

**Bass v Aldrico, Inc.**

2023 NY Slip Op 32906(U)

August 21, 2023

Supreme Court, New York County

Docket Number: Index No. 190144/2019

Judge: Adam Silvera

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INC., SUCCESSOR TO H.A THRUSH AND THRUSH  
PRODUCTS, INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 196, 197, 198, 199 were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is ordered that the instant motion for summary judgment seeking dismissal of this action, pursuant to CPLR §3212, is denied for the reasons set forth below.

Here, defendant Rockwell Automation, Inc. (“Rockwell”) moves to dismiss this action on the grounds that plaintiff (“Mr. Silvestri”) was not exposed to asbestos from any burners manufactured by Rockwell’s predecessor, Timken-Detroit Axle Company during his work as an HVAC mechanic, working often with the installation, removal, and servicing of boilers.

The Court notes that summary judgment is a drastic remedy and should only be granted if the moving party has sufficiently established that it is warranted as a matter of law. *See Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986). “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). Despite the sufficiency of the opposing papers, the failure to make such a showing requires denial of the motion. *See id.* at 853. Additionally, summary judgment motions should be denied if the opposing party presents admissible evidence establishing that there is a genuine issue of fact remaining. *See Zuckerman v City of New York*, 49 NY2d 557, 560 (1980). “In determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving

party and should not pass on issues of credibility.” *Garcia v J.C. Duggan, Inc.*, 180 AD2d 579, 580 (1<sup>st</sup> Dep’t 1992), citing *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1<sup>st</sup> Dep’t 1990). The court’s role is “issue-finding, rather than issue-determination”. *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 (1957) (internal quotations omitted). As such, summary judgment is rarely granted in negligence actions unless there is no conflict at all in the evidence. *See Ugarriza v Schmieder*, 46 NY2d 471, 475-476 (1979). Furthermore, the Appellate Division, First Department has held that on a motion for summary judgment, it is moving defendant’s burden “to unequivocally establish that its product could not have contributed to the causation of plaintiff’s injury”. *Reid v Georgia-Pacific Corp.*, 212 AD2d 462, 463 (1<sup>st</sup> Dep’t 1995).

Defendant Rockwell argues that one piece of Mr. Silvestri’s testimony, attributing his asbestos exposure to primarily boiler-related parts as opposed to solely Timken burners, is dispositive of their liability in the underlying action. This is unconvincing.

In opposition, plaintiff correctly notes that Mr. Silvestri’s testimony regarding Timken burners was clear and consistent, and that asbestos-containing components were required to be used when installing Timken burners to the boilers. Defendant Rockwell has done nothing to prove that Timken burners did not contain asbestos or required asbestos-containing parts in order to be installed, that Mr. Silvestri did not encounter Timken burners during his lifetime of work as a mechanic, or that Mr. Silvestri’s illness could not have been caused by exposure to asbestos from Timken burners.

Here, defendant Rockwell has failed to meet its initial burden in establishing that its product did not contain asbestos and could not have contributed to plaintiff’s asbestos exposure. As a reasonable juror could decide that plaintiff was exposed to asbestos from the use or exposure to Timken burners, issues of fact exist to preclude summary judgment.

Accordingly, it is

ORDERED that defendant Rockwell's motion for summary judgment is denied in its entirety; and it is further

ORDERED that within 30 days of entry plaintiff shall serve all parties with a copy of this Decision/Order with notice of entry.

This constitutes the Decision/Order of the Court.



08/21/2023

DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: