

Arana v A.O. Smith Water Prods. Co.

Supreme Court of New York, Appellate Division, First Department

November 17, 2022, Decided; November 17, 2022, Entered

Index No. 190261/19, Appeal No. 16681, Case No. 2021-04739

Reporter

2022 N.Y. App. Div. LEXIS 6434 *; 2022 NY Slip Op 06542 **

[1]** Victor Arana, as Administrator for the Estate of Gloria M. Maryn, Plaintiff-Respondent, v A.O. Smith Water Products Co., et al., Defendants, J-M Manufacturing Company, Inc., Defendant-Appellant.

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THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

Prior History: [*1] Order, Supreme Court, New York County (Adam Silvera, J.), entered on or about October 8, 2021, which, to the extent appealed from, denied the motion of defendant J-M Manufacturing Company (JMM) for summary judgment dismissing the complaint as against it, unanimously modified, on the law, to dismiss plaintiff's punitive damages demand, and otherwise affirmed, without costs.

Core Terms

punitive damages, distributed, singularly, **asbestos**, warnings, malice, cases, pipe

Counsel: Manning Gross + Massenburg, LLP, New York (Anna Hwang of counsel), for appellant.

Weitz & Luxenberg, P.C., New York (Jason P. Weinstein of counsel), for respondent.

Judges: Before: Kern, J.P., Scarpulla, Rodriguez, Pitt, Higgitt, JJ.

Opinion

Defendant is a former distributor of **asbestos** cement pipe (ACP). Plaintiff Arana, a plumber's laborer, alleges

that he worked with ACP distributed by JMM and that his mother, Gloria M. Maryn, was secondarily exposed to **asbestos**-containing dust while she laundered his clothes.

Questions of fact and credibility exist as to whether plaintiff Arana worked with ACP distributed by JMM (see [Comeau v W.R. Grace & Co.-Conn.](#), 216 AD2d 79, 80 [1st Dept 1995]; see also [Matter of New York City Asbestos Litig.](#), 7 AD3d 285 [1st Dept 2004]; [Dollas v Grace & Co.](#), 225 AD2d 319 [1st Dept 1996]).

There is insufficient evidence, however, to support plaintiff's punitive damages demand. "Even where there is gross negligence, punitive damages are awarded only in 'singularly rare cases' such as cases [*2] involving an improper state of mind or malice or cases involving wrongdoing to the public" ([Anonymous v Streitferdt](#), 172 AD2d 440, 441 [1st Dept 1991], quoting [Rand & Paseka Mfg. Co. v Holmes Protection](#), 130 AD2d 429, 431 [1st Dept 1987], *lv denied* 70 NY2d 615 [1988]). This is not such a singularly rare case (see [Matter of New York City Asbestos Litig.](#), 225 AD2d 414, 415 [1st Dept 1996], *affd* 89 NY2d 955 [1997]; see also [Matter of Eighth Jud. Dist. Asbestos Litig.](#), 92 AD3d 1259 [4th Dept 2012], *lv denied* 19 NY3d 803 [2012]). There is no evidence of a concerted effort to suppress information about the dangers of **asbestos**. To the contrary, the product came with multiple warnings that it could not safely be worked with using dry saws or the like. To the extent those warnings were not present on each piece of pipe may evidence negligence, it does not evidence malice (compare [Matter of 91st St. Crane Collapse Litig.](#), 154 AD3d 139 [1st Dept 2017]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: November 17, 2022