

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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SHELLEY DONATO, Individually and as Executrix of :
the Estate of GERARD DONATO, Deceased, : Index No.: 190255/2024
:
Plaintiff(s), :
:
-against- : **NOTICE OF ENTRY**
:
1004 SECOND AVENUE PARTNERS LLC, et al., :
:
Defendants. :
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PLEASE TAKE NOTICE that the within is a true copy of the Decision and Order, signed
by the Honorable Eric Schumacher, J.S.C., on October 7, 2026, and entered in the office of the
New York County Clerk on October 7, 2026.

Dated: New York, New York
October 7, 2026

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ITW Food Equipment Group LLC and
Hobart Corporation

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: <u>HON. ERIC SCHUMACHER</u>	PART	13M
<i>Justice</i>		
-----X	INDEX NO.	<u>190255/2024</u>
SHELLEY DONATO et ano.,	MOTION DATE	<u>10/07/2026</u>
Plaintiffs,	MOTION SEQ. NO.	<u>001</u>
- v -		
1004 SECOND AVENUE PARTNERS LLC et al.,	DECISION + ORDER ON MOTION	
Defendants.		

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NYSCEF doc nos. 82-126 were read on this motion for summary judgment.

Motion by defendant ITW Food Equipment Group, LLC, individually and as successor to Hobart, and defendant Hobart Corporation pursuant to CPLR 3212 for summary judgment dismissing the complaint and cross claims against them granted.

BACKGROUND

Plaintiff Gerard Donato, deceased, and Shelley Donato commenced this New York City Asbestos Litigation action on September 30, 2024. Plaintiffs alleges that Mr. Donato developed mesothelioma due to asbestos exposure from various defendants' products.

As is relevant here, at a deposition held on November 15, 2024, Mr. Donato testified, among other things, that he was exposed to asbestos from multiple door gasket replacements on three Vulcan ovens in a French restaurant that he operated in Manhattan between 1982 and 2016 (*see* Transcript of Gerald Donato's Deposition, NYSCEF Doc. No. 87, pp. 75 – 93). Mr. Donato also testified that the Vulcan ovens were present in the restaurant when he purchased it in 1982, and that he replaced the ovens every five to ten years, always purchasing the Vulcan brand (*id.*, pp. 75, 76, 79, 128). He further testified that he replaced the door insulating gaskets on the ovens "every so often" as needed (*id.*, pp. 82-86, 189, 238).

In 1986, defendant Hobart Corporation ("Hobart") purchased the assets of Vulcan-Hart, which manufactured and sold the Vulcan ranges (*see* Asset Purchase Agreement, NYSCEF Doc. No. 95). Pursuant to the Asset Purchase Agreement, Hobart did not assume, among other things, liabilities that arose out of the seller's business prior to the closing of the Asset Purchase Agreement on April 25, 1986 (*id.*, p. 4). Defendant ITW Food Equipment Group, LLC, individually and as successor to Hobart ("ITW FEG") acquired the Hobart and Vulcan brands in 2002 (*see* Dunn Affirmation, NYSCEF Doc. No. 94, p. 2).

ITW FEG and Hobart (collectively "defendants") now seek summary judgment dismissing the claims and all cross claims against them arguing an absence of identification and causation. Relying primarily on deposition transcripts, expert affidavits and other reports, the

defendants argue that their Vulcan ovens did not cause Mr. Donato's mesothelioma, and that Mr. Donato failed to identify an asbestos-containing component of their Vulcan oven. Defendants assert that Mr. Donato described the Vulcan ovens at his restaurant as Vulcan heavy-duty range-ovens, but that these ranges did not contain door gaskets, much less an asbestos door gasket (*see* Dunn Affirmation, *supra*, p. 3). Defendants also assert that plaintiff failed to set forth any evidence to establish that oven gaskets contained asbestos, and that Mr. Donato's testimony established only an assumption of asbestos-exposure (*see* NYSCEF Doc. No. 87, *supra*, p. 90).

Defendants argue that Mr. Donato was only briefly present during the removal of nine allegedly asbestos-containing oven doors. Defendants contend that even if the Vulcan ranges described by Mr. Donato had oven door gaskets, and assuming all the gaskets contained asbestos, Mr. Donato's potential exposure to asbestos from the gaskets would have nonetheless been insufficient to cause or contribute to the development of his mesothelioma. Defendants maintain that Mr. Donato's cumulative potential exposure to asbestos from being present during the oven door gasket changes was less than 1% of his cumulative exposure to ambient levels of asbestos. Defendants also assert that the development of mesothelioma is associated with heavy exposures to amphibole, not chrysotile, and that exposure to chrysotile-containing asbestos gaskets does not significantly increase a person's overall asbestos burden or risk of developing malignant mesothelioma.

In addition, defendants argue that even if the Court denies their request for summary judgment, they cannot be held liable for Mr. Donato's exposure to asbestos from Vulcan oven gaskets prior to April 25, 1986.

In opposition, plaintiffs assert that the claims against defendants are limited to Mr. Donato's encounters with Vulcan ovens after April 30, 1986, since his first exposure to asbestos from Vulcan equipment "occurred closer to 1987" (Memorandum of Law in Opposition, NYSCEF Doc. No. 105, p. 6). Plaintiffs argue that issues of fact remain as to identification based on Mr. Donato's testimony. Plaintiffs also rely on expert evidence to argue that exposure to asbestos from Vulcan ovens caused Mr. Donato's mesothelioma.

Defendants' assertions in reply mirror those advanced in support of the motion for summary judgment.

DISCUSSION

"The standard for summary judgment is well established. On a motion for summary judgment, all facts are considered in the light most favorable to the nonmoving party. The movant has the initial burden to make a prima facie showing of entitlement to judgment as a matter of law. If the movant fails to make the showing, the motion must be denied regardless of the sufficiency of the opposing papers. If the showing is made, the burden shifts to the nonmoving party to establish the existence of a triable issue of fact." (*Najera-Ordonez v 260 Partners L.P.*, ---NYS3d---, 2026 NY Slip Op 04558 [1st Dept 2026] [internal citations and quotation marks omitted].)

In reviewing a motion for summary judgment, the Court must view the evidence in the light most favorable to the nonmoving party (*see Branham v Loews Orpheum Cinemas, Inc.*, 8 NY3d 931, 932 [2007]).

It is not disputed that plaintiffs identified exposure to certain Vulcan ovens, however, defendants argue that plaintiffs have failed to identify a Vulcan oven that contained asbestos. In support, defendants offer, among other things, the affirmation of Robert Dunn, Agency Compliance and Product Safety Manager for ITW FEG (*see* NYSCEF Doc. No. 94, *supra*). The affirmation states, in part, that the Vulcan ovens described by Mr. Donato were likely the Vulcan heavy-duty series range, which did not have a door gasket, and that Vulcan discontinued the only asbestos parts in the heavy-duty range in January 1980, which was before the relevant exposure period (*id.*). Mr. Dunn does not state that these were the only heavy-duty series that Vulcan manufactured during the relevant period (*id.*). Further, it is the movant's initial burden to unequivocally establish that its products could not have contributed to plaintiff's injury (*see Reid v Georgia-Pac., Corp.*, 212 AD2d 462, 463 [1st Dept 1995]).

Even if the court were to find that defendants have met their prima facie burden as to identification, plaintiffs have raised genuine issues of material fact. In opposition, plaintiffs rely, in part, on the transcript of the deposition of Mr. Dunn (*see* Transcript of Dunn Deposition, NYSCEF Doc. No. 110). Mr. Dunn testified, among other things, that he began his employment with ITW FEG in 2006 and had no involvement with the historical Vulcan ovens or asbestos components (*see id.*, pp. 18-35), that he did not have access to all historical product documentation (*see id.*, pp. 97, 108, 179), and that he did not review all of the available product documentation (*see id.*, pp. 77-78, 85-87, 120, 126-136, 155-156, 177). Under the circumstances, had defendants met their prima facie burden, the court would nonetheless have found genuine issues of material fact as to product identification.

On the issue of causation, the parties rely primarily on expert opinions and scientific reports. An expert opinion on causation in an asbestos exposure action should set forth a plaintiff's exposure to a toxin, that the toxin is capable of causing the particular illness (general causation) and that plaintiff was exposed to sufficient levels of the toxin to cause the illness (specific causation) (*see Nemeth v Brenntag N. Am.*, 38 NY3d 336, 342-343 [2022] [internal citations omitted]). The expert opinion, based on generally accepted methodologies, must establish sufficient exposure to the toxin even though "it is sometimes difficult, if not impossible," to do so (*id.*).

As to general causation, defendants, through their experts, established as a matter of law that chrysotile dust is a weak human pleural carcinogen, and exposure from encapsulated chrysotile-containing gaskets, if any, falls within the current permissive exposure limit ("PEL") of 0.1 f/cc, and hence not causative of mesothelioma (*see* Graham Report, NYSCEF Doc. No. 103). Plaintiffs, in opposition, through their experts Dr. Jacqueline Moline and Kenneth Garza, raise genuine issues of material fact that all asbestos fiber types, including chrysotile asbestos fibers, are capable of causing mesothelioma, and that encapsulated asbestos-containing products when disturbed can release asbestos fibers that can be of causative levels (*see* Moline Affirmation, NYSCEF Doc. No. 119; Garza Affirmation, NYSCEF Doc. No. 120).

As to specific causation, the court finds that plaintiffs have failed to raise genuine issues of material fact for similar reasons stated in Evans v Air & Liquid Sys. Corp., Sup Ct, NY County, June 9, 2026, Schumacher, J., index no. 190260/2024).

As such, the action is dismissed as to ITW FEG and Hobart and the court need not address defendants' remaining assertions.

CONCLUSION

Accordingly, it is

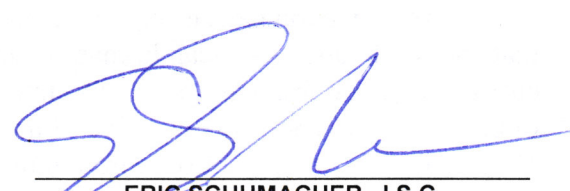
ORDERED that the motion by defendant ITW Food Equipment Group, LLC, individually and as successor to Hobart, and defendant Hobart Corporation pursuant to CPLR 3212 for summary judgment dismissing the complaint and cross claims against them is granted; and it is further

ORDERED that the complaint and cross claims asserted against defendant ITW Food Equipment Group, LLC, individually and as successor to Hobart, and defendant Hobart Corporation are dismissed; and it is further

ORDERED that within five days of entry, defendant ITW Food Equipment Group, LLC, individually and as successor to Hobart, and defendant Hobart Corporation shall serve a copy of this order with notice of entry on plaintiffs; and it is further

12/2, 2026, at 9:30 a.m. ORDERED that all remaining parties shall appear in Part 13 for a pretrial conference on

The foregoing constitutes the decision and order of the court.

<u>10/7/2026</u>			
DATE		ERIC SCHUMACHER, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE