

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RUSSELL and DORIS HALL,	:	NO. 02-01,249
Plaintiffs	:	
	:	
vs.	:	
	:	CIVIL ACTION - LAW
ATLAS CHEMICAL CORP. and	:	
WINNER HARDWARE,	:	
Defendants	:	Summary Judgment

OPINION AND ORDER

Before the Court is a Motion for Summary Judgment filed by Defendant Winner Hardware on January 28, 2004. Argument on the motion was heard March 19, 2004.

Defendant Winner contends it is entitled to judgment as a matter of law with respect to the negligence claims brought against it by Plaintiff, specifically with regard to the claim it was negligent as a seller of a product for failure to warn regarding uses or dangers of the product and for failure to test the product to ensure it was safe for its intended use. Defendant claims it is under no duty to provide warnings to a purchaser over and above the warnings contained on the package. Plaintiff argues such a duty arose when he, as purchaser, informed Defendant Winner of the particular need for the product and Defendant Winner thereafter undertook to recommend a particular product and inform Plaintiff with respect to its use, citing Restatement (Second) of Torts, Section 323. It appears from the pleadings, affidavits and depositions that Plaintiff has raised an issue of material fact and that it cannot be concluded that Defendant Winner is entitled to judgment as a matter of law in this regard. The motion for summary judgment will therefore be denied as to the claim of negligence for failure to warn.

With respect to the claim of negligence for failure to test, although Plaintiff argues that a duty to test arises from a duty to warn in connection with the undertaking to provide information, as discussed above, Plaintiff points to no authority for such a claim and the Court does not believe the law can be stretched to the point necessary to encompass such a claim. Summary judgment in Defendant Winner's favor is appropriate in this regard.

Defendant Winner also seeks summary judgment with respect to the products liability claims against it on the grounds raised by its co-defendant Atlas Chemical Corp. in their motion for summary judgment, but inasmuch as that motion was denied by this Court's Order of February 26, 2004, and for the same reasons, Defendant Winner's request will also be denied.

ORDER

AND NOW, this 23rd day of March 2004, for the foregoing reasons, Defendant Winner Hardware's Motion for Summary Judgment is granted in part and Judgment for Defendant Winner Hardware and against Plaintiffs is hereby entered with respect to the claim contained in Paragraph 25 (a) of the Second Amended Complaint, filed January 21, 2003. In all other respects, the motion for Summary Judgment is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

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