

## Castagna v Amchem Prods., Inc.

Supreme Court of New York, New York County

June 27, 2023, Decided

INDEX NO. 190018/2020

### Reporter

2023 N.Y. Misc. LEXIS 3183 \*; 2023 NY Slip Op 32138(U) \*\*

**[\*\*1]** JEAN CASTAGNA, Plaintiff, - v - AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC AG COMPANY, N/K/A BAYER CROPSCIENCE INC, CRANE CO, ELECTROLUX HOME PRODUCTS, INC. INDIVIDUALLY, AND AS SUCCESSOR TO TAPPAN AND COPE-S-VULCAN, FMC CORPORATION, ON BEHALF OF ITS FORMER CHICAGO PUMP & NORTHERN PUMP BUSINESSES, GENERAL ELECTRIC COMPANY, GOULDS PUMPS LLC, GRINNELL LLC, HAMMERMILL PAPER COMPANY, HEIDELBERG USA, INC., AS SUCCESSOR IN INTEREST TO MERGENTHALER LINOTYPE COMPANY, IMO INDUSTRIES, INC, INTERNATIONAL PAPER COMPANY, INDIVIDUALLY AND AS SUCCESSOR TO CHAMPION INTERNATIONAL CORPORATION, AS SUCCESSOR TO UNITED STATES PLYWOOD CORPORATION, ITT LLC., INDIVIDUALLY AND AS SUCCESSOR TO BELL & GOSSETT AND AS SUCCESSOR TO KENNEDY VALVE MANUFACTURING CO., INC, PFIZER, INC. (PFIZER), ROCKWELL AUTOMATION, INC., AS SUCCESSOR IN INTEREST TO ALLEN-BRADLEY COMPANY, LLC, U.S. RUBBER COMPANY (UNIROYAL), UNION CARBIDE CORPORATION, WARREN PUMPS, LLC, WEYERHAEUSER COMPANY, BALDWIN TECHNOLOGY COMPANY, LLC INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO OXY DRY CORPORATION, BOISE CASCADE CORPORATION, CHAMPION INTERNATIONAL CORPORATION, ELECTROLUX HOME PRODUCTS INC., INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO WHITE CONSOLIDATED INDUSTRIES INC. (WCI), AND AMERICAN TYPE FOUNDERS, KOMORI AMERICA CORPORATION, ROCKWELL AUTOMATION, INC., INDIVIDUALLY, AND AS SUCCESSOR TO ROCKWELL GRAPHICS SYSTEMS, INC AND MIEHELE-GOSS-DEXTER, INC., CASE PAPER COMPANY, MANROLAND GOSS WEB SYSTEMS AMERICAS LLC, MANROLAND GOSS WEBB

SYSTEMS INTERNATIONAL, LLC, Defendant.

**Notice:** THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

### Core Terms

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printing press, summary judgment, incorporation, summary judgment motion, issue of fact, exposed to asbestos, records, deposition testimony, sufficient to raise, asbestos exposure, question of fact, fail to provide, former employer, matter of law, fail to meet, no record, unequivocally, Additionally, constitutes, contributed, documents, asbestos, argues, dispel, seller, vendor

**Judges:** **[\*1]** PRESENT: HON. ADAM SILVERA, Justice.

**Opinion by:** ADAM SILVERA

### Opinion

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#### DECISION + ORDER ON MOTION

**[\*\*2]** The following e-filed documents, listed by NYSCEF document number (Motion 001) 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 119, 131, 132, 133, 134, 135, 136 were read on this motion to/SUMMARY JUDGMENT (AFTER JOINDER).

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 Komori America Corporation ("Komori") moves to dismiss this action on the grounds that plaintiff decedent (Mr. Castagna) was not exposed to asbestos

from any Komori-brand product during his employment with Martin Lithographers, Inc. in the 1980s. Defendant Komori argues that it was not incorporated until 1982, while Mr. Castagna identified 1980 as the year of his **asbestos** exposure from a Komori printing press. Defendant also argues that it never distributed any Komori-brand printing presses to Mr. Castagna's former employer.

In opposition, plaintiff notes that Mr. Castagna's testimony regarding Komori products was consistent and detailed. Further, Mr. Castagna was deposed while undergoing chemotherapy [\*2] and experienced some difficulties remembering exact dates.

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, 501 N.E.2d 572, 508 N.Y.S.2d 923 (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, 476 N.E.2d 642, 487 N.Y.S.2d 316 (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 [\*\*3] admissible evidence establishing that there is a genuine issue of fact remaining. See [Zuckerman v City of New York](#), 49 NY2d 557, 560, 404 N.E.2d 718, 427 N.Y.S.2d 595 (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, 580 N.Y.S.2d 294 (1' Dep't 1992), citing [Dauman Displays, Inc. v Masturzo](#), 168 AD2d 204, 562 N.Y.S.2d 89 (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, 144 N.E.2d 387, 165 N.Y.S.2d 498 (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, 386 N.E.2d 1324, 414 N.Y.S.2d 304 (1979). Furthermore, the Appellate [\*3] 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, 622 N.Y.S.2d 946 (1' Dep't 1995).

Here, defendant Komori has failed to meet its initial burden in establishing that its product did not contain **asbestos** and could not have contributed to plaintiff's **asbestos** exposure. Rather, defendant Komori relies upon a very small detail in plaintiff's otherwise consistent testimony regarding their products—the specific year of 1980.

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, 639 N.Y.S.2d 323 (1' Dep't 1996) (internal citations omitted).

[\*\*4] The Court finds that plaintiff worked at Martin Lithographers until 1988, well after the [\*4] point of defendant Komori's incorporation, and that the years 1980 and 1982 are not so far apart as to dispel with certainty any exposure to a Komori product, particularly in light of the fact that plaintiff unequivocally testified that he worked, and was exposed to **asbestos**, for another six years after defendant Komori's incorporation. Mr. Castagna's recollection of the Komori-brand printing press, combined with his continued employment during Komori's point of incorporation and afterwards, is sufficient to raise a question of fact for the jury.

Defendant Komori further relies on the affidavit of Robert Rath dated August 16, 2021. This affidavit does not indicate the requisite personal knowledge of the relevant period to dispel with certainty all questions of fact. Specifically, the affidavit merely recounts the incorporation year of 1982 as the determining factor. Mr. Rath additionally notes that there are no records of defendant Komori selling a printing press to Mr. Castagna's former employer. Without any further details, this assertion is insufficient to establish with certainty that Komori printing presses did not contain **asbestos**, and that any **asbestos**-containing Komori printing [\*5] press could not have been available to or used by Mr. Castagna.

Defendant Komori provides no facts suggesting that it was the only direct seller of their printing presses, and

that Martin Lithographers could not have purchased such printing press from a third-party vendor or licensed vendor. Similarly, defendant fails to provide information as to the custodianship of the records reviewed. Given that the transaction at issue occurred over 40 years ago, Mr. Rath's bold assertion that there are no records fails to meet the heavy burden on summary judgment as Mr. Rath fails to provide any information regarding how records are kept and for how long such records are kept.

**[\*\*5]** As a reasonable juror could decide that plaintiff was exposed to a Komori printing press sometime after their incorporation and that such printing press was obtained from a different seller, issues of fact exist to preclude summary judgment.

The Court finds that a triable issue of fact exists as to whether Mr. Castagna worked with a Komori product and to what extent he was exposed to asbestos from it.

Accordingly, it is

ORDERED that defendant Komori's motion for summary judgment is denied in its entirety; and it is further **[\*6]**

ORDERED that within 30 days of entry defendant shall serve plaintiff with a copy of this Decision/Order with notice of entry.

This constitutes the Decision/Order of the Court.

**06/27/2023**

**DATE**

/s/ Adam Silvera

**ADAM SILVERA, J.S.C.**

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