

**Moore v A.O. Smith Water Prods. Co.**

2024 NY Slip Op 31004(U)

March 25, 2024

Supreme Court, New York County

Docket Number: Index No. 190106/2018

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.	<u>190106/2018</u>
OSCAR MOORE,	MOTION DATE	<u>N/A</u>
	MOTION SEQ. NO.	<u>001</u>

OSCAR MOORE,

Plaintiff,

- v -

A.O. SMITH WATER PRODUCTS CO., AIR & LIQUID SYSTEMS CORPORATION, AS SUCCESSOR-BY-MERGER TO BUFFALO PUMPS, INC., AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC AG COMPANY, N/K/A BAYER CROPSCIENCE INC., CERTAINTEED CORPORATION, CROSBY VALVE LLC, FMC CORPORATION, ON BEHALF OF ITS FORMER CHICAGO PUMP & NORTHERN PUMP BUSINESSES, HONEYWELL INTERNATIONAL, INC., F/K/A ALLIED SIGNAL, INC. / BENDIX, OWENS-ILLINOIS, INC., PEERLESS INDUSTRIES, INC., PFIZER, INC. (PFIZER), 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, BORGWARNER MORSE TEC LLC., CRANE CO., ITT LLC., INDIVIDUALLY AND AS SUCCESSOR TO BELL & GOSSETT AND AS SUCCESSOR TO KENNEDY VALVE MANUFACTURING CO., INC., JENKINS BROS., ROCKWELL AUTOMATION, INC., AS SUCCESSOR IN INTEREST TO ALLEN-BRADLEY COMPANY, LLC, BW/IP, INC. AND ITS WHOLLY OWNED SUBSIDIARIES, FLOWSERVE US, INC. SOLELY AS SUCCESSOR TO ROCKWELL MANUFACTURING COMPANY, EDWARD VALVE, INC., NORDSTROM VALVES, INC., EDWARD VOGT VALVE COMPANY, AND VOGT VALVE COMPANY,

Defendant.

**DECISION + ORDER ON MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120

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 Crosby Valve, LLC (“Crosby”) moves to dismiss this action on the grounds that plaintiff, Oscar Moore (“Mr. Moore”) cannot establish exposure to asbestos from any Crosby product. Mr. Moore identifies insulation surrounding Crosby valves as the primary source of his exposure, and moving defendant proffers that they did not manufacture or supply such insulation. *See* Memorandum of Law in Support of Crosby Valve, LLC’s Motion for Summary Judgment, p. 3. Defendant Crosby further states that asbestos insulation was not required for use of Crosby valves, relying on the affidavit of their corporate representative. *See* Affirmation in Support, Exh. E, Affidavit of Robert Martin in Support of Crosby Valve, LLC’s Motion for Summary Judgment, dated Sept. 1, 2021.

In opposition, plaintiff highlights Mr. Moore’s clear and unequivocal testimony regarding his work repairing boilers in the 1980s, which included his specific identification of Crosby valves as a source of his exposure to asbestos-containing insulation. Further, plaintiff notes that defendant Crosby has not provided affirmative proof that their products could not have caused such exposure, and proffers evidence that Crosby as a manufacturer recommended asbestos insulation for use with their valves. *See* Affirmation in Opposition to Defendant Crosby Valve, LLC’s Motion for Summary Judgment, p. 3-4.

Defendant Crosby’s reply raises issues with plaintiff’s documentary evidence and summarizes the discovery dispute regarding such evidence. *See* Reply Memorandum of Law of Defendant Crosby Valve, LLC, in Support of its Motion for Summary Judgment.

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).

The standard for summary judgment is well settled. In *Dyer v Amchem Products Inc.*, 207 AD3d 408, 409 (1st Dep’t 2022), 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. Moreover, *In re New York City Asbestos Litigation (Dummitt)*, 27 NY3d 765, 799 (N.Y. 2016) set the standard governing defendant’s liability for products manufactured by a third-party.


Here, the Court finds that plaintiff has proffered sufficient evidence to raise issues of fact surrounding moving defendant’s active involvement with the asbestos-containing insulation at issue herein or “substantial[] participat[ion]” in integrating such products with Crosby-manufactured valves. *See Dummitt, supra*. Plaintiff has proffered evidence of defendant Crosby recommending or incorporating the use of insulation as part of the process of installing Crosby-manufactured valves. *See Affirmation in Opposition, supra*, Exh. 7, p. 13. Thus, issues of fact exist regarding moving defendant’s knowledge of the asbestos-containing products as well as their active participation in recommending such products for use with valves manufactured by them. As such, plaintiff has raised issues of fact as to defendant Crosby’s “substantial participation” under *Dummitt* in recommending or incorporating known asbestos-containing products with its manufactured valves, sufficient to preclude summary judgment.

Accordingly, it is

ORDERED that defendant Crosby’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.

03/25/2024  
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART

APPLICATION:

CHECK IF APPROPRIATE:

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE