

Bonavise v AERCO Intl., Inc.
2026 NY Slip Op 31224(U)
March 27, 2026
Supreme Court, New York County
Docket Number: Index No. 190232/2022
Judge: Eric Schumacher
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ERIC SCHUMACHER PART 13M

Justice

-----X

ROSALIE BONAUISE as executrix for the estate of
DOMINICK BONAUISE,

Plaintiff,

- v -

AERCO INTERNATIONAL, INC. et al.,

Defendants.

-----X

INDEX NO. 190232/2022

MOTION DATE 03/26/2026

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

NYSCEF doc nos. 358-365, and 367-370 were read on this motion to reargue

Motion by defendant Viking Pump Inc. pursuant to CPLR 2221(d) for leave to reargue its motion in seq. no. 003 pursuant to CPLR 3212 for summary judgment to dismiss plaintiff's complaint and all cross claims asserted against it, and upon reargument to grant the underlying motion in its entirety, granted to the extent that leave to reargue is granted, and upon reargument, the motion is denied.

BACKGROUND

This matter involves plaintiff's claim that the decedent was exposed to, and injured by, asbestos dust from pumps manufactured, sold or distributed by defendant Viking Pump Inc. (Viking) during his time as a construction worker. The decedent, Dominick Bonavise, was diagnosed with asbestos related lung cancer in September 2022, and passed away a month later from hypoxic respiratory failure related to metastatic lung cancer. Decedent's co-worker, John Onofrio, testified that from 1993-1995 they worked in tandem to remove outdated boilers, pumps, and valves from hundreds of work sites and scraped off associated asbestos flange gaskets and external insulation (Onofrio deposition, NYSCEF Doc No. 270-271 at 18-19, 29, 42-44, 271). Onofrio testified that he recalled the decedent removing asbestos insulated Viking pumps and associated asbestos flange gaskets (id. at 155, 158).

Viking, in its motion for summary judgment, argued that the type of pump identified by Onofrio- a centrifugal pump- has never been manufactured or sold by Viking. In support of its motion, Viking submitted the affidavit of its corporate representative, Scott Kunkle, who stated as much.

On October 22, 2025, this Court heard oral arguments and denied Viking's motion for summary judgment on the grounds that it had failed to establish its prima facie case. Viking relied primarily on the affidavit of Kunkle, a former employee who worked for the company from 1979 to 2019 and retired as a PE Lab Manager (Kunkle aff, NYSCEF Doc No. 272 ¶ 2).

The court found that while the affidavit begins with a general assertion of personal knowledge, it failed to establish that the affiant possessed personal knowledge of the facts asserted in the affidavit. Instead, Kunkle stated that his familiarity with Viking's business practices was derived not only from his own knowledge but also from a "reasonable inquiry" of information assembled by other employees, representatives, and counsel (*id.*). The affidavit then makes sweeping historical assertions regarding Viking Pump's use of asbestos dating back to 1911, as well as statements that the company never manufactured or sold certain asbestos-containing components or recommended insulation. The affidavit does not explain what positions the affiant held during the relevant time periods or how those positions would have provided the requisite personal knowledge. Nor does the affidavit reference which documents he may have reviewed, sources that he gleaned his information from or who the "other authorized employees, representatives, and counsel" are that he obtained his knowledge from (*id.*). The court held that the affidavit does not constitute competent evidence sufficient to eliminate all triable issues of fact as to whether the alleged materials contained asbestos. Accordingly, Viking's summary judgment motion was granted only to the limited extent that all cross claims against it were dismissed with prejudice, and the motion was otherwise denied (NYSCEF Doc No. 50 and 54).

Respondent now moves to reargue its prior motion for summary judgment, contending that the Court overlooked the Kunkle affidavit and misapprehended the significance of *Papsodero v Blackmer Pump Co.*, (2025 NY Slip Op 30317[U] at *1 [Sup Ct, NY County 2025]) (*Papsodero* Decision and Order, NYSCEF Doc No. 273), which it asserts presents substantially similar facts to those at issue here.

DISCUSSION

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" (*Schneider v Solowey*, 141 AD2d 813, 813 [2d Dept 1988]). Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to relitigate arguments already considered and rejected by the Court (*Pro Brokerage, Inc. v Home Insurance Co.*, 99 AD2d 971, 971 [1st Dept 1984]). Nor may it be used to present arguments different from those originally asserted (*McGill v Goldman*, 261 AD2d 593, 594 [2d Dept 1999]). Here, Viking in sum and substance contends that the Court misapplied existing law.

Viking has not demonstrated that the Court overlooked or misapprehended any facts or controlling legal principles when issuing its October 22, 2025 Decision and Order (oral argument transcript, NYSCEF Doc No. 354). Rather, the motion merely rehashes the same arguments advanced on the underlying motion, including the asserted admissibility and sufficiency of the Kunkle affidavit, all of which were previously considered and rejected.

Viking argues that the Court overlooked the principle that a corporation may designate a representative who, after reviewing corporate records and information, may testify on behalf of the company even where the testimony extends beyond the representative's personal knowledge, and should reconsider Kunkle's affidavit.

However, Viking's contention does not warrant reargument and, in any event, lacks merit. The First Department has held that an affidavit from a corporate representative which is "conclusory and without specific factual basis" does not meet the burden of a motion for summary judgment (*Matter of New York City Asbestos Litig. (DiSalvo)*, 123 AD3d 498, 499 [1st Dept 2014]). Furthermore, the Court of Appeals in *Matter of New York City Asbestos Litig.* 27 NY3d 765, 747 (2016), found that a corporate representative who was not employed during the relevant time at issue could testify as to defendant's procurement practices only if he had personal knowledge of the practices that existed at that time or "...if he acquired an adequate factual foundation for such an opinion by, for example, reviewing documents or scholarly materials discussing the procurement practices in effect in that prior era."

Here, as the Court noted during oral argument, the Kunkle affidavit fails to meet these requirements. The affidavit does not delineate which statements are based on personal knowledge and which are derived from hearsay. Kunkle fails to establish that as the affiant he personally reviewed specific business records or lays a foundation for their admissibility. Instead, he affirmatively demonstrates that he relies, at least in part, on second-hand information supplied by unidentified others, rendering it inadmissible hearsay without identifying an exception. Furthermore, contrary to Viking's contention, the absence of documentary proof does not convert speculation or secondhand information into personal knowledge; rather, it underscores the lack of admissible evidence. Accordingly, Viking failed to meet its prima facie burden, which alone requires denial of summary judgment regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

Viking's reliance on affidavits deemed sufficient in *Papsodero (supra)* and *Daly v Amchem Prods., Inc.* (2024 NY Slip Op 30663[U] [Sup Ct, NY County 2021]) is misplaced. Those affidavits are materially distinguishable. In *Daly*, the affiant established personal knowledge through decades of relevant experience and detailed review of specifically identified business records maintained in the ordinary course. Likewise, in *Papsodero*, the affiant grounded his opinions in identifiable sources, including corporate records and deposition testimony, and tied those sources to his own experience and responsibilities. In both cases, the affidavits linked their conclusions to admissible proof and demonstrated a clear factual foundation.

By contrast, the Kunkle affidavit offers only a generalized assertion of "personal knowledge," immediately undercut by the admission that such knowledge is derived from a "reasonable inquiry" of information assembled by others and an unspecified review of corporate materials. Critically, the affidavit fails to connect its central assertion, that Viking "has never manufactured centrifugal pumps," to any specific personal experience, identified records, or admissible evidence. This renders the affidavit conclusory and insufficient to eliminate triable issues of fact.

Viking also contends that the Court misapprehended the significance of *Papsodero*. Regardless of whether *Papsodero* is characterized as a "no identification" or "misidentification" case, the dispositive point is that the movant there satisfied its prima facie burden by demonstrating an absence of evidence linking its product to the plaintiff's exposure. In *Papsodero*, the record established that the plaintiff "identified no products manufactured, sold, or

distributed by Defendant which exposed Plaintiff to asbestos” (*Papsodero*, 2025 NY Slip Op 30317[U] at **2).

Here, in contrast, the record contains affirmative identification evidence, in the form of deposition testimony identifying Viking pumps as a source of exposure, which Viking’s submissions fail to conclusively refute. Accordingly, *Papsodero* is factually inapposite and does not support a different result (*see Dollas v W.R. Grace & Co.*, 225 AD2d 319, 321 [1st Dept 1996]).

In sum, Viking fails to identify any matter of fact or law that the Court overlooked or misapprehended. Instead, it advances the same arguments previously considered and rejected, which is an improper basis for reargument. The Court has considered Viking’s remaining arguments and finds them unavailing.

CONCLUSION

Accordingly, it is

ORDERED that defendant Viking Pump Inc.’s motion pursuant to CPLR 2221(d) for leave to reargue its motion in seq. no. 003 pursuant to CPLR 3212 for summary judgment to dismiss plaintiff’s complaint and all cross claims asserted against it, and upon reargument to grant the underlying motion in its entirety, is granted to the extent that leave to reargue is granted; and it is further

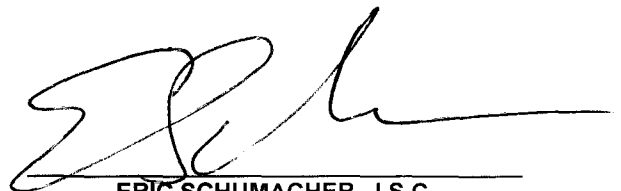
ORDERED that upon reargument, the motion is denied; and it is further

ORDERED that within five days of entry, plaintiff shall serve a copy of this order with notice of entry on defendant Viking Pump Inc.

The foregoing constitutes the decision and order of this court.

3/27/2026

DATE



ERIC SCHUMACHER, J.S.C.

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: