SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MARY V. ROSADO** **PART** **33M**

Justice

----------X

HARRINGTON WATT, GRACE WATT,

Plaintiff,

- v -

BP PRODUCTS NORTH AMERICA INC.,CARBO INDUSTRIES, INC.,CHEVRON U.S.A. INC. F/K/A GULF OIL CORPORATION, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO HESS CORPORATION, ENERGY TRANSFER (R&M), LLC F/K/A SUNOCO, LLC (R&M) F/K/A SUNOCO, INC. (R&M) F/K/A SUN COMPANY, INC. AND F/K/A SUN OIL COMPANY, INC.,EXXON MOBIL CORPORATION, HESS CORPORATION, MARATHON PETROLEUM CORPORATION, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO MARATHON PETROLEUM COMPANY LLC F/K/A MARATHON ASHLAND PETROLEUM LLC,NORTHVILLE INDUSTRIES CORP., SHELL USA, INC. F/K/A SHELL OIL COMPANY, SPRAGUE OPERATING RESOURCES LLC,INDIVIDUALLY, AND AS SUCCESSOR-IN-INTEREST TO CARBO INDUSTRIES INC.,TEXACO INC.,INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO TEXACO REFINING AND MARKETING, INC.,

Defendant.

----------X

INDEX NO. 151554/2024

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for DISMISS.

Upon the foregoing documents, and after oral argument, which took place on August 6, 2024 with Stephen J. Riccardulli, Esq. appearing for Defendant Exxon Mobil Corporation ("Exxon"), and Anthony P. Mastroianni, Esq. appearing for Plaintiffs Harrington Watt ("Harrington") and Grace Watt (collectively "Plaintiffs"), Exxon's motion to dismiss is granted in part and denied in part.

I. Background

This action arises from Harrington's alleged benzene exposure as a driver transporting gasoline, diesel fuel, aviation fuel, kerosene, and heating oil products to numerous fueling stations and petroleum supply and distribution centers (NYSCEF Doc. 1 at ¶ 21). Harrington was employed in this line of work from 1985 through 2022 (*id.*). Plaintiffs allege that as a result of this work he contracted multiple myeloma on January 21, 2022 (*id.* at ¶ 25). Plaintiffs allege numerous causes of action, including (1) negligence and gross negligence; (2) strict products liability; (3) fraudulent misrepresentation; (4) breach of warranty, and (5) loss of consortium.

Exxon now moves for partial dismissal, arguing that Plaintiffs have failed to state a claim for strict products liability, fraudulent misrepresentation, and breach of warranty. It also argues that Plaintiffs' breach of warranty claim runs afoul of the statute of limitations. Finally, Exxon argues Plaintiffs' demand for punitive damages should be stricken.

Exxon argues the strict products liability claim is only pled in conclusory fashion and does not contain the requisite facts to state a claim. It argues that the fraudulent misrepresentation claim should be dismissed because it is not pled in sufficient detail pursuant to CPLR § 3016(b). As for breach of warranty, Exxon argues there can be no claim for breach of an express warranty as there are no facts regarding the language of any express warranty or how said warranty was made. It also argues that since the statute of limitations for breach of warranty is limited to a four-year statute of limitation, and Plaintiffs alleges exposure dating back decades, this cause of action must be pruned. Finally, Exxon argues that Plaintiffs have failed to allege sufficient conduct to justify an award of punitive damages.

In opposition, Plaintiffs have withdrawn their claim for breach of express warranty and concede that their claim for breach of implied warranty is subject to the applicable statute of

limitations. However, they argue that they have stated a claim for strict products liability based on design defect. Specifically, Plaintiffs allege that Exxon products, including gasoline, diesel fuel, kerosene, and heating oil were defectively designed because they contained benzene which causes cancer and permanent genetic damage. They further allege that the products were defectively designed because they were packaged in a way that increased the risk of benzene exposure.

Plaintiffs further oppose dismissal of the fraudulent misrepresentation claim and that the pleadings satisfy CPLR 3016(b) as they contain sufficient facts and circumstances to permit a reasonable inference of the alleged fraud. Finally, Plaintiffs argue that the claim for punitive damages should not be dismissed, especially as Exxon has not moved to dismiss the gross negligence claim asserted against it.

In reply, Exxon argues that the strict liability claims should be dismissed because benzene is a naturally occurring molecule and its presence in products is not inherently defective. They argue that the complaint as alleged is too conclusory for the strict liability claim to survive. Exxon makes similar arguments as to Plaintiffs' fraudulent misrepresentation cause of action, and further argues that because there exists no fiduciary relationship between Exxon and Plaintiffs that they had no duty to warn about inherent and foreseeable risks. Exxon reasserts that the breach of implied warranty claim should be dismissed because there are no allegations that Exxon's products did not meet a minimum level of quality with regard to their use. Finally, they reassert their argument that Plaintiff's punitive damages claim should be dismissed.

II. Discussion

A. Standard

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give the Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings

and determines only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). All factual allegations must be accepted as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). Conclusory allegations or claims consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]; *Barnes v Hodge*, 118 AD3d 633, 633-34 [1st Dept 2014]). A motion to dismiss for failure to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

Nonetheless, the sole criterion for a Court to decide a motion to dismiss for failure to state a claim is whether the pleadings, from its four corners, taken together as a whole, manifests any cause of action cognizable at law (*African Diaspora Maritime Corp. v Golden Gate Yacht Club*, 109 AD3d 204 [1st Dept 2013]). Whether a Plaintiff can ultimately establish its allegations is not taken into consideration in deciding a motion to dismiss (*id.*).

B. Breach of Warranty

Plaintiffs have already agreed to withdraw, without prejudice, their claims for breach of express warranty. Thus, to the extent the Complaint contained allegations related to breach of express warranty, those claims are dismissed without prejudice. Moreover, Plaintiffs agree that their breach of implied warranty claims are subject to a four-year statute of limitations, and thus Plaintiffs' breach of implied warranty claim is dismissed to the extent they allege a breach prior to February 21, 2020.

Pursuant to U.C.C. §2-314(2)(c), there may be a breach of the implied warranty of merchantability if goods are unsafe "when used in the customary, usual and reasonably foreseeable manner" (*Denny v Ford Motor Co.*, 87 NY2d 248, 258-259 [1995]). This Court and other Courts

in New York in analogous benzene cases routinely find viable breach of implied warranty causes of action where, as here, plaintiffs allege that certain goods are alleged to cause cancer as a result of their benzene content (*Tucci v Ashland, LLC*, 2023 NY Slip Op. 31728[U] [Sup. Ct., NY Co. 2023]; *Pellegrino v US Steel Corp.*, 2020 NY Slip Op 31217[U] [Sup. Ct., Kings Co., 2020]; *Smith v Ashland, Inc.*, 2018 NY Slip Op 32448[U] [Sup Ct, NY Co 2018]). Here, Plaintiffs allege that Exxon's benzene-containing products were inherently dangerous, poisonous, not safe as marketed, and are cancer causing by increasing benzene exposure through the intended use of Exxon's products while simultaneously failing to provide a warning as to the dangers of benzene exposure (NYSCEF Doc. 1 at ¶¶ 157-64). As this is a pre-answer motion to dismiss, where the Court accepts the pleadings as true and makes no judgment on the merits of the claim, the Court finds that Plaintiffs have sufficiently stated a claim for breach of implied warranty.

C. Fraudulent Misrepresentation

This portion of Exxon's motion to dismiss is denied. To sufficiently allege fraudulent misrepresentation, a plaintiff must allege that (1) defendant made a materially false representation; (2) defendant intended to defraud plaintiffs; (3) plaintiffs reasonably relied upon the misrepresentation and (4) plaintiffs suffered damages as a result (*J.A.O. Acquisition Corp. v Stavitsky*, 18 AD3d 389 [1st Dept 2005]). While Exxon is correct that CPLR 3016(b) imposes a heightened pleading standard for fraud, that requirement is not meant to prevent an otherwise valid cause of action in situations where it may be 'impossible to detail the circumstances constituting a fraud'" (*Pludeman v Northern Leasing Systems, Inc.* 10 NY3d 486, 491 [2008] citing *Lanzi v Brooks*, 43 NY2d 778, 780 [1977] quoting *Jered Contr. Corp. v New York City Tr. Auth.*, 22 NY2d 187, 194 [1968]).

Exxon's argument that a fiduciary relationship must be pleaded to state a claim for fraudulent misrepresentation is contrary to First Department precedent (*see Stanfield Offshore Leveraged Assets, Ltd. v Metropolitan Life Ins. Co.*, 64 AD3d 472 [1st Dept 2009]). In *Stanfield*, the First Department did not limit fraud to cases where there exist only fiduciary relationships, but explicitly stated that fraud based on failure to disclose may exist where there is "some other independent duty owed" by a defendant to plaintiffs (*id.* at 476). Here, Exxon did not move to dismiss the negligence/gross negligence claims and therefore do not deny that Plaintiffs have adequately pleaded, for purposes of a pre-answer motion to dismiss, that Exxon owed Plaintiffs a duty. Moreover, at this pre-answer motion to dismiss stage, it can be inferred that the producer, distributor, or merchant of an allegedly dangerous product has a duty to warn the general public about an allegedly high risk of developing cancer associated with prolonged use of their products. Thus, simply because the duty is not explicitly pleaded as a fiduciary duty is not fatal to Plaintiffs' fraudulent misrepresentation claim.

D. Strict Liability

This portion of Exxon's motion is likewise denied. As recited by the Court of Appeals, a plaintiff may seek relief under a theory of strict products liability due to improper design or failure to provide adequate warnings regarding the use of the product (*Voss v Black & Decker Mfg. Co.*, 59 NY2d 102, 106-7 [1983]). Plaintiffs allege that Exxon's products were defective because it did not warn that the level of benzene contained in those products causes cancer. Plaintiffs allege that Exxon could have designed products with substantially less benzene but failed to do so. For purposes of a pre-answer motion to dismiss, this is sufficient to put Exxon on notice of the alleged defects in their products.

E. Punitive Damages

While the Court agrees with Exxon that punitive damages are to be awarded in rare circumstances, for purposes of a pre-answer motion to dismiss, the Court finds that Plaintiff's punitive damages claim should survive. This is especially true here, where Exxon did not move to dismiss Plaintiff's gross negligence claim which, if ultimately proven at trial, would give rise to a claim for punitive damages (*see e.g. 11 Essex Street Corp. v Tower Ins. Co. of New York*, 81 AD3d 516 [1st Dept 2011] [where allegations of gross negligence implicates public safety, punitive damages may be awarded if allegations ultimately proven]).

Accordingly, it is hereby,

ORDERED that Defendant Exxon Mobil Corporation's motion to dismiss is granted solely to the extent that Plaintiff's claim for breach of express warranty is dismissed without prejudice and Plaintiff's claim for breach of implied warranty is dismissed for any breach alleged to have occurred prior to February 21, 2020; and it is further

ORDERED that Defendant Exxon Mobil Corporation's motion to dismiss is otherwise denied; and it is further

ORDERED that within twenty days of entry of this Decision and Order, Exxon Mobil Corporation shall file and serve an Answer to Plaintiff's Complaint; and it is further

ORDERED that the parties shall meet and confer and submit to the Court, via e-mail to bgilmartin@nycourts.gov, a proposed preliminary conference order no later than November 20, 2024. In the event the parties are unable to agree to a proposed preliminary conference order, they are directed to appear for an in-person preliminary conference at 10:30 a.m. in Room 442, 60 Centre Street, New York, New York on December 4, 2024; and it is further

ORDERED that within ten days of entry, counsel for Plaintiffs shall serve a copy of this Decision and Order with notice of entry on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

11/7/2024
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[x]	NON-FINAL DISPOSITION	
	[ ]	GRANTED	[ ] DENIED	[x]	GRANTED IN PART	[ ] OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER	
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ] REFERENCE