

## Gonzalez v. Arkema, Inc.

Superior Court of California, County of Los Angeles

September 21, 2023, Decided

22STCV03991

### Reporter

2023 Cal. Super. LEXIS 72723 \*

MARIA GONZALEZ, et al. v. ARKEMA, INC.

**Notice:** THIS DOCUMENT INCLUDES THE ORDER OF THE COURT. OTHER MATERIALS, SUCH AS LEGAL MEMORANDA, MAY HAVE BEEN INCLUDED BY THE COURT. DOCUMENTS THAT ARE COMBINED AND FILED AS ONE DOCUMENT BY THE COURT ARE PUBLISHED AS ONE DOCUMENT.

### Core Terms

**asbestos**, Interrogatory, products, putty, talc, cause of action, summary adjudication motion, summary adjudication, punitive damages, documents, summary judgment, shift a burden, responses, summary judgment motion, deposition, discovery, expenses, exposure, present evidence, supporting facts, devoid

**Counsel:** [\*1] For Plaintiff's: Mary Rahmes (X).

For Defense: Zack Lodmer (X).

**Judges:** Honorable Laura A. Seigle, Judge.

**Opinion by:** Laura A. Seigle

### Opinion

**NATURE OF PROCEEDINGS:** 1) Hearing on Motion for Summary Adjudication for Defendant National Steel and Shipbuilding Company [erroneously named as Nassco Holdings Incorporated](Gonzales-22STCV03991); (2) Hearing on Motion for Summary Judgment or Alternatively for Summary Adjudication for Defendant Vanderbilt Mineral LLC (Gonzalez-22STCV03991)

Matters are called for hearing.

The Court is advised the three (3) remaining Defendants for trial are as follows: Henry Company LLC; National Steel and Shipbuilding Company [erroneously named as

Nassco Holdings Incorporated]; and Vanderbilt Minerals, LLC (sued as successor-by-merger to R.T. Vanderbilt Company, Inc.). Plaintiff's counsel is to file either a Notice of Settlement or dismissal as to all other remaining Defendants.

#### **1) Hearing on Motion for Summary Adjudication for Defendant National Steel and Shipbuilding Company [erroneously named as Nassco Holdings Incorporated]**

The Court issues a Tentative Ruling. Defense counsel for National Steel and Shipbuilding Company is not present. Plaintiff's counsel advises the Court counsel for moving [\*2] party submits on the Tentative Ruling. Counsel for plaintiff submits.

The Court adopts the Tentative Ruling as the Final Court Order as follows:

#### **ORDER RE MOTION FOR SUMMARY ADJUDICATION (NASSCO)**

Defendant National Steel and Shipbuilding Company filed a motion for summary adjudication of Plaintiffs Maria Gonzalez, Roberto Gonzalez and Gerardo Gonzalez's first cause of action for negligence and third cause of action for premises liability. Plaintiffs did not oppose.

A defendant seeking summary judgment must "conclusively negate[] a necessary element of the plaintiff's case, or ... demonstrate[] that under no hypothesis is there a material issue of fact that requires the process of trial." ([Guz v. Bechtel Nat. Inc. \(2000\) 24 Cal.4th 317, 334.](#)) To show that a plaintiff cannot establish an element of a cause of action, a defendant must make the initial showing "that the plaintiff does not possess, and cannot reasonably obtain, needed evidence." ([Aguilar v. Atlantic Richfield Co. \(2001\) 25 Cal.4th 826, 854.](#)) "The defendant may, but need not, present evidence that conclusively negates an element of the plaintiff's cause of action. The defendant may also

present evidence that the plaintiff does not possess, and cannot reasonably obtain, needed evidence - as through admissions by the plaintiff following extensive [\*3] discovery to the effect that he has discovered nothing." (*Id. at p. 855.*) A plaintiff's deposition testimony that the plaintiff has no knowledge of any exposure to the defendant's products may be sufficient to shift the burden to the plaintiff to demonstrate the existence of triable issues of fact. (*McGonnell v. Kaiser Gypsum Co., Inc. (2002) 98 Cal.App.4th 1098, 1103-1104.*) The plaintiff's deposition testimony that he did not recall ever working with a product manufactured by the defendant may not be sufficient to shift the burden if the plaintiff is able to prove his case by another means. (*Weber v. John Crane, Inc. (2006) 143 Cal.App.4th 1433, 1439.*) "If plaintiffs respond to comprehensive interrogatories seeking all known facts with boilerplate answers that restate their allegations, or simply provide laundry lists of people and/or documents, the burden of production will almost certainly be shifted to them once defendants move for summary judgment and properly present plaintiff's factually devoid discovery responses." (*Id. at p. 1440.*)

#### A. First Cause of Action -- Negligence

Plaintiffs contend the decedent was exposed to **asbestos** from Defendant's products while the decedent was working at IMS Recycling. Defendant served interrogatories asking for all facts supporting that contention. (Ex. D at p. 6.) In response, Plaintiffs referred to [\*4] their response to Special Interrogatory No. 1. (Ex. D at p. 6.) Special Interrogatory No. 1 asked about facts supporting the claim for economic damages. (Ex. C at p. 3.) The response to Special Interrogatory No. 1 stated the decedent had medical expenses, hospital expenses, lost wages, lot business opportunities, prescription medical expenses, nursing expenses, travel and lodging expenses, and funeral expenses. (Ex. C at pp. 4-5.) The response did not present any facts about Defendant's products. Therefore the response was factually devoid and shifted the burden. Because Plaintiffs did not file an opposition, they did not show any disputed issue.

The motion is granted as to the first cause of action.

#### B. Third Cause of Action -- Premises Liability

Defendant served interrogatories asking for all facts supporting Plaintiffs' claims against Defendant. (Undisputed Material Fact ("UMF") 6.) In response, Plaintiffs did not mention the premises liability cause of action. (UMF 7.) Instead, Plaintiffs stated the decedent

was exposed to **asbestos** via Defendant's **asbestos**-containing products and equipment. (UMF 8.) Because Plaintiffs did not identify any facts supporting a premises liability claim, [\*5] the discovery responses were factually devoid. Because Plaintiffs did not file an opposition, they did not show an issue of disputed fact. The motion is granted as to the third cause of action.

The motion for summary adjudication is GRANTED as follows:

The Hearing on Motion for Summary Adjudication for Defendant National Steel and Shipbuilding Company [erroneously named as Nassco Holdings Incorporated](Gonzales-22STCV03991) scheduled for 09/21/2023 is 'Held - Motion Granted' for case 22STCV03991.

The motion for summary adjudication is GRANTED as to the first and third causes of action.

The moving party is to give notice.

#### (2) Hearing on Motion for Summary Judgment or Alternatively for Summary Adjudication for Defendant Vanderbilt Mineral LLC

The Court issues a Tentative Ruling. Both sides submit and the Court adopts the Tentative Ruling as the Final Court Order as follows:

#### ORDER RE MOTION FOR SUMMARY ADJUDICATION (VANDERBILT)

Defendant Vanderbilt Minerals, LLC filed a motion for summary judgment of Plaintiffs Maria Gonzalez, Roberto Gonzalez and Gerardo Gonzalez's claims that Roberto Gonzalez was exposed to **asbestos** in talc from Defendant. Alternatively, Defendant moves for summary adjudication [\*6] of the punitive damages claim.

A defendant seeking summary judgment must "conclusively negate[] a necessary element of the plaintiff's case, or ... demonstrate[] that under no hypothesis is there a material issue of fact that requires the process of trial." (*Guz v. Bechtel Nat. Inc. (2000) 24 Cal.4th 317, 334.*) To show that a plaintiff cannot establish an element of a cause of action, a defendant must make the initial showing "that the plaintiff does not possess, and cannot reasonably obtain, needed evidence." (*Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 854.*) "The defendant may, but need not, present evidence that conclusively negates an element

of the plaintiff's cause of action. The defendant may also present evidence that the plaintiff does not possess, and cannot reasonably obtain, needed evidence - as through admissions by the plaintiff following extensive discovery to the effect that he has discovered nothing." (*Id. at p. 855.*) A plaintiff's deposition testimony that the plaintiff has no knowledge of any exposure to the defendant's products may be sufficient to shift the burden to the plaintiff to demonstrate the existence of triable issues of fact. (*McGonnell v. Kaiser Gypsum Co., Inc. (2002) 98 Cal.App.4th 1098, 1103-1104.*) The plaintiff's deposition testimony that he did not recall ever working with a product manufactured by the defendant may not be sufficient [\*7] to shift the burden if the plaintiff is able to prove his case by another means. (*Weber v. John Crane, Inc. (2006) 143 Cal.App.4th 1433, 1439.*) "If plaintiffs respond to comprehensive interrogatories seeking all known facts with boilerplate answers that restate their allegations, or simply provide laundry lists of people and/or documents, the burden of production will almost certainly be shifted to them once defendants move for summary judgment and properly present plaintiff's factually devoid discovery responses." (*Id. at p. 1440.*)

#### A. Summary Judgment

Defendant served a special interrogatory asking for all facts supporting the claim that Gonzalez was exposed to **asbestos** from Defendant's products. (Ex. E at p. 1.) In response, Plaintiffs stated Gonzalez and his wife used talcum powders containing Defendant's talc. (Ex. F at p. 5.) In response to Standard Interrogatory No. 18 asking Defendant for a specific description of the products containing the **asbestos** from Defendant, Plaintiffs stated Defendant supplied talc containing **asbestos** and referred to an Exposure History Sheet attached as Exhibit A. (Ex. D [Plaintiff's interrogatory responses did not contain page numbers].) The Exposure History Sheet stated "Decedent also [sic] DAP, HENRY coating product, [\*8] SHERWIN WILLIAMS wood filler family of products and Donald Durham Rock Hard (Vanderbilt) putty ...." (Ex. D.) Thus, these interrogatory responses contend, without citing any evidence, that Defendant supplied **asbestos** for use in unspecified talcum powder products and Donald Durham Rock Hard putty. These responses are factually devoid and shift the burden.

In their opposition, Plaintiffs do not pursue the allegation that Defendant supplied **asbestos** in the talcum powder, but instead focus on Donald Durham Rock Hard putty. Plaintiffs point out that Gonzalez's wife testified he used

Donald Durham Rock Hard putty. (Ex. 6 at pp. 115, 120, 126, 127, 215, 290, 291, 295.) Plaintiffs' expert testified that Donald Durham Rock Hard putty contained **asbestos**, as did Defendant's talc. (Ex. 2 at pp. 2-3; Ex. 2 at p. 3.) Plaintiffs cited evidence that Defendant was the exclusive supplier of talc for Donald Durham Rock Hard putty. (Ex. 9 at pp. 36-37.)

In their reply, Defendant argues that Plaintiffs' discovery responses did not identify Donald Durham Rock Hard putty as a product containing Defendant's talc. (Reply at p. 2.) That is not correct. The response to Standard Interrogatory No. 18 identified that [\*9] product. Also, in the depositions, the parties asked a lot of questions about that putty product, and the wife stated many times that Gonzalez used the product. (See, e.g., Ex. 6 at pp. 115, 120, 126, 127, 215, 290, 291, 295.) Thus Defendant was on notice that Plaintiffs are claiming exposure to **asbestos** from Defendant's talc via that putty.

Plaintiffs showed the existence of a disputed issue regarding the presence of **asbestos**-containing talc from Defendant in Donald Durham Rock Hard putty. Therefore the motion for summary judgment is denied.

#### B. Punitive Damages

Defendant moves for summary adjudication of the request for punitive damages. When the motion targets a request for punitive damages, a higher standard of proof is at play. "Although the clear and convincing evidentiary standard is a stringent one, 'it does not impose on a plaintiff the obligation to "prove" a case for punitive damages at summary judgment [or summary adjudication.]' [Citations.] Even so, 'where the plaintiff's ultimate burden of proof will be by clear and convincing evidence, the higher standard of proof must be taken into account in ruling on a motion for summary judgment or summary adjudication, since if a plaintiff [\*10] is to prevail on a claim for punitive damages, it will be necessary that the evidence presented meet the higher evidentiary standard.' [Citation.]" (*Butte Fire Cases (2018) 24 Cal.App.5th 1150, 1158-1159.*) "Summary judgment or summary adjudication ' " 'on the issue of punitive damages is proper' only 'when no reasonable jury could find the plaintiff's evidence to be clear and convincing proof of malice, fraud or oppression.' " ' . [Citation.]" (*Id. at p. 1159.*)

" [I]ntentionally marketing a defective product knowing that it might cause injury and death is 'highly reprehensible.' [Citation.]" (*Bankhead v. ArvinMeritor,*

*Inc. (2012) 205 Cal.App.4th 68, 85.*) Punitive damages may be available when a defendant knows the dangers of **asbestos**, took action to protect its own employees from the hazard, knew that its products were likely to pose a danger to users, and did not warn them. (*Pfeifer v. John Crane, Inc. (2013) 220 Cal.App.4th 1270, 1300.*) Such evidence "was sufficient to show malice, that is, despicable conduct coupled with conscious disregard for the safety of others." (*Id. at pp. 1300-1301.*) On the other hand, a defendant's knowledge of trace amounts of **asbestos** in talc does not necessarily mean that the defendant knew the **asbestos** in talc "would cause of high probability of injury." (*McNeal, supra, 80 Cal.App.5th at p. 873.*) There must be evidence of knowledge that exposure to talcum powder could cause mesothelioma. (*Id. at p. 874.*)

Defendant [\*11] states they served a request for production of documents asking for all documents supporting the claim for punitive damages, and Plaintiffs did not produce any responsive documents. (Motion at p. 11.) That Plaintiffs have no documents showing Defendant's fraud, malice, and oppression does not mean that Plaintiffs cannot obtain evidence of fraud, malice, or oppression by, for example, taking depositions and seeking documents from Defendants. In fact it is more likely that Defendant, rather than Plaintiffs, have such documents showing Defendant's internal communications, knowledge and decision-making.

Because Defendant did not shift the burden, the motion is denied.

The motion is DENIED as follows:

The Hearing on Motion for Summary Judgment or Alternatively for Summary Adjudication for Defendant Vanderbilt Mineral LLC (Gonzalez-22STCV03991) scheduled for 09/21/2023 is 'Held - Motion Denied' for case 22STCV03991.

The moving party is to give notice.

A copy of this minute order will append to the following coordinated case under JCCP4674: 22STCV03991.

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