

Malerba v New York City Tr. Auth.

2023 NY Slip Op 34702(U)

September 8, 2023

Supreme Court, New York County

Docket Number: Index No. 113520/2009

Judge: Suzanne J. Adams

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SUZANNE J. ADAMS PART 39TR

Justice

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INDEX NO. 113520/2009

PETER MALERBA, JANET MALERBA,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 012

- v -

NEW YORK CITY TRANSIT AUTHORITY,
METROPOLITAN TRANSPORTATION AUTHORITY (MTA),
ANSUL INCORPORATED, E.A. TECHNOLOGIES,
INC., TYCO INTERNATIONAL, LTD, E.A.
TECHNOLOGIES/PETROCELLI, E.A.
TECHNOLOGIES/PETROCELLI, J.V., LLC., AMERON
GLOBAL, INC. D/B/A AMERON GLOBAL PRODUCT
SUPPORT

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 012) 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 361, 370, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 414, 415, 416, 424, 428

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

Upon the foregoing documents, it is ordered that the motion of defendant/third-party plaintiff Tyco Fire Products LLC (i/s/h/a Ansul Inc. and Tyco International, Ltd.) ("Tyco") is denied. This matter arises out of an incident that occurred on September 25, 2008, in which plaintiff Peter Malerba was injured at work when a halon fire suppression tank unexpectedly activated and propelled toward him, hitting his face and head. Plaintiff was an employee of third-party defendant Ameron Global, Inc. d/b/a Ameron Global Product Support ("Ameron"), an entity that was retained by defendant EA Technologies/Petrocelli, J.V., LLC, to maintain certain halon fire suppression tanks that were installed and used by defendant New York City Transit Authority ("NYCTA"). Tyco's

predecessor entity manufactured the tank at issue. Tyco now moves pursuant to CPLR 3211 and/or 3212 to dismiss plaintiffs' claims, and any counterclaims or cross-claims, as against it. Plaintiffs, defendants NYCTA and MTA, and Ameron oppose the motion.

It is well-settled that "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 demonstrate the absence of any material issues of fact. Alvarez v. Prospect Hospital, 68 N.Y.2d 320, 324 (1986) (citing Winegrad v. New York University Medical Center, 64 N.Y.2d 851 (1985)). In addition, the party opposing a motion for summary judgment is entitled to all reasonable inferences most favorable to it. Assaf v. Ropog Cab Corp., 153 A.D.2d 520, 521 (1st Dep't 1989). Viewing the evidence in a light most favorable to the non-moving parties, summary judgment must be denied. There are significant questions of fact that can only be resolved by the trier thereof, including (but not limited to) the HMTA's applicability to the tank at issue, the extent of Tyco's duty to warn, and whether Tyco's design of the tank/valve was defective (especially in light of its competitors' design). Further, the parties may seek to depose Brent Ehmke as part of the further discovery authorized in this court's contemporaneous decision and order on motion sequence 011 (granting Tyco's motion to serve an amended answer).

Accordingly, it is hereby

ORDERED that Tyco's motion is denied in its entirety.

This constitutes the decision and order of the court.

9/8/2023
DATE

SUZANNE J. ADAMS, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE