

Cabrera v Chanel, Inc.

2023 NY Slip Op 34017(U)

November 9, 2023

Supreme Court, New York County

Docket Number: Index No. 190118/2020

Judge: Adam Silvera

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA

PART

13

Justice

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ROSARIO CABRERA,

Plaintiff,

- v -

INDEX NO. 190118/2020
MOTION DATE N/A
MOTION SEQ. NO. 002

CHANEL, INC, FOOT LOCKER, INC., INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO WOOLWORTH CORPORATION, FOOT LOCKER SPECIALTIES, INC., INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO F.W. WOOLWORTH CO., PUBLIX SUPER MARKETS, INC., BRENNTAG NORTH AMERICA, AS A SUCCESSOR-IN-INTEREST TO MINERAL PIGMENT SOLUTIONS, INC., AS SUCCESSOR-IN-INTEREST TO WHITTAKER, CLARK & DANIELS, INC., BRENNTAG SPECIALTIES, INC., F/K/A MINERAL PIGMENT SOLUTIONS, INC., AS SUCCESSOR-IN- INTEREST TO WHITTAKER, CLARK & DANIELS, INC., BRITISH-AMERICAN COSMETICS CORPORATION, COLGATE-PALMOLIVE COMPANY, CYPRUS AMAX MINERALS COMPANY, JOHNSON & JOHNSON, JOHNSON & JOHNSON CONSUMER COMPANIES, INC., JOHNSON & JOHNSON HEALTH AND WELLNESS SOLUTIONS, INC., KOLMAR LABORATORIES, INC., LORNAMEAD BRANDS, INC., D/B/A LORNAMEAD NORTH AMERICA, LORNAMEAD INC., D/B/A LORNAMEAD NORTH AMERICA, PROCTER & GAMBLE HAIR CARE, LLC, PROCTER & GAMBLE PRODUCTIONS, INC., SHULTON, INC., SMITHKLINE BEECHAM CONSUMER PRODUCTS, INC, SMITHKLINE BEECHAM CORPORATION, THE PROCTER & GAMBLE COMPANY, WHITTAKER, CLARK & DANIELS, INC., YARDLEY OF LONDON, INC., INDIVIDUALLY AND AS SUCCESSOR-IN- INTEREST TO LENTHERIC, INC., AND LENTHERIC DISTRIBUTORS, INC., COLGATE-PALMOLIVE COMPANY, AS SUCCESSOR-IN-INTEREST TO THE MENNEN COMPANY, GLAXOSMITHKLINE, LLC, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO YARDLEY OF LONDON, INC., YARDLEY OF LONDON, LTD., AND YARDLEY OF LONDON (U.S.) LLC, YARDLEY OF LONDON (U.S.) LLC., BRENNTAG NORTH AMERICA, AS A SUCCESSOR-IN-INTEREST TO MINERAL PIGMENT SOLUTIONS, INC., AS SUCCESSOR-IN-INTEREST TO WHITTAKER, CLARK & DANIELS, INC., BRENNTAG SPECIALTIES, INC., F/K/A MINERAL PIGMENT SOLUTIONS, INC., AS SUCCESSOR-IN- INTEREST TO WHITTAKER, CLARK & DANIELS, INC., BRITISH-AMERICAN COSMETICS CORPORATION, COLGATE-

DECISION + ORDER ON MOTION

PALMOLIVE COMPANY, CYPRUS AMAX MINERALS COMPANY, JOHNSON & JOHNSON, JOHNSON & JOHNSON CONSUMER COMPANIES, INC., JOHNSON & JOHNSON HEALTH AND WELLNESS SOLUTIONS, INC., KOLMAR LABORATORIES, INC., LORNAMEAD BRANDS, INC., D/B/A LORNAMEAD NORTH AMERICA, LORNAMEAD INC., D/B/A LORNAMEAD NORTH AMERICA, PROCTER & GAMBLE HAIR CARE, LLC, PROCTER & GAMBLE PRODUCTIONS, INC., SHULTON, INC., SMITHKLINE BEECHAM CONSUMER PRODUCTS, INC., SMITHKLINE BEECHAM CORPORATION, THE PROCTER & GAMBLE COMPANY, WHITTAKER, CLARK & DANIELS, INC., YARDLEY OF LONDON, INC., INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO LENTHERIC, INC., AND LENTHERIC DISTRIBUTORS, INC., COLGATE-PALMOLIVE COMPANY, AS SUCCESSOR-IN-INTEREST TO THE MENNEN COMPANY, GLAXOSMITHKLINE, LLC, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO YARDLEY OF LONDON, INC., YARDLEY OF LONDON, LTD., AND YARDLEY OF LONDON (U.S.) LLC, YARDLEY OF LONDON (U.S.) LLC.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227

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

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 Kolmar Laboratories, Inc. (“Kolmar”) moves for summary judgment to dismiss this action on the grounds that plaintiff-decedent, Dolores Gomez (“Ms. Gomez”) has not established that she was exposed to any asbestos-containing product manufactured by Kolmar and that any such product was manufactured per the specifications of Johnson & Johnson. *See* Memorandum of Law in Support of Motion for Summary Judgment by Kolmar Laboratories, Inc., p. 15-22. In opposition, plaintiff notes that defendant has confirmed its

manufacturing role in a product at issue herein and has had an active role in manufacturing such product. *See* Affirmation in Opposition to Defendant Kolmar Laboratories Inc.'s Motion for Summary Judgment, p. 6-10. Defendant Kolmar replies, emphasizing that it was only a backup manufacturer for the product at issue and that plaintiff has not proven that she used such product manufactured specifically by defendant.

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 (1st Dep’t 1992), citing *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st 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 (1st Dep't 1995).

The appropriate standard at summary judgment for moving defendant Kolmar can be found in *Dyer v Amchem Products Inc.*, 207 AD3d 408, 409 (1st Dep't 2022). In *Dyer*, defendants were granted summary judgment not by "simply argu[ing] that plaintiff could not affirmatively prove causation" but by "affirmatively prov[ing], as a matter of law, that there was no causation." *Id.*

Moving defendant's arguments focus entirely on plaintiff's evidence and lack of certainty as to the proportion of products used that may have been actually manufactured by defendant, if any. However, conflicting evidence has been presented herein with regards to the defendant Kolmar's involvement with the product at issue and defendant has confirmed that it was a manufacturer of such product during the period of Ms. Gomez's exposure. Thus, moving defendant has failed to "establish that its products could not have contributed to the causation of plaintiff's injury." *Reid v Georgia-Pacific Corp.*, *supra*.

Accordingly, it is

ORDERED that defendant Kolmar'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.



ADAM SILVERA, J.S.C.

11/09/2023

DATE

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: