

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

W.N. STEVENSON COMPANY : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
OSLOU CORPORATION, :
LOUIS SENN, and :
EASTERN GUNITE COMPANY, INC. :
Defendants. :
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OSLOU CORPORATION and :
LOUIS SENN, :
Third-Party Plaintiffs, :
 :
v. :
 :
EASTERN GUNITE COMPANY, INC., :
WALTER N. STEVENSON, III and :
THOMAS R. HOLSHUE, :
Third-Party Defendants. : NO. 97-CV-6841

MEMORANDUM & ORDER

J.M. KELLY, J.

FEBRUARY , 1999

Defendants Oslou Corporation and Louis Senn (collectively "Oslou") have filed the present Motion for Partial Summary Judgment against Plaintiff, W.N. Stevenson Company ("Stevenson"). Stevenson filed this action to recover environmental cleanup costs for its property from Oslou because the groundwater contamination on the Stevenson property is allegedly, in part, a result of actions taken on the adjacent Oslou property. There is evidence in the record that suggests that Oslou's tenant at the time, Eastern Gunitite Company, Inc. ("Eastern Gunitite"), dumped a barrel or barrels of diesel fuel on the Oslou property in 1989. It is undisputed that there have been two successive underground storage tanks on the Oslou property where diesel fuel was stored.

Oslou claims that there is no evidence that its underground storage tanks ever leaked diesel fuel, therefore it cannot be liable under the Pennsylvania Storage Tank and Spill Prevention Act, 35 Pa. Stat. Ann. tit. 35, § 6021.101-6021.2104 (West 1993). Oslou also claims that the applicable two year statute of limitations bars Stevenson's public nuisance, negligence per se, negligence and common law indemnification claims.

DISCUSSION

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).

The Pennsylvania Storage Tank and Spill Prevention Act creates a rebuttable presumption that the owner or operator of an underground storage tank "shall be liable, without proof of fault, negligence or causation, for all damages, contamination or pollution within 2,500 feet of the perimeter of the site of a storage tank containing or which contained a regulated substance of the type which caused the damage, contamination or pollution." Pa. Stat. Ann. tit. 35 § 6021.1311(a). For Oslou to prevail on a motion for summary judgment on this claim, it must present enough evidence to overcome its presumed liability. While Stevenson has presented scant evidence that underground storage tanks on Oslou's property caused the groundwater contamination, Oslou has failed to present the necessary quantum of evidence to overcome the statutory presumption and prevail on a motion for summary judgment. Summary judgment will be denied on this issue.

Oslou next argues that the public nuisance, negligence per se, negligence and common law indemnification claims are time barred by the applicable two year statute of limitations because Stevenson knew in 1989 that Eastern Gunitite employees had dumped diesel fuel on the Oslou property that ran onto the Stevenson property. This represents a fair interpretation of the evidence. It is also possible that a jury might find that Stevenson reasonably believed that a dumped barrel of diesel fuel had been contained by blacktop and cleaned up by Eastern Gunitite before any

contamination took place. Accordingly, summary judgment is inappropriate and will also be denied on these claims.

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O R D E R

AND NOW, this day of February, 1999, upon consideration of the Motion for Partial Summary Judgment of Defendants Oslou Corporation and Louis Senn, the Response of Plaintiff W.N. Stevenson Company, and the Reply thereto of Defendants Oslou Corporation and Louis Senn, it is ORDERED that the Motion for Partial Summary Judgment is DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.