Chandler v. Pneumo Abex Llc

Superior Court of California, County of Sacramento

October 11, 2022, Filed

CASE NO: 34-2019-00265009-CU-AS-GDS

Reporter
2022 Cal. Super. LEXIS 61970 *

Evelyn Chandler, as Successor-in-Interest and as Wrongful Death heir of Gail Chandler v. Pneumo Abex LLC

Core Terms

Warehouse, clutches, ***asbestos***-containing, declares, gaskets, supplied, summary judgment motion, pleadings, deposition, ***asbestos***, triable issue of material, summary adjudication, separate statement, material fact, non-***asbestos***, brands

Judges: [*1] Richard K. Sueyoshi, Judge.

Opinion by: Richard K. Sueyoshi

Opinion

JUDICIAL OFFICER PRESIDING: Richard K. Sueyoshi

MINUTE ORDER

Nature of Proceeding: Motion for Summary Judgment and/or Adjudication

TENTATIVE RULING

The motion of Defendant Parts Warehouse, Inc. ("Moving Defendant" or "Parts Warehouse") for summary judgment in its favor and against Plaintiffs Evelyn Chandler ("Chandler") and Randi Greco ("Greco") (collectively "Plaintiffs") is DENIED.

As a preliminary matter, the Court notes that neither party properly complied with the requirement to submit supporting evidence in a single compendium of evidence. (*Cal. Rules of Court, rule 3.1350(c)*.) Further, the parties are reminded that one purpose of the requirements for a separate statement is to ease the burden on the Court. (*Security Pacific Nat. Bank v. Bradley (1992) 4 Cal.App.4th 89, 99*.) In achieving this goal, responses to separate statements are required to unequivocally state whether a fact is disputed or undisputed and must state the nature of the dispute and the supporting evidence. (*Cal. Rules of Court, rule 3.1350(f)*.) Separate statements are not intended to provide parties an additional opportunity to argue the merits of the motion. Here, the parties' muddled and lengthy oppositions and replies to the separate statements were of little assistance to the Court in identifying **[*2]** the specific material disputes at issue in this motion. Nonetheless, after continuing the hearing for further review, the Court was eventually able to determine the merits of the motion without requiring amendment to the form of evidence and separate statements.

Plaintiff's objection to paragraph 17 of the Declaration of Bob Glyer ("Glyer") is sustained. The objection to the remaining portions of the declaration are overruled. However, as set forth below, the Court considers the challenges to the sufficiency of Glyer's declaration and the supporting evidence for the objections in determining whether the declaration is sufficient to meet Moving Defendant's burden on this motion. Moving Defendant's objections to Plaintiff's evidence are overruled. Again, the challenges raised by Moving Defendant go to the sufficiency of the evidence to support Plaintiff's claims. The Court declines to rule on Plaintiff's objection to new evidence offered in reply as the new evidence was not material to the Court's decision, except where the evidence was already available to the Court through the moving papers and/or opposition. (*Code Civ. Proc. § 437(t)(2)*.)

In evaluating a motion for summary judgment or summary adjudication the **[*3]** Court engages in a three-step process.

First, the Court identifies the issues framed by the pleadings. The pleadings define the scope of the issues on a motion for summary judgment or summary

adjudication. (*FPI Dev. Inc. v. Nakashima (1991) 231 Cal.App.3d 367, 381-382*.) Because a motion for summary judgment or summary adjudication is limited to the issues raised by the pleadings (*Lewis v. Chevron (2004) 119 Cal. App. 4th 690, 694*), all evidence submitted in support of or in opposition to the motion must be addressed to the claims and defenses raised in the pleadings. The Court cannot consider an unpled issue in ruling on a motion for summary judgment or summary adjudication. (*Roth v. Rhodes (1994) 25 Cal.App.4th 530, 541*.) The papers filed in response to a defendant's motion for summary judgment or summary adjudication may not create issues outside the pleadings and are not a substitute for an amendment to the pleadings. (*Tsemetzin v. Coast Federal Savings & Loan Assn. (1997) 57 Cal.App.4th 1334, 1342*.)

When a defendant or cross-defendant moves for summary judgment, the defendant "bears the burden of persuasion that there is no triable issue of material fact and that [the defendant] is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 850 (Aguilar)*; *Chavez v. Glock, Inc. (2012) 207 Cal.App.4th 1283, 1301*.)) A defendant satisfies this burden by showing one or more elements of the cause of action cannot be established, or that there is a complete defense to that cause of action. (*Ibid.*) If **[*4]** a plaintiff pleads several theories, the defendant has the burden of demonstrating there are no material facts requiring trial on any of them. The moving defendant whose declarations omit facts as to any theory permits that portion of the complaint to be unchallenged. Even if no opposition is presented, the moving party still has the burden of eliminating all triable issues of fact. (*Wright v. Stang Manufacturing Co. (1997) 54 Cal. App. 4th 1218, 1228*; see also *Juarez v. Boy Scouts of America, Inc. (2000) 81 Cal. App. 4th 377, 397*.)

Once a moving party meets his or her initial burden, '"the burden shifts to the [opposing party] … to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto."' (*Aguilar, supra, 25 Cal.4th at p. 849*.) To satisfy this burden, the opposing party must present admissible evidence and may not rely upon the allegations or denials of its pleading. (*Ibid.*)

In ruling on the motion, the Court must consider the evidence and inferences reasonably drawn from the evidence in the light most favorable to the party opposing the motion. (*Aguilar, supra, at 843*.)

This is an action alleging the wrongful death of Gail Chandler ("Decedent") due to exposure to ***asbestos***-containing parts. Parts Warehouse is alleged to be one of the supply-chain of the parts that caused the exposure. In addition, Parts Warehouse is alleged **[*5]** to have liability for parts obtained through its alternate entity, Lamus-Lundlee Co. ("Lamus-Lundlee").

The moving papers argue Plaintiffs cannot demonstrate Parts Warehouse caused Decedent to be exposed to ***asbestos*** because the only specific evidence of any part sold to Decedent from Parts Warehouse and Lamus-Lundlee was a single non-***asbestos*** containing clutch. (UMF Nos. 6-18.) Thus, Moving Defendant argues Plaintiff cannot establish the essential element for an ***asbestos*** claim of product identification.

Moving Defendant relies heavily on the declaration of Bob Glyer, who began working for Parts Warehouse on May 10, 1968 and was the President of the company when it ceased operations in the year 2000. (Glyer Decl., ¶¶ 2, 7.) Glyer declares that Parts Warehouse and Lamus-Lundlee merged in June 1995. (Glyer Decl., ¶ 12.) However, Glyer demonstrates sufficient knowledge of a relationship between Parts Warehouse and Lamus-Lundlee such that Glyer is able to declare Lamus-Lundlee would not have obtained parts from another company that were available from Parts Warehouse. (Glyer Decl., ¶ 11.) Based on this knowledge, Glyer affirmatively declares that a Borg Warner clutch specifically identified **[*6]** in this litigation as having been obtained by Decedent through Lamus-Lundlee would have been a non-***asbestos*** containing clutch supplied through Parts Warehouse. (Glyer Decl., ¶¶ 9-11 and 13.) Glyer also declares he has no recollection of G. Chandler Automotive, Plaintiffs, or Decedent ever being customers of Parts Warehouse. (Glyer Decl., ¶ 15.)

The Court finds Plaintiff has raised challenges to the sufficiency and accuracy of the above evidence that raise a triable issue of material fact. For example, while Glyer's deposition confirms the testimony that Lamus-Lundlee would generally first purchase parts from Parts Warehouse, it admits Glyer cannot confirm that Lamus-Lundlee did not purchase Borg Warner clutches in the 1980s from other sources. (Aelstyn Decl., Exh. E., Depo of Glyer, p. 48:20-49:13.) Similarly, while Glyer declares the only Borg Warner clutches it supplied to Lamus-Lundlee did not contain ***asbestos***, Glyer's deposition testimony indicates the non-***asbestos*** clutches were a new line of product that did not come out until 1988. (*Id.* at pp. 60:19-61:4 and 62:13-20.) Glyer further admits he

cannot contradict evidence that Borg Warner supplied ***asbestos***-containing clutches between **[*7]** 1928 and 1986. (*Id.* at pp. 57:21-58:23.) Given Decedent is alleged to have been exposed to ***asbestos***-containing parts from Parts Warehouse and Lamus-Lundlee as early as 1980 (see UMF No. 4), the Court finds this testimony is sufficient to create a triable issue of material fact that prior to 1986, Parts Warehouse may have supplied ***asbestos***-containing Borg Warner's clutches to Lamus-Lundlee, which were in turn sold to Decedent. At a minimum, the deposition testimony creates an issue of credibility that must be submitted to a jury in considering the evidence.

Moving Defendant's arguments in reply do not change this result. As Moving Defendant explains, Glyer testified Parts Warehouse did not include BorgWarner clutches in the warehouse until they were non-***asbestos***. (Aelstyn Decl., Exh. E., Deposition of Glyler at p. 50:1-4.) However, as set forth above, Glyer's testimony indicates that BorgWarner did not have non-***asbestos*** clutches until 1988. Further, Moving Defendant concedes the alleged ***asbestos***-containing BorgWarner clutch was sold by Lamus-Lundlee to Decedent in 1984. (UMF No. 6.) Based on the collective testimony of Glyer, it follows that in 1984 Parts Warehouse did not supply BorgWarner **[*8]** clutches and that the BorgWarner clutch sold by Lamus-Lundlee would therefore have been an ***asbestos***-containing clutch that Lamus-Lundlee would have purchased from an entity other than Parts Warehouse. The complaint alleges that Parts Warehouse is liable for Lamus-Lundlee's actions as an alternative entity. Neither the moving nor reply memorandum argue Moving Defendant does not have liability for Lamus-Lundlee's pre-merger sales to Decedent. Thus, Moving Defendant has failed to meet its burden.

Moreover, even if the testimony of Glyer were sufficient to demonstrate both Parts Warehouse and Lamus-Lundlee did not supply ***asbestos***-containing clutches to Decedent, Moving Defendant concedes it is alleged to have supplied ***asbestos***-containing parts other than clutches to Decedent. (UMF No. 5.) In order to prevail on a motion for summary judgment, Moving Defendant must therefore show that Plaintiff cannot reasonably obtain evidence to show that Parts Warehouse or Lamus-Lundlee supplied other ***asbestos***-containing parts to Decedent. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 847.) As the evidence cited in support of the undisputed fact, Plaintiff's Response to Special Interrogatory ("Resp. to SROG") No. 1, identifies **[*9]** various witnesses who may have knowledge of the parts sold, including Plaintiffs and Warren Raynor. (Zwarg Decl., Exh. C, Greco's Resp. to SROG No. 1, p. 5:8-10.) In order to meet the burden to show Plaintiff cannot obtain evidence, Moving Defendant must therefore show the witnesses identified do not have knowledge of ***asbestos***-containing parts supplied by Parts Warehouse or Lamus-Lundlee to Defendant.

Here, the moving papers make no effort to demonstrate whether Raynor and Chandler have knowledge of such parts and limit the discussion of Greco's knowledge to a single Borg Warner clutch. Further, while Glyer declares Parts Warehouse did not supply an ***asbestos*** containing clutch to Lamus-Lundlee (UMF Nos. 1-14) and that Decedent was not a direct customer of Parts Warehouse (UMF Nos. 15-16), Glyer does not represent that Decedent was not a direct customer of Lamus-Lundlee and could not have obtained other ***asbestos***-containing parts from Lamus-Lundlee. Thus, Moving Defendant has failed to meet its initial burden to demonstrate Plaintiff cannot present evidence of parts identification.

Even if Moving Defendant had met its burden, the Court finds Plaintiff has presented sufficient evidence to **[*10]** create a triable issue of material fact as to whether Lamus-Lundlee supplied ***asbestos***-containing parts to Plaintiff.

Specifically, Plaintiff offers the deposition of Warren Raynor ("Raynor"), who testified that Decedent obtained parts from Lamus-Lundlee and that Lamus-Lundlee was an ACDelco distributor (Aelstyn Decl., Exh. B, Depo. of Raynor, p. 159:12-19.) Raynor testified Decedent used Raybestos, Beck/Arnley, and Wanger brakes, some of which were obtained from Lamus-Lundlee. (*Id.* at pp. 190:9 - 191:5.) Raynor also testified Decedent used OEM gaskets, Seal Power and Victor Reinz gaskets, some of which were obtained from Lamus-Lundlee. (*Id.* at pp. 191:7-17.) The Court finds this testimony is distinguishable from the case relied upon by Moving Defendant, *McGonnell v. Kaiser Gypsum Co. (2002) 98 Cal.App.4th 1098*. In *McGonnell*, there was no testimony that could tie exposure to ***asbestos***-containing bags of cement to the decedent's employer. In contrast, this is not a case where a single ***asbestos***-containing part was purchased from an unidentified supplier. Rather, based on Raynor's testimony, Decedent used multiple brands, at least some of which were obtained through Lamus-Lundlee. Combined with evidence that all of the brands contained ***asbestos***, this testimony **[*11]** may be sufficient to support a finding

that Decedent was more likely than not exposed to ***asbestos***-containing parts sold by Lamus-Lundlee. There are no undisputed material facts demonstrating the parts identified do not contain ***asbestos***. Thus, there is a triable issue of material fact as to whether Lamus-Lundlee sold ***asbestos***-containing brakes and gaskets to Decedent.

Plaintiff also offers the deposition of Greco as evidence. Greco testified "I know I picked up gaskets there; I don't know brands for that. I recall a fell - Felpro - Felpro." (Aelstyn Decl., Exh. C., Depo of Greco, p. 193:4-6.) The Court rejects Moving Defendant's attempt to characterize this testimony as stating Greco does not know what brand of gaskets she picked up from Lamus-Lundlee. Although Greco initially states she does not know, she immediately recalls one specific brand - Felpro. The Court must interpret evidence in the light most favorable to the opposing party. (*Aguilar, supra, 25 Cal.4th at p. 843*.) Thus, the Court must interpret this testimony as evidence that Greco recalls obtaining Felpro gaskets from Lamus-Lundlee for Decedent's use. This is sufficient for a reasonable juror to conclude it is more likely than not that Decedent worked with **[*12]** Felpro gaskets purchased from Lamus-Lundlee. Again, there is no evidence or material fact indicating Felpro gaskets were ***asbestos***-free. Thus, there is a triable issue of material fact as to whether Lamus-Lundlee sold ***asbestos***-containing gaskets to Decedent.

Based on the foregoing, the motion for summary judgment is denied. This minute order is effective immediately. No formal order pursuant to *CRC Rule 3.1312* or further notice is required.

COURT RULING

There being no request for oral argument, the Court affirmed the tentative ruling.

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