

**Simmons v A.P. Servs., Inc.**

2021 NY Slip Op 31468(U)

April 29, 2021

Supreme Court, New York County

Docket Number: 190123/2012

Judge: Adam Silvera

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 13

Justice

-----X

ROBERT SIMMONS,

Plaintiff,

- v -

A.P. SERVICES, INC.,AIR & LIQUID SYSTEMS CORPORATION, ALFA LAVAL, INC.,AMERICAN STANDARD, INC.,ARMSTRONG INTERNATIONAL, INC.,ATWOOD & MORRILL CO., INC.,AURORA PUMP COMPANY, BEAZER EAST, INC.,BIRD INCORPORATED, BORG WARNER CORPORATION, BURNHAM CORPORATION, BW/IP INTERNATIONAL CO., CARRIER CORPORATION, CBS CORPORATION, CERTAIN-TEED CORPORATION, CLARK RELIANCE CORPORATION, CLEAVER BROOKS COMPANY, CRANE CO., CROSBY VALVE AND GAGE COMPANY, CROSBY VALVE, INC.,DEAN PUMP DIVISION, DEZURIK, INC.,EATON CORPORATION, ELECTROLUX HOME PRODUCTS, INC.,ELLIOTT TURBOMACHINERY CO., INC.,FAIRBANKS COMPANY (THE), FALK CORPORATION (THE), FLOWSERVE US, INC.,FMC CORPORATION, FOSTER WHEELER LLC,GARDNER DENVER, INC.,GENERAL ELECTRIC COMPANY, GEORGIA-PACIFIC CORPORATION, GOODRICH CORPORATION, GOODYEAR CANADA, INC.,GOODYEAR TIRE & RUBBER COMPANY (THE), GOULDS PUMPS, INC.,GREENE, TWEED & CO., LLP, GRINNELL CORPORATION, HONEYWELL INTERNATIONAL, INC.,HOPEMAN BROTHERS, INC.,HOWDEN BUFFALO, INC.,I.T.T. INDUSTRIES, INC.,IMO INDUSTRIES, INC.,JOHN CRANE, INC.,KENTILE FLOORS, INC.,KINNEY VACUUM PUMP COMPANY, MARLEY COMPANY (THE), METROPOLITAN LIFE INSURANCE COMPANY, MONTALVO CORPORATION (THE), NASH ENGINEERING COMPANY (THE), OWENS ILLINOIS INC.,RAPID AMERICAN CORPORATION, RHEEM MANUFACTURING CORP., RILEY POWER, INC.,SIEMENS CORPORATION, SPENCE ENGINEERING COMPANY, INC.,SPIRAX SARCO, INC.,SUPERIOR LIDGERWOOD MUNDY CORP., SVI CORPORATION, TACO, INC.,TODD SHIPYARDS CORPORATION, TRANE U.S. INC.,TUTHILL CORPORATION, TYCO FLOW CONTROL, INC.,TYCO INTERNATIONAL (US), INC.,UNION CARBIDE CORPORATION, VELAN VALVE CORP., WARD LEONARD ELECTRIC CO., WARREN PUMPS, INC.,WEIL MCLAIN, WILLIAM POWELL COMPANY (THE), YARWAY

INDEX NO. 190123/2012
MOTION DATE 03/24/2021
MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

CORPORATION, YORK INTERNATIONAL  
CORPORATION, ZURN INDUSTRIES, INC.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 006) 192, 193, 194, 195, 196, 197

were read on this motion to/for JUDGMENT - SUMMARY.

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 and the deposition transcript of plaintiff’s shipmate, Mr. Jim LeBlanc. A review of such document reveals that neither plaintiff

nor Mr. LeBlanc identified 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 (1<sup>st</sup> 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.

4/29/2021

DATE



ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES  
TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE