Laramie v. Philip Morris USA Inc., et al.

Suffolk Superior Court Action No. 1784CV02240-BLS1

Decision and Order Regarding Request for Reconsideration Concerning Defendant's Motion in Limine #3:

Plaintiff Pamela Laramie ("Ms. Laramie" or "Plaintiff") brings this action as the personal representative of the estate of her late husband, Fred R. Laramie ("Mr. Laramie"). Mr. Laramie died of lung cancer in December 2016. Ms. Laramie alleges that Mr. Laramie's lung cancer was caused by his longtime use of Marlboro and Marlboro Light cigarettes, which are manufactured by defendant Philip Morris USA, Inc. ("Philip Morris" or "Defendant"). Ms. Laramie further alleges that Marlboro cigarettes are "defective and unreasonably dangerous," and that they "should not have been marketed, given or sold to [Mr.] Laramie at any time, but especially not when he was a child and un-addicted." First Amended Complaint and Jury Trial Demand (Docket Entry No. 10.1) at 1. Ms. Laramie asserts claims against Philip Morris for breach of warranty and negligence. Her claims are set to go to trial before a Suffolk County jury beginning on Monday, July 29, 2019.

On July 2, 2019, the Court conducted a lengthy hearing on the parties' numerous motions in limine and other pretrial motions. One of the motions heard and decided by the Court on that date was Philip Morris' Motion in Limine #3 to Exclude Evidence Regarding Any Alleged Conspiracy (Docket Entry No. 29.0) ("Motion #3"). The Court expressly denied Motion #3 "based upon Defendant's representation that it intends to argue Mr. Laramie's comparative negligence at trial." See Decision and Order Regarding Multiple Pre-Trial Motions (Docket Entry No. 51.0) at 3.

Since the Court issued its ruling on Motion #3, Philip Morris has elected to withdraw its comparative negligence defense. Philip Morris still plans, however, to offer evidence at trial that Mr. Laramie's lung cancer was legally caused, not by Philip Morris' acts or omissions, but by Mr. Laramie's personal decision to continue smoking for many years despite his purported "knowledge of the health risks and addictive nature of cigarette smoking." Philip Morris' Response to Plaintiff's "Supplemental Memorandum" in Support of Her Request for Reconsideration of the Court's Pretrial Ruling on Defendant's Motion #3, dated July 25, 2019, at 5. Thus, Philip Morris still intends to lay the legal blame for Mr. Laramie's injuries squarely at his own feet, but it will not ask the jury to assess its and Mr. Laramie's relative culpability, and it will not seek to reduce any compensatory damage award Plaintiff might obtain based upon Mr. Laramie's percentage degree of fault.

Both sides now seek guidance from the Court as to whether its prior denial of Defendant's Motion #3 remains in effect in light of Philip Morris' decision to withdraw its comparative negligence defense.

The answer to the question posed is, "it does," because the reasoning behind the Court's decision on Motion #3 has not materially changed. To be more specific, the Court denied Motion #3 because the Court believes that it would be incongruous and unfair to permit Philip Morris to argue that Mr. Laramie was legally responsible for his own injuries based upon his choice to continue smoking cigarettes in the face of his purported knowledge of the health risks associated with smoking, while simultaneously prohibiting Plaintiff from offering evidence that, during the relevant time frame, Philip Morris concealed and/or publicly downplayed the full health risks associated with smoking. The risk of unfairness that drove the Court's original ruling on Motion #3 is not alleviated by Philip Morris' decision to withdraw its comparative negligence defense, while, at the same time, reserving its right to blame Mr. Laramie for his own failure to act. Philip Morris, in effect, offers half a loaf, which means that the potential for unfairness persists.

The United States Court of Appeals for the Eleventh Circuit faced the same question under comparable circumstances in *Cote v. R.J. Reynolds Tobacco Co.*, 909 F.3d 1094 (2018) ("*Cote*"). Judith Berger ("Mrs. Berger"), the claimant in *Cote*, started smoking at the age of thirteen and continued to smoke Philip Morris cigarettes -- despite numerous attempts to quit -- for the next forty years.

1 Id. at 1101-1102. Mrs. Berger eventually was diagnosed with chronic obstructive pulmonary disease, and she brought suit against Philip Morris for her alleged smoking-related injuries.

1 Id. at 1100-1102. She prevailed at trial, but the trial court granted Philip Morris' motion for judgment as a matter of law ("JMOL") with respect to her fraudulent concealment and conspiracy claims because it found that,

Mrs. Berger's own testimony that she started smoking due to peer pressure and that she chose her cigarette brand and type based on personal preferences, not health considerations, overcame any evidence that would fairly support an inference of detrimental reliance.

Id. at 1106-1107. The Court of Appeals, however, reversed the trial court's decision to grant Philip Morris' JMOL motion as erroneous. In doing so, it said,

¹ Mrs. Berger died while her appeal in *Cote* was pending. The named plaintiff, Bernard Cote, was the personal representative of her estate. *Id.* at 1099 n.1.

[i]n this case, jurors heard evidence about the tobacco industry's sustained and pervasive disinformation campaign, Mrs. Berger's exposure to ads that imparted the notion that smoking "wasn't that bad," Mrs. Berger's unawareness early on about the addictive power of nicotine, and her impression that the Surgeon General's warning was based on Additionally, Mrs. Berger testified that she speculation. made multiple unsuccessful attempts to stop smoking before her 1998 diagnosis, even resorting to nicotine gum and "waiting for some miracle" that never happened. With this evidence, any reasonable juror could have inferred that Mrs. Berger might have never started smoking or would have guit smoking earlier if she had known the true facts about the health effects and/or addictive nature of smoking. Contrary to the district court's view, we find that Mrs. Berger's testimony that peer pressure influenced her decision to start smoking and that she chose her cigarette brand and type based on personal preferences did little to rebut the reasonable inference that Philip disinformation campaign confused her understanding about the health hazards of smoking to her detriment. Even if Mrs. Berger started smoking solely as a result of peer pressure, and then subsequently chose her cigarettes based solely on personal preferences, a reasonable juror could have concluded that if she had known the whole truth about the risks of smoking, she would have guit.

Id. at 1109.

Although the claims at issue in *Cote* were different than the claims asserted by Plaintiff in this action, the question of "personal choice" is the same, and the relevance of the tobacco industry's alleged "sustained and pervasive disinformation campaign" is the same. See *id*. So long as Philip Morris contends that Mr. Laramie was legally responsible for his own smoking-related cancer and death because he chose to continue smoking despite knowing the health risks and addictive nature of cigarette smoking, then Plaintiff is entitled to introduce evidence at trial which may tend to show that Philip Morris and/or its agents concealed and/or publicly downplayed "the true facts about the health effects and/or addictive nature of smoking," which might lead a reasonable jury to infer that, "if [Mr. Laramie] had known the whole truth about the risks of smoking, [he] would have quit." *Id*.

For the foregoing reasons,	Philip Morris'	Motion in Limine	#3 to Exclude	Evidence
Regarding Any Alleged Cons	piracy (Docket	Entry No. 29.0) is,	, once again, D l	ENIED.

Brian A. Davis
Associate Justice of the Superior Court

Date: July 26, 2019