

McLaughlin v Air & Liquid Sys. Corp.

2024 NY Slip Op 33020(U)

August 27, 2024

Supreme Court, New York County

Docket Number: Index No. 190046/2022

Judge: Adam Silvera

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

THOMAS R. MCLAUGHLIN, LILLIAN J. MCLAUGHLIN,

Plaintiff,

INDEX NO. 190046/2022

MOTION DATE 06/11/2024

MOTION SEQ. NO. 006

- v -

AIR & LIQUID SYSTEMS CORPORATION, AS SUCCESSOR BY MERGER TO BUFFALO PUMPS, INC., ALFA LAVAL INC., AMETECK, INC., ARMSTRONG INTERNATIONAL, INC., AURORA PUMP COMPANY, BLACKMER, BW/IP, INC. AND ITS WHOLLY-OWNED SUBSIDIARIES, CARRIER CORPORATION, CLEAVER-BROOKS, INC., CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., COURTER & COMPANY INC., CRANE CO., CROSBY VALVE, LLC, EXXONMOBIL OIL CORPORATION, FERGUSON ENTERPRISES, LLC, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO BLACKMAN PLUMBING SUPPLY COMPANY, INC., FLOWSERVE CORPORATION, AS SUCCESSOR IN INTEREST TO DURAMETALLIC CORPORATION, FLOWSERVE US INC., SOLELY AS SUCCESSOR TO ROCKWELL MANUFACTURING COMPANY, EDWARD VALVES, INC., NORDSTROM VALVES, INC., AND EDWARD VOGT VALVE COMPANY, FLSMIDTH INC., F/K/A FULLER COMPANY, FMC CORPORATION, ON BEHALF OF ITS FORMER CHICAGO PUMP, PEERLESS PUMP AND NORTHERN PUMP BUSINESSES, FOSTER WHEELER ENERGY CORRPORATION, GARDNER DENVER, INC., GENERAL ELECTRIC COMPANY, GEORGE A. FULLER COMPANY, THE GERARD PACKING & BELTING CORP., GEROSA INCORPORATED, GOODYEAR CANADA INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOULDS PUMPS LLC, GREENE, TWEED CO., INC., HONEYWELL INTERNATIONAL INC., F/K/A ALLIEDSIGNAL, INC., AS SUCCESSOR-IN-INTEREST TO THE BENDIX CORPORATION, IMO INDUSTRIES, INC., ITT INC., INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO BELL & GOSSETT PUMP COMPANY, JENKINS BROS., KEELER/DORR-OLIVER BOILER COMPANY, MARIO & DIBONO PLASTERING CO., INC., THE MARLEY-WYLAIN COMPANY, NATIONAL GRID GENERATION LLC, O'CONNOR CONSTRUCTORS, INC., PARAMOUNT GLOBAL, F/K/A VIACOMCBS INC., F/K/A CBS CORPORATION, A DELAWARE CORPORATION, F/K/A VIACOM INC., SUCCESSOR BY MERGER TO CBS CORPORATION, A PENNSYLVANIA CORPORATION, F/K/A WESTINGHOUSE ELECTRIC

DECISION + ORDER ON MOTION

CORPORATION, PNEUMO ABEX LLC, SUCCESSOR IN INTEREST TO ABEX CORPORATION, RILEY POWER INC., SID HARVEY INDUSTRIES, INC., SPIRAX SARCO, INC., TISHMAN LIQUIDATING CORPORATION, TREADWELL CORPORATION, UNION CARBIDE CORPORATION, VELAN VALVE CORPORATION, WARREN PUMPS LLC, WEIR VALVE & CONTROLS, USA, INC., YORK INTERNATIONAL CORPORATION, ZURN INDUSTRIES, LLC, EATON CORPORATION, AS SUCCESSOR-IN-INTEREST TO CUTLER-HAMMER, INC., CLYDE UNION INC., GRINNELL LLC, ITT LLC, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO HOFFMAN SPECIALTY MANUFACTURING CO., MET-PRO TECHNOLOGIES LLC., A CECO ENVIRONMENTAL COMPANY, SUCCESSOR BY MERGER TO MET-PRO CORPORATION, ON BEHALF OF ITS DEAN PUMP DIVISION, ROCKWELL AUTOMATION, INC., AS SUCCESSOR IN INTEREST TO ALLEN-BRADLEY COMPANY, LLC, SCHNEIDER ELECTRIC USA, INC., FORMERLY KNOWN AS SQUARE D COMPANY, VIKING PUMP, INC., BMCE, INC., F/K/A UNITED CENTRIFUGAL PUMPS, KAMCO SUPPLY CORP., MORSE TEC LLC, F/K/A BORGWARNER MORSE TEC LLC, AS SUCCESSOR-BY-MERGER TO BORG-WARNER CORPORATION, THE GOODYEAR TIRE & RUBBER COMPANY, THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, THE WILLIAM POWELL COMPANY, TACO, INC., LONG ISLAND LIGHTING COMPANY D/B/A LIPA

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 006) 313, 314, 315, 318 were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, it is ordered that plaintiffs', Lillian J. McLaughlin, individually and as executrix of the estate of Thomas R. McLaughlin, and Thomas R. McLaughlin II, as executor of the estate of Thomas R. McLaughlin, motion to reargue this Court's prior Decision/Order dated March 13, 2024 (hereinafter referred to as the "Prior Decision"), and to vacate such order, is denied for the reasons set forth below.

Plaintiffs commenced this action against various defendants seeking monetary damages for personal injuries resulting from plaintiff Thomas McLaughlin's exposure to asbestos allegedly from working as a steamfitter and welder at defendant Long Island Lighting

Company's d/b/a LIPA ("LILCO") Shoreham Nuclear Power Station located in Suffolk County, New York from 1978 through 1982. By prior motion (mot. seq. no. 003), defendant LILCO moved for summary judgment to dismiss the action against it on the grounds that plaintiffs released all claims of asbestos exposure against LILCO in 1993 when plaintiffs signed a Settlement Agreement and General Release in resolution of a federal asbestos action against LILCO which was commenced in 1988. Such motion was granted by the Prior Decision.

Here, plaintiffs move to reargue the Prior Decision and have the Court issue an Order vacating such Prior Decision and denying defendant LILCO's motion for summary judgment. Defendant LILCO opposes. CPLR 2221(d)(2) permits a party to move for leave to reargue a decision upon a showing that the court misapprehended the law in rendering its initial decision. "A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision." *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 (1st Dep't 1992), *appeal denied in part, dismissed in part* 80 NY2d 1005 (1992) (internal quotations omitted).

However, plaintiffs have failed to establish that the Court, in its Prior Decision, misapprehended or overlooked the facts or law in finding that the 1993 Settlement Agreement General Release preclude plaintiff's asbestos exposure claims against LILCO in the instant action. Plaintiff argues that mesothelioma could not have been contemplated in the Settlement Agreement and General Release because plaintiff was not diagnosed with until January 2022. As determined by the Court in its Prior Decision and as correctly argued by defendant LILCO, the language in the Settlement Agreement and General Release was unambiguous and clearly contemplated mesothelioma as an asbestos-related disease that may arise, and for which plaintiff

waived all claims. The defendant further correctly argues that the Court did not overlook or misapprehend matters of fact or law in the Prior Decision, as plaintiffs now raise the same arguments that were previously considered and decided. Plaintiff has wholly failed to establish which facts or law were misapprehended by the Court. As such, the motion is denied.

Accordingly, it is hereby

ORDERED that plaintiffs' motion to reargue this Court's Prior Decision is denied in its entirety; and it is further

ORDERED that, within 30 days of entry, plaintiff shall serve upon all parties a copy of this decision and order, together with notice of entry.

This constitutes the Decision and Order of the Court.

8/27/24
DATE

ADAM SILVERA, J.S.C.

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