

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAROLYN WHITE and KENNETH WHITE, : CIVIL ACTION
Plaintiffs, :
v. :
PULVER SYSTEMS, INC. and :
ETMW SHERBROOK : NO. 96-CV-6788
Defendants. :

PULVER SYSTEMS, INC., :
Third-Party Plaintiff, :
v. :
BURRELL-LEDER BELTECH, INC., :
Third-Party Defendant. :

BURRELL-LEDER BELTECH, INC., :
Fourth-Party Plaintiff, :
v. :
THERMOID, INC., HBD INDUSTRIES, :
Fourth-Party Defendant. :

MEMORANDUM AND ORDER

J. M. KELLY, J.

SEPTEMBER , 1998

Presently before the Court is a Motion for Summary Judgment filed by Third-Party Defendant Burrell-Leder Beltech, Inc. ("Burrell") and a Motion to Dismiss filed by Fourth-Party Defendant Thermoid, Inc., HBD Industries ("Thermoid").

SUMMARY JUDGMENT STANDARD

Under Fed. R. Civ. P. 56(c), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." This court is required, in resolving a motion for summary judgment pursuant to Rule 56, to determine whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In making this determination, the evidence of the nonmoving party is to be believed, and the district court must draw all reasonable inferences in the nonmovant's favor. See id. at 255. Furthermore, while the movant bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of material fact, Rule 56(c) requires the entry of summary judgment "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

BACKGROUND

Plaintiff Carolyn White ("White") claims that she was injured when her hand was caught in a "rubberized belt" that was part of a "relidder" machine used at the Stroehmann's Bakery plant where she worked. She brought this suit against the manufacturer of the machine, Pulver Systems, Inc. ("Pulver"), and the installer, ETMW Sherbrook. White's complaint alleges that the relidder machine was negligently designed, manufactured and installed. White also asserted claims based on breach of warranty and strict products liability.

Burrell makes replacement conveyor belts that are compatible with the Pulver relidder machine. Pulver filed a Third-Party Complaint against Burrell alleging that its negligently designed or manufactured replacement belts caused White's injuries. Thermoid makes the materials that Burrell uses to manufacture its replacement belts. Burrell filed a Fourth-Party Complaint against Thermoid.

Pulver supplied the original belt on the relidder machine. Invoices were produced that show that Stroehmann purchased and received replacement belts from Burrell prior to the accident. The belt that was actually on the machine at the time of the accident, however, has been lost. The parties did not submit any evidence as to who is responsible for the loss of this evidence.

ANALYSIS

Both Burrell and Thermoid argue that the cases against them should be dismissed under the "spoliation doctrine."¹ Spoliation is the intentional or negligent destruction of evidence. Sanctions for spoliation range from an adverse jury instruction to judgment against the offending party. The Third Circuit has stated that the key considerations for determining the appropriate sanction for spoliation are: "(1) the degree of fault of the party who altered or destroyed the evidence; (2) the degree of prejudice suffered by the opposing party; and (3) whether there is a lesser sanction that will avoid substantial unfairness to the opposing party and, will serve to deter such conduct by others in the future." Schmid v. Milwaukee Elec. Tool Corp., 13 F.3d 76, 79 (3d Cir. 1994); see Schroeder v. Commonwealth of Penn., 710 A.2d 23, 27 (Pa. 1998) (adopting Third Circuit's fault-based approach to spoliation).

The Spoliation doctrine is not relevant to these motions. Sanctions for spoliation must be premised on some type of fault. Neither Pulver nor Burrell is responsible for the disappearance of the conveyor belt at issue in this case. The issue here is not sanctions, the issue is the sufficiency of the evidence.

¹ Thermoid contends that White cannot prove her case without the conveyor belt. I will not discuss White's case, since she is not a party to the present Motions.

Under Pennsylvania law, it is possible to prove a design defect case without producing the allegedly defective product. See Schroeder, 710 A.2d at 23. Two recent Pennsylvania Superior Court cases are instructive. In O'Donnell v. Big Yank, Inc., 696 A.2d 846 (Pa. Super. 1997), the plaintiff alleged that he was injured when pants manufactured by the defendant caught fire. He claimed that the pants were defectively designed because they were made of a flammable material. The plaintiff did not retain the remnants of the pants involved in the accident. Nevertheless, his wife testified that shortly before the accident she had purchased three pairs of the defendant's pants, she had the remaining two pairs, and the pants her husband was wearing at the time of the accident were "exactly the same." The court found that there was sufficient circumstantial evidence to support a jury finding that the Plaintiff was wearing pants manufactured by the defendant at the time of the accident.

In Payton v. Pennsylvania Sling Co., 710 A.2d 1221 (Pa. Super. 1998), the plaintiff was injured when a tag broke off a "chain sling" that he was using at work. The chain sling and tag were not preserved. The plaintiff's employer had purchased chain slings from several different manufacturers. Summary judgment was granted because the plaintiff did not produce evidence to establish which manufacturer's product was involved in the accident.

Neither the O'Donnell case nor the Payton case was dismissed because of spoliation. O'Donnell and Payton were decided based on the sufficiency of the circumstantial evidence connecting the defendant's product to the case. Like O'Donnell and Payton, this is a products liability case where the allegedly defective product is not available, and the conduct of the parties does not justify dismissal under the spoliation doctrine.

The issue on these motions is simply whether Pulver, as Third-Party Plaintiff, can meet its burden of proving that a Burrell product was involved in this accident. It is undisputed that Pulver supplied the original belt on the relidder machine. It is also undisputed that Burrell replacement belts were received at Stroehmann's plant. Considering the evidence presented by Pulver, however, the conclusion that a Burrell replacement belt was actually installed on the machine would be based on pure speculation.

Stroehmann's plant engineer testified that he was "as sure as he could be" that the original Pulver belt was on the machine at the time of the accident. Stroehmann's engineering manager testified that he did not know, and did not keep maintenance records that would indicate, which belt was on the machine at the time of the accident. No witness testified that the belt on the relidder machine was replaced.

The timing of the accident does not indicate which belt was on the machine. Stroehmann's plant engineer testified that belts can last anywhere "from five minutes to six months." The relidder machine was installed in June of 1993, and the accident occurred on December 29, 1993.

In opposition to the Motion, Pulver points to the invoices that show that Burrell belts were received at the Stroehmann factory. Pulver also points out that the Plaintiff testified that a "rubberized" belt was on the machine at the time of the accident, while Stroehmann's plant engineer testified that the original belt was plastic.

Pulver's evidence does not take its claim out of the realm of speculation. Pulver relies on a vague reference to a plastic belt. The only direct testimony on this issue, however, is the plant engineer's testimony that the original Pulver belt was on the machine when he tested it a few days after the accident. He testified that the belt was "dirty" and that he would have known if it was a new belt. Neither the Plaintiff nor the plant engineer were directly questioned as to the discrepancy in their description of the material used to make the belt. The Plaintiff's vague references to a "rubberized" belt are insufficient to carry Pulver's summary judgment burden.

The evidence on the record does not create a genuine issue of material fact as to whether a Burrell product was on the

relidder machine at the time of this accident. The invoices, relied on by Pulver, only show that the Burrell belts were received at the plant. The inference that a Burrell belt was actually installed on the machine is not a reasonable inference in light of the evidence. Therefore, Burrell's Motion for Summary Judgment on Pulver's Third-Party Complaint is granted.

Fourth Party Defendant Thermoid makes materials that Burrell uses to make its belts. Thermoid's liability is premised on Burrell's liability. Since the Third-Party Complaint against Burrell is dismissed, it follows that the Fourth-Party complaint against Thermoid is also dismissed.

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THERMOID, INC., HBD INDUSTRIES, :
Fourth-Party Defendant. :
_____ :

ORDER

AND NOW, this day of September, 1998, after consideration of The Motion for Summary Judgment of Third Party Defendant Burrell-Leder Beltech, Inc., and the response thereto, it is ordered:

1. Third Party Defendant Burrell-Leder Beltech Inc.'s Motion for Summary Judgment is GRANTED; Judgment is entered in favor of Third Party Defendant Burrell-Leder Beltech, Inc. and against Third Party Plaintiff Pulver Systems, Inc.

2. Fourth Party Defendant Thermoid, Inc., HBD Industries Motion to Dismiss is GRANTED; Judgment is entered in favor of Fourth Party Defendant Thermoid, Inc., HBD Industries and against Fourth Party Plaintiff Burrell-Leder Beltech, Inc.

BY THE COURT:

JAMES MCGIRR KELLY, J.