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2017 WL 2983914

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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.  
**IN RE: ASBESTOS LITIGATION SCOTT GLASER and SANDRA HURST, Plaintiffs, v. SEARS ROEBUCK, CO., et al.,** Secondary Sources  
 Superior Court of Delaware. July 12, 2017 Not Reported In A 3d. 2017 WL 2983914 (Approx. 3 pages)  
 Superior Court of Delaware.

IN RE: **ASBESTOS LITIGATION**  
 SCOTT GLASER and SANDRA HURST, Plaintiffs,  
 v.  
 SEARS ROEBUCK, CO., et al., Defendants.

C.A. No. N15C-08-207 ASB  
 July 12, 2017

Upon Defendant Sears Roebuck Company's  
 Motion for Summary Judgment. **GRANTED.**

**Opinion**

The Honorable Calvin L. Scott, Jr.

\*1 Plaintiffs Scott Glaser and Sandra Hurst cannot satisfy the summary judgment criteria. <sup>1</sup>

Plaintiffs allege that Mr. Glaser was exposed to **asbestos** containing products as a carpenter at the following locations: Convention & Show Services, Inc. (1998-2006); Exhibit Works (1998); FBK Construction (1997-1998); Wonerlick Construction and Don Lueker Construction (1980s and 1990s); and Carpenters Union (1977-1980). The parties agree that this Motion is limited to exposure to floor tile sold by Defendant Sears Roebuck Company ("Defendant" or "Sears") that was used at the Penobscot Building in Detroit, Michigan from 1977-1978. Mr. Glaser testified that he cleaned up floor tile associated with Sears. The clean up process included cleaning up scraps or pieces of floor tile off the floor. He testified to sweeping up debris and dust on the floor. Defendant contends that Sears is a retailer of a variety of consumer products and it has never mined, milled, manufactured, processed, or distributed wholesale **asbestos** containing products. Plaintiffs' opposition to Defendant's Motion does not rebut Defendant's argument that it was a retailer of materials and *not* a manufacturer. Michigan law explicitly limits Plaintiff's claims to negligence and breach of express warranty. Michigan law provides:

In a product liability action, a seller other than a manufacturer is not liable for harm allegedly caused by the product unless either of the following is true:

- (a) The seller failed to exercise a reasonable care, including breach of any implied warranty, with respect to the product and that failure was a proximate cause of the person's injuries;
- (b) The seller made an express warranty as to the product, the product failed to conform to the warranty, and the failure to conform to the warranty was a proximate cause of the person's harm. <sup>2</sup>

Additionally under Michigan law, "the plaintiff must show that the product was sold in a defective condition, the defect caused the injury, *and* the seller failed to exercise reasonable care."<sup>3</sup> Defendant contends that Plaintiffs have not put forth any evidence to demonstrate that the above elements are met. Plaintiffs argue that they have met this burden by establishing that Sears became aware of the dangers of **asbestos** exposure in the 1970s. However, the interrogatories that Plaintiff cites purportedly to prove that Sears "knew it was selling harmful, **asbestos**-containing floor tile" hardly supports that. The interrogatory answer Plaintiff cites to states:

**SELECTED TOPICS**

Negligence

Premises Liability  
 Condition of Commercial Building

**Secondary Sources**

**Liability of Owner of Store, Office, or Similar Place of Business to Invitee Falling on Tracked-In Water or Snow**

123 A.L.R.5th 1 (Originally published in 2004)  
 ...This annotation collects and analyzes the state and federal cases in which the courts have discussed or explicitly decided whether, or under what circumstances, the owner of a store, office, or similar...

**Liability of proprietor of store, office, or similar business premises for injury from fall on floor made slippery by tracked-in or spilled water, oil, mud, snow, and the like**

62 A.L.R.2d 6 (Originally published in 1958)  
 ...The question to be dealt with herein is this: Under what circumstances is the proprietor of a store, office, or similar business (including a restaurant) liable for injuries sustained by one other than...

**Duty and liability respecting condition of store or shop**

162 A.L.R. 949 (Originally published in 1946)  
 ...The present annotation supplements that in 33 ALR 181; 43 ALR 886; 46 ALR 1111; 58 ALR 136; and 100 ALR 710. The rules of law which govern the duties and liabilities of store owners and proprietors wit...

See More Secondary Sources

**Briefs**

**Reply Brief on Behalf of Plaintiff-Appellant Kenneth Stelly**

1994 WL 16123765  
 Kenneth STELLY, Plaintiff-Appellant Cross-Appellee, v. BARLOW WOODS, INC., d/b/a/ Best Western Seaway Inn, Defendant-Appellee Cross-Appellant.  
 United States Court of Appeals, Fifth Circuit  
 Aug. 25, 1994

...A)MICHAEL'S HAD ACTUAL KNOWLEDGE THAT A DANGEROUS CONDITION EXISTED ON ITS DANCE FLOOR; B)MICHAEL'S HAD CONSTRUCTIVE KNOWLEDGE THAT A DANGEROUS CONDITION EXISTED ON ITS DANCE FLOOR; C)THE DANGEROUS CON...

**Brief of Appellee, Kohl's Department Stores, Inc.**

2007 WL 5083712  
 Lenora REID, Plaintiff-Appellant, v. KOHL'S DEPARTMENT STORES, INC., Defendant-Appellee.  
 United States Court of Appeals, Seventh Circuit.  
 2007

...Illinois law is clear; absent notice, liability will not attach. Tomczak v. Planetosphere, Inc., 735 N.E.2d 662, 666 (Ill. App. Ct. 2000). In the instant case, Ms. Reid offers no evidence whatsoever tha...

**Appellant's Brief**

Sears did not now and has never mined, milled, manufactured, processed or distributed wholesale **asbestos**-containing products as those terms are commonly used and understood in this litigation. Sears at all relevant times is and has been a retailer of various consumer products and services. As such, Sears ability to respond to this Request is limited by this role ... However, based on available information and a reasonable and diligent investigation, Sears admits that certain floor tile sold by Sears during the relevant time period contained **asbestos**.

\*2 Thus, Plaintiffs' Motion supports Defendant's assertion that it was not a manufacturer of **asbestos** tiles. However, Plaintiffs do not address Defendant's argument under Michigan law. The Court finds Plaintiffs did not meet their burden under Michigan law to show that Sears sold a product in a defective condition, the defect caused the injury, and the seller failed to exercise reasonable care. As an initial inquisition, under Michigan law manufacturers do not owe a duty to warn of the dangers associated with another manufacturer's products. In *Dreyer*, the court pointed out that Michigan law does not impose a duty on a manufacturer to warn of dangers associated with another manufacturer's product.<sup>4</sup> Likewise, the court found that plaintiff was unable to show that the product was defective because the manufacturer had no duty to warn.<sup>5</sup> Thus, the plaintiff could not show that the product was sold in a defective condition and his breach of implied warranty claim failed. Additionally, *Dreyer* noted that the plaintiff offered "no support for the proposition that a non-manufacturing seller is under a duty to warn of the dangers associated with a product manufactured by another."<sup>6</sup> Accordingly, for the reasons stated above, Plaintiffs' claim against Defendant Sears Roebuck fails under Michigan law. Defendant's Motion for Summary Judgment is therefore **GRANTED**.

**IT IS SO ORDERED.**

**All Citations**

Not Reported in A.3d, 2017 WL 2983914

**Footnotes**

- 1 Super. Ct. Civ. R. 56; *Smith v. Advanced Auto Parts, Inc.*, 2013 WL 6920864, at \*3 (Del. Super. Dec. 30, 2013); see *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979); *Nutt v. A.C. & S., Inc.*, 517 A.2d 680, 692 (Del. Super. Ct. 1986); *In re Asbestos Litigation (Helm)*, 2012 WL 3264925 (Del. Aug. 13, 2012).
- 2 Mich. Comp. Laws Ann. § 600.2947(6). The Sixth Circuit noted that "the Michigan legislature enacted a statutory revision to its tort law that limits a non-manufacturing seller's liability to instances where '[t]he seller failed to exercise reasonable care, including breach of any implied warranty, with respect to the product and that failure was the proximate cause of the person's injuries'." See *Dreyer v. Excel Indus., S.A.*, 2009 WL 1184846, at \*5 (6th Cir. May 4, 2009).
- 3 *Dreyer*, 2009 WL 1184846, at \*5 (citations omitted).
- 4 *Dreyer*, 2009 WL 1184846, at \*3.
- 5 *Id.* In *Dreyer*, a plaintiff sued a manufacturer and a distributor of a paint sprayer after he was burned when the solvent he was using ignited. *Id.* at \*1. The Court held that the manufacturer of the paint sprayer had no duty to warn of another manufacturer's defective product. "As explained above, we conclude that the paint sprayer was not defective due to inadequate warnings regarding the dangers of [the product] because the manufacturer did not owe a duty to issue those warnings." Thus, the plaintiff could not prove that the "product was sold in a defective condition," and the manufacturer was not liable for breach of implied warranty. *Id.*
- 6 *Id.*

1996 WL 33502316  
 Andres HILL, Plaintiff/Appellee, v. INTERNATIONAL PAPER COMPANY, Defendant/Appellant St. Paul Fire and Marine Insurance Company, Intervenor.  
 United States Court of Appeals, Fifth Circuit Apr. 29, 1996  
 ...Oral argument in this premises liability case would assist the Court in understanding the facts and law. The district court had diversity jurisdiction pursuant to 28 U.S.C. 1332.  
 Plaintiff, Andres Hill...

See More Briefs

**Trial Court Documents**

**In re Ocean Place Development, LLC**

2011 WL 2750889  
 In Re: OCEAN PLACE DEVELOPMENT, LLC., Debtor.  
 United States Bankruptcy Court, D. New Jersey.  
 Mar. 31, 2011  
 ...CHAPTER 11 This matter comes before the Court by way of a Motion filed by Debtor, Ocean Place Development, LLC ("Debtor" and/or "Ocean Place") for a final order approving the use of cash collateral. AF...

**U.S. v. Bou**

2013 WL 8482187  
 UNITED STATES OF AMERICA, v. Chea BOU.  
 United States District Court, C.D. California.  
 Mar. 19, 2013  
 ...[x] pleaded guilty to counts: Thirteen, Fourteen, Eighteen, Nineteen, Thirty, and Forty of the Indictment . [ ] pleaded nolo contendere to count(s) which was accepted by the court. [ ] was found guilty o...

**U.S. v. Yuen**

2013 WL 8482184  
 UNITED STATES OF AMERICA, v. Bob YUEN.  
 United States District Court, C.D. California.  
 Mar. 08, 2013  
 ...THE DEFENDANT: [x] pleaded guilty to counts: One and Forty-Five of the Indictment . [ ] pleaded nolo contendere to count(s) which was accepted by the court. [ ] was found guilty on count(s) after a plea ...

See More Trial Court Documents