

Raynor v A.O. Smith Water Prods. Co.

2024 NY Slip Op 34898(U)

July 31, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 618439/2021

Judge: Jerry Garguilo

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.

SHORT FORM ORDER

INDEX No. 618439/2021
CAL. No. 202301485AB

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 47 - SUFFOLK COUNTY

PRESENT:

Hon. JERRY GARGUILO
Justice of the Supreme Court

MOTION DATE 3/6/24
ADJ. DATE 4/24/24
Mot. Seq. # 002 MD

-----X
MARILYN RAYNOR and CHARLES RAYNOR,

Plaintiffs,

- against -

A.O. SMITH WATER PRODUCTS CO., et al.,

Defendants.
-----X

WEITZ & LUXENBERG, PC
Attorney for Plaintiffs
700 Broadway
New York, New York 10003

CLYDE & CO US LLP
Attorney for Defendant Burnham, LLC
The Chrysler Building
405 Lexington Avenue, 16th Floor
New York, New York 10174

Upon the following papers read on this e-filed motion for summary judgment : Notice of Motion/Order to Show Cause and supporting papers by defendant Burnham, LLC, filed February 8, 2024 ; Notice of Cross-Motion and supporting papers _____; Answering Affidavits and supporting papers by plaintiffs, filed April 10, 2024 ; Replying Affidavits and supporting papers _____; Other _____; it is

ORDERED that the motion by defendant Burnham, LLC for summary judgment dismissing the complaint against it is denied.

This is an action to recover damages for the injuries allegedly sustained by plaintiff Marilyn Raynor as a result of exposure to asbestos contained in products manufactured or sold by defendants. Plaintiff Marilyn Raynor allegedly developed an asbestos-related disease from exposure to asbestos contained in, among other things, Burnham boilers, while laundering her husband’s work clothes. Marilyn Raynor’s husband, Charles Raynor, brought a derivative cause of action for loss of services.

Defendant Burnham, LLC (Burnham) now moves for summary judgment dismissing the complaint against it, arguing that plaintiffs cannot demonstrate specific causation because there is insufficient evidence to establish any quantifiable exposure to asbestos from Burnham boilers. It also

Raynor v A.O. Smith Water Prods.
Index No. 618439/2021
Page 2

argues that punitive damages are inappropriate in this case. Plaintiffs oppose the motion, arguing that Burnham failed to meet its burden on the motion and failed to include case-specific medical and scientific expert proof that its products could not have contributed to plaintiff Marilyn Raynor's disease. It further argues that plaintiff Marilyn Raynor's deposition testimony clearly identified sufficient secondary exposure to asbestos-containing dust from Burnham boilers.

At his examination before trial, plaintiff Charles Raynor testified that he was employed as a carpenter for a builder known as Clarke Smith for 20 to 25 years. He testified that he would gut renovate entire homes as well as do renovations to homes. He testified that when he gut renovated homes, he would rip out, among other things, the boilers, pumps, valves, floor tiles, and the ceiling. He testified that he used a sledgehammer to rip out such components, and that the boilers that he ripped out included ones manufactured by Burnham. He testified that doing such work caused asbestos, which was white and dusty, to get on his clothes. He further testified that his wife would wash his work clothes and that he did not always change his work clothes immediately after returning home.

At her examination before trial, plaintiff Marilyn Raynor testified that her husband worked with asbestos containing products as a carpenter and that she has been responsible for laundering his clothes since 1976. She testified that she would do laundry about twice a week and that her husband's work clothes were very dusty. She testified that she would shake his clothes before putting it into the laundry and they were chalky and cloudy with dust.

On a motion for summary judgment the movant bears the initial burden and must tender evidence sufficient to eliminate all material issues of fact (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). Once the movant meets this burden, the burden then shifts to the opposing party to demonstrate that there are material issues of fact; mere conclusions and unsubstantiated allegations are insufficient to raise any triable issues of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]; *Perez v Grace Episcopal Church*, 6 AD3d 596, 774 NYS2d 785 [2004]). As the court's function on such a motion is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility, the facts alleged by the opposing party and all inferences that may be drawn are to be accepted as true (*see Roth v Barreto*, 289 AD2d 557, 735 NYS2d 197 [2d Dept 2001]; *O'Neill v Town of Fishkill*, 134 AD2d 487, 521 NYS2d 272 [2d Dept 1987]).

In order to establish its entitlement to summary judgment, a defendant must make a prima facie showing that its products could not have contributed to the causation of the plaintiff's injury (*see Matter of New York City Asbestos Litigation*, 216 AD2d 79, 628 NYS2d 72 [1st Dept 1995]; *Reid v Georgia-Pacific Corp.*, 212 AD2d 462, 622 NYS2d 946 [1st Dept 1995]). If this burden is met, the plaintiff must then allege facts and conditions from which the defendant's liability may reasonably be inferred, that is, that the plaintiff worked in the vicinity where the defendant's products were used and that the plaintiff was exposed to the defendant's products (*see Matter of New York City Asbestos Litigation, supra; Scheidel v A.C. and S. Inc.*, 258 AD2d 751 [3d Dept 1999]; *see also Healey v Firestone Tire & Rubber Co.*, 87 NY2d 596, 640 NYS2d 860 [1996]). A plaintiff is not required to show the precise cause of his or her injuries (*see Matter of New York City Asbestos Litigation*, 116 AD3d 545, 984 NYS2d 45 [1st

Raynor v A.O. Smith Water Prods.
Index No. 618439/2021
Page 3

Dept 2014]; *Matter of New York City Asbestos Litigation [Brooklyn Nav. Shipyard Cases]*, 188 AD2d 214, 593 NYS2d 43 [1st Dept 1993], *affd* 82 NY2d 821, 605 NYS2d 3 [1993]).

In addition, punitive damages are awarded “to punish the tortfeasor and to deter this wrongdoer and others similarly situated from indulging in the same conduct in the future” (*Ross v Louise Wise Servs., Inc.*, 8 NY3d 478, 489, 836 NYS2d 509 [2007]; *see Loughry v Lincoln First Bank*, 67 NY2d 369, 502 NYS2d 965 [1986]). “Punitive damages are recoverable in actions where a party engages in willful or wanton conduct evincing a deliberate intention to harm or an utter indifference or conscious disregard for the safety of others” (*Colombini v Westchester County Healthcare Corp.*, 24 AD3d 712, 715, 808 NYS2d 705, 708 [2d Dept 2005]; *see Home Ins. Co. V American Home Products Corp.*, 75 NY2d 196, 551 NYS2d 481 [1990]; *DiDomenico v Long Beach Plaza Corp.*, 60 AD3d 618, 875 NYS2d 133 [2d Dept 2009]).

Here, Burnham failed to establish its prima facie entitlement to summary judgment as a matter of law. Plaintiff Charles Raynor’s testimony specifically identified Burnham as the manufacturer of boilers that contained asbestos, which he was exposed to during his career. Moreover, both plaintiffs testified that plaintiff Marilyn Raynor would wash her husband’s work clothes, which were chalky and dusty. Burnham has failed to establish that its product could not have contributed to the causation of plaintiff’s asbestos-related injury. Rather than submitting evidence such as expert reports to demonstrate that its product did not cause plaintiff’s asbestos-related injury, Burnham merely contends that it would be impossible to determine when, how, or how often Mr. Raynor was exposed to a Burnham boiler and whether plaintiff Marilyn Raynor was exposed to sufficient levels of asbestos from a Burnham boiler to cause her alleged injury. A defendant cannot obtain summary judgment by pointing to gaps in plaintiff’s proof; rather, it must adduce affirmative evidence that the alleged exposure from asbestos from its boilers did not cause injury to plaintiff (*see Vazquez v 3M Co.*, 177 AD3d 428, 113 NYS3d 41 [1st Dept 2019]; *Koulermos v A.O. Smith Water Prods.*, 137 AD3d 575, 27 NYS3d 157 [1st Dept 2016]; *Ricci v A.O. Smith Water Prods. Co.*, 143 AD3d 516, 38 NYS3d 797 [1st Dept 2013]; *Vittorio v U-Haul Co.*, 52 AD3d 823, 861 NYS2d 726 [2d Dept 2008]). Having determined that Burnham failed to establish its prima facie burden on the motion, it is unnecessary to consider the sufficiency of plaintiff’s papers in opposition (*see Zambri v Madison Sq. Garden, L.P.*, 73 AD3d 1035, 901 NYS2d 377 [2d Dept 2010]). Thus, the application by Burnham for summary judgment dismissing the complaint against it is denied.

As to Burnham’s application to dismiss the claims for punitive damages, it has not met its prima facie burden as there was insufficient evidence submitted in support of its motion for summary judgment. Burnham contends that its boilers have always been significantly below the standards or regulations regarding permissible exposure limits to asbestos, pointing to a study done by Dr. William Longo. However, Burnham submits an unsigned transcript of the deposition testimony of Dr. Longo from a different case, which is not admissible (*see McDonald v Mauss*, 38 AD3d 727, 832 NYS2d 291 [2d Dept 2007]; *Santos v Intown Assocs.*, 17 AD3d 564, 793 NYS2d 477 [2d Dept 2005]). In any event, it is not clear the study that is the subject of such deposition testimony is relevant as Dr. Longo testified at his deposition that he did not conduct any studies on boilers manufactured by defendant Burnham. Furthermore, the decision on the punitive damages claim is best left to be determined by the trial judge after submission of all the evidence in the case (*see Matter of the 91st St. Crane Collapse Litig.*, 154

Raynor v A.O. Smith Water Prods.
Index No. 618439/2021
Page 4

AD3d 139, 62 NYS 3d 11 [1st Dept 2017]; *Camillo v Olympia & York Properties Co.*, 157 A.D.2d 34, 554 NYS2d 532 [1st Dept 1990]). Accordingly, the application by Burnham for summary judgment dismissing the claim for punitive damages against it is denied.

Dated: July 31, 2024



J.S.C.

____ FINAL DISPOSITION X NON-FINAL DISPOSITION

TO: ALL COUNSEL OF RECORD (via NYSCEF)