STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

CAMILLE K. PARVANA,

Plaintiff,

-against-

DECISION and ORDER
INDEX NO. 1292-11
RJI NO. 01-11-104034

GENERAL MOTORS, LLC and
FUCCILLO AUTOMOTIVE GROUP, INC.,

Defendants.

Supreme Court Albany County All Purpose Term, June 3, 2013
Assigned to Justice Joseph C. Teresi

APPEARANCES:
Rheingold, Valet, Rheingold,
McCartney & Giuffra, , LLP
Attn: Terrence E. McCartney, Esq.
Attorney for the Plaintiff
113 East 37the Street
New York, New York 10016

Eckert, Seamans, Cherin & Mellott, LLC
Attn: Steven R. Kramer, Esq.
Attorney for the Defendants
10 Bank Street
Suite 700
White Plains, New York 10606

TERESI, J.:

On July 15, 2009, Plaintiff was driving her 2002 Chevrolet Blazer (hereinafter "2002 Blazer") when she was severely injured in a one car rollover accident. The 2002 Blazer was partially designed, manufactured, assembled and tested by GM.[1]

[1] The pleadings establish that while General Motors LLC is the named party herein, such actions were performed by Motors Liquidation Corporation f/k/a General Motors Corporation. Because this distinction was not raised within this motion, all three entities will be referred to as "GM" without distinction.

Plaintiff commenced this products liability/breach of warranty/negligence action to recover, in pertinent part, punitive damages from GM. Issue was joined by Defendants, discovery is complete and a note of issue filed. A jury trial date certain has been set (September 9, 2013).

GM now moves for summary judgment dismissing Plaintiff's punitive damages claims, on both a choice of law theory and a substantive analysis. Plaintiff opposed the motion. Because GM failed to establish its entitlement to judgment as a matter of law, its motion is denied.

As is well established "summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue." (Napierski v Finn, 229 AD2d 869, 870 [3d Dept 1996], quoting Moskowitz v Garlock, 23 AD2d 943 [3d Dept 1965]).

Here, GM bears the "initial burden of making a prima facie showing of entitlement to judgment as a matter of law." (Butler v City of Gloversville, 12 NY3d 902, 904 [2009], quoting Alvarez v Prospect Hosp., 68 NY2d 320 [1986]). A movant's initial burden is not met without "proof in admissible form." (Ulster County v CSI, Inc., 95 AD3d 1634, 1636 [3d Dept 2012]; Lockwood v Layton, 79 AD3d 1342, 1342 [3d Dept 2010]). Nor by merely "pointing to gaps in... proof." (DiBartolomeo v St. Peter's Hosp. of City of Albany, 73 AD3d 1326 [3d Dept 2010]; Antonucci v Emeco Industries, Inc., 223 AD2d 913 [3d Dept1996]). Only if the movant establishes its right to judgment as a matter of law will the burden shift to the opponent of the motion to establish the existence of a genuine issue of fact. (Zuckerman v City of New York, 49 NY2d 557 [1980]; Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 [1985]).

GM first failed to demonstrate its entitlement to judgment as a matter of law with its conflict of laws theory.

"The first step in any case presenting a potential choice of law issue is to determine

whether there is an actual conflict between the laws of the jurisdictions involved." (Matter of Allstate Ins. Co. (Stolarz), 81 NY2d 219, 223 [1993]). Plaintiff does not contest the conflict GM constructs: Michigan's prohibition on punitive damages (Gregory v Cincinnati Inc., 450 Mich 1 [1995]; Fellows v Superior Products Co., 201 Mich App 155, 506 NW2d 534 [Mich Ct App 1993]), as opposed to New York's authorization of such claims (Dumesnil v Proctor and Schwartz Inc., 199 AD2d 869 [3d Dept 1993]; Sclafani v Brother Jimmy's BBQ, Inc., 88 AD3d 515 [1st Dept 2011]).

With the conflict established, New York law requires an "interest analysis." (Edwards v Erie Coach Lines Co., 17 NY3d 306 [2011]). The inquiry is twofold: "(1) what are the significant contacts and in which jurisdiction are they located; and, (2) whether the purpose of the law is to regulate conduct or allocate loss." (Padula v Lilarn Properties Corp., 84 NY2d 519, 521 [1994]; DaSilva v C & E Ventures, Inc., 83 AD3d 551 [1st Dept 2011]).

On this record, GM failed to proffer sufficient proof to establish that Michigan's interests outweigh New York's interests. As correctly alleged by Defendant, Plaintiff's punitive damages claim is "of a conduct-regulating nature." (Rose v Arthur J. Gallagher & Co., 87 AD3d 733, 734 [2d Dept 2011]). When, as here, "conflicting conduct-regulating laws are at issue, the law of the jurisdiction where the tort occurred will generally apply because that jurisdiction has the greatest interest in regulating behavior within its borders." (Padula v Lilarn Properties Corp., supra 522, quoting Cooney v Osgood Mach., Inc., 81 NY2d 66 [1993]; Phelan v Budget Rent A Car Sys. Inc., 267 AD2d 654 [3d Dept 1999]). Because a tort occurs at "the place of the injury" (Devore v Pfizer Inc., 58 AD3d 138, 141 [1st Dept 2008]; Schultz v. Boy Scouts of Am., 65 NY2d 189 [1985]) and it is uncontested that Plaintiff was injured in New York, New York has a greater

interest and its punitive damages law controls. Contrary to GM's assertions and the proof it offered, "the location where the allegedly defective product was manufactured" does not establish where the tort occurred. (Burnett v Columbus McKinnon Corp., 69 AD3d 58, 59-60 [4th Dept 2009]).

Accordingly, that portion of GM's summary judgment motion based upon a conflict of laws theory is denied.

Turning to GM's substantive challenge, it again failed to establish its entitlement to judgment as a matter of law.

Punitive damages may only be awarded "in exceptional cases [upon proof of]... spite or malice, or a fraudulent or evil motive on the part of the defendant, or such a conscious and deliberate disregard of the interests of others that the conduct may be called wilful or wanton." (Marinaccio v Town of Clarence, 20 NY3d 506, 511 [2013], quoting Dupree v. Giugliano, 20 NY3d 921 [2012][internal quotation marks omitted]). GM bears the initial burden "to demonstrate the absence of any triable issues of fact as to the plaintiffs' claims for punitive damages relative to their tort causes of action." (Sieger v Zak, 74 AD3d 1319 [2d Dept 2010]).

Here, GM failed to proffer sufficient proof to establish their entitlement to judgment as a matter of law dismissing Plaintiff's punitive damages claim. First, because GM's attorney's affirmation is not based upon "personal knowledge of the operative facts [it is of no]... probative value." (2 North Street Corp. v Getty Saugerties Corp., 68 AD3d 1392 [3d Dept 2009]; Groboski v Godfroy, 74 AD3d 1524 [3d Dept 2010]; Zuckerman v City of New York, 49 NY2d 557 [1980]). The three employee affidavits GM submitted are likewise deficient. Not one of them even addresses the care, or lack thereof, GM took in designing, manufacturing, assembling and

testing the 2002 Blazer. Similarly, the three partial deposition transcripts do not demonstrate GM's entitlement to judgment. The extremely limited transcript excerpts, nine pages of questions and answers in total, preclude review of the comments submitted within their overall context. Moreover, the deponents' limited comments do not establish, as a matter of law, that GM had no "conscious and deliberate disregard of the interests of others." (Marinaccio v Town of Clarence, supra at 511; Sieger v Zak, supra; Marsh v Arnot Ogden Med. Ctr., 91 AD3d 1070 [3d Dept 2012]). Conspicuously absent from GM's submission is a comprehensive explanation of its design, manufacture, assembly and testing of the 2002 Blazer. Without such proof GM failed to demonstrate that it is not subject, as a matter of law, to punitive damages.

Because GM failed to satisfy its initial burden, its motion for summary judgment must be denied "regardless of the sufficiency of the opposing papers." (Pezzino v Woodruff, 103 AD3d 944 [3d Dept 2013], quoting Ames v Paquin, 40 AD3d 1379 [3d Dept 2007]; Vega v Restani Const. Corp., 18 NY3d 499 [2012]).

Accordingly, GM's motion is denied.

This Decision and Order is being returned to the attorneys for Plaintiff. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: July / , 2013
Albany, New York

Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion, dated May 3, 2013, Affirmation of Steven R. Kramer, dated May 3, 2013, with attached Exhibits A - K.
2. Affirmation of Terrence McCartney, dated May 24, 2013, with attached Exhibits A - K.