

Runyon v ABB, Inc.

2024 NY Slip Op 33021(U)

August 27, 2024

Supreme Court, New York County

Docket Number: Index No. 190296/2019

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. 190296/2019

MICHAEL A RUNYON,

MOTION DATE 12/29/2023

Plaintiff,

MOTION SEQ. NO. 004

- v -

ABB, INC. INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO ITE CIRCUIT BREAKERS, INC, 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, AMERICAN HONDA MOTOR CO., INC. (AHM), ATWOOD & MORRILL COMPANY, AURORA PUMP COMPANY, BLACKMER, BORGWARNER MORSE TEC LLC, BRIGGS & STRATTON CORP, BW/IP, INC. AND ITS WHOLLY OWNED SUBSIDIARIES, CARRIER CORPORATION, CBS CORPORATION, F/K/A VIACOM INC., SUCCESSOR BY MERGER TO CBS CORPORATION, F/K/A WESTINGHOUSE ELECTRIC CORPORATION, CERTAINTIED CORPORATION, CLEAVER BROOKS COMPANY, INC, CRANE CO, CROSBY VALVE LLC, DANA COMPANIES, LLC, EATON CORPORATION, INDIVIDUALLY AND AS SUCCESSOR -IN-INTEREST TO CUTLER-HAMMER, INC, FLOWSERVE US, INC. INDIVIDUALLY AND SUCCESSOR TO ROCKWELL MANUFACTURING COMPANY, EDWARD VALVE, INC., NORDSTROM VALVES, INC., EDWARD VOGT VALVE COMPANY, AND VOGT VALVE COMPANY, FMC CORPORATION, ON BEHALF OF ITS FORMER CHICAGO PUMP & NORTHERN PUMP BUSINESSES, FORD MOTOR COMPANY, FOSTER WHEELER, L.L.C, GENERAL ELECTRIC COMPANY, GOULDS PUMPS LLC, HONEYWELL INTERNATIONAL, INC., F/K/A ALLIED SIGNAL, INC. / BENDIX, IMO INDUSTRIES, INC, ITT INDUSTRIES, INC. INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO HOFFMAN SPECIALTY, ITT LLC., INDIVIDUALLY AND AS SUCCESSOR TO BELL & GOSSETT AND AS SUCCESSOR TO KENNEDY VALVE MANUFACTURING CO., INC, JENKINS BROS, KAWASAKI MOTORS CORPORATION, KOHLER CO, MCCORD CORPORATION, MILTON ROY COMPANY, PFIZER, INC. (PFIZER), STANDARD MOTOR PRODUCTS, INC, SUPERIOR LIDGERWOOD MUNDY CORPORATION, TACO, INC, TECUMSEH PRODUCTS COMPANY, THE NASH ENGINEERING COMPANY, TYCO INTERNATIONAL (US)

DECISION + ORDER ON MOTION

INC, U.S. RUBBER COMPANY (UNIROYAL), UNION
CARBIDE CORPORATION, VELAN VALVE
CORPORATION, VIKING PUMP, INC, WARREN PUMPS,
LLC, WEIL-MCLAIN, A DIVISION OF THE MARLEY-
WYLAIN COMPANY, A WHOLLY OWNED SUBSIDIARY
OF THE MARLEY COMPANY, LLC, GOULD
ELECTRONICS INC.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 233, 234, 235, 236, 237, 238, 239, 242, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 268, 269, 270, 271

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 cannot establish exposure to asbestos from any Crosby product and that Crosby had no duty to warn regarding asbestos-containing insulation used on its valves. Plaintiff identifies insulation surrounding Crosby valves as the primary source of his asbestos exposure, and moving defendant argues 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. 3-4. 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. D, Affidavit of Robert Martin in Support of Crosby Valve, LLC's Motion for Summary Judgment, dated Dec. 23, 2023, p. 3.

In opposition, plaintiff highlights his clear and unequivocal testimony regarding his work as a machinist mate in the United States Navy aboard four ships, which included his specific identification of Crosby valves as a source of his exposure to asbestos-containing insulation. *See*

Affirmation in Opposition to Crosby Valve, LLC's Motion for Summary Judgment, p. 5-9.

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 recommended asbestos insulation for use with their valves. *See id.* at p. 10-14.

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).

With respect to plaintiff's deposition testimony, the Appellate Division, First Department, has held that “[t]he deposition testimony of a litigant is sufficient to raise an issue of fact so as to preclude the grant of summary judgment dismissing the complaint. The assessment of the value of a witnesses' testimony constitutes an issue for resolution by the trier of fact, and any apparent discrepancy between the testimony and the evidence of record goes only to the weight and not the admissibility of the testimony.” *Dollas v W.R. Grace and Co.*, 225 AD2d 319, 321 (1st Dep't 1996) (internal citations omitted).

The appropriate standard at summary judgment for moving defendant Crosby 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.*, 221 AD3d 491 (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. *Sason*, 221 AD3d at 492. 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 provided unequivocal testimony identifying Crosby products as a source of his asbestos exposure. In addition, 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. H, pg. 106, Exh. I, pgs. 9, 268, 286. Thus, defendant Crosby 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 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, and as to defendant Crosby’s “substantial participation” under *Dummitt* in recommending or incorporating known asbestos-containing products with its manufactured valves, summary judgment is precluded.

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.

8/27/24
DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE