

Savianeso v Aerco Intl., Inc

2024 NY Slip Op 31002(U)

March 25, 2024

Supreme Court, New York County

Docket Number: Index No. 190040/2020

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

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INDEX NO. 190040/2020

JUNE SAVIANESO,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 003

- v -

AERCO INTERNATIONAL, INC, AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC AG COMPANY, N/K/A BAYER CROPSCIENCE INC, BALLANTYN STRONG INC, BLODGETT CORPORATION, BMCE INC., F/K/A UNITED CENTRIFUGAL PUMP, BRIGGS & STRATTON CORP, CBS CORPORATION, F/K/A VIACOM INC., SUCCESSOR BY MERGER TO CBS CORPORATION, F/K/A WESTINGHOUSE ELECTRIC CORPORATION, COMPUDYNE CORPORATION, INDIVIDUALLY, AND AS SUCCESSOR TO YORK SHIPLEY, INC, DAVID FABRICATORS INC A/K/A DAVID ASBESTOS CORP, DEERE & CO, ECHO INCORPORATED, GENERAL ELECTRIC COMPANY, GOULD ELECTRONICS INC, 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, KARNAK CORPORATION, LEVITON MANUFACTURING CO., INC, MORSE TEC LLC, PB HEAT LLC, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO PEERLESS INDUSTRIES, PEERLESS INDUSTRIES, INC, PFIZER, INC. (PFIZER), PULSAFEEDER, QCP, INC., INDIVIDUALLY AND AS SUCCESSOR TO BAKERS PRIDE OVEN COMPANY, INC, RHEEM MANUFACTURING COMPANY, SCHNEIDER ELECTRIC USA, INC. FORMERLY KNOWN AS SQUARE D COMPANY, SIEMENS INDUSTRY, INC., SUCCESSOR IN INTEREST TO SIEMENS ENERGY & AUTOMATION, INC, SIGNIFY.COM, STIHL INC, STRAND LIGHTING, INC, STRONG LIGHTING, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO SUPER TROUPER, TECUMSEH POWER, TECUMSEH PRODUCTS COMPANY, THE TORO COMPANY, U.S. RUBBER COMPANY (UNIROYAL), UNION CARBIDE CORPORATION, WEIL-MCLAIN, A DIVISION OF THE MARLEY-WYLAIN COMPANY, A WHOLLY OWNED SUBSIDIARY OF THE MARLEY COMPANY, LLC, BALLANTYNE OF OMAHA, INC. INDIVIDUALLY AND AS SUCCESSOR TO STRONG ELECTRIC CORP AND STRONG INTERNATIONAL, FEDDERS CORP, FMC CORPORATION, ON BEHALF OF ITS FORMER CHICAGO

**DECISION + ORDER ON
MOTION**

PUMP & NORTHERN PUMP BUSINESSES, FORD MOTOR COMPANY, GOULDS PUMPS LLC, ITT LLC., INDIVIDUALLY AND AS SUCCESSOR TO BELL & GOSSETT AND AS SUCCESSOR TO KENNEDY VALVE MANUFACTURING CO., INC., KOHLER CO., LENNOX INDUSTRIES, INC., PK&P INVESTMENT CO. F/K/A MOLE RICHARDSON CO, TACO, INC., WOOLSULATE CORPORATION, STRAND LIGHTING LLC INDIVIDUALLY AND SUCCESSOR IN INTEREST TO RANK AMERICA INC., RANK INDUSTRIES INC., RANK INDUSTRIES AMERICA INC., CENTURY STRAND INC., STRAND ELECTRIC, INC., STRAND LIGHTING INC., SLI INC., STRAND CENTURY INC., AND DOE CORPORATION, SIGNIFY NORTH AMERICA CORPORATION F/K/A PHILLIPS LIGHTING, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO RANK AMERICA INC., RANK INDUSTRIES, INC., AND RANK INDUSTRIES AMERICA INC., CENTURY STRAND INC., STRAND ELECTRIC INC., STRAND LIGHTING, SLI INC.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 249, 251, 252, 253, 254, 256, 258

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 granted for the reasons set forth below.

Here, defendant QCP (“Bakers Pride”) moves to dismiss this action on the grounds that plaintiff, June Savianeso, cannot establish causation from secondhand exposure to asbestos dust from Bakers Pride ovens on behalf of plaintiff-decedent, Michael Savianeso (“Mr. Savianeso”). Defendant Bakers Pride proffers expert evidence to establish that secondhand exposure from plaintiff-decedent’s brother would be insufficient to have caused Mr. Savianeso’s mesothelioma. *See Memorandum of Law in Support of Defendant QCP’s Motion for Summary Judgment*, p. 5-6. In opposition, plaintiff offers conflicting expert evidence regarding causation. *See Plaintiffs’ Affirmation in Opposition to Defendant QCP’s Motion for Summary Judgment*, p. 14-16.

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 Bakers Pride 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.* The Appellate Division, First Department, recently affirmed this Court’s decision in *Sason v Dykes Lumber Co., Inc., et. al.*, 2023 NY Slip Op 05796 (1st Dep’t 2023), stating that “the parties’ competing causation evidence constituted the classic ‘battle of the experts’” sufficient to raise a question of fact, and to preclude summary judgment.

Here, the Court finds that Bakers Pride has established its *prima facie* burden that their product could not have contributed to Mr. Savianeso’s mesothelioma from the alleged exposure. While plaintiff submits a conflicting expert report, such report does not quantify the amount of asbestos that secondhand exposure would have caused. *See* Affirmation in Opposition to Motion, Exh. 2, p. 22. Here, plaintiff has not provided sufficient evidence to establish issues of fact regarding plaintiff-decedent’s secondhand exposure to defendant’s products.

Accordingly, it is

ORDERED that defendant Bakers Pride’s motion for summary judgment is granted; and it is further

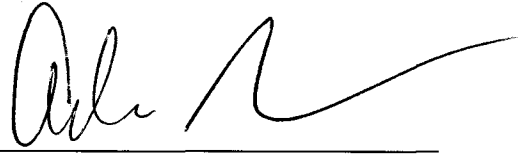
ORDERED that the complaint is dismissed in its entirety against defendant Bakers Pride with costs and disbursement to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

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

This constitutes the Decision/Order of the Court.



03/25/2024
DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: