

Lee v Amchem Prods., Inc.

2024 NY Slip Op 34109(U)

November 13, 2024

Supreme Court, New York County

Docket Number: Index No. 190100/2020

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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RAYMOND LEE AS ADMINISTRATOR FOR THE ESTATE
OF JIM LEE,

Plaintiff,

INDEX NO. 190100/2020

MOTION DATE _____

MOTION SEQ. NO. 001

- v -

AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC
AG COMPANY, N/K/A BAYER CROPSCIENCE INC,
CRANE CO, CROSBY VALVE LLC, FLOWSERVE US, INC.
INDIVIDUALLY AND SUCCESSOR TO ROCKWELL
MANUFACTURING COMPANY, EDWARD VALVE,
INC., NORDSTROM VALVES, INC., EDWARD VOGT
VALVE COMPANY, AND VOGT VALVE COMPANY,
GENERAL ELECTRIC COMPANY, GRINNELL
LLC, HOFFMAN- NEW YORKER, INC, ITT LLC.,
INDIVIDUALLY AND AS SUCCESSOR TO BELL &
GOSSETT AND AS SUCCESSOR TO KENNEDY VALVE
MANUFACTURING CO., INC, JENKINS BROS, PFIZER,
INC. (PFIZER), QUALITEX COMPANY, U.S. RUBBER
COMPANY (UNIROYAL), UNION CARBIDE
CORPORATION, WEIL-MCLAIN, A DIVISION OF THE
MARLEY-WYLAIN COMPANY, A WHOLLY OWNED
SUBSIDIARY OF THE MARLEY COMPANY, LLC,

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 54, 55, 56, 57, 58,
59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 86, 87,
88, 89, 90, 91, 92, 93, 94, 95

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 Crosby Valve, LLC (“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 about a defendant’s alleged failures to warn of a toxin’s dangers, as here, the court must first decide whether the defendant has a legal duty to warn the plaintiff. *Matter of New York City Asbestos Litig. (Dummitt)*, 27 NY3d 765, 787 (2016). “[T]he manufacturer of a product has a duty to warn of the danger arising from the known and reasonably foreseeable use of its product in combination with a third-party product which, as a matter of design, mechanics or economic necessity, is necessary to enable the manufacturer’s product to function as intended.” *Id.* at 793. The concept of necessity is a functional one that

extends beyond “purely ... mechanical necessity.” *Id.* at 796; *see also Peraica v A.O. Smith Water Prods. Co.*, 143 AD3d 448, 450 (1st Dep’t 2016) (considering the “practical[] necess[ity]” of using asbestos products with the defendant’s valves). If a duty to warn exists, a plaintiff must then show, among other things, that he was exposed to a toxin by the defendant.¹ *See Dyer v Amchem Prods. Inc.*, 207 AD3d 408, 410 (1st Dep’t 2022), citing *Parker v Mobil Oil Corp.*, 7 NY3d 434, 448 (2006).

When a defendant in a toxic tort case moves for summary judgment, “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 to dismiss this action on the grounds that the plaintiff, Raymond Lee (“Plaintiff”), as administrator for the estate of the decedent, Jim Lee (“Decedent”), has not established (i) that Decedent was exposed to any asbestos products manufactured by Defendant or (ii) that Defendant had a duty to warn Decedent of asbestos products that, although not manufactured by Defendant, were used jointly with Defendant’s products. *See Memorandum of*

¹ Although the duty and exposure analyses are described here as two separate steps, the analyses are often collapsed into one.

Law of Defendant Crosby Valve, LLC, in Support of Motion for Summary Judgment (“Motion”) at 4-9. In opposition, Plaintiff points to Decedent’s testimony that, as part of his job, he removed asbestos insulation and flange gaskets attached to Defendant’s valves. *See* Affirmation in Opposition to Defendant Crosby Valve, LLC’s Motion for Summary Judgment (“Opposition”) at 5, 10. Plaintiff also claims, based on the prior testimony of Defendant’s corporate representative, that Defendant understood that asbestos products would be commonly used with its valves. *See id.* at 12-14. Defendant’s reply, in addition to reaffirming the arguments in its Motion, attacks Plaintiff’s documentary evidence and argues that Plaintiff’s Opposition should be stricken from the record.² *See* Surreply Memorandum of Law of Defendant Crosby Valve, LLC, in Support of Its Motion for Summary Judgment at 8-13.

Plaintiff has proffered sufficient evidence, including (i) of Defendant’s awareness of the use of asbestos flange gaskets or insulation along with its valves and (ii) of Decedent’s work with Defendant’s valves, to raise issues of fact about the extent of Defendant’s involvement with asbestos flange gaskets and insulation. For example, Plaintiff has proffered evidence that Defendant at times shipped asbestos gaskets with its valves. *See* Opposition, Exh. 10, Depo. Tr. of Robert Martin, dated September 12, 2006, at 83-85. As such, factual questions exist as to Defendant’s “substantial[] participat[ion]” in the integration of its valves with products containing asbestos. *Dummitt*, 27 NY3d at 799, quoting Restatement [Third] of Torts: Products Liability § 5(b)(1). Thus, summary judgment must be denied.

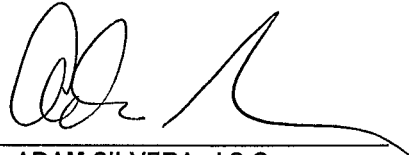
Accordingly, it is

² Given the drastic nature of striking Plaintiff’s Opposition, the Court declines to do so. The exhibit at issue, however, was not considered in deciding the instant motion. As such, Defendant’s argument to strike Plaintiff’s Opposition is moot.

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.

11/13/2024

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE