

SHORT FORM ORDER

SUPREME COURT-NEW YORK STATE-NASSAU COUNTY
PRESENT:

HON. ANTHONY L. PARGA
JUSTICE

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EDMUND HAEGELE,
Plaintiffs,

PART 6

INDEX NO. 602340/14

-against-

MOTION DATE: 09/14/15
SEQUENCE NO.: 002

AMCHEM PRODUCTS, INC., n/k/a RHONE
POULENC AG COMPANY, n/k/a BAYER
CROPSCIENCE INC., et al.
Defendants.

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Notice of Motion, Affm., Affd., Memo of Law & Exhs..... 1

Upon the foregoing papers, the unopposed motion by Eaton Corporation, as successor - in- interest to Cutler-Hammer, Inc. (hereinafter "Eaton"), which seeks an order pursuant to CPLR Rule 3212 granting summary judgment in favor of Eaton and dismissing the plaintiff's complaint as against defendant, Eaton, **only**, is granted.

The within action is brought by plaintiff, Edmund Haegele, for personal injuries which he allegedly sustained as a result of exposure to asbestos containing products. The exposure to the asbestos allegedly occurred as a result of plaintiff's employment as a truck mechanic. This employment involved work on brakes, clutches and engine work on trucks. Eaton is but one of multiple defendants which are named in the lawsuit. In plaintiff's response to interrogatories he indicates that during his years of employment as an auto/truck mechanic from the late 1950's to the mid 1990's, he worked with "Eaton clutches". The plaintiff also testified at his deposition that the clutch "jobs" which he performed were done on trucks and that he removed and installed Eaton clutches on trucks from 1961 to 1970.

In support of it's motion for summary judgment, Eaton submits, *inter alia*, a copy of the summons and complaint, a copy of the response to interrogatories, a copy of portions of the

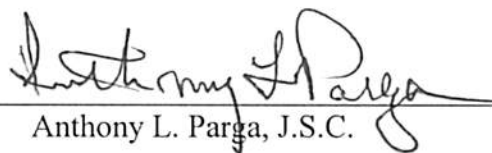
plaintiff's deposition transcript and an affidavit from Roger Hobbie, who was employed in various capacities by Eaton from 1959 to 1997. Mr. Hobbie attests that from 1959 until the late 1980's "Eaton did not manufacture, sell or distribute clutches for use in medium-duty or heavy-duty trucks". Mr. Hobbie also attests that the clutches that Eaton did manufacture, sell and distribute did not contain asbestos and or asbestos-containing components.

Plaintiff has made *prima facie* showing of entitlement to summary judgment on the issue of liability. The proponent of a summary judgement motion "must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact." (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 (1986)). Once the movant has demonstrated a prima facie showing of entitlement to judgement, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of a fact which require a trial of the action. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980)). Plaintiff has failed to oppose Eaton's motion, nor has there been any opposition submitted by a co-defendant.

Accordingly, the motion by defendant Eaton for summary judgment, pursuant to CPLR Rule 3212, dismissing the plaintiff's complaint as to Eaton as well as any cross claims which may have been asserted against Eaton by a co-defendant, is granted.

This constitutes the decision and Order of this Court and any request for relief not expressly granted herein is denied.

Dated: October 1, 2015


Anthony L. Parga, J.S.C.

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ENTERED

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COUNTY CLERK'S OFFICE