

Goldstein v Chanel, Inc.

2024 NY Slip Op 32825(U)

August 9, 2024

Supreme Court, New York County

Docket Number: Index No. 190108/2022

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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LITA GOLDSTEIN,

Plaintiff,

INDEX NO. 190108/2022

MOTION DATE 05/03/2024

MOTION SEQ. NO. 005

- v -

CHANEL, INC., CHATTEM, INC., BRENNTAG NORTH AMERICA, BRENNTAG SPECIALTIES, INC., AS SUCCESSOR-IN-INTEREST TO MINERAL PIGMENT SOLUTIONS, INC., AS SUCCESSOR-IN-INTEREST TO WHITTAKER CLARK & DANIELS, INC., BRISTOL-MYERS SQUIBB COMPANY AS SUCCESSOR TO E.R. SQUIBB AND SONS, COLGATE-PALMOLIVE COMPANY (FOR CASHMERE BOUQUET), COLGATE-PALMOLIVE COMPANY AS SUCCESSOR-IN-INTEREST TO THE MENNEN COMPANY, COTY US, LLC, COTY, INC., ELIZABETH ARDEN, INC., ESTEE LAUDER, INC., HELENA RUBINSTEIN, INC., KOLMAR LABORATORIES, INC., L'OREAL TRAVEL RETAIL AMERICAS, INC., L'OREAL USA, INC., PFIZER INC., REVLON CONSUMER PRODUCTS CORPORATION, REVLON, INC., SANOFI, S.A., SANOFI US SERVICES, INC., WHITTAKER CLARK & DANIELS, INC., WHITTAKER CLARK & DANIELS, INC., INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO AMERICAN TALC COMPANY, METROPOLITAN TALC COMPANY INC., CHARLES MATHIEU, INC., AND RESOURCE PROCESSORS, INC., AVON PRODUCTS, INC., BARRETT'S MINERALS INC., BLOCK DRUG COMPANY, INC., INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO THE GOLD BOND STERILIZING POWDER CO. A/K/A THE GOLD BOND CO., BLOCK DRUG CORPORATION, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO THE GOLD BOND STERILIZING POWDER CO. A/K/A THE GOLD BOND CO., COSMETIC SPECIALTIES, INC., HIMMEL MANAGEMENT CO. LLC, A/K/A HIMMEL GROUP, FORMERLY D/B/A MARTIN HIMMEL INC., INDIVIDUALLY AND AS SUCCESSOR- IN-INTEREST TO BLOCK DRUG CORPORATION, SUCCESSOR-IN-INTEREST TO THE GOLD BOND STERILIZING POWDER CO., A/K/A THE GOLD BOND CO., HIMMEL MEDIA LLC, A/K/A HIMMEL GROUP, FORMERLY D/B/A MARTIN HIMMEL INC., INDIVIDUALLY AND AS SUCCESSOR- IN-INTEREST TO BLOCK DRUG CORPORATION, SUCCESSOR-IN-INTEREST TO THE GOLD BOND STERILIZING POWDER CO., A/K/A THE GOLD BOND CO., JOHNSON & JOHNSON, KENVUE

**DECISION + ORDER ON
MOTION**

INC., INDIVIDUALLY AND AS SUCCESSOR-IN- INTEREST
TO JOHNSON & JOHNSON CONSUMER INC. ;,
PRESERSE CORPORATION ;, PRESERSE
INTERNATIONAL CORPORATION, JOHN DOE 1
THROUGH JOHN DOE 75 (FICTITIOUS), LTL
MANAGEMENT LLC, INDIVIDUALLY AND AS
SUCCESSOR IN INTEREST TO OLD JJCI

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 750, 751, 752, 753

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, Lita Goldstein (“Ms. Goldstein”) has not established that she was exposed to any asbestos-containing product manufactured by defendant Kolmar, and that any such product was manufactured per the specifications of Johnson & Johnson and for which defendant Kolmar would not be liable. *See* Memorandum of Law of Kolmar Laboratories, Inc. in Support of Motion for Summary Judgment, p. 10-20.

In opposition, plaintiff notes that moving defendant has confirmed its manufacturing role in a product at issue herein and has had an active role in manufacturing such product. *See* Plaintiff’s Memorandum of Law in Opposition to Defendant Kolmar Laboratories, Inc.’s Motion for Summary Judgment, p. 4-7. Plaintiff further notes that plaintiff’s experts have offered exposure evidence regarding asbestos in the products at issue and that defendant Kolmar can be

held liable for a product it manufactured regardless of its contractor status. *Id.* at 7, 15-16. Defendant Kolmar replies, highlighting prior testimony of its own witnesses and Mennen's witness, 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 Kolmar. *See* Defendant Kolmar Laboratories, Inc.'s Reply in Further Support of Their Motion for Summary Judgment, p. 3-4. Moving defendant further notes that plaintiff has offered no expert testimony specific to defendant Kolmar or its products. *Id.* at p. 6-7. Finally, moving defendant reiterates its "contractor" defense. *Id.* at 8-11.

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 (1stDep'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 defendant Kolmar's involvement with the product at issue; asbestos-contaminated Mennen talcum powder and not J&J baby powder. Further, moving defendant has confirmed that it was a manufacturer of the product at issue herein during the period of Ms. Goldstein'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*. As defendant Kolmar has failed to meet its initial burden for summary judgment, and issues of fact exist, the instant motion is denied.

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.

8/9/2024
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE