Ace Am. Ins. Co. v Filtration Sys. A Div. of Mech. Mfg. Corp.
2022 NY Slip Op 34280(U)
December 19, 2022
Supreme Court, New York County
Docket Number: Index No. 158544/2019
Judge: Lori S. Sattler

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 02TR

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ACE AMERICAN INSURANCE COMPANY AS SUBROGEE OF ROCKLAND FUNDING LLC D/B/A WESTBROOK PARTNERS, LIBERTY MUTUAL INSURANCE COMPANY AS SUBROGEE OF ROCKLAND FUNDING LLC D/B/A WESTBROOK PARTNERS, ENDURANCE INSURANCE COMPANY AS SUBROGEE OF ROCKLAND FUNDING LLC D/B/A WESTBROOK PARTNERS, CHUBB CUSTOM INSURANCE COMPANY AS SUBROGEE OF ROCKLAND FUNDING LLC D/B/A WESTBROOK PARTNERS, GENERAL SECURITY INDEMNITY COMPANY OF ARIZONA AS SUBROGEE OF ROCKLAND FUNDING LLC D/B/A WESTBROOK PARTNERS, EVEREST INSURANCE COMPANY AS SUBROGEE OF ROCKLAND FUNDING LLC D/B/A WESTBROOK PARTNERS, ARCH INSURANCE GROUP, INC. AS SUBROGEE OF ROCKLAND FUNDING LLC D/B/A WESTBROOK PARTNERS, ALLIED WORLD ASSURANCE COMPANY AS SUBROGEE OF ROCKLAND FUNDING LLC D/B/A WESTBROOK PARTNERS,

Plaintiff,

- v -

FILTRATION SYSTEMS A DIVISION OF MECHANICAL MFG. CORPORATION, ATLANTIC COOLING TECHNOLOGIES & SERVICES, INTERSTATE MECHANICAL SERVICES, INC.,

Defendant.

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INDEX NO. 158544/2019

MOTION DATE 08/25/2022

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137

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

In this subrogation action arising out of alleged real property damage, Defendant Filtration Systems A Division of Mechanical Mfg. Corporation ("Filtration Systems") moves for an order pursuant to CPLR 3212 granting summary judgment dismissing all claims and

crossclaims against it. Plaintiffs, subrogee-insurers of Rockland Funding LLC d/b/a Westbrook Partners ("Plaintiffs") and defendants Atlantic Cooling Technologies & Services ("Atlantic Cooling") and Interstate Mechanical Services, Inc. ("Interstate") oppose the motion.

Rockland Funding LLC d/b/a Westbrook Partners ("Rockland") is the owner of the building located at 444 Madison Avenue, New York New York ("444 Madison"). Prior to 2018, Rockland retained Atlantic Cooling and Interstate to install an HVAC system at 444 Madison, which included installation of filter system canisters in a cooling tower. Filtration Systems manufactured the water filter system that Atlantic Cooling and/or Interstate subsequently installed in the cooling tower as part of the HVAC system. On or about July 2, 2018, a water leak occurred in one of the cooling towers. Plaintiffs allege that the leak originated in one of the filter system canisters when a black steel bolt that had been plugging a hole at the back of one of the canisters corroded and ejected.

Plaintiffs commenced this action on September 3, 2019 by filing the Summons and Complaint. In their first cause of action, Plaintiffs assert negligence against all defendants. In their second cause of action, they assert strict products liability against Filtration Systems only. Defendants answered, and the parties attempted to complete discovery over a period of three years. During that time, Filtration Systems filed two motions seeking to compel discovery, first from Interstate and second from a non-party. Duly noticed depositions of Atlantic Cooling and Interstate have been adjourned ten times. Filtration Systems then filed this motion for summary judgment dismissing both causes of action against it.

On a motion for summary judgment, the movant "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

"Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985]). If this initial showing is made, the burden shifts to the opposing parties "to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact" such that trial of the action is required (*Alvarez*, 68 NY2d at 324).

Filtration Systems argues that there is no dispute of material fact as to the existence of any design defect in the filter system it manufactured. According to Filtration Systems, the filter system it furnished for the project consisted of six individual stainless-steel modules, filter bags and O-rings with a full gauge and valve package, and a four-inch header terminating with flanged connections (NYSCEF Doc. No. 109, Statement of Material Facts ¶¶ 16-17). Filtration Systems maintains that, when assembled, there is no need for any additional bolts or plugs of any kind because the completed stainless-steel gauge and valve package "fills all the holes with ports" in the system (*id*. ¶ 19; NYSCEF Doc. No., Goldman aff 119 ¶ 11). The principal engineer of Filtration Systems testified that the company did not sell or ship plugs because of this design feature (Goldman EBT at 23-24).

Additionally, an Installation, Operating and Safety Manual ("Manual") accompanied the filter system (NYSCEF Doc. No. 118). In relevant part, the Manual directs users to check the chemical and thermal compatibility of "Housing Material, O-Rings, Gaskets, and Media" and all materials that will come into contact with the liquid being filtered, to seal "any unused connections with a (user-furnished) blind flange or threaded plug," and states that "[i]mproper use of Filter Vessels may result in injury or property damage" (Manual at 6-8). Filtration Systems argues that an installer "would need necessary expertise as a matter of course" such that a "careful reading" of the Manual would have resulted in proper installation (NYSCEF Doc. No.

135, Reply Affirmation ¶ 16). It therefore argues it has shown prima facie that it was not liable under negligence or strict products liability theories.

In opposition, Plaintiffs and Defendants Atlantic Cooling and Interstate argue that there is a dispute of material fact as to whether Filtration Systems failed to provide adequate warnings regarding the use of valves, plugs, or gauges not provided by the manufacturer. They maintain that the safety manual provided by Filtration Systems with the components does not warn of dangers associated with using valves not provided by the manufacturer, specifically warn about the dangers of using black steel plugs, or state that using plugs or other external equipment is inappropriate (NYSCEF Doc. No. 123 ¶ 7). They further contend that the depositions of the remaining defendants have not been taken and without this discovery there is no basis for a finding of summary judgment.

A manufacturer of a defective product may be held liable under theories of negligence or strict products liability for failing to provide adequate warnings against latent dangers resulting from foreseeable uses of its products about which it knew or should have known (*see Rastelli v Goodyear Tire & Rubber Co.*, 78 NY2d 289 [1992]; *Liriano v Hobart Corp.*, 92 NY2d 232, 237 [1998]). "Failure-to-warn liability is intensely fact-specific, including but not limited to such issues as feasibility and difficulty of issuing warnings in the circumstances . . . ; obviousness of the risk from actual use of the product; knowledge of the particular product user; and proximate cause" (*Liriano*, 92 NY2d at 243).

Outstanding questions of material fact exist related to whether Filtration Systems provided adequate warnings with its product. Filtration Systems' Manual contains language instructing users to check the compatibility of components with the liquid to be filtered and specifically warns that property damage may result from improper use of the filter vessels that it

characterizes as warnings (NYSCEF Doc. No. 135 at ¶ 16). However, Filtration Systems does not present undisputed facts regarding, *inter alia*, the identity of the party that installed the filter system, the level of knowledge possessed by the installer, or the obviousness of the risk of using black steel plugs/bolts to the installer (*see Liriano*, 92 NY2d at 243). Further discovery is required to uncover these relevant facts. Filtration Systems' argument that the parties cannot make failure to warn arguments because the Complaint does not allege failure to warn or breach of a duty to warn is unavailing. Plaintiffs sufficiently state causes of action for negligence and strict products liability (NYSCEF Doc. No. 111, Complaint at ¶¶ 37-53). Therefore, Filtration Systems has not demonstrated its entitled to summary judgment as a matter of law.

In light of the history of delays in discovery in this matter, the Court will order an expedited discovery schedule. These deadlines are final and shall not be adjourned without court approval. Counsel may contact the Court to request a discovery and/or settlement conference at any point.

Accordingly, it is hereby:

ORDERED that the motion is denied; and it is further

ORDERED that depositions shall be completed before March 31, 2023; and it is further

ORDERED that all discovery is to be completed by May 31, 2023; and it is further

ORDERED that Plaintiff shall file a Note of Issue after the close of discovery and no later than June 23, 2023.

12/19/2022
DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:		**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
		GRANTED	[X] **DENIED**		**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**