

Rydzewski v A.O. Smith Water Prods. Co

2024 NY Slip Op 34108(U)

November 14, 2024

Supreme Court, New York County

Docket Number: Index No. 190043/2017

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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INDEX NO. 190043/2017

RICHARD RYDZEWSKI,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 003

- v -

A.O. SMITH WATER PRODUCTS CO, AERCO INTERNATIONAL, INC, AMCHEM PRODUCTS, INC., BARNES & JONES, INC, BMCE INC., BORGWARNER MORSE TEC LLC, CARRIER CORPORATION, CBS CORPORATION, F/K/A VIACOM INC., CERTAINTEED CORPORATION, CLEAVER BROOKS COMPANY, INC, COLUMBIA BOILER COMPANY OF POTTSTOWN, CRANE CO., CROWN BOILER CO., DAP, INC., ECR INTERNATIONAL, CORP., FLOWSERVE US, INC., FMC CORPORATION, GENERAL ELECTRIC COMPANY, GEORGIA PACIFIC LLC., GOULDS PUMPS, INC., GRUNDFOS PUMPS CORP, HEXION INC., F/K/A MOMENTIVE SPECIALTY CHEMICALS, HONEYWELL INTERNATIONAL, INC., ITT INDUSTRIES, INC., J.H. FRANCE REFRACTORIES COMPANY, JENKINS BROS., KOHLER CO., LENNOX INDUSTRIES, INC, NATIONAL GRID GENERATION LLC D/B/D, NIBCO INC., OWENS-ILLINOIS, INC., PEERLESS INDUSTRIES, INC., PFIZER, INC. (PFIZER), RED WHITE VALVE CORP, RHEEM MANUFACTURING COMPANY, RUUD, SLANT/FIN CORPORATION, SMITH CAST IRON BOILERS, SPENCE ENGINEERING COMPANY, INC., SPIRAX SARCO, INC., TACO, INC, TECUMSEH POWER, TECUMSEH PRODUCTS COMPANY, THE TORO CO., U.S. RUBBER COMPANY (UNIROYAL), UNION CARBIDE CORPORATION, UTICA BOILERS, INC., WATTS WATER TECHNOLOGIES, INC. F/K/A, WEIL-MCLAIN, A DIVISION OF THE MARLEY-WYLAIN COMPANY, WW HENRY CO, ZURN INDUSTRIES LLC, CROWN BOILER CO., BRIGGS & STRATTON CORP., AMERICAN WATER HEATER COMPANY, BRADFORD WHITE CORPORATION, BURNHAM, LLC, INDIVIDUALLY AND AS SUCCESSOR TO BURNHAM CORPORATION, COMPUDYNE CORPORATION, INDIVIDUALLY, AND AS SUCCESSOR TO YORK SHIPLEY, INC., SEARS ROEBUCK AND CO.,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 267, 328, 330, 331, 336, 338, 378, 379, 380, 381, 382, 383, 384, 387, 389, 390

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents and for the reasons set forth below, the Court denies the motion for summary judgment by defendant Watts Water Technologies, Inc. (“Defendant”), pursuant to CPLR § 3212.

A court must grant summary judgment if the movant establishes its claim “as a matter of law” and no “issue of fact” warranting trial remains. CPLR § 3212(b). The movant has the initial burden to show “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 Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985). The movant’s failure to meet its initial burden requires denial of the motion without probing the sufficiency of the opponent’s papers. *See id.* Furthermore, even if the movant makes a prima facie showing of entitlement to judgment as a matter of law, the court must deny a summary judgment motion if the opponent’s papers present admissible evidence establishing that a “material issue[] of fact” remains. *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986).

“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), quoting *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, 205 (1st Dep’t 1990). The court’s role centers on “issue-finding, [not] issue-determination.” *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 (1957), quoting *Esteve v Abad*, 271 AD 725, 727 (1st Dep’t 1947) (internal quotation marks omitted). As a result, and because it is a “drastic remedy,” *Vega v Restani Constr. Corp.*,

18 NY3d 499, 503 (2012), summary judgment is rarely granted in negligence actions unless no conflict exists in the evidence. *See Ugarriza v Schmieder*, 46 NY2d 471, 475-476 (1979).

In toxic tort cases, as here, a plaintiff must show that he was exposed to a toxin by the defendant, “that the toxin is capable of causing a particular illness (general causation) and that [he] was exposed to sufficient levels of the toxin to cause the illness (specific causation).” *Dyer v Amchem Prods. Inc.*, 207 AD3d 408, 410 (1st Dep’t 2022), quoting *Parker v Mobil Oil Corp.*, 7 NY3d 434, 448 (2006). When a defendant moves for summary judgment in these cases, “the burdens of proof are virtually reversed.” *Lopez v Gem Gravure Co., Inc.*, 50 AD3d 1102, 1108 (2d Dep’t 2008, Lifson, J.P., dissenting). Thus, for the moving defendant to meet its initial burden on summary judgment, it must do more than “point[] to gaps in [the] opponent’s evidence”; it must “affirmatively demonstrate the merit” of its position. *Koulermos v A.O. Smith Water Prods.*, 137 AD3d 575, 576 (1st Dep’t 2016), quoting *Dalton v Educ. Testing Serv.*, 294 AD2d 462, 463 (2d Dep’t 2002); *see also Dyer*, 207 AD3d at 409 (noting that a summary judgment movant does “not meet its prima facie burden by merely pointing to gaps or deficits in [the] plaintiff’s case”); *Reid v Georgia-Pac. Corp.*, 212 AD2d 462, 463 (1st Dep’t 1995) (denying summary judgment when the defendant “fail[ed] ... to unequivocally establish that its product could not have contributed to the ... plaintiff’s injury”).

Here, Defendant moves for summary judgment on the grounds that the plaintiff, Richard R. Rydzewski (“Plaintiff”), has not established that he was exposed to any asbestos-containing product manufactured by Defendant and that, even if he has established exposure, he has not established that any such product caused his cancer. *See* Defendant Watts Water Technologies, Inc.’s Memorandum in Support of Motion for Summary Judgment at 1-2. More specifically, Defendant claims, based on the affidavit of its corporate representative, Timothy M. MacPhee

(“Mr. MacPhee”), that it has never manufactured the product that Plaintiff identified. *Id.* at 5. In addition, Defendant argues that, even taking Plaintiff’s word as true, his exposure to asbestos was, as a matter of law, insufficient to cause his cancer. *Id.* at 6-11.

On the other hand, Plaintiff attacks the testimony of Defendant’s corporate representative and argues that Plaintiff’s testimony is sufficient to create an issue of fact as to whether he was exposed to Defendant’s product. *See* Affirmation in Opposition to Defendant Watts Water Technologies Inc.’s Motion for Summary Judgment at 7-14. Plaintiff also insists that his expert report creates an issue of fact as to whether Defendant’s products were a substantial cause of his cancer. *Id.* at 14-17.

Pursuant to CPLR § 3212(b), a “motion for summary judgment shall be supported by affidavit ... by a person having knowledge of the facts.” “A conclusory affidavit or an affidavit by an individual without personal knowledge of the facts does not establish the proponent’s prima facie burden.” *JMD Holding Corp. v Congress Fin. Corp.*, 4 NY3d 373, 384-385 (2005). The Appellate Division, First Department, has held “that affidavits devoid of evidentiary facts and consisting of mere conclusions, speculation and unsupported allegations are insufficient” on a motion for summary judgment. *Castro v New York Univ.*, 5 AD3d 135, 136 (1st Dep’t 2004). Here, Mr. MacPhee’s five-paragraph affidavit fails to assert, with any specificity, the information he has acquired through his personal knowledge or experiences with Defendant. Mr. MacPhee’s conclusory statements regarding Defendant’s products are insufficient to establish entitlement to summary judgment absent any supporting statements or documents as to how he obtained such knowledge.

Moreover, the parties’ “competing causation evidence” is the “classic ‘battle of the experts,’” sufficient to raise a question of fact and, thus, to preclude summary judgment. *Sason v*

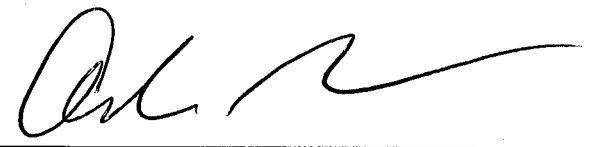
Dykes Lbr. Co., Inc., 221 AD3d 491, 492 (1st Dep’t 2023), quoting *Shillingford v New York City Tr. Auth.*, 147 AD3d 465, 465 (1st Dep’t 2017). So is the parties’ competing testimony on Plaintiff’s alleged exposure to Defendant’s product. It is the jury’s job, not the Court’s, to “pass on issues of credibility.” *Garcia*, 180 AD2d at 580, quoting *Dauman*, 168 AD2d at 204. Defendant has failed “to unequivocally establish that its product could not have contributed to the ... [P]laintiff’s injury.” *Reid*, 212 AD2d at 463. As Defendant has failed to meet its initial burden on a motion for summary judgment, and issues of fact exist, summary judgment must be denied.

Accordingly, it is

ORDERED that Defendant’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.

11/14/2024

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: