

COMMONWEALTH OF KENTUCKY
19TH JUDICIAL CIRCUIT
MASON CIRCUIT COURT
NO. 17-CI-00271

MICHAEL WILLIAMS

PLAINTIFF

v.

SAMSUNG ELECTRONICS CO., LTD.;
VAPOR RIZING; SAMSUNG SDI AMERICA, INC.;
SAMSUNG SDI CO., LTD; AND KEITH MASON
D/B/A VAPOR RIZING

RESPONDENT

ORDER GRANTING DEFENDANT'S SUMMARY JUDGMENT

This matter is before the Court on Defendant, Samsung SDI America, Inc.'s ("SDIA"), Motion for Summary Judgment. Having considered the legal arguments and authorities presented, and the record as a whole, and being otherwise fully and sufficiently advised;

THE COURT ORDERS that SDIA's Motion for Summary Judgment is **GRANTED**.

The Plaintiff, Michael Williams ("Plaintiff") filed his Complaint on November 22, 2017, seeking damages for injuries from an alleged spontaneous combustion of an e-cigarette device ("Device") owned by the Plaintiff. Plaintiff asserted several claims against SDIA, including: 1. Strict liability; 2. Negligence; 3. Failure to warn; 4. Breach of implied warranty of merchantability; 5. Breach of express warranty; 6. Breach of implied warranty: fitness for a particular purpose; and 7. Violation of Kentucky's Consumer Protection Act.¹ Discovery took place for the next year and a half. The Defendant filed a Motion for Summary Judgment on November 2, 2018. Defendant submitted the affidavit of Samuel G. Sudler, III (Sudler). Sudler is a professional engineer² who

¹ Plaintiff's Third Complaint.

² Engineer Licensing and Degree Designations: PE, IntPE, DFE.

inspected the battery that was allegedly manufactured, distributed and sold by SDIA. Sudler stated that “[t]he incident battery involved... is not a Samsung Battery.”³ Sudler finding was based on “[t]he incident battery has four vent holes which is inconsistent with Samsung SDI batteries that I have personally examined in the past that were manufactured with three curve-shaped vent holes.”⁴ Furthermore, Sudler noted that the “incident battery’s hole size is smaller than the vent hole size in 18650 batteries manufactured by Samsung.”⁵

Plaintiff argued in its response to the Motion for Summary Judgment that there was a genuine issue of material fact of whether the battery in question was a SDIA battery. Plaintiff also argued that additional time was necessary to conduct additional discovery. SDIA counter-argued that the case was over a year old and Plaintiff had an opportunity to conduct discovery, and “the opinions of two (2) laypersons⁶ contradicted the opinion of an expert engineer who had inspected hundreds of SDIA batteries did not create a genuine issue of material fact.”⁷ The Motion for Summary Judgment came before this Court on December 14, 2018. The Court favored granting the Motion for Summary Judgment; however, Co-Defendants Vapor Rizing and Keith Mason d/b/a Vapor Rizing (collectively “Vapor Rizing”) had only been a party for about a month and discovery had not yet occurred. SDIA renewed its Motion for Summary Judgment on April 1, 2019.

In its brief supporting the granting for summary judgment, SDIA argues that “a party which has no role in the design, manufacture or distribution of an allegedly defective product cannot have any common law liability for a product-based claim.”⁸ Further, it argued that SDIA did not commit

³ Affidavit of Samuel G. Sudler, III, P.E., IntPE, DFE ¶ 2.

⁴ Id. at ¶ 2(1).

⁵ Id. at ¶ 2(2).

⁶ Two laypersons were the Plaintiff Michael Williams and his cousin James Curtis.

⁷ Def. Renewed Mot. For Sum. Judgment, at pg. 3.

⁸ Def. Renewed Mot for Sum. Judgment, at pg. 6.

any of the listed transgressions in the Complaint because “SDIA had no role whatsoever in the design, manufacture or distribution of that product (Device).”⁹

Plaintiff’s response to the motion for summary judgment contained two counter-arguments. First, that there were factual issues remaining in dispute, and second, that SDIA’s Motion for Summary Judgment was premature. Plaintiff contends that SDIA’s inconsistent discovery responses pertaining to the battery in question is within itself a dispute of the factual record. Further, Plaintiff contends that “Samsung itself has failed to disown the battery at issue or otherwise produce evidence that it only manufactures three prong batteries.”¹⁰ SDIA stated clearly that “the battery at issue in this case cannot be a SDIA battery” because of the expert testimony of Mr. Sudler.¹¹ The Plaintiff argues that co-Defendant Vapor-Rizing has yet to respond to discovery request and dismissal of SDIA would be premature before knowing the source of distribution of the battery.

On April 12, 2019, this Court heard oral arguments on the Motion for Summary Judgment. All counsel of record were present. This Court took the case under advisement to render a decision once interrogatories propounded by the Plaintiff on Defendant Vapor-Rizing was filed for the Court to review.

Argument

i. Procedural Posture

Kentucky adheres to a strict standard for granting summary judgment to a party. Perkins v. Hausladen, 828 S.W.2d 652, 654 (Ky. 1992). The Supreme Court of Kentucky stated in the

⁹ Id.

¹⁰ Pl. Res. At pg. 5. (April 11, 2019).

¹¹ Reply in Support of Defendant, Samsung SDI America’s Motion for Summary Judgment, at pg. 2 (December 13, 2018).

seminal case regarding summary judgment, “[o]nly when it appears impossible for the nonmoving party to produce evidence at a trial warranting a judgment in his favor should the motion for summary judgment be granted.” Steelvest, Inc. v. Scansteel Serv. Ctr., Inc., 807 S.W.2d 476, 482 (Ky. 1991). However, “‘impossible’ is used in a practical sense, not in an absolute sense.” Perkins, 828 S.W.2d at 654. Ultimately, “a party opposing a properly supported summary judgment motion cannot defeat it without presenting at least some affirmative evidence showing that there is a genuine issue of material fact for trial.” Steelvest, 807 S.W.2d at 482.

ii. Summary Judgment for SDIA

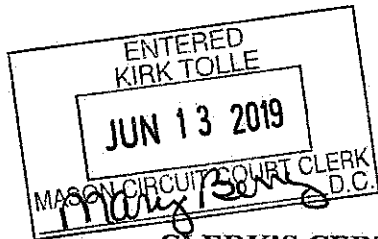
The question before the Court is simply whether there is any evidence that the defendant, SDIA, designed, manufactured, or distributed the battery in question. The Plaintiff and others in this case had ample time to conduct discovery to determine who designed, manufactured and distributed the battery. Plaintiff had time to obtain an expert to examine and give an opinion on the battery. Instead, the Plaintiff offered two laypersons to determine to dispute the SDIA’s affidavit of Mr. Sudler. Mr. Sudler is a professional engineer. Mr. Sudler explained the battery in question cannot be one that is made by SDIA because the battery in question has “four vent holes instead of three curved shaped vent holes”¹². Plaintiff argues that their lay persons’ testimony contradicts Mr. Sudler’s Affidavit thus creating a factual dispute in this case. It does not. After the April 12, 2019 hearing, the new co-defendant submitted responses to interrogatories into the Court record. These interrogatories come with three (3) years of monthly invoices from Vapor-Rizing which revealed that Expo International, Inc. was the supplier to Vapor-Rizing, not SDIA. Further, the invoices did not list any batteries that consisted or related to the Samsung brand or

¹² Affidavit of Samuel G. Sudler, III, P.E., IntPE, DFE ¶ 2.

anything listing SDIA as a possible distributor of batteries. The invoice did list other companies that may be responsible for designing manufacturing and distributing the battery in question. The invoices show Vapor-Rizing did not receive any Samsung or SDIA batteries.

The parties have had ample time to produce even a scintilla of evidence that the battery was connected to SDIA. They have failed to do so. For the foregoing reasons, SDIA's Motion for Summary Judgment is GRANTED and the Court thereby dismisses this matter against SDIA.

SO ORDERED this 12 day of JUNE, 2019.



Stockton B Wood
STOCKTON B. WOOD, JUDGE
MASON CIRCUIT COURT

-CLERK'S CERTIFICATE OF SERVICE-

This is to certify that a true and correct copy of the foregoing was mailed, postage prepaid to the following:

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Hon. Justin S. Peterson
Hon. Kellie M. Collins
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Lexington, Kentucky 40503

Hon. Judd R. Uhl
Hon. R. Morgan Salisbury
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Ft. Wright, Kentucky 41011

Hon. Stephen E. Neal
P.O. Box 950
Mt. Sterling, Kentucky 40353

This the 13 day of June, 2019.

Kirk Tolle Circuit Clerk
By Mary Berry D.C.
MASON CIRCUIT COURT CLERK