[Cite as *Einbecker v. Gates Corp.*, 2024-Ohio-385.]

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
ALLEN COUNTY

ROBERT J. EINBECKER,

CASE NO. 1-22-62

PLAINTIFF-APPELLANT,

v.

GATES CORPORATION, **O P I N I O N**

DEFENDANT-APPELLEE.

Appeal from Allen County Common Pleas Court
Trial Court No. CV 2020 0164

Judgment Reversed and Cause Remanded

Date of Decision: February 5, 2024

APPEARANCES:

***Paul W. Flowers, Mark E. Defossez,* and *Matthew C. Huffman* for Appellant**

***Elizabeth L. Moyo* and *Syed Ahmadul Huda* for Appellee, Gates Corporation**

ZIMMERMAN, J.

{¶1} Plaintiff-appellant, Robert J. Einbecker ("Einbecker"), brings his appeal to the September 29, 2022 and October 11, 2022 judgments of the Allen County Court of Common Pleas dismissing his civil complaint versus the defendant-appellee, Gates Corporation ("Gates Corp."). Specifically, Einbecker appeals the trial court's decision dismissing his complaint pursuant to Civ.R. 12(C). For the reasons set forth hereinafter, we reverse the judgment of the trial court.

Relevant Facts

{¶2} Einbecker was injured on June 4, 2019 when a transfer-hose assembly that was designed and manufactured by Gates Corp. "failed and burst" resulting in sulfuric acid to be sprayed upon him. At the time of this event, Einbecker was pumping sulfuric acid from a tanker truck into a holding tank at a facility in Pennsylvania owned by ATI Flat Rolled Products ("ATI").[1] Einbecker's injury occurred during the course of his employment with Roeder Cartage Company ("Roeder"). Roeder is a corporation that provides transportation services for the delivery of chemical commodities, which includes sulfuric acid. The transfer hose used by Einbecker to transfer the acid from the truck into the holding tank was sold to Roeder by Hart Industries, Inc. ("Hart").

[1] The corporate ownership of ATI includes Allegheny Ludlum Steel Corporation and Jewel Acquisition, LLC.

{¶3} Einbecker commenced his civil lawsuit versus Gates Corp. and other defendants in the Allen County Common Pleas Court on April 16, 2020. The complaint requested damages under the Ohio Products Liability Act ("OPLA") as well as for common law theories of negligence and breach of warranty. As to Gates Corp., Einbecker alleged that the transfer hose assembly "was defective in design, formulation and construct, and also that inadequate warnings and construction had been furnished." (Appellant's Brief at 2).

{¶4} Einbecker amended his complaint in the trial court, without opposition, in August 2020. The amended complaint restated Einbecker's common-law claims, and further detailed how the OPLA applied to Einbecker's injury. Gates Corp. filed an answer to the amended complaint on September 4, 2020 denying liability and asserting various affirmative defenses. Importantly, Gates Corp. did not raise as an affirmative defense that federal law preempted Einbecker's claims.

{¶5} Gates Corp. filed a request for partial summary judgment under Civ.R. 12(C) on September 29, 2020, which ultimately resulted in the trial court's issuance of an agreed order granting Gates Corp.'s motion on October 14, 2020. Contained in the agreed order was the stipulation of the parties that the Ohio Products Liability Act ("OPLA") at R.C. 2307.71 *et seq.* governs Einbecker's products-liability claims against Gates Corp. (*Id.*). The trial court's order also dismissed all of Einbecker's claims except those relating to the claims under OPLA. (*See* Exhibit 2).

{¶6} On December 20, 2021, Gates Corp. filed its request in the trial court to amend its answer to include an additional affirmative defense of federal preemption. The trial court granted the request on December 21, 2021, and reaffirmed the order through an additional order.

{¶7} On July 19, 2022, Gates Corp. filed its motion for judgment on the pleadings under Civ.R. 12(C), which Einbecker opposed. In its request, Gates Corp. sought a judgment on the pleadings for the reasons that the federal Hazardous Materials Transportation Act ("HMTA") preempted the OPLA state-law claims filed by Einbecker.

{¶8} On September 29, 2022, the trial court granted Gates Corp.'s motion and dismissed all of the "state-law-based" claims of Einbecker versus Gates Corp.

{¶9} Einbecker timely appealed the trial court's dismissal setting forth two assignments of error. They are:

First Assignment of Error

> **The Trial Judge Abused His Discretion By Granting Defendant-Appellee Leave To Assert An Affirmative Defense After Over 20 Months Of Litigation [Decisions Dated December 20, 2021, And August 11, 2022].**

Second Assignment of Error

> **The Trial Court Erred, As A Matter Of Law, By Holding That The Ohio Products Liability Act Is Preempted By The Federal Hazardous Material Transportation Act. [Entry Dated September 23, 2022].**

{¶10} Because it is dispositive of the issues presented, we will address Appellant's second assignment of error first.

Second Assignment of Error

The Trial Court Erred, As A Matter Of Law, By Holding That The Ohio Products Liability Act Is Preempted By The Federal Hazardous Material Transportation Act. [Entry Dated September 23, 2022].

Standard of Review

{¶11} "Under Civ.R. 12(C), '[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.'" *Jones v. Gilbert*, 3d Dist. Auglaize No. 2-22-19, 2023-Ohio-754, ¶ 10, quoting Civ.R. 12(C). When "considering a Civ.R. 12(C) motion for judgment on the pleadings, the court is limited to the statements contained in the parties' pleadings and any 'written instruments' attached as exhibits to those pleadings." *Id.*, citing *Socha v. Weiss*, 8th Dist. Cuyahoga No. 105468, 2017-Ohio-7610, ¶ 9 and Civ.R. 10(C) (stating that a "copy of any written instrument attached to a pleading is a part of the pleading for all purposes").

{¶12} "'A trial court reviews a Civ.R. 12(C) motion for judgment on the pleadings using the same standard of review as a Civ.R. 12(B)(6) motion for failure to state a claim upon which relief may be granted.'" *Oliver v. Marysville*, 3d Dist. Union No. 14-18-01, 2018-Ohio-1986, ¶ 18, quoting *Walker v. Toledo*, 6th Dist. Lucas No. L-15-1240, 2017-Ohio-416, ¶ 18. Consequently, "'Civ.R. 12(C) requires

a determination that no material factual issues exist and that the movant is entitled to judgment as a matter of law.'" *Jones* at ¶ 11, quoting *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570 (1996).

{¶13} "'An appellate court reviews a trial court's decision on a Civ.R. 12(C) motion for judgment on the pleadings de novo and considers all legal issues without deference to the trial court's decision.'" *Id.*, quoting *Wentworth v. Coldwater*, 3d Dist. Mercer No. 10-14-18, 2015-Ohio-1424, ¶ 15.

> Under Civ.R. 12(C), dismissal is appropriate where a court (1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and (2) finds *beyond doubt*, that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief.

(Emphasis sic.) *Wentworth* at ¶ 15. "Thus, the granting of a judgment on the pleadings is only appropriate where the plaintiff has failed to allege a set of facts which, if true, would establish the defendant's liability." *Id.*

Analysis

Federal Preemption of State Law

{¶14} The Supremacy Clause of the United States Constitution provides that the Constitution, federal statutes, and treaties constitute "the supreme Law of the Land". U.S. Constitution, Article VI, cl. 2. Nevertheless, the Supremacy Clause also empowers Congress the power to preempt state law. Under the doctrine of preemption, Congress has authority to set aside state laws. *See generally, Barnett Bank of Marion County, N.A. v. Nelson,* 517 U.S. 25, 116 S.Ct. 1103 (1996).

{¶15} Preemption involves statutory interpretation and comes about in one of three ways: express preemption (where Congress has expressly preempted state law); field preemption (where Congress has legislated an entire field of regulation leaving no room for state law); and conflict preemption (where state law conflicts with federal law making it an obstacle to the federal objectives). Whether Congress intended a federal regulation to supersede state law is the "critical question" in a preemption analysis. *Rick v. Santa Fe Elevator Corp.*, 331 U.S. 218, 67 S.Ct. 1146 (1947).

HMTA

{¶16} The federal regulation in play before us is found in the Hazardous Materials Transportation Act ("HMTA"). The HMTA governs hazardous material storage, handling, and transportation. *Trimbur v. Norfolk Southern Ry. Co.*, S.D.Ohio No. 2:13-cv-0160, 2015 WL 4755205, *5 (Aug. 10, 2015). Its purpose is "to protect against the risks to life, property, and the environment that are inherent in the transportation of hazardous material", and it empowers the Secretary of Transportation to "prescribe regulations for the safe transportation, including security of hazardous material in intrastate, interstate, and foreign commerce." 49 U.S.C. 5101, 5103(b)(1). These regulations prescribed by the Secretary are called Hazardous Materials Regulations ("HMR"), and they apply to the transport of hazardous materials in commerce. 49 U.S.C. 5103(b)(1)(A)(i).

{¶17} The HMTA expressly preempts any state law, regulation, or order that "is not substantively the same" as a regulation set forth under the HMTA that relates to the "designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing" of a package or container that is used in transporting hazardous materials in commerce. 49 U.S.C. 5125(b)(1)(E). "A non federal requirement is 'not substantively the same' unless it 'conforms in every significant respect to the federal requirement'". *Roth v. Norfalco LLC*, 651 F.3d 367, 377 (3d Cir.2011), quoting 49 C.F.R. 107.202(d).

{¶18} In our *de novo* review we must determine whether or not 49 U.S.C. 5125(b)(1) expressly applies to the non-federal law at issue (i.e., OPLA) and then whether that non-federal law is "substantively the same" as conditions imposed in the HMR. *Roth* 651 F.3d at 376.

Plaintiff-Appellant's Amended Complaint

{¶19} Einbecker's amended complaint of August 19, 2020, alleges that the transfer-hose assembly manufactured and designed by Gates Corp. is violative of the OPLA. Specifically, Einbecker's amended complaint states:

> 50. The Transfer Hose was defective in its manufacture and/or construction as described in O.R.C. § 2307.74 in that it was unable to withstand the foreseeable pressures necessary to transfer sulfuric acid and/or hazardous material in accordance with its intended used [sic].
>
> * * *
>
> 54. The Transfer Hose was defective in its design and/or formulation as described in O.R.C. § 2307.75 in that it was not designed and/or

> formulated to withstand the pressure that it could reasonable be foreseen to encounter when used in accordance with its intended use.
>
> * * *
>
> 58. The Transfer Hose was defective due to inadequate warning and/or instruction as described in O.R.C. § 2307.76 in that Defendant Gates failed to warn and/or instruct Plaintiff regarding the maximum pressure that the Transfer Hose could withstand which created hazards to its users during foreseeable use.
>
> 59. The Transfer Hose was defective due to inadequate warning and/or instruction as described in O.R.C. § 2307.76 in that Defendant Gates failed to warn and/or instruct Plaintiff regarding the useful life of the Transfer Hose which created hazards to its users during foreseeable use.
>
> * * *
>
> 63. Defendant Gates represented that the Transfer Hose could withstand certain levels of pressure that were necessary to transfer sulfuric acid through the Transfer Hose in accordance with its intended use.
>
> 64. Defendant Gates represented that the use life of the Transfer Hose extended for a certain amount of time after purchase by Roeder, which time period extended beyond the date of Plaintiff's injuries.
>
> 65. The Transfer Hose was defective as described in O.R.C. § 2307.77 because it did not conform to said representations made by Defendant Gates.

Condensing Einbecker's amended complaint as it relates to the OPLA violations, we discern that his amended complaint only involves the transfer-hose assembly and nothing involving the container used in transporting hazardous material in commerce.

OPLA

{¶20} The Ohio Products Liability Act is codified at R.C. 2307.71 to R.C. 2307.80. The OPLA and its provisions were "intended to abrogate all common law product liability claims or causes of action." R.C. 2307.71(B). *See also Parker v. Ace Hardware Corp.*, 2d Dist. Champaign No. 2017-CA-8, 2018-Ohio-320, ¶ 1, *discretionary appeal not allowed*, 153 Ohio St.3d 1433, 2018-Ohio-2639, (holding that common-law negligence, negligent-failure-to-warn claims, and negligent-misrepresentation claims have been abrogated by the OPLA).

{¶21} Under Ohio common law, a defect is considered to exist in a product, which is not of good and merchantable quality, fit and safe for its ordinary and intended use. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 321 (1977). Pursuant to R.C. 2307.73(A) and (B), the OPLA renders a manufacturer liable where the claimant establishes by a preponderance of the evidence that the product was defective: (1) in manufacture or construction; (2) in design or formulation; (3) due to inadequate warning or instruction; or (4) because it did not conform to a representation by the manufacturer, so long as the defect was a proximate cause of harm for which the claimant seeks damages.

Trial Court's Preemption Analysis

{¶22} The trial court's entry of dismissal is premised upon HMTA case law authority set forth in *Roth v. Norfalco LLC*, 651 F.3d 367, 377 (3d Cir.2011) and *Noffsinger v. Valspar Corp.*, 60 F.Supp.3d 907 (N.D.Ill.2014). The *Roth* case involves a plaintiff's negligence and strict-liability claims against a shipper for its

tank-car design that were preempted under the HMTA. In *Roth*, the court determined that the plaintiff's design claim would impose requirements on the *shipper* that were different than those contained in the HMR and "the structure and purpose of the HMTA confirms what the text of § 5125(b)(1) makes plain: the HMTA preempts state common law claims that, if successful, would impose design requirements upon a package or container qualified for use in transporting hazardous materials in commerce." *Roth* at 379.

{¶23} The *Noffsinger* case involves a plaintiff's negligence and product-liability claims regarding injuries sustained from a leak in a steel drum containing hazardous material inside the trailer that he was transporting. Plaintiff's claims were against the *shipper* under the theory that the "shipper does not have to be the entity that actually designs, constructs, maintains or fills the package, but the shipper is responsible for making sure those things are done in compliance with the HMTA and HMR to assure that the package is safe." *Noffsinger* at 911.

{¶24} In our review, we find Einbecker's claims are distinguishable from *Roth* and *Noffsinger* since it only involves a hose that ruptured while transferring sulfuric acid from the tanker truck into a holding tank. Einbecker's claims differ because he does not present claims versus the *shipper* of the hazardous material, as was the case in *Roth* and *Noffsinger*. Rather, Einbecker's claims are presented against Gates the manufacturer of the hose that ruptured. Manufacturing a hose that is used to drain the hazardous-material container differs markedly from the HMTA

requirements of packages or containers qualified for use in transporting hazardous materials in commerce as discussed in the *Roth* and *Noffsinger* cases.

{¶25} Moreover, the trial court did not identify how the OPLA conflicted with the HMTA or any HMR and why preemption was required. The only reference found in the trial court's analysis is that § 5125(b)(1)(B) & (E) applies to:

> (B) the packing, repacking, *handling*, marking, and placarding of hazardous material.
>
> * * *
>
> (E) the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in the transporting hazardous material in commerce.

(Emphasis added.) (Doc. No. 123). Despite reciting the above preemption language, we are unable to determine how the OPLA claims of Einbecker would impose design requirements upon a package or container qualified for use in transporting hazardous materials in commerce as determined in *Roth* and *Noffsinger* to require preemption. Further, the handling of hazardous materials under 49 C.F.R. 177.834 is not implicated. Here, the only potential hose regulation set forth in the HMTA is found in 49 C.F.R. 177.834(i)(3)(iii), which we find to be an issue of inspection and that is not an issue herein.

{¶26} We conclude that Einbecker's claims should survive a Civ.R. 12(C) determination because preemption is not required. We further find that the intended

purpose of the HMTA is to protect against the risks to life, property and the environment from the transportation of hazardous materials and that Einbecker's claims provide that Gates Corp. has general duties relating to preventing the rupturing of its hoses used in the handling of hazardous materials.

{¶27} Einbecker's amended complaint has given Gates Corp. proper notice that its alleged faulty hose assembly is violative of certain HMR provisions relative to hoses used in handling hazardous material despite citing to those provisions. Thus, we find the duties that Gates allegedly violated under the OPLA are substantively the same as those in the HMR and which would not require preemption.

Conclusion

{¶28} Thus, we find that the trial court erred in granting Gates Corp.'s judgment on the pleadings request, the second assignment of error is sustained, and the judgment of the trial court is reversed and this matter is remanded to the trial court for further proceedings consistent with the decision.

{¶29} Further, the court determines, in light of its decision herein, Appellant's first assignment of error is rendered moot.

Judgment Reversed
and Cause Remanded

WILLAMOWSKI, P.J. and WALDICK, J., concur.

/hls