

## **Bass v Aldrico, Inc.**

Supreme Court of New York, New York County

August 21, 2023, Decided

INDEX NO. 190144/2019

### Reporter

2023 N.Y. Misc. LEXIS 4386 \*; 2023 NY Slip Op 32906(U) \*\*

**[\*\*1]** LISA BASS, Plaintiff, - v - ALDRICO, INC., AO SMITH WATER PRODUCTS COMPANY, AXEMAN-ANDERSON COMPANY, BURNHAM LLC, CARRIER CORP., CARLIN COMBUSTION TECHNOLOGY, INC, CERTAINTIED CORPORATION, CLEAVER BROOKS, COLUMBIA BOILER COMPANY OF POTTSTOWN, COMPUDYNE CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO YORK-SHIPLEY, CRANE CO., ECR INTERNATIONAL, INC., F/K/A DUNKIRK RADIATOR CORP. AND AS SUCCESSOR BY MERGER TO THE UTICA COMPANIES, INC., ENERJET CORPORATION AS SUCCESSOR IN INTEREST TO AMERICAN BURNER CORP., FORT KENT HOLDINGS, INC., F/K/A DUNHAM-BUSH, INC.;; FORD MOTOR COMPANY;; GENERAL ELECTRIC COMPANY;; GOULDS PUMPS LLC, F/K/A GOULDS PUMPS INCORPORATED, HONEYWELL INTERNATIONAL, INC., F/K/A ALLIEDSIGNAL, INC., AS SUCCESSOR-IN-INTEREST TO THE BENDIX CORPORATION, ITT LLC, J.&S. SUPPLY CORP, JAMAICA PLUMBING & HEATING, LENNOX INDUSTRIES INC.; MESTEK, INC., INDIVIDUALLY AND AS SUCCESSOR TO HYDROTHERM, INC.; NEW YORK BOILER COMPANY, INC., PECORA CORPORATION, PEERLESS INDUSTRIES;; PNEUMO ABEX LLC, SUCCESSOR IN INTEREST TO ABEX CORPORATION, RHEEM MANUFACTURING COMPANY, ROCKWELL AUTOMATION, INC, AS SUCCESSOR IN INTEREST TO THE T1MKEN-DETROIT AXLE COMPANY, R.W. BECKETT CORPORATION, SID HARVEY INDUSTRIES, S.W. ANDERSON SALES CORPORATION, TACO, INC., THE H.B. SMITH COMPANY, INCORPORATED, TRANE U.S. INC., F/K/A AMERICAN STANDARD INC., UNION CARBIDE CORPORATION, UTICA AVENUE PLUMBING SUPPLY, WEIL-MCLAIN, A DIVISION OF THE MARLEY-WYLAIN COMPANY, N & S SUPPLY OF BREWSTER, INC., N & S SUPPLY OF CATSKILL, INC., N & S SUPPLY OF FISHKILL, INC., SOS PRODUCTS COMPANY, INC., WAYNE/SCOTT

FETZER COMPANY, WILLIAMS THE COMFORT PRODUCTS CO, UNITED TECHNOLOGIES CORP., 3M COMPANY F/K/A MINNESOTA MINING & MANUFACTURING CO., AMTROL INC., SUCCESSOR TO H.A THRUSH AND THRUSH PRODUCTS, INC, Defendant.

**Notice:** THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

### Core Terms

burners, summary judgment, summary judgment motion, installation, asbestos, exposed to asbestos, asbestos exposure, issue of fact, matter of law, asbestos-containing, contributed, documents, exposure, mechanic, boilers

**Judges:** **[\*1]** PRESENT: HON. ADAM SILVERA, J.S.C.

**Opinion by:** ADAM SILVERA

### Opinion

#### **[\*\*2] DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 196, 197, 198, 199 were read on this motion to/for JUDGMENT - SUMMARY.

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 Rockwell Automation, Inc. ("Rockwell")

moves to dismiss this action on the grounds that plaintiff ("Mr. Silvestri") was not exposed to **asbestos** from any burners manufactured by Rockwell's predecessor, Timken-Detroit Axle Company during his work as an HVAC mechanic, working often with the installation, removal, and servicing of boilers.

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 [\*2] 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 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 [\*\*3] 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 (1st 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 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 (1st Dep't 1995).

Defendant Rockwell argues that one piece of Mr. Silvestri's testimony, attributing his **asbestos** exposure to primarily boiler-related parts as opposed to solely Timken burners, is dispositive [\*3] of their liability in the underlying action. This is unconvincing.

In opposition, plaintiff correctly notes that Mr. Silvestri's testimony regarding Timken burners was clear and consistent, and that **asbestos**-containing components were required to be used when installing Timken burners to the boilers. Defendant Rockwell has done nothing to prove that Timken burners did not contain **asbestos** or required **asbestos**-containing parts in order to be installed, that Mr. Silvestri did not encounter Timken burners during his lifetime of work as a mechanic, or that Mr. Silvestri's illness could not have been caused by exposure to **asbestos** from Timken burners.

Here, defendant Rockwell 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. As a reasonable juror could decide that plaintiff was exposed to **asbestos** from the use or exposure to Timken burners, issues of fact exist to preclude summary judgment.

[\*\*4] Accordingly, it is

ORDERED that defendant Rockwell's motion for summary judgment is denied in its entirety; and it is further

ORDERED that within 30 days of entry plaintiff shall serve all parties [\*4] with a copy of this Decision/Order with notice of entry.

This constitutes the Decision/Order of the Court.

08/21/2023

DATE

/s/ Adam Silvera

ADAM SILVERA, J.S.C.

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