

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

Supreme Court of New York, New York County

August 14, 2023, Decided; August 22, 2023, Published

190009/2014

Reporter

2023 NYLJ LEXIS 2190 *

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

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(Cuevas v A.O. Smith Water Prods. Co., NYLJ, Aug. 22, 2023 at p.17, col.2)

Core Terms

motion to dismiss, failure to warn, cause of action, loss of consortium, notice, claim for punitive damages, practical necessity, premises liability, express warranty, punitive damages, liability claim, market share, Labor Law, mask-related, transactions, foreseeable, **asbestos**, boilers, parties, dust, pled, material element, instant motion, further order, occurrences, documents, partial

Judges: [*1] Judge: Justice Adam Silvera

Opinion

Plaintiff sued Defendant for a breach of implied and express warranties, market share liability, Labor Law premises liability, and dust mask-related liability claims. Defendant moved to dismiss the claim. The motion to dismiss was partial granted---as the motion to dismiss was unopposed---however the motion to dismiss for the claims of failure to warn, loss of consortium, and punitive damages claims were denied. The court explained that Plaintiff pled with particularity on the claims and that Defendant failed to show that the injuries were not foreseeable or a practical necessity.

Full Case Digest Text

The following e-filed documents, listed by NYSCEF document number (Motion 002) 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123,

124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141 were read on this motion to/for DISMISSAL.

DECISION

ORDER ON MOTION Upon the foregoing documents, it is ordered that the instant motion for dismissal is partially granted with respect to plaintiff's breach of implied and express warranties, market share liability, Labor Law premises liability, and dust mask-related liability [*2] claims as there is no opposition as to the dismissal of such claims against defendant Burnham LLC ("Burnham"). Dismissal of plaintiff's failure to warn, loss of consortium, and punitive damages claims is denied in accordance with the decision below. On a motion to dismiss pursuant to [CPLR §3211 \(a\)\(7\)](#), the movant has the burden to demonstrate that, based upon the four corners of the complaint liberally construed in favor of the plaintiff, the pleading states no legally cognizable cause of action. See [Leon v. Martinez, 84 NY2D 83, 87-88 \(1994\)](#). A motion to dismiss the complaint for failure to state a cause of action "will generally depend upon whether or not there was substantial compliance with [CPLR 3013](#)." *Catli v. Lindenman, 40 AD2d 714, 715 (2d Dep't 1972)*. If the allegations are not "sufficiently particular to give the court and parties notice of the transactions intended to be proved and the material element of each cause of action", the cause of action will be dismissed. *Id. at 715*. [CPLR §3013](#) provides that "[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions and occurrences, intended to be proved and the material elements of each cause of action or defense."

Here, defendant Burnham moves to dismiss plaintiff's [*3] "failure to warn" claims on the basis that plaintiff has not met the standard for "an injury arising from the foreseeable use of a defendant's non-**asbestos** equipment in conjunction with a third party's **asbestos** components...that was 'necessary' for the

defendant's product to function as intended" under Dummitt. See Memorandum of Law in Support of Defendant Burnham LLC's Motion to Dismiss, p. 10 (citing [*Matter of New York City Asbestos Litig. \(Dummitt\)*, 27 N.Y.3D 765 \(2016\)](#)). Plaintiff notes that the Dummitt standard focuses on "foreseeability and 'practical necessity' of using the carcinogenic **asbestos** component part". Affirmation in Opposition to Burnham's [sic] Motion to Dismiss Certain Claims, p. 3. Here, there is ample evidence that Burnham was aware of the **asbestos**-containing components used in their boilers and knew of their "practical necessity" to the boilers. See *id.* at p. 11-12. Certain components, such as **asbestos** cement, were clearly necessary to, and expected to, be used in Burnham boilers. This is sufficient basis for the failure to warn claims, and accordingly, the loss of consortium claim.

Defendant Burnham also moves to dismiss plaintiff's claims for punitive damages on the basis that they are not pled sufficiently and implicate procedural [*4] due process under the 2017 Case Management Order. Defendant's procedural claim is insufficient due to the incorporation of punitive damages in plaintiff's standard complaint. A review of the standard complaint reveals that the claims for failure to warn, loss of consortium, and punitive damages are all sufficiently pled so as to put defendant on notice of such claims. As such, defendant Burnham's instant motion is denied as to such claims.

Accordingly, it is

ORDERED that defendant Burnham's motion for dismissal is granted in part with respect to the breach of implied and express warranties, market share liability, Labor Law premises liability, and dust mask-related liability claims; and it is further

ORDERED that defendant Burnham's motion for dismissal is denied with respect to the failure to warn, loss of consortium, and punitive damages claims; and it is further

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

This constitutes the Decision/Order of the Court.

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION GRANTED DENIED GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES [*5] TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

Dated: August 14, 2023

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