

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA**PART****13***Justice*

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INDEX NO. 190208/2019**MOTION DATE** 11/09/2021**MOTION SEQ. NO.** 006

ALBA MARTINEZ, AS ADMINISTRATRIX FOR THE
ESTATE OF JAMES R. MARTINEZ, AND ALBA
MARTINEZ, INDIVIDUALLY,

Plaintiff,

- v -

AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC
AG COMPANY, N/K/A BAYER CROPSCIENCE
INC., ARVINMERITOR, INC., INDIVIDUALLY AND AS
SUCCESSOR-IN-INTEREST TO ROCKWELL
AUTOMOTIVE, BORGWARNER MORSE TEC LLC.,
BUCYRUS INTERNATIONAL, INC, CARLISLE
INDUSTRIAL BRAKE & FRICTION, INC., CATERPILLAR,
INC, CERTAINTED CORPORATION, DANA COMPANIES,
LLC, DETROIT DIESEL CORPORATION, F/K/A
DETROIT DIESEL ALLISON (DDA), INDIVIDUALLY AND
AS A SUBSIDIARY OF PENSKE CORPORATION,,
EAST MANUFACTURING CORPORATION, EATON
CORPORATION, INDIVIDUALLY AND AS SUCCESSOR
-IN-INTEREST TO CUTLER-HAMMER, INC, FORD
MOTOR COMPANY, GATES CORPORATION, GENERAL
ELECTRIC COMPANY, GREAT DANE TRAILERS, INC,
H.O. PENN MACHINERY CO. INC, HALDEX BRAKE
PRODUCTS CORPORATION AS SUCCESSOR IN
INTEREST TO GREY ROCK BRAKES, HALE PRODUCTS,
INC., HONEYWELL INTERNATIONAL, INC., F/K/A
ALLIED SIGNAL, INC. / BENDIX, HYSTER-YALE
MATERIALS HANDLING, INC, JCB, INC., KALMAR USA
INC, KELSEY-HAYES COMPANY INDIVIDUALLY AND AS
SUCCESSOR IN INTEREST TO FREUHAUF, LIPE-
AUTOMATION CORPORATION, MACK TRUCKS, INC,
NAVISTAR, INC., A/K/A INTERNATIONAL TRUCK &
ENGINE CORP. F/K/A INTERNATIONAL HARVESTER,
INC, PFIZER, INC. (PFIZER), PNEUMO ABEX
LLC, SUCCESSOR IN INTEREST TO ABEX
CORPORATION (ABEX), SEARS HOLDINGS
CORPORATION, AS SUCCESSOR-BY-MERGER
KMART HOLDING CORPORATION, STOUGHTON
TRAILERS LLC, STRICK TRAILERS, THE HEIL CO. D/B/A
HEIL TRAILER INTERNATIONAL, U.S. RUBBER
COMPANY (UNIROYAL), UNION CARBIDE
CORPORATION, VOLVO WHITE TRUCK CORPORATION
INDIVIDUALLY AND AS SUCCESSOR TO WHITE
TRUCKS, A DIVISION OF WHITE MOTOR
CORPORATION, WABASH NATIONAL TRAILER

DECISION + ORDER ON MOTION

CENTERS, INC. INDIVIDUALLY AND AS SUCCESSOR-
IN-INTEREST TO FRUEHAUF CORPORATION A/K/A
FRUEHAUF TRAILER CORPORATION, YALE
MATERIALS HANDLING CORPORATION, CUMMINS,
INC., STANDARD MOTOR PRODUCTS, INC.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272

were read on this motion to/for

REARGUMENT/RECONSIDERATION

Before the court is Plaintiff's motion for leave to reargue Defendant Strick Trailers, LLC's (hereinafter referred to as Strick) motion for summary judgment and upon re-argument for vacatur of this Court's Decision and Order dated October 13, 2021 (hereinafter referred to as the "prior order"), in which the Court granted Strick's prior motion for summary judgment on the basis that Strick may not be held liable for a third party's product. Strick opposes, and Plaintiff replies.

CPLR 2221(d)(2) permits a party to move for leave to reargue a decision upon a showing that the court misapprehended the law in rendering its initial decision. The Court may exercise its discretion in determining whether a motion to reargue should be granted on the rationale that the Court "overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision." *Sachar v Columbia Pictures Indus., Inc.*, 129 AD3d 420, 421 (1st Dept 2015). "Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided . . . or to present arguments different from those originally asserted". *Matter of Setters v AI Properties and Developments (USA) Corp.*, 139 AD3d 492, 492 (1st Dept 2016), citing *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 (1st Dept 1992), *appeal denied in part, dismissed in part* 80 NY2d 1005 (1992).

In the *Matter of New York City Asbestos Litig. [Dummit]*, 27 NY3d 765, 788 (2016), the Appellate Division, First Department held “[t]he manufacturer’s duty. . . includes a legal obligation to issue warnings regarding hazards arising from foreseeable uses of the product about which the manufacturer learns after the sale of the product.” (internal citations omitted).

Plaintiff contends that the Court erred in granting summary judgment to Strick based upon this Court’s holding in a different motion for summary judgment made in the instant action by defendant East Manufacturing Corp. (hereinafter referred to as “East”). Plaintiff argues that defendant East’s motion for summary judgment was granted due to East’s failure to comply with discovery, resulting in a lack of factual showing. Conversely, Strick contends that the same legal standards were applied in which East demonstrated a lack of duty, breach, and causation, and that the identical facts in which Plaintiff refers to were general facts of the case in which East and Strick had similar positions. Strick further emphasizes the similarities between their case and East, as there was an affidavit from a corporate representative which affirmed East had no authority over, nor designed, manufactured, or sold any third-party brakes.

In granting summary judgment to East, this Court concluded that East had no duty to warn since East proffered evidence that its “vehicles function and were designed without asbestos brakes.” Affirmation in Support of Opposition of Motion For Leave to Reargue, Exh. B, Decision and Order on Motion, dated December 16, 2020, p.8. Therefore, Plaintiffs argument herein that the Court erred in relying on its prior decision in the motion made by East is without merit as such motion was not granted due to East’s lack of compliance with discovery.

Further, Plaintiff argues that the Court misapprehended or overlooked the law, as “a product seller is deemed to have a duty to warn of the hazards associated with component parts installed post-sale upon its products.” Affirmation In Support Of Plaintiff’s Motion For Leave To

Reargue, p. 8, ¶ 25. Plaintiff relies upon the argument of public policy, contending that a manufacturer's duty to warn against the use of third-party products is long standing in New York. However, Strick correctly argues that this Court previously analyzed whether such a duty to warn was applicable in the instant matter. "[T]he 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 demonstrate the absence of any material issues of fact." *Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 (2014) (internal citations omitted). Strick made a prima facie showing of entitlement to summary judgment by establishing that their vehicles did not contain asbestos brakes. Thus, Plaintiff has failed to show that this Court misapprehended or overlooked the law or facts in holding that "[t]he mere possibility that a party could replace defendant Strick's brakes with a third-party manufactured asbestos brake does not expose defendant Strick to liability." Aff In Opp, *supra*, Exh. G, Decision and Order on Motion, dated October 13, 2021, p. 6. It is undisputed that a manufacturer of a product will not be liable for the product of another manufacturer when the initial manufacturer created a product with no defects. The Court of Appeals in *Rastelli v Goodyear Tire & Rubber Co.*, 79 NY2d 289, 297-98 (1992) "decline[d] to hold that one manufacturer has a duty to warn about another manufacturer's product when the first manufacturer produces a sound product which is compatible for use with a defective product of the other manufacturer." In *Rastelli*, the Court of Appeals declined to impose liability on Goodyear, as "Goodyear had no control over the production of the subject multipiece rim, had no role in placing that rim in the stream of commerce, and derived no benefit from its sale." *Id.* at p. 298. Since Strick proffered evidence that they had no control, interest, or contribution to the brake valve that contained asbestos, this Court did not misapprehend or overlook the facts or the law. As such, Plaintiff's motion to reargue is denied.

Accordingly, it is

ORDERED that the Plaintiff's motion to reargue is denied in its entirety; and it is further

ORDERED that, within 30 days of entry, defendant Strick shall serve upon all parties a copy of this decision and order, together with notice of entry.

This constitutes the decision / order of the Court

6/24/2022

DATE

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

APPLICATION:

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SETTLE ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

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GRANTED IN PART

☐

OTHER

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SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE



ADAM SILVERA, J.S.C.