

Arana v A.O. Smith Water Prods. Co.

2022 NY Slip Op 34231(U)

December 13, 2022

Supreme Court, New York County

Docket Number: Index No. 190261/2019

Judge: Adam Silvera

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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

13

Justice

X

INDEX NO.

190261/2019

VICTOR ARANA,

MOTION DATE

N/A

Plaintiff,

MOTION SEQ. NO.

005

- v -

A.O. SMITH WATER PRODUCTS CO, AERCO INTERNATIONAL, INC, AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC AG COMPANY, N/K/A BAYER CROPSCIENCE INC, ATWOOD & MORRILL COMPANY, AURORA PUMP COMPANY, BARNES & JONES, INC, BLACKMAN PLUMBING SUPPLY COMPANY, INC, BMCE INC., F/K/A UNITED CENTRIFUGAL PUMP, BORGWARNER MORSE TEC LLC, BURNHAM, LLC, INDIVIDUALLY, AND AS SUCCESSOR TO BURNHAM CORPORATION, BW/IP, INC. AND ITS WHOLLY OWNED SUBSIDIARIES, CBS CORPORATION, F/K/A VIACOM INC., SUCCESSOR BY MERGER TO CBS CORPORATION, F/K/A WESTINGHOUSE ELECTRIC CORPORATION, CERTAINTTEED CORPORATION, CLEAVER BROOKS COMPANY, INC, CLYDE UNION, INC, COLUMBIA BOILER COMPANY OF POTTSTOWN, COMPUDYNE CORPORATION, INDIVIDUALLY, AND AS SUCCESSOR TO YORK SHIPLEY, INC, CONBRACO INDUSTRIES, INC, CRANE CO, ELECTROLUX HOME PRODUCTS, INC. INDIVIDUALLY, AND AS SUCCESSOR TO TAPPAN AND COPE-S-VULCAN, FLOWSERVE US, INC. INDIVIDUALLY AND SUCCESSOR TO ROCKWELL MANUFACTURING COMPANY, EDWARD VALVE, INC., NORDSTROM VALVES, INC., EDWARD VOGT VALVE COMPANY, AND VOGT VALVE COMPANY, FMC CORPORATION, ON BEHALF OF ITS FORMER CHICAGO PUMP & NORTHERN PUMP BUSINESSES, FOSTER WHEELER, L.L.C, GENERAL ELECTRIC COMPANY, GOULDS PUMPS LLC, GRINNELL LLC, HARSCO CORPORATION, AS SUCCESSOR TO PATTERSON-KELLEY COMPANY, INC., INDIVIDUALLY AND D/B/A PATTERSON-KELLEY, HONEYWELL INTERNATIONAL, INC., F/K/A ALLIED SIGNAL, INC. / BENDIX, ITT LLC., INDIVIDUALLY AND AS SUCCESSOR TO BELL & GOSSETT AND AS SUCCESSOR TO KENNEDY VALVE MANUFACTURING CO., INC, JENKINS BROS, KAMCO SUPPLY CORP, KEELER-DORR-OLIVER BOILER COMPANY, KOHLER CO, LOCHNIVAR CORPORATION, NEW YORKER BOILER COMPANY, INC, PEERLESS INDUSTRIES, INC, PFIZER, INC. (PFIZER), PULSAFEEDER, R.W. BECKETT

DECISION + ORDER ON MOTION

CORPORATION, RED WHITE VALVE CORP, RHEEM MANUFACTURING COMPANY, RILEY POWER INC, ROCKWELL AUTOMATION, INC.,AS SUCCESSOR IN INTEREST TO ALLEN- BRADLEY COMPANY, LLC,ROPER PUMP COMPANY, SLANT/FIN CORPORATION, SPENCE ENGINEERING COMPANY, INC. INDIVIDUALLY AND AS A DIVISION OF CIRCOR INTERNATIONAL INC, SPIRAX SARCO, INC. INDIVIDUALLY AND AS SUCCESSOR TO SARCO COMPANY, SUPERIOR BOILER WORKS, INC, TACO, INC, THE J.R. CLARKSON COMPANY LLC SUCCESSOR BY MERGER TO IMI CASH VALVE, INC. (FORMERLY KNOWN AS AW CASH VALVE MANUFACTURING CORPORATION), U.S. RUBBER COMPANY (UNIROYAL), UNION CARBIDE CORPORATION, UTICA BOILERS, INC., INDIVIDUALLY AND AS SUCCESSOR TO UTICA RADIATOR CORPORATION, VIKING PUMP, INC, WARREN PUMPS, LLC,WEIL-MCLAIN, A DIVISION OF THE MARLEY-WYLAIN COMPANY, A WHOLLY OWNED SUBSIDIARY OF THE MARLEY COMPANY, LLC,ZURN INDUSTRIES LLC INDIVIDUALLY AND SUCCESSOR TO ERIE CITY IRON WORKS A/K/A ERIE CITY BOILERS, ZY-TECH GLOBAL INDUSTRIES, INC, AMERICAN INTERNATIONAL INDUSTRIES INC.,BIRD INCORPORATED, J-M MANUFACTURING COMPANY, INC.,KARNAK CORPORATION, LENNOX INDUSTRIES, INC.,NESLEMUR, AS SUCCESSOR IN INTEREST TO CLUBMAN AND JERIS TALC, NESLEMUR, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO CLUBMAN, ARMSTRONG PUMPS, INC.,INTERNATIONAL PAPER COMPANY, INDIVIDUALLY AND AS SUCCESSOR TO CHAMPION INTERNATIONAL CORPORATION, AS SUCCESSOR TO UNITED STATES PLYWOOD CORPORATION, LEVITON MANUFACTURING CO., INC.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 526, 527, 528, 529, 530, 542, 546, 547, 548, 549

were read on this motion to/for

REARGUMENT/RECONSIDERATION

Upon the foregoing documents, it is ordered that defendant J-M Manufacturing Company, Inc.’s (hereinafter referred to as “J-MM”) motion to reargue is granted. Here, defendant J-MM seeks to reargue a prior motion seeking summary judgment of dismissal, or

alternatively seeking partial summary judgment on the issue of punitive damages.

In a prior decision dated September 27, 2021 (hereinafter referred to as the “Prior Decision”), the Court denied defendant J-MM’s motion for summary judgment. CPLR 2221(d)(2) permits a party to move for leave to reargue a decision upon a showing that the court misapprehended the law in rendering its initial decision. “A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision.” *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 (1st Dep’t 1992), *appeal denied in part, dismissed in part* 80 NY2d 1005 (1992) (internal quotations omitted).

The Court notes that, subsequent to the Prior Decision, defendant J-MM subsequently moved to reargue and appealed the Prior Decision. The Court notes that by Decision/Order of the Appellate Division, First Department, dated November 17, 2022, the Prior Decision was affirmed in part and modified in part. As such, and in accordance with the Appellate Division, defendant J-MM’s instant motion to reargue is granted, and the original motion is denied in part and granted in part. Defendant J-MM’s summary judgment motion seeking to dismiss this action is denied as issues of fact exist as detailed in the Prior Decision. The portion of defendant J-MM’s motion seeking partial summary judgment to dismiss plaintiff’s claim for punitive damages is granted as per the Appellate Division, First Department, decision in this action.

Accordingly, it is

ORDERED that defendant J-MM’s motion to reargue is granted and, upon reargument, the Court modifies its prior decision, dated September 27, 2021, and grants defendant J-MM’s prior

motion in part to dismiss plaintiff's claim of punitive damages against defendant J-MM only; and it is further

ORDERED that the remainder of the prior decision, dated September 27, 2021, remains unchanged; and it is further

ORDERED that, within thirty days of entry, defendant J-MM shall serve a copy of this order upon all parties, together with notice of entry.

This constitutes the Decision/Order of the Court.

12/13/2022

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