

Holland v Amchem Prods., Inc.

2023 NY Slip Op 33284(U)

September 19, 2023

Supreme Court, New York County

Docket Number: Index No. 190053/2020

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

LYNN HOLLAND AS ADMINISTRATOR FOR THE ESTATE OF JOHN E HOLLAND,

Plaintiff,

- v -

AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC AG COMPANY, N/K/A BAYER CROPSCIENCE INC, CARRIER CORPORATION, CBS CORPORATION, F/K/A VIACOM INC., SUCCESSOR BY MERGER TO CBS CORPORATION, F/K/A WESTINGHOUSE ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC, CRANE CO, CROSBY VALVE LLC, ECR INTERNATIONAL, CORP., F/K/A DUNKIRK BOILERS AND UTICA BOILER COMPANY, FLOWSERVE US, INC. INDIVIDUALLY AND SUCCESSOR TO ROCKWELL MANUFACTURING COMPANY, EDWARD VALVE, INC., NORDSTROM VALVES, INC., EDWARD VOGT VALVE COMPANY, AND VOGT VALVE COMPANY, FMC CORPORATION, ON BEHALF OF ITS FORMER CHICAGO PUMP & NORTHERN PUMP BUSINESSES, FOSTER WHEELER, L.L.C, GENERAL ELECTRIC COMPANY, GOULDS PUMPS LLC, GRINNELL LLC, IMO INDUSTRIES, INC, ITT LLC., INDIVIDUALLY AND AS SUCCESSOR TO BELL & GOSSETT AND AS SUCCESSOR TO KENNEDY VALVE MANUFACTURING CO., INC, PEERLESS INDUSTRIES, INC, PFIZER, INC. (PFIZER), U.S. RUBBER COMPANY (UNIROYAL), UNION CARBIDE CORPORATION, UTICA BOILERS, INC., INDIVIDUALLY AND AS SUCCESSOR TO UTICA RADIATOR CORPORATION, WARREN PUMPS, LLC, WEIL-MCLAIN, A DIVISION OF THE MARLEY-WYLAIN COMPANY, A WHOLLY OWNED SUBSIDIARY OF THE MARLEY COMPANY, LLC,

Defendant.

INDEX NO. 190053/2020
MOTION DATE 05/16/2023
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87, 88

were read on this motion to/for

JUDGMENT - SUMMARY

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 Crosby Valve, LLC (“Crosby”) moves to dismiss this action on the grounds that plaintiff, John Holland (“Mr. Holland”) was not exposed to asbestos from any Crosby product. In opposition, plaintiff highlights Mr. Hollands clear and unequivocal testimony identifying Crosby as a manufacturer, the lack of personal knowledge in defendant Crosby’s supporting affidavit, and the testimony of Crosby’s corporate affiant confirming asbestos-containing Crosby products. *See* Affirmation in Opposition to Defendant Crosby Valve, LLC’s Motion for Summary Judgment, p. 3-9.

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).

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 Mr. Holland provided unequivocal testimony identifying defendant Crosby products as a source of his asbestos exposure and that defendant Crosby's corporate representative and historical Crosby catalogue confirmed the presence and circulation of Crosby's asbestos-containing products. *See* Affirmation in Opposition, *supra*, p. 10. Defendant Crosby's only evidence in support of their claim is the affidavit of Robert J. Martin, dated December 1, 2022. *See* Affirmation of Counsel in Support of Crosby Valve, LLC's Motion for Summary Judgment, Exh. D. Mr. Martin's affidavit provides no basis for his conclusions, no reference to company materials reviewed, and contradicts his deposition testimony with respect to asbestos-containing gaskets being used on Crosby valves. *See id.*

As conflicting evidence has been presented herein, and a reasonable juror could decide that Mr. Holland was exposed to asbestos from the installation or use of Crosby products, sufficient issues of fact exist to preclude summary judgment.

Accordingly, it is

ORDERED that defendant Crosby'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.

09/19/2023

DATE

ADAM SILVERA, 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: