

Unger v A.W. Chesterton Co.
2021 NY Slip Op 31161(U)
April 2, 2021
Supreme Court, New York County
Docket Number: 190098/2020
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 13

Justice

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EDWARD UNGER, LISA UNGER,
Plaintiff,

INDEX NO. 190098/2020
MOTION DATE 01/08/2021
MOTION SEQ. NO. 001

- v -

A.W. CHESTERTON COMPANY, ABB, INC.,All
ACQUISITION CORPORATION, LLC,AIR & LIQUID
SYSTEMS CORPORATION, ALFA LAVAL, INC.,ALLEN-
BRADLEY COMPANY, INC.,AMTROL, INC.,ARMSTRONG
INTERNATIONAL, INC.,ATWOOD & MORRILL CO.,
INC.,AURORA PUMP COMPANY, BLACKMER PUMP,
BURNHAM CORPORATION, BW/IP INTERNATIONAL CO.,
CARRIER CORPORATION, CATERPILLAR INC.,CBS
CORPORATION, CLARK RELIANCE CORPORATION,
CLEAVER-BROOKS COMPANY, CRANE CO., CROWN
BOILER CO., CUMMINS ENGINE COMPANY,
INC.,CUMMINS INC.,CUMMINS NORTHEAST,
INC.,DEZURIK, INC.,EATON CORPORATION,
ELECTROLUX HOME PRODUCTS, INC.,ELLIOTT
TURBOMACHINERY CO., INC.,FLOWSERVE US,
INC.,FMC CORPORATION, FOSTER WHEELER,
LLC,GENERAL ELECTRIC COMPANY, GENUINE PARTS
COMPANY, GOULD ELECTRONICS, INC.,GOULDS
PUMPS, INC.,GREENE, TWEED & CO., INC.,GRINNELL
CORPORATION, HENRY TECHNOLOGIES,
INC.,HONEYWELL INTERNATIONAL, INC.,HOWDEN
BUFFALO, INC.,I.T.T. INDUSTRIES, INC.,INGERSOLL
RAND, INC.,JENKINS BROS., LENNOX INDUSTRIES,
INC.,LIGHTOLIER INCORPORATED, METROPOLITAN
LIFE INSURANCE COMPANY, MORSE TEC LLC,NAPA
AUTO PARTS, NASH ENGINEERING COMPANY (THE),
NEW ENGLAND INSULATION CO., PNEUMO ABEX
CORPORATION, PNEUMO-ABEX LLC,PROGRESS
LIGHTING, INC.,RHEEM MANUFACTURING COMPANY,
INC.,ROCKWELL AUTOMATION, INC.,SCHNEIDER
ELECTRIC USA, INC.,SPENCE ENGINEERING
COMPANY, INC.,SPIRAX SARCO, INC.,SPX COOLING
TECHNOLOGIES, INC.,SUPERIOR LIDGERWOOD
MUNDY CORP., THRUSH CO., INC.,TUTHILL
CORPORATION, UNION CARBIDE CORPORATION,
VELAN VALVE CORP., WARREN PUMPS LLC,WEIL
MCLAIN, WILLIAM POWELL COMPANY (THE), YORK
INTERNATIONAL CORPORATION, BARNES & JONES,
INC.,MUELLER CO., O.C. KECKLEY COMPANY,
SKIDMORE PUMP, WATTS REGULATOR COMPANY,
INDIVIDUALLY AND AS SUCCESSOR TO WARREN

DECISION + ORDER ON
MOTION

WEBSTER, WATTS WATER TECHNOLOGIES, INC.,CAMERON INTERNATIONAL CORPORATION INDIVIDUALLY AND AS SUCCESSOR TO PENNSYLVANIA PUMP & COMPRESSOR COMPANY AND COOPER BESSEMER, SID HARVEY INDUSTRIES, INC.,SID HARVEY SUPPLY, INC.,SIEMENS CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO MURRAY & FURNAS, DISTRIBUTOR CORPORATION OF NEW ENGLAND, EMERSON SWAN, INC.,HAJOCA CORPORATION, HAJOCA PLUMBING SUPPLY COMPANY, PEABODY SUPPLY CO., ECR INTERNATIONAL, INC.,INDIVIDUALLY AND AS SUCCESSOR TO DUNKIRK, DUNKIRK BOILERS AND UTICA BOILERS, KOHLER CO., HUBBELL INCORPORATED (DELAWARE), GRUNDFOS CBS INC.,INDIVIDUALLY AND AS SUCCESSOR TO PACO PUMPS AND PACIFIC PUMPS, PACO PUMPS, INC.,PCC FLOW TECHNOLOGIES, INC.,F/K/A PCC FLOW TECHNOLOGIES LP, INDIVIDUALLY AND AS SUCCESSOR TO PACO PUMPS AND PACIFIC PUMPS, PCC FLOW TECHNOLOGIES LP, AS SUCCESSOR IN INTEREST TO PACO PUMPS, INC.,PRECISION CASTPARTS CORP., INDIVIDUALLY AND AS SUCCESSOR TO PACIFIC PUMPS AND PACO PUMPS, SULZER PROCESS PUMPS (US), INC.,INDIVIDUALLY AND AS SUCCESSOR TO PACO PUMPS AND SULZER PUMPS, HOUSTON, INC.,SULZER PUMPS (US), INC.,INDIVIDUALLY AND AS SUCCESSOR TO JOHNSTON PUMP AND AHLSTROM PUMPS AND PACO PUMPS AND SULZER PUMPS, HOUSTON, INC.,SIEMENS INDUSTRY, INC.,SUCCESSOR IN INTEREST TO SIEMENS ENERGY & AUTOMATION, INC.,AERMOTOR PUMPS, INC.,INDIVIDUALLY AND AS SUCCESSOR TO MUELLER PUMP AND WEINMAN PUMP, AMW PUMP COMPANY, INC.,INDIVIDUALLY AND AS SUCCESSOR TO MUELLER PUMP, AERMOTOR, AND WEINMAN, GRINNELL CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO MUELLER PUMP AND WEINMAN PUMP, JIM WALTER CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO MUELLER CO., MUELLER WATER PRODUCTS AND MUELLER PUMP, MUELLER PUMP COMPANY, MUELLER WATER PRODUCTS INC.,INDIVIDUALLY AND AS SUCCESSOR TO MUELLER PUMP COMPANY, AMW PUMPS, AND WEINMAN PUMP, MUELLER STEAM SPECIALTY, I.G. MARSTON CO., INC.,COOPER CAMERON CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO PENNSYLVANIA PUMP & COMPRESSOR COMPANY AND COOPER BESSEMER AND GROVE REDUCER VALVES;, PRATT & WHITNEY POWER SYSTEMS, INC.,UNITED TECHNOLOGIES CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO PRATT & WHITNEY (PRATT & WHITNEY/AIRCRAFT DIVISION), RAYTHEON TECHNOLOGIES CORPORATION F/K/A UNITED TECHNOLOGIES CORPORATION, BLAKE

GROUP HOLDINGS, INC.,F.W. WEBB COMPANY, INDIVIDUALLY AND AS SUCCESSOR TO BERGEN INDUSTRIAL SUPPLY CO., FORT KENT HOLDINGS, INC. F/K/A DUNHAMBUSH, INC.,GRUNDFOS PUMPS CORPORATION, INDIVIDUALLY AND AS SUCCESSOR- IN-INTEREST TO PACIFIC PUMP COMPANY, JOMAR DISTRIBUTORS, INC.,MCMASTER-CARR SUPPLY COMPANY, TACO, INC.,TOTAL AIR SUPPLY INC.,VIKING PUMP, INC.,A UNIT OF IDEX CORPORATION, W. W. GRAINGER, INC.,BALTIMORE AIRCOIL COMPANY, INC.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 202, 203, 204, 205, 206, 207

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Upon the foregoing documents, it is ordered that defendant The William Powell Company’s motion for summary judgment to dismiss the instant action is granted without opposition.

The standards of summary judgment are well settled. To grant summary judgment, it must be clear that no material or triable issues of fact are presented. See *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 (1957). “The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case”. *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 (1985). Once such entitlement has been demonstrated by the moving party, the burden shifts to the party opposing the motion to “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure...to do [so]”. *Zuckerman v City of New York*, 49 NY2d 557, 560 (1980).

Here, defendant The William Powell Company moves to dismiss plaintiff’s complaint arguing that plaintiff failed to produce any evidence to link moving defendant’s product with

plaintiff's asbestos exposure. In support of its motion, defendant The William Powell Company proffers, *inter alia*, plaintiff's answers to interrogatories. A review of such document reveals that plaintiff did not identify any products manufactured, sold, or distributed by defendant The William Powell Company which exposed plaintiff to asbestos. Thus, moving defendant has established entitlement to summary judgment of dismissal on the ground that it did not contribute to, or cause plaintiff to, be exposed to asbestos, and, thus, is not liable for any injury or harm suffered by plaintiff as a result of asbestos exposure.

As moving defendant met its prima facie burden, the burden shifts to plaintiff to establish a genuine triable issue of fact. In a products liability case, plaintiff must "come forward with evidence of an evidentiary nature to...creat[e] a reasonable inference that [plaintiff was exposed to asbestos] from [defendant's] product." *Cawein v Flintkote Co.*, 203 AD2d 105, 106 (1st Dep't 1994). Here, plaintiff failed to oppose the instant motion such that no issues of fact have been raised. As such, defendant The William Powell Company's motion for summary judgment of dismissal is granted without opposition.

Accordingly, it is

ORDERED that defendant The William Powell Company's motion for summary judgment to dismiss this action as against it is granted and this action is dismissed as to defendant The William Powell Company only; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendant The William Powell Company dismissing the claims and cross-claims made against it in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs, and amend the caption to remove defendant The William Powell Company only; and it is further

ORDERED that the said claims against the remaining defendants are severed and the balance of the action shall continue; and it is further

ORDERED that within 30 days of entry, defendant The William Powell Company shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

4/2/2021
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE