

Munna v American Honda Motor Co., Inc.

2023 NY Slip Op 32320(U)

July 10, 2023

Supreme Court, New York County

Docket Number: Index No. 190353/2016

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. 190353/2016

JOSEPH MUNNA, KAREN MUNNA,

MOTION DATE 11/04/2022

Plaintiff,

MOTION SEQ. NO. 005

- v -

AMERICAN HONDA MOTOR CO., INC.; BMW OF NORTH AMERICA, LLC; BORGWARNER MORSE TEC LLC, FEDERAL-MOGUL ASBESTOS PERSONAL INJURY TRUST, FIAT CHRYSLER AUTOMOBILES N.V.; FIAT U.S.A., INC.; FORD MOTOR COMPANY; GENUINE PARTS COMPANY; GOODRICH CORPORATION, GOODYEAR TIRE & RUBBER COMPANY, THE, HENNESSY INDUSTRIES, INC.; HONEYWELL INTERNATIONAL, INC., MCCORD CORPORATION, MERCEDES-BENZ USA, LLC; MORTON THIOKOL; NATIONAL AUTO PARTS ASSOCIATION, PEP BOYS - MANNY, MOE & JACK, PERFORMANCE INDUSTRIES, INC., PNEUMO-ABEX, LLC, ROBERT BOSCH CORPORATION, TOYOTA MOTOR SALES, USA, INC.; VOLKSWAGEN OF AMERICA, INC.; VOLVO CARS OF NORTH AMERICA, INC.; VOLVO CARS OF NORTH AMERICA, LLC; VOLVO TRUCKS NORTH AMERICA, INC., WESTERN AUTO SUPPLY COMPANY; ADVANCE AUTO PARTS, INC., DANA COMPANIES, LLC, FORMERLY KNOWN AS DANA CORPORATION AND INDIVIDUALLY AND AS SUCCESSOR TO MIDLAND BRAKE, INC., SPICER ENTERPRISES, INC., VICTOR GASKETS AND WICHITA CLUTCH CO., INC., MOROSO PERFORMANCE PRODUCTS, TENECO INC., UNION CARBIDE CORPORATION, JOHN DOE 1 THROUGH JOHN DOE 75

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 209, 210, 211, 212, 213, 214, 215, 216, 221, 222, 223, 224, 225, 226, 227, 229, 230

were read on this motion to/for

DISMISS

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 Advance Auto, Advance Stores Company, Inc. (“Advance Auto”) moves to dismiss this action on the grounds that plaintiff, Mr. Joseph Munna, was not exposed to asbestos from any Advance Auto product during his employment as an auto-mechanic at various businesses between the 1970s and 1990s. Defendant Advance Auto argues that Mr. Munna’s testimony identifies Advance Auto store as a supplier of asbestos-containing parts, but that he was not personally involved in any of these purchases. *See* Memorandum of Law in Support of Advance Stores Company, Incorporated’s Summary Judgment Motion, at p. 3. Additionally, defendant Advance Auto notes that they did not operate stores in Valley Stream or Staten Island in the 1970s-1990s. *See id.* at p. 4; *see also* Exh. D, Affidavit of Michael A. Tankersley, dated Oct. 20, 2022, at p. 2.

In opposition, plaintiff notes that “Mr. Munna identified Advance Auto as a supplier of asbestos-containing parts at every location that he worked at”, including recollections of the Advance Auto delivery vehicles and their packaging. *See* Plaintiff’s Memorandum of Law in Opposition to Defendant Advance Stores Company, Incorporated’s Motion for Summary Judgment, at p. 3. Additionally, Mr. Munna’s testimony did not specify any Advance Auto store locations. *See id.* at p. 5.

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).

Here, defendant Advance Auto has failed to meet its initial burden in establishing that its products did not contain asbestos and could not have contributed to plaintiff’s asbestos exposure. Rather, defendant Advance Auto relies solely upon a mischaracterization of plaintiff’s consistent and unequivocal testimony regarding their products.

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 Court finds that plaintiff provided unequivocal testimony identifying Advance Auto and that this testimony was not limited to any particular store locations. *See* Memorandum of Law in Opposition, *supra*, Exh. A, Deposition Transcripts of Joseph Munna, dated Mar. 12, 2019, at p. 621. It is well-established in the testimony that Mr. Munna was not responsible for ordering parts in his capacity as a mechanic. This has no bearing on whether he was exposed to asbestos from his work with those parts. It is also clear that he has not identified the stores presently located in Valley Stream or Staten Island as the only possible sources of the parts at issue.

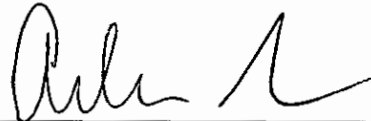
As a reasonable juror could decide that plaintiff was exposed to asbestos from Advance Auto car parts, issues of fact exist to preclude summary judgment. The Court finds that a triable issue of fact exists as to whether Mr. Munna worked with an asbestos containing Advance Auto product and to what extent he was exposed to asbestos from it.

Accordingly, it is

ORDERED that defendant Advance Auto’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.

07/10/2023

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