

Rullo v ABB, Inc.

2024 NY Slip Op 32750(U)

August 2, 2024

Supreme Court, New York County

Docket Number: Index No. 190272/2020

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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GIUSEPPE RULLO, MARIA RULLO,
Plaintiff,

INDEX NO. 190272/2020
MOTION DATE 04/30/2024
MOTION SEQ. NO. 003

- v -

ABB, INC, AIR & LIQUID SYSTEMS CORPORATION,
ARMSTRONG INTERNATIONAL, INC., AURORA PUMP
COMPANY, BEAZER EAST INC, BELDEN WIRE & CABLE
COMPANY, LLC, BW/IP, INC., CLARK-RELIANCE
CORPORATION, CLEAVER-BROOKS INC., CONVAL,
INC., COPERS-VULCAN INC., CRANE CO., INDIVIDUALLY
AND AS, CRANE ENVIRONMENTAL, INC., CRANE PUMPS
& SYSTEMS, INC., CRESCENT ELECTRIC SUPPLY
COMPANY, INC. OF NEW YORK, CROSBY VALVE,
LLC, DAV CORPORATION, EATON CORPORATION,
ELLIOTT COMPANY, ERICSSON, INC., FLOWSERVE US,
INC., FMC CORPORATION, GARDNER DENVER,
INC., GENERAL CABLE CORPORATION, GEROSA
INCORPORATED, GOULD ELECTRONICS, INC, GOULD
PUMPS, LLC, GRAYBAR ELECTRIC COMPANY
INC., GRINNELL LLC, ITT LLC, INDIVIDUALLY, DOING
BUSINESS AS AND SUCCESSOR TO ITT
CORPORATION, BELL & GOSSETT COMPANY AND/OR
BELL & GOSSETT DIVISION, FLOJET CORPORATION,
THE HOFFMAN SPECIALTY MANUFACTURING
COMPANY, ITT FLUID PRODUCTS CORPORATION, J.R.
CLARKSON COMPANY, THE, LLC, JENKINS BROS., JOHN
E. POTENTE & SONS, INC., KENNEDY ELECTRICAL
SUPPLY CORP., MINE SAFETY APPLIANCES COMPANY,
LLC, MUNACO SEALING SOLUTIONS, NASH
ENGINEERING COMPANY, THE, OKONITE COMPANY,
INC., THE, OLYMPIC GLOVE AND SAFETY CO.,
INC., ROCKWELL AUTOMATION, INC., RSCC WIRE &
CABLE LLC, SCHNEIDER ELECTRIC USA, INC., SIEMENS
INDUSTRY, INC., SPIRAX SARCO, INC, TREADWELL
CORPORATION, TRIANGLE PWC, INC., UNION CARBIDE
CORPORATION, VELAN VALVE CORPORATION.,
VIACOMBCBS, INC., VIKING PUMP INC., WARREN PUMPS
LLC, WEIL-MCLAIN, WEIR VALVES & CONTROLS USA,
INC., WILLIAM POWELL COMPANY, THE, YUBA HEAT
TRANSFER LLC, ZY-TECH GLOBAL INDUSTRIES,
INC., JOHN DOE

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 306, 308 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 Atwood & Morrill Co., Inc. (Atwood) moves for summary judgment to dismiss this action on the grounds that plaintiff Giuseppe Rullo (Mr. Rullo) was not exposed to asbestos-containing pumps during the course of his work at Con Ed from 1969 to 1979. Moving defendant's motion rests entirely upon challenging plaintiff's evidence implicating defendant Atwood as a manufacturer of asbestos-containing pumps in Mr. Rullo's asbestos exposure. Defendant argues that it only manufactured valves, not pumps. *See Affirmation in Support of Motion for Summary Judgment on Behalf of Defendant Atwood & Morrill Co., Inc.*, p. 3. Plaintiff opposes on the basis of external depositions in which Atwood valves have been identified at Con Ed powerhouses, including those that Mr. Rullo specifically worked at. *See Plaintiff Memorandum of Law in Opposition to Atwood & Morrill Co., Inc.'s Motion for Summary Judgment*, p. 4-7. Defendant Atwood replies, reiterating their argument that Mr. Rullo did not mention Atwood valves and that the depositions should not be considered.

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 Atwood 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.*

Here, the Court notes Mr. Rullo provided clear and unequivocal details regarding his work history from approximately fifty years ago, including the locations of powerhouses he worked at, what his role was, and which specific categories of products he was exposed to. *See*

Plaintiff's Memorandum of Law in Opposition, *supra*, at p. 4. The Appellate Division, First Department has affirmed denials of summary judgment in similar instances. In *Koulermos v A.O. Smith Water Prods.*, 137 AD3d 575, 576 (1st Dep't 2016), the court noted that defendant's "contention rested on evidence of plaintiff's inability to remember precisely when he worked at the facility" and stated that "pointing to gaps in an opponent's evidence is insufficient to demonstrate a movant's entitlement to summary judgment".

Moreover, the appellate court stated that the defendants affirmatively "failed to present evidence... [regarding] when their employees were present at the facility and whether or not those employees used asbestos-containing products". *Id.* Similarly, the First Department noted in *Krok v AERCTO International, Inc., et. al*, 146 AD3d 700, 700 (1st Dep't 2017) that "reliance on the decedent's inability to identify its product as a source of his exposure to asbestos is misplaced" and that "plaintiffs raised an issue of fact by submitting evidence that defendant's asbestos-containing pumps were present on the ship to which the decedent was assigned as a boiler tender fireman." *See also* Affirmation in Opposition, *supra*, p. 4-8. Plaintiffs have met the standard set forth by the Appellate Division to sufficiently raise a question of fact. The weight of the evidence is an issue for the trier of fact, such that the granting of summary judgment is precluded.

Further, defendant Atwood makes no attempt to meet their initial burden on a motion for summary judgment by proving that their products were not located at any of Mr. Rullo's worksites or that they did not contain asbestos. 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.*

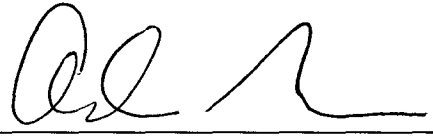
As conflicting evidence has been presented herein, and a reasonable juror could determine that Mr. Rullo was exposed to asbestos-containing products manufactured by defendant Atwood from his work at various Con Ed powerhouses, and that such exposure could have contributed to his illness, sufficient issues of fact exist to preclude summary judgment. Accordingly, it is

ORDERED that defendant Atwood & Morrill Co., Inc.'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.

8/2/2024
DATE


ADAM SILVERA, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE