

## Gold v Avon Prods., Inc.

Supreme Court of New York, New York County

October 5, 2023, Decided

INDEX NO. 190165/2019

### Reporter

2023 N.Y. Misc. LEXIS 7461 \*; 2023 NY Slip Op 33489(U) \*\*

**[\*\*1]** MERRITT ELLIS GOLD AND PAULA THERESE NEARY, AS CO-EXECUTORS OF THE ESTATE OF VICTORIA KAYE, DECEASED, Plaintiff, - v - AVON PRODUCTS, INC., BLOOMINGDALES, INC., BRENNTAG NORTH AMERICA, INC., INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO MINERAL PIGMENT SOLUTIONS, INC., AS SUCCESSOR IN INTEREST TO WHITTAKER, CLARK & DANIELS, INC., BRENNTAG SPECIALTIES, INC. F/K/A MINERAL PIGMENT SOLUTIONS, INC. AND AS SUCCESSOR IN INTEREST TO WHITTAKER, CLARK & DANIELS, INC., CHANEL CO., CHANEL, INC., COTY INC., COTY INTERNATIONAL INC., GLAXOSMITHKLINE, LLC, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO YARDLEY OF LONDON, INC., YARDLEY OF LONDON, LTD., AND YARDLEY OF LONDON (U.S.), LLC, MACYS, INC., MINERAL AND PIGMENT SOLUTIONS, INC., F/K/A WHITTAKER, CLARK & DANIELS, INC., PFIZER INC., INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO COTY INC. AND COTY INTERNATIONAL INC., REVLON, INC., THE PROCTOR & GAMBLE COMPANY, AS SUCCESSOR IN INTEREST TO THE SHULTON COMPANY AND AS SUCCESSOR IN INTEREST TO YARDLEY OF LONDON, INC., YARDLEY OF LONDON, LTD., AND YARDLEY OF LONDON (U.S.), LLC, WHITTAKER, CLARK & DANIELS, INC., Defendant.

**Notice:** THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

### Core Terms

talc, punitive damages, summary judgment, partial summary judgment, asbestos, warnings, summary judgment motion, documents, products, reckless, notice, issue of fact, matter of law, contaminated, wanton

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

**Opinion by:** ADAM SILVERA

### Opinion

#### DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 161, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 404, 405, 406, 407, 408, 409

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

**[\*\*2]** Upon the foregoing documents, it is ordered that defendant Chanel, Inc's ("Chanel") instant motion for partial summary judgment on the issue of punitive damages is denied in accordance with the decision below.

Here, defendant Chanel moves to dismiss plaintiff's punitive damages claim on the basis that Chanel did not exhibit the "level of malice and near criminal reckless disregard" necessary to justify such damages. See Memorandum of Law in Support of Chanel, Inc.'s Motion for Partial Summary Judgment on the Issue of Punitive Damages, p. 2. Plaintiff opposes, noting that Chanel was aware of the presence of asbestos in its talc and the negative impacts of **[\*2]** asbestos as early as the 1970s and continued to use asbestos-containing talc in its products for over twenty years after.

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 (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 (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 (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 (1st Dep't 1992), citing [Dauman Displays, Inc. v Masturzo](#), 168 AD2d 204 (1st Dep't 1990). **[\*\*3]** The court's role is "issue-finding, rather than issue-determination". [Sillman v Twentieth Century-Fox Film Corp.](#), 3 NY2d 395, 404 (1957) (internal quotations omitted). As such, summary judgment is rarely granted in negligence actions unless there is no conflict **[\*3]** at all in the evidence. See [Ugarriza v Schmieder](#), 46 NY2d 471, 475-476 (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 (1st Dep't 1995).

Here, defendant Chanel argues that aside from the lawsuits from plaintiff's counsel, it was never put on notice that the talc used in their products contained **asbestos**. This is insufficient to meet its burden at summary judgment. Defendant has not offered any evidence that dispels with certainty questions of fact regarding their level of recklessness or wanton disregard regarding **asbestos** in its talc. Plaintiffs have submitted numerous documents indicating that Chanel was aware of the contamination in its talc in the 1970s but continued to use the same talc in its products for at least two decades without warning the public. The Court notes that where a plaintiff provides evidentiary facts tending to show that defendant's warnings were in any way deficient, the adequacy of such warnings are a factual question that should be resolved by a jury. See [Eiser v Feldman](#), 123 AD2d 583, 584 (1986). The New

York Court of Appeals has also held that "[a] products **[\*4]** liability action founded on a failure to warn involves conduct of the defendant having attributes of negligence which the jury may find sufficiently wanton or reckless to sustain an award of punitive damages." [Home Ins. Co. v American Home Products Corp.](#), 75 NY2d 196, 204 (1990) (internal citations omitted).

**[\*\*4]** As a reasonable juror could find that Chanel was on notice of its contaminated talc and that its subsequent conduct and usage of such talc rises to the level required for punitive damages, issues of fact exist to preclude summary judgment on punitive damages.

Accordingly, it is

ORDERED that defendant Chanel's motion for partial summary judgment is denied in its entirety; 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.

**10/05/2023**

**DATE**

/s/ Adam Silvera

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

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