

THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY  
IN THE COURT OF COMMON PLEAS

BRANHAM

VS.

ROHM & HAAS CO., et al.

: TRIAL DIVISION- CIVIL  
: MAY TERM, 2006  
: No. 3590 (Lead Case)  
:  
: CONTROL # 09032087  
: Defendant's Motion for  
: Summary Judgment

Braham Vs Rohm&Haas Co Etal-ORDER

DOCKETED  
FEB 16 2010  
S. LONERGAN

FINDINGS and ORDER



This Court now has before it Defendant, Rohm & Haas, et al,'s Motion for Summary Judgment in which it seeks to dismiss Plaintiff's Complaint entirely. This Motion raises claims as to each Count brought by Plaintiff which this Court now reviews in summary fashion so as to provide brief context for these Findings.

Plaintiff's Complaint includes claims for (1) Strict Liability; (2) Negligence; (3) Misrepresentation and Fraud; (4) Willful and Wanton Misconduct and (5) Nuisance. Plaintiff abandoned any claim under a res ipsa loquitur theory and therefore, such claim will not be addressed.

The claims for Negligence, Misrepresentation and Fraud have been addressed explicitly and implicitly in this Court's prior Findings and Orders most recently entered and considering these and the Record as a whole, Summary Judgment is denied as to these Counts.

On the claim of Willful and Wanton Misconduct, Plaintiff has produced sufficient, relevant and admissible material facts, that if believed by the fact finder, would allow for a finding for Plaintiff on this Count and Summary Judgment is denied on this basis.

Under the Nuisance claim, Plaintiff makes general allegations regarding the invasion of the former residence of Mr. Branham in the McCollom Lake Village. These allegations and the facts developed and offered by Plaintiff in support of same are insufficient as a matter of law. In this case, Plaintiff fails to show how the Branhams were deprived of the

private use or enjoyment of their land or how such use and enjoyment were impaired. Therefore, this claim is dismissed.

The remaining claim is brought under a theory of Strict Liability. In order to sustain this claim, Plaintiff has to satisfy the requirements of Sections 519 and 520 of the Restatement (Second) of Torts (Restatement). (Citations omitted). One of the requirements under these Sections of the Restatement is to determine if an activity is abnormally dangerous. As a predicate to this analysis, the specific activity that is under scrutiny must be identified. Here, the activity of Defendant was the storage of liquid waste in an open lagoon situated on Defendant's property, adjacent to Defendant's Plant. The offered evidence does not support any claim that the storage of the waste was abnormally dangerous. Plaintiff complains that the leaking of the waste and subsequent infiltration of the aquifer and release into the atmosphere was abnormally dangerous to the community. The necessary implication of this is that the storage facility was negligently maintained, of which the converse is that if the storage facility had been non-negligently maintained, there would have been no release into or infiltration of the surroundings. Under the Restatement, this negates the claim that the activity was abnormally dangerous. This analysis is consistent with the approach used in *Smith v. Weaver*, 445 Pa. Super. 461, 665 A.2d 1215 (1995) and *Melso v. Sun Pipe Line Co.*, 394 Pa. Super. 578; 576 A.2d 999 (1990).

Considering this and the Record as a whole, Plaintiff's claim for Strict Liability is dismissed.

BY THE COURT:

Feb 16<sup>th</sup> 2010

DATE

Tereshko

ALLAN L. TERESHKO, J.

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PURSUANT TO Pa.R.C.P. 23G(b)

FEB 16 2010

cc:  
Aaron J. Freiwald  
Dennis R. Suplee

FIRST JUDICIAL DISTRICT OF PA  
USER I.D.: SJT