

COURT OF COMMON PLEAS
MONROE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS OF MONROE COUNTY, OHIO

STATE OF OHIO, ex rel.
NANCY ROGERS
ATTORNEY GENERAL OF OHIO,

2009 MAR 30 PM 2:57
Case No. 2007-224
JETH ANN ROSE
CLERK OF COURTS
JUDGE JULIE R. SELMON

Plaintiff,
vs.

DONALD C. COEN, et al.,
Defendants.

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**OPINION AND DECISION
AND ORDER OF THE COURT**
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This matter is before the Court on Plaintiff's Motion for Summary Judgment filed on April 14, 2008. The Court finds that Defendants have not filed responses to Plaintiff's Motion.

A party is entitled to summary judgment if there are no genuine issues as to any material fact, and the party is entitled to judgment as a matter of law.¹ In a decision endorsed and followed by the Ohio Supreme Court, the United States Supreme Court expressed strong support for the use of summary judgment to identify and dispose of cases with no real factual dispute:

[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather *** designed "to secure the just, speedy and inexpensive determination of every action." *** Rule 56 must be construed with due regard not only for the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury, but also for the rights of persons opposing such claims and defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and defenses have no factual basis.²

Civ. R. 56(C) describes the standard upon which a court should grant a motion for

¹ Civ. Rule 56(C); *Dresher* supra, at 280; *Harless v. Willis Day Warehouse Co.* (1978), 54 Ohio St.2d 64.

² *Dresher* at 302.

summary judgment:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

In interpreting Civ. R. 56(C), and Ohio case law, the lead opinion in *Dresher*

discussed the differing burdens a motion for summary judgment places on the moving and nonmoving parties and held that:

a party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden on informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party's claim ***. [T]he moving party must be able to specifically point to some *evidence* of the type listed in Civ. R. 56(C) which affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party's claim *** [I]f the moving party has satisfied its initial burden, the nonmoving party then has a reciprocal burden outlined in Civ. R. 56(E) to set forth specific facts showing that there is a genuine issue for trial ***. (emphasis in original)³

A "genuine" issue of fact exists only where there is "sufficient evidence favoring the nonmoving party to return a verdict for that party."⁴ If the evidence is "merely colorable" or "not sufficiently probative *** summary judgment may be granted."⁵ A "fact" set forth by the nonmoving party to defeat summary judgment is not "material" unless it will be "outcome determinative" under applicable law.⁶

In the instant case, the State's claim against Defendants are appropriate for summary judgment because there are no genuine issues as to any material facts regarding Defendants liability for the violations alleged in the State's Complaint.

³ *Dresher*, at 293.

⁴ *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242,249, 106 S.Ct 2505.

⁵ *Id.* At 249-50.

⁶ *Id.* At 248.

Therefore summary judgment as to Defendants' liability for all violations in the State's Complaint is hereby granted to the State against Donald C. Coen ("Donald Coen") and Rocket Oil Company. Further, the Court orders that Default Judgment be granted against Rocket Oil Company.

Based upon the Court's opinion and decision, it makes the following orders:

1. Donald Coen is individually liable for the acts of Rocket Oil Company and is therefore jointly and severally liable with this company for the violations at the Lewisville Reed's Amoco site.
2. In addition, Donald Coen, as owner of the underground storage tanks (UST's) located at the Lewisville Reed's Amoco site, is personally responsible for the violations at this site.
3. Pursuant to R.C. § 3737.882(C)(2), Donald Coen and Rocket Oil Company are ordered to comply with the registration application, registration certificate, and registration fee requirements for the underground storage tanks (UST's) at Lewisville Reed's Amoco pursuant to Ohio Adm. Code 1301:7-9-04(B)(1-3).
4. Pursuant to R.C. § 3737.882(C)(2), Donald Coen and Rocket Oil Company are order to permanently remove, close-in-place, perform a change in service or immediately place back into service the UST's at Lewisville Reed's Amoco pursuant to Ohio Adm. Code 1301:7-9-12(E)(4).
5. Pursuant to R.C. § 3737.882(C)(2), Donald Coen and Rocket Oil Company are ordered to conduct a closure assessment for the UST system located at Lewisville Reed's Amoco as required by Ohio Adm. Code 1301:7-9-12(I)(1)(iv) and in accordance with the requirements of Ohio Adm. Code 1301:7-9-12(I)(2-5).

6. Pursuant to R.C. § 3737.882(C)(2), Donald Coen and Rocket Oil Company are ordered to submit a Closure Assessment Report for the UST system to remain or to be removed from the Lewisville Reed's Amoco in accordance with the requirements of Ohio Adm. Code 1301:7-9-12(J).
7. Pursuant to R.C. § 3737.882(C)(2), Donald Coen and Rocket Oil Company are ordered to handle all petroleum contaminated soils generated from closure assessment and/or corrective actions undertaken with respect to the UST system at the Lewisville Reed's Amoco in accordance with Ohio Adm. Code 1301:7-9-16.
8. Pursuant to R.C. § 3737.882(C)(2), Donald Coen and Rocket Oil Company are ordered to take the required response action if any free product is discovered in the course of closure assessment activities at the Lewisville Reed's Amoco in accordance with Ohio Adm. Code 1301:7-9-13(G)(3).
9. Pursuant to R.C. § 3737.882(C)(2), Donald Coen and Rocket Oil Company are ordered to conduct any necessary corrective actions at any site referenced herein in accordance with Ohio Adm. Code 1301:7-9-13.
10. Donald Coen and Rocket Oil Company are permanently ordered from violating R.C. Chapter 3737 and the rules adopted thereunder, or any Orders issued by the State Fire Marshall.
11. Donald Coen and his agents, representatives, employees, successors, or assigns, under the names that they presently use or any other names they use through any corporate or other device, and those acting in concert and participation with them directly or indirectly, are permanently enjoined from engaging in the acts or practices of which Plaintiff complains.
12. This Court shall retain jurisdiction of this suit for the purpose of making

any Order or Decree the Court may deem necessary at any time to enforce and administer Donald Coen's compliance with, and to carry out, this Court's judgment.

The Court makes the express determination that there is no just cause for delay and that this decision constitutes a final appealable order for purposes of Civ.R. 54(B).

To determine the appropriate civil penalty to be assessed against Defendant Donald Coen and Rocket Oil Company a hearing will be held upon the request of Plaintiff.

IT IS SO ORDERED.

DATED: March 30, 2009


JULIE R. SELMON, JUDGE

(COPIES SENT THIS DAY TO:
Assistant Attorney General Nicholas J. Bryan and Donald C. Coen)