2017 PA Super 10

JEFFREY HIGH, Appellant v. PENNSY SUPPLY, INC., v. CHARLES W. HIGH, II,	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 411 MDA 2016

Appeal from the Order Entered February 18, 2016
In the Court of Common Pleas of Dauphin County
Civil Division at No(s): 2013-CV-6181-CV, 2013-CV-6206-CV

CHARLES W. HIGH, II, Appellant v. PENNSY SUPPLY, INC., v. JEFFREY HIGH,	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 416 MDA 2016

Appeal from the Order Entered February 18, 2016
In the Court of Common Pleas of Dauphin County
Civil Division at No(s): 2013-CV-6181-CV, 2013-CV-6206-CV

BEFORE: FORD ELLIOTT, P.J.E., SHOGAN, J., and STEVENS, P.J.E.*

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* Former Justice specially assigned to the Superior Court.

CONCURRING AND DISSENTING OPINION BY SHOGAN, J.:

FILED JANUARY 13, 2017

I am of the opinion that ***Tincher v. Omega Flex, Inc.***, 104 A.3d 328, 336 (Pa. 2014), a design defect case, did not preclude the trial court from granting summary judgment in this "wet concrete" case. Indeed, our Supreme Court explicitly limited its decision "to the context of a 'design defect' claim." ***Id***. at 384 n.21. However, I agree with the learned Majority that at least Jeffrey High arguably raises a strict liability claim "under the theory that the concrete delivered was defective as Pennsy Supply failed to adequately warn [the High brothers] of the inherent danger of concrete to cause severe burns."[1] Majority Opinion at 20. Thus, if the underlying claim is construed as a failure to warn, I agree that summary judgment should not have been granted under the current state of the law. ***See Phillips v. A-Best Products Co.***, 665 A.2d 1167, 1171 (Pa. 1995) (recognizing that a deficient warning to the user regarding the dangers inherent in the product can make a product defective).

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[1] A plaintiff is permitted to proceed under more than one defect theory. ***Barton v. Lowe's Home Centers, Inc.***, 124 A.3d 349, 355 (Pa. Super. 2015).