

[Daly v. Amchem Prods., Inc.](#)

Supreme Court of New York, New York County

December 27, 2023, Decided; January 8, 2024, Published

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Reporter

2023 NYLJ LEXIS 3592 *

Daly v. Amchem Prods., Inc.

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(Daly v. Amchem Prods., Inc., NYLJ, Jan. 8, 2024 at p.17, col.1)

Core Terms

valves, gaskets, summary judgment, summary judgment motion, manufactured, [asbestos](#)

Judges: [*1] Judge: Justice Adam Silvera

Opinion

Defendant in a personal injury action moved to dismiss the action on the grounds that plaintiff was not exposed to [asbestos](#) from any Crosby product. Specifically, Defendant's motion was based on Mr. Daly's, the decedent, testimony that he was exposed to [asbestos](#) from "flange gaskets" used along with Crosby valves, and not actually manufactured by Crosby. The motion to dismiss was granted. The court found that Mr. Daly's testimony did not indicate any products manufactured by Defendant Crosby, and that moving Defendant provided evidence that such gaskets were not required by Crosby for the use of their valves. Plaintiff's exhibits had been identified as largely withdrawn, irrelevant to Crosby as a manufacturer, or as containing no reference to the [asbestos](#)-containing gaskets at issue. As such, Plaintiff failed to raise an issue of fact sufficient to defeat summary judgment. Plaintiff did not provided sufficient evidence to demonstrate that Defendant Crosby was actively involved in the [asbestos](#) gaskets at issue or substantially participated in integrating such gaskets with Crosby-manufactured valves.

Full Case Digest Text

The following e-filed documents, listed [*2] by NYSCEF document number (Motion 002) 120, 121, 122, 123, 124, 125, 126, 127, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 154, 156, 157, 162, 163, 164, 165 were read on this motion to/for JUDGMENT SUMMARY.

DECISION + ORDER ON

MOTION Upon the foregoing documents, it is ordered that the instant motion for summary judgment seeking dismissal of this action, pursuant to [CPLR §3212](#), is granted for the reasons set forth below. Here, defendant Crosby Valve, LLC ("Crosby") moves to dismiss this action on the grounds that plaintiff, John B. Daly, Jr. ("Mr. Daly") was not exposed to [asbestos](#) from any Crosby product. See Memorandum of Law in Support of Crosby Valve, LLC's Motion for Summary Judgment. In opposition, plaintiff highlights Mr. Daly's clear and unequivocal testimony identifying Crosby as a manufacturer of valves containing [asbestos](#)-containing parts during the course of his work as a Con Ed mechanic 1974-2012. See Affirmation in Opposition to Defendant Crosby Valve, LLC's Motion for Summary Judgment.

Specifically, defendant Crosby's motion is based on Mr. Daly's testimony that he was exposed to [asbestos](#) from "flange gaskets" used along with Crosby valves, and not actually [*3] manufactured by Crosby. See Reply Memorandum of Law of Defendant Crosby Valve, LLC, In Support of Motion for Summary Judgment, p. 3-4.

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). 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 [*4] is no conflict at all in the evidence. See Ugariza 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).

Ordinarily, the appropriate standard at summary judgment for moving defendant Crosby in an asbestos action would be that of Dyer v. Amchem Products Inc., 207 AD3d 408, 409 (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 of law, that there was no causation." Id. The Appellate Division, First Department, recently affirmed this Court's decision in Sason v. Dykes Lumber Co., Inc., et. al., 2023 NY Slip Op 05796 (1st Dep't 2023), stating that "the parties' competing causation evidence constituted the classic 'battle of the experts'" sufficient to raise a question of fact, and to preclude summary judgment. However, in the instant motion, defendant Crosby correctly identifies In re New York City Asbestos Litigation (Dummitt), 27 NY3d 765, 799 (N.Y. 2016) as the standard governing defendant's liability for solely a third-party product.

The Court finds that Mr. Daly's testimony does not indicate any products [*5] manufactured by defendant Crosby, and that moving defendant has provided

evidence that such gaskets were not required by Crosby for the use of their valves. Plaintiffs exhibits have been identified as largely withdrawn, irrelevant to Crosby as a manufacturer, or as containing no reference to the asbestos-containing gaskets at issue herein. See Reply Memorandum of Law, supra, p. 6-8. As such, plaintiff has failed to raise an issue of fact sufficient to defeat summary judgment. Here, plaintiff has not provided sufficient evidence to demonstrate that defendant Crosby was actively involved in the asbestos gaskets at issue herein or "substantially participated" in integrating such gaskets with Crosby-manufactured valves. See Dummitt, supra.

Accordingly, it is

ORDERED that defendant Crosby's motion for summary judgment is granted; and it is further

ORDERED that the complaint is dismissed in its entirety as against defendant Crosby with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further [*6]

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that within 30 days of entry defendant Crosby 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 X NON-FINAL DISPOSITION X GRANTED DENIED GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

Dated: December 27, 2023

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