

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS P. PHELAN,

Justice.

TRIAL/IAS PART 2
NASSAU COUNTY

THOMAS O'ROURKE AND KATHRYN
O'ROURKE,

MOTION SEQUENCE #002, 003

Plaintiffs,

ORIGINAL RETURN DATE: 06/19/12

SUBMISSION DATE: 06/22/12

Index No. 001819/2011

-against-

ARMSTRONG INTERNATIONAL, INC.,
(Individually and as Successor to ARMSTRONG
MACHINE WORKS); AURORA PUMP COMPANY,
BELL & GOSSETT COMPANY; BLACKMAN
PLUMBING SUPPLY COMPANY, INC; BMI-
FRANCE (Individually and as Successor to J. H.
France Refractories Co.); BURNHAM CORPORATION
(Individually and as Successor to KEWANEE BOILER);
CHICAGO PNEUMATIC TOOL COMPANY, LLC;
CLEAVER BROOKS CO.; CONSOLIDATED VALVE,
LTD. (Individually and as Successor to LUNKENHEIMER
CO. INC.); PACIFIC STEEL BOILER CORPORATION
AND THATCHER BOILER); DANA HOLDING CORPORATION (Individually
and as Successor to WICHITA CLUTCH, INC);
DAVIS & WARSHOW, INC.; FOSTER WHEELER CORPORATION;
GENERAL ELECTRIC COMPANY; GEORGIA-PACIFIC LLC;
GOULD'S PUMPS, INCORPORATED; HONEYWELL
INC. (Individually and as Successor to formerly known as
Allied Signal as Successor in interest to Bendix Corpora-
tion); IMO INDUSTRIES, INC. (Individually and as
Successor to DELAVAL TURBINE, TRANSAMERICA
DELAVAL AND IMO DELAVAL); INGERSOLL-RAND
COMPANY (Individually and as Successor to ALDRICH
PUMP COMPANY AND TERRY STEAM TURBINE
COMPANY); ITT FLUID PRODUCTS CORPORATION
(Individually and as Successor to ITT GRINNELL CORP.);

ITT FLUID TECHNOLOGY CORPORATION; J.H. FRANCE
REFRACTORIES CO., INC.; KEELER/DORR-OLIVER;
MUNACO PACKING & RUBBER CO.; NAGLE PUMPS,
INC.; S.W. ANDERSON SALES CORP.; SID HARVEY
INDUSTRIES, INC.; STERLING FLUID SYSTEMS (USA),
LLC., FORMERLY KNOWN AS PEERLESS PUMP
COMPANY; THE TRANE COMPANY (A DIVISION OF
AMERICAN STANDARD); TODD COMBUSTION INC.;
TODD SHIPYARDS CORP. (Individually and as Successor
to TODD COMBUSTION EQUIPMENT, INC.); UNITED
GILSONSITE LABORATORIES; VIACOM, INC. as
Successor in Interest by Merger to CBS Corporation fka
Westinghouse/1st payment (Individually and as Successor
to CBS CORPORATION (BY MERGER) F/K/A
WESTINGHOUSE ELECTRIC CORPORATION);
WEIL MCLAIN (A DIVISION OF THE MARLEY
COOLING TOWER CO.); YARWAY CORPORATION;
YORK INDUSTRIES, INC.;

Defendants.

The following papers read on this motion:

Notices of Motion	1, 2
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Defendant's, ITT CORPORATION*'s ("ITT"), unopposed motions for summary judgment in this asbestos litigation, pursuant to CPLR 3212, dismissing plaintiff's complaint and all cross claims against it on the grounds that there are no triable issues of fact is granted.

The standards for summary judgment are well settled. A court may grant summary judgment where there is no genuine issue of a material fact; and the moving party

*Sued herein as BELL & GOSSETT COMPANY and ITT FLUID PRODUCTS CORPORATION (Individually and as Successor to ITT GRINNELL CORP.) and ITT FLUID TECHNOLOGY CORPORATION

is, therefore, entitled to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). Thus, when faced with a summary judgment motion, a court's task is not to weigh the evidence or to make the ultimate determination as to the truth of the matter; its task is to determine whether or not there exists a genuine issue for trial (*Miller v Journal-News*, 211 AD2d 626 [2d Dept. 1995]).

Defendant ITT submits that plaintiffs have failed to offer evidence which would serve to show that an ITT product was a cause in fact of any alleged injury or a substantial factor in causing that injury.

In light of defendant ITTs' showing of entitlement to judgment as a matter of law, the burden shifts to plaintiff as the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact requiring a trial (*Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]). This plaintiffs have failed to do.

Accordingly, the complaint and all cross claims are dismissed as against defendant ITT, and the caption of the action is amended to read as follows:

"THOMAS O'ROURKE AND KATHRYN
O'ROURKE,

Plaintiffs,

-against-

ARMSTRONG INTERNATIONAL, INC.,
(Individually and as Successor to ARMSTRONG
MACHINE WORKS); AURORA PUMP COMPANY,
BLACKMAN PLUMBING SUPPLY COMPANY, INC;
BMI- FRANCE (Individually and as Successor to J. H.
France Refractories Co.); BURNHAM CORPORATION
(Individually and as Successor to KEWANEE BOILER);
CHICAGO PNEUMATIC TOOL COMPANY, LLC;
CLEAVER BROOKS CO.; CONSOLIDATED VALVE,
LTD. (Individually and as Successor to LUNKENHEIMER
CO. INC.); PACIFIC STEEL BOILER CORPORATION
AND THATCHER BOILER); DANA HOLDING CORPORATION
(Individually and as Successor to WICHITA CLUTCH, INC);

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DELAVAL AND IMO DELAVAL); INGERSOLL-RAND
COMPANY (Individually and as Successor to ALDRICH
PUMP COMPANY AND TERRY STEAM TURBINE
COMPANY); J.H. FRANCE REFRACTORIES CO., INC.;
KEELER/DORR-OLIVER; MUNACO PACKING & RUBBER
CO.; NAGLE PUMPS, INC.; S.W. ANDERSON SALES CORP.;
SID HARVEY INDUSTRIES, INC.; STERLING FLUID SYSTEMS
(USA), LLC., FORMERLY KNOWN AS PEERLESS PUMP
COMPANY; THE TRANE COMPANY (A DIVISION OF
AMERICAN STANDARD); TODD COMBUSTION INC.;
TODD SHIPYARDS CORP. (Individually and as Successor
to TODD COMBUSTION EQUIPMENT, INC.); UNITED
GILSONSITE LABORATORIES; VIACOM, INC. as
Successor in Interest by Merger to CBS Corporation fka
Westinghouse/1st payment (Individually and as Successor
to CBS CORPORATION (BY MERGER) F/K/A
WESTINGHOUSE ELECTRIC CORPORATION);
WEIL MCLAIN (A DIVISION OF THE MARLEY
COOLING TOWER CO.); YARWAY CORPORATION;
YORK INDUSTRIES, INC.;

Defendants."

This decision constitutes the order of the court.

Dated: June 25, 2012

HON THOMAS P. PHELAN
THOMAS P. PHELAN, J..S.C.

ENTERED
JUN 27 2012
NASSAU COUNTY
COUNTY CLERK'S OFFICE

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