

NOT PRECEDENTIAL
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-2636

JAMES R. GORSKI,

Appellant

v.

WESTERN ELECTRIC CO., INC.

LUCENT TECHNOLOGIES INC.; WESTERN
ELECTRIC CO., INC.

v.

LUBRICANT PACKAGING & SUPPLY COMPANY, INC.;
MANZ WATTS INC.

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 99-cv-02760)
District Judge: Honorable Petrese B. Tucker

Submitted Under Third Circuit LAR 34.1(a)
February 25, 2002

Before: ROTH and FUENTES, Circuit Judges
GIBSON*, Circuit Judge

(Opinion filed: May 8, 2002)

* Honorable John R. Gibson, Senior Circuit Court Judge for the Eighth Circuit,
sitting by designation.

OPINION

ROTH, Circuit Judge

On August 3, 2000, the United States District Court for the Eastern District of Pennsylvania granted summary judgment against James Gorski on his claims against Lucent. We have jurisdiction to hear the appeal pursuant to 28 U.S.C. 1291. Our review of a grant of summary judgment is plenary. See *Metro Transp. Co. v. North Star Reinsurance Co.*, 912 F.2d 672, 678 (3rd Cir. 1990). A movant is entitled to judgment as a matter of law if, when viewing the facts and all reasonable inferences drawn therefrom in a light most favorable to the non-moving party, "there is no genuine issue as to any material fact." *Woessner v. Air Liquide, Inc.*, 242 F.3d 469, 471 (3d Cir. 2001) citing *Fed.R.Civ.P.* 56(c).

Gorski's suit was based on injuries he suffered while cleaning machinery with a

substance containing trichloroethane. Gorski contends that the substance was dangerous and that its container lacked adequate warning. He brought claims based on strict liability under the Pennsylvania version of Section 402A of the Restatement (Second) of Torts, negligence, and breach of warranty.

Under Pennsylvania law, the adequacy of a warning is a question of law to be answered by the trial judge. See *Mackowick v. Westinghouse Electric Co*, 575 A.2d 100, 102 (Pa. 1990). Gorski argues that the warnings were inadequate because trichloroethane can be absorbed through the skin. Gorski also contends that he knew of the dangers of using the cleaning substance without adequate ventilation but that he did not appreciate the risks under the circumstances. The container, however, had a label which warned "use only with adequate ventilation" and "avoid prolonged or repeated contact with the skin."

After reviewing the record, the District Court concluded that Gorski read, understood and disregarded the warning label when he used the cleaning substance without gloves in an unventilated room. The court also noted that Gorski received training in the proper use of this and similar substances. We conclude that the District Court did not err in determining that the warnings were adequate and ignored. The evidence overwhelmingly indicates that Gorski had knowledge of the risks inherent in using the cleaning substance and proceeded to use it in disregard of the warnings.

As for the negligence and breach of warranty claims, the District Court found the negligence claim deficient because Gorski failed to prove specific facts to demonstrate either that the trichloroethane was defective or that Lucent acted without due care. The breach of warranty claim is time barred. In Pennsylvania, breach of warranty actions must be filed within four years of the date that the seller delivers the goods, even if the breach is undiscovered until after delivery. See *Nationwide Insurance Co. v. General Motors Corp./ Chevrolet Motor Division*, 625 A.2d 1172, 1174 (Pa. 1993). The record suggests that the trichloroethane was delivered to Western Electric (Lucent's predecessor) sometime prior to 1984. This claim was filed in 1998. The District Court found no evidence to support Gorski's assertion that the substance was delivered at a later time and properly concluded that Gorski's breach of warranty claim was time barred.

In addition to his substantive claims, Gorski claims that the District Court abused its discretion by not providing additional discovery and a hearing to present additional material facts which could refute these conclusions. He contends that this hearing would present material issues of fact and demonstrate that summary judgment was unwarranted. Gorski also claims on appeal that the District Court should have allowed leave to supplement his response and should have allowed expert testimony on the adequacy of the warning label. We do not reach these issues because the overwhelming evidence demonstrates that a reasonable trier of fact could have concluded only that the warnings on the substance were adequate and disregarded.

For the above reasons, we will affirm the judgment of the District Court.

TO THE CLERK:

Please file the foregoing Opinion.

By the Court,

Circuit Judge

/s/ Jane R. Roth