

Watt v BP Prods. N. Am. Inc.

2024 NY Slip Op 33962(U)

November 7, 2024

Supreme Court, New York County

Docket Number: Index No. 151554/2024

Judge: Mary V. Rosado

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**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,

INDEX NO. 151554/2024

MOTION DATE N/A

MOTION SEQ. NO. 005

- 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.,

DECISION + ORDER ON MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 69, 70, 71, 72, 76, 77, 78, 79, 80, 81, 82, 83, 84, 89

were read on this motion to/for DISMISSAL

Upon the foregoing documents, and after oral argument, which took place on August 6, 2024 with David N. Cohen, Esq. appearing for Defendant Texaco Inc. (“Texaco”), and Anthony P. Mastroianni, Esq. appearing for Plaintiffs Harrington Watt and Grace Watt (collectively “Plaintiffs”), Texaco’s motion to dismiss is denied.

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.*). Plaintiff alleges that as a result of this work he contracted multiple myeloma on January 21, 2022 (*id.* at ¶ 25). Plaintiff alleges 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.

Texaco now moves for partial dismissal, arguing that Plaintiff has failed to state a claim for fraudulent misrepresentation. Texaco basically argues that Plaintiff failed to meet the heightened pleading standard for fraudulent misrepresentation under CPLR 3016(b). In opposition, Plaintiffs argue that the pleadings satisfy CPLR 3016(b) as they contain sufficient facts and circumstances to permit a reasonable inference of the alleged fraud and similar pleadings in other courts in New York have survived pre-answer motions to dismiss. In reply, Texaco reasserts its argument that the allegations are too vague and there is no specific knowledge attributed to Texaco regarding the dangers of benzene containing products.

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, 633-634 [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 determine on 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. Fraudulent Misrepresentation

Texaco'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 Texaco 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]).

Here, Plaintiffs have alleged that the Defendants, including Texaco, had specific knowledge that benzene exposure led to a high risk of injury or death and had obtained this knowledge through their own testing and research or through participation in industry and trade organizations. Plaintiffs allege that nonetheless, Defendants concealed the dangers of benzene containing products. Plaintiff alleges that Texaco specifically knew about the dangers of benzene no later than 1948 yet distributed benzene containing products without any warning of its potential

dangers. This is sufficient, for purposes of a pre-answer motion to dismiss, to state a claim for fraudulent misrepresentation.

Accordingly, it is hereby,

ORDERED that Defendant Texaco Inc.'s motion to dismiss is denied; and it is further

ORDERED that within twenty days of entry of this Decision and Order, Texaco Inc. 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 Plaintiff 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.

<u>11/7/2024</u> DATE					<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE