# *Hollingsworth v. A.O. Smith Water Prods. Co.*

Supreme Court of New York, New York County

November 21, 2023, Decided

INDEX NO. 190172/2019

**Reporter**
2023 N.Y. Misc. LEXIS 22811 *; 2023 NY Slip Op 34172(U) **

**[**1]** SHONTAI HOLLINGSWORTH, Plaintiff, - v - A.O. SMITH WATER PRODUCTS CO., AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC AG COMPANY, N/K/A BAYER CROPSCIENCE INC., BURNHAM, LLC, INDIVIDUALLY, AND AS SUCCESSOR TO BURNHAM CORPORATION, BW/IP, INC. AND ITS WHOLLY OWNED SUBSIDIARIES, CERTAINTEED CORPORATION, CLYDE UNION, INC, COLUMBIA BOILER COMPANY OF POTTSTOWN, CRANE CO., CROSBY VALVE LLC, CROWN BOILER CO., F/K/A CROWN INDUSTRIES, INC, DEAN PUMP DIVISION, DOMCO PRODUCTS TEXAS, INC, FLOWSERVE US, INC. SOLELY AS SUCCESSOR TO ROCKWELL MANUFACTURING COMPANY, EDWARD VALVE, INC., NORDSTROM VALVES, INC., EDWARD VOGT VALVE COMPANY, AND VOGT VALVE COMPANY, FMC CORPORATION, INDIVIDUALLY AND SUCCESSOR TO COFFIN, GARDNER DENVER, INC, GENERAL ELECTRIC COMPANY, ITT LLC., INDIVIDUALLY AND AS SUCCESSOR TO BELL & GOSSETT AND AS SUCCESSOR TO KENNEDY VALVE MANUFACTURING CO., INC., KEELER-DORR-OLIVER BOILER COMPANY, KOHLER CO, MCWANE INC. AND IT'S WHOLLY OWNED SUBSIDIARY CLOW VALVE CO., PEERLESS INDUSTRIES, INC, PFIZER, INC. (PFIZER), RILEY POWER INC, ROCKWELL AUTOMATION, INC., AS SUCCESSOR IN INTEREST TO ALLEN- BRADLEY COMPANY, LLC, ROPER PUMP COMPANY, SLANT/FIN CORPORATION, TACO, INC, THE NASH ENGINEERING COMPANY, U.S. RUBBER COMPANY (UNIROYAL), UNION CARBIDE CORPORATION, VIKING PUMP, INC, WEIL-MCLAIN, A DIVISION OF THE MARLEY-WYLAIN COMPANY, A WHOLLY OWNED SUBSIDIARY OF THE MARLEY COMPANY, LLC, Defendant.

**Notice:** THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

## Core Terms

valve, summary judgment motion, summary judgment, ***asbestos*** exposure, causation, issue of fact, matter of law, unequivocal, documents, exposure, illness, Notice, Reply

**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 001) 141, 142, 143, 144, 145, 146,147, 148, 149, 150, 151, 152, 153, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 176

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

**[**2]** Upon the foregoing documents, it is ordered that the instant motion for summary judgment seeking dismissal of this action, pursuant to *CPLR §3212*, is decided in accordance with the decision below.

Here, defendant Mc Wane, Inc. on behalf of its unincorporated division Clow Valve Company ("Clow") files a motion for summary judgment seeking to dismiss this action on the basis that no Clow product could have caused plaintiff-decedent Willie Hollingsworth's ("Mr. Hollingsworth") mesothelioma. *See* Memorandum of Law in Support of Motion for Summary Judgment By Defendant Mc Wane, Inc., p. 2-3. Defendant Clow argues that plaintiff's testimony was insufficient to

identify any Clow valves as a source of ***asbestos*** exposure. *See id.*

Plaintiff opposes, highlighting Mr. Hollingsworth's clear and unequivocal testimony identifying Clow valves as a source of ***asbestos*** **[*2]** exposure and noting that defendant Clow has failed to submit any expert report in support of their claims. *See* Affirmation in Opposition to Defendant McWane Inc.'s Motion for Summary Judgment, p. 3. Defendant replies, re-identifying uncertainties in plaintiff's testimony regarding identification of Clow valves and noting the affidavit from its corporate representative. *See* Reply Brief of Mc Wane, Inc. In Support of Its Motion for Summary Judgment, p. 9-13.

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*. **[**3]** 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, **[*3]** the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility." *Garcia v JC. Duggan, Inc., 180 AD2d 5 79, 580 (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". *Reidv Georgia-Pacific Corp., 212 AD2d 462,463 (1st Dep't 1995)*.

The appropriate standard at summary judgment for moving defendant Clow can be found in *Dyer v Amchem Products Inc., 207 AD3d 408,409, 171 N.Y.S.3d 498 (1st Dep't 2022)*. In *Dyer*, defendants were granted summary judgment not by "simply argu[ing] that plaintiff could not affirmatively prove causation" but by "affirmatively prov[ing], as a matter oflaw, that there was no causation." *Id.*

Here, defendant Clow relies heavily on the affidavit of their employee representative, Doug Peirce, to establish that a Clow valve could not have been in the boiler room as identified by Mr. Hollingsworth as his primary place of exposure. *See* Notice of Motion, Affidavit of Douglas **[*4]** Peirce, dated Sept. 13, 2021. Mr. Peirce's eight-sentence affidavit is a general one and does not establish with certainty that a Clow valve could not have been in use at the time of Mr. **[**4]** Hollingsworth's exposure. Moreover, defendant Clow proffers no other evidence that Mr. Hollingsworth's description could not have applied to a Clow valve or that Clow valves did not contain ***asbestos***.

Thus, defendant Clow has failed to meet its burden to establish that its products could not have been the cause of plaintiff's illness. *See Reid v Georgia-Pacific Corp., supra*.

Furthermore, as a reasonable juror could decide that ***asbestos*** exposure from a Clow valve was a contributing cause of Mr. Hollingsworth' s illness, sufficient issues of fact exist to preclude summary judgment.

Accordingly, it is

ORDERED that defendant Clow'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 with a copy of this Decision/Order with notice of entry.

This constitutes the Decision/Order of the Court.

**11/21/2023**

**DATE**

/s/ Adam Silvera

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

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