

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

In Re: Welding Rod Civil Actions)	JUSTICE FRANCIS E. SWEENEY
Products Liability Litigation)	
)	
)	
Joseph Boyd, et al.,)	Case No. 545413
)	
Plaintiffs,)	
)	
v.)	<u>ENTRY AND OPINION</u>
)	
Lincoln Electric Co., et al.,)	
)	
Defendants.)	
)	

I. INTRODUCTION

The current litigation arises from a complaint filed by the above-captioned Plaintiff alleging that he is suffering from manganese-induced parkinsonism caused by his exposure to welding rod fumes during his career as a boilermaker from 1977 until mid-2004. Plaintiff has asserted causes of action for, among other things, conspiracy, fraud, fraudulent concealment, failure to warn, failure to test, aiding and abetting, and negligent performance of a voluntary undertaking.

For the foregoing reasons, Defendants' Motion for Summary Judgment on Counts One and Two is granted.

II. LAW AND ARGUMENT

A. Standard of Review

Summary judgment may be granted only when it is demonstrated:

“ *** (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor.”

Harless v. Willis Day Warehousing Co. (1978), 54 Ohio St.2d 64; Civ.R. 56(E). When seeking summary judgment, a party must specifically delineate the basis upon which the motion is brought, *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, syllabus, and identify those portions of the record that demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280. When a properly supported motion for summary judgment is made, an adverse party may not rest on mere allegations or denials in the pleading, but must respond with specific facts showing there is a genuine issue of material fact. Civ.R. 56(E); *Riley v. Montgomery* (1984), 11 Ohio St.3d 75. A material fact is one that would affect the outcome of the suit under the applicable substantive law. *Needham v. Provident Bank* (1986), 110 Ohio App.3d 817, citing *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242.

B. Conspiracy and Fraudulent Concealment

The issue before the Court is whether Certain Defendants, by their involvement in several trade organizations, engaged in a conspiracy to conceal the alleged dangers of welding rod fumes.

In Ohio, civil conspiracy requires plaintiffs to show the existence of “a malicious combination of two or more persons to injure another in person or property in a way not competent for one alone, resulting in actual damages.” *Williams v. Aetna Fin. Co.* (1998), 83 Ohio St.3d 464, 475. Because conspiracy is not a free-standing tort, plaintiffs must also establish the existence of a separate, independent wrong. *Wilson v. Harvey*

(Ohio App. 8 Dist), 2005-Ohio-5722, at 41. And that independent wrong must have been not a negligent act, but an intentional one. *Hicks v. Bryan Med. Grp., Inc.* (N.D. Ohio 2003), 287 F. Supp.2d 795, 813. The underlying tort alleged in Count One of Plaintiff's Complaint is the claim of fraudulent concealment, thus, if Plaintiff's fraudulent concealment claim fails, so does his claim for conspiracy.

To successfully make a claim for fraudulent concealment, plaintiff must establish the following:

- (a) a representation or, where there is a duty to disclose, concealment of a fact,
- (b) which is material to the transaction at hand,
- (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred,
- (d) with the intent of misleading another into relying upon it,
- (e) justifiable reliance upon the representation or concealment, and
- (f) a resulting injury proximately caused by the reliance.

Burr v. Stark Cty. Bd. of Commrs. (1986), 23 Ohio St. 3d 69, 23 OBR 200, 491 N.E. 2d 1101, paragraph two of the syllabus; *Cohen v. Lamko, Inc.* (1984), 10 Ohio St. 3d 167.

The Court could go through a lengthy analysis of the elements required under Ohio law to make a claim for fraudulent concealment, however, it is unnecessary in this specific case. Under the fifth element of a claim for fraudulent concealment, Plaintiff must be able to demonstrate that he justifiably relied upon Defendants' representation or concealment, and that that reliance proximately caused his injury. But Plaintiff admitted that he never saw or read the warnings. Logically, Plaintiff cannot prove that he would never have been injured had he read or seen the allegedly-concealed facts in the warnings, if he testified previously that at no time did he ever read or look at the warnings. Therefore, Plaintiff's claim for fraudulent concealment must fail.

Because Plaintiff cannot prove the underlying unlawful act of fraudulent concealment, his civil conspiracy claim must also fail as a matter of law. *Wilson v. Harvey* (2006), 164 Ohio App.3d 278 (8th Dist 2006).

III. CONCLUSION

Accordingly, Defendants' Motion for Summary Judgment on Conspiracy and Fraudulent Concealment is granted.

IT IS SO ORDERED.

Justice Francis E. Sweeney
July 10, 2007