UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNIVERSAL NORTH AMERICAN INS. CO. a/s/o LAUREN HIGHSMITH,	: Hon. Joseph H. Rodriguez
Plaintiff,	: Civil Action No. 17-3420
v.	:
BLUE RHINO; KINGSFORD PRODUCTS CO., LLC; WALMART,	: ORDER
Defendants.	:

This matter is before the Court on Defendants' motion for summary judgment pursuant to Fed. R. Civ. P. 56. Defendants[1] argue that Plaintiff breached the duty to preserve evidence relevant to the case and, as a result, they will be unable to mount a defense. Specifically, Plaintiff Universal North American Insurance Company a/s/o Lauren Highsmith has alleged that a grill was improperly designed, manufactured, and inspected by Defendants and therefore led to a fire that damaged Highsmith's house, which was insured by Universal North American. Prior to the Complaint's filing, Highsmith disposed of the grill.

[1] Defendants are Blue Rhino Global Sourcing, Inc. (improperly pled as Blue Rhino) and Kingsford Manufacturing Company (improperly pled as Kingsford Products Company, LLC). Also named as a Defendant was Wal-Mart, which joined in the instant motion [Doc. 10].

Factual Background

In 2012, Lauren Highsmith purchased a charcoal grill, manufactured and distributed and/or sold by Defendants. On July 27, 2015, Highsmith was using this grill when charcoal fell onto her deck, resulting in significant property damage. On June 15, 2016, a third party administrator for Defendants sent a letter to Plaintiff requesting that any artifacts be preserved in light of litigation. On September 1, 2016, at the request of Plaintiff, Defendants provided the name of their intended expert and requested to inspect the grill the following week. On September 7, 2016, Defendants responded to Plaintiff's inquiry as to what type of testing would be done on the grill. On September 24, 2016, Defendants followed up with Plaintiff to schedule an inspection of the grill. On December 14, 2016, Plaintiff informed Defendants that the grill had been destroyed by the insured, Lauren Highsmith. On December 15, 2016, Defendants notified Plaintiff that due to the failure to preserve the grill, any and all claims were barred under applicable law. On March 23, 2017, Plaintiff filed a Complaint against Defendants in Camden County Superior Court, alleging that the grill was improperly designed, manufactured, and inspected. On May 12, 2017, this matter was removed from the Superior Court of New Jersey to this Court.

Summary Judgment Standard

"Summary judgment is proper if there is no genuine issue of material fact and if, viewing the facts in the light most favorable to the non-moving party, the moving party is entitled to judgment as a matter of law." Pearson v. Component Tech. Corp., 247 F.3d 471, 482 n.1 (3d Cir. 2001) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)); accord Fed. R. Civ. P. 56 (a). Thus, the Court will enter summary judgment in favor of a movant who shows that it is entitled to judgment as a matter of law, and supports the showing that there is no genuine dispute as to any material fact by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56 (c)(1)(A).

An issue is "genuine" if supported by evidence such that a reasonable jury could return a verdict in the nonmoving party's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is "material" if, under the governing substantive law, a dispute about the fact might affect the outcome of the suit. Id. In determining whether a genuine issue of material fact exists, the court must view the facts and all reasonable inferences

drawn from those facts in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

Initially, the moving party has the burden of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has met this burden, the nonmoving party must identify, by affidavits or otherwise, specific facts showing that there is a genuine issue for trial. Id.; Maidenbaum v. Bally's Park Place, Inc., 870 F. Supp. 1254, 1258 (D.N.J. 1994). Thus, to withstand a properly supported motion for summary judgment, the nonmoving party must identify specific facts and affirmative evidence that contradict those offered by the moving party. Andersen, 477 U.S. at 256-57. "A nonmoving party may not 'rest upon mere allegations, general denials or . . . vague statements . . . .'" Trap Rock Indus., Inc. v. Local 825, Int'l Union of Operating Eng'rs, 982 F.2d 884, 890 (3d Cir. 1992) (quoting Quiroga v. Hasbro, Inc., 934 F.2d 497, 500 (3d Cir. 1991)). Indeed,

> the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

Celotex, 477 U.S. at 322. That is, the movant can support the assertion that a fact cannot be genuinely disputed by showing that "an adverse party

cannot produce admissible evidence to support the [alleged dispute of] fact." Fed. R. Civ. P. 56(c)(1)(B); accord Fed. R. Civ. P. 56(c)(2).

In deciding the merits of a party's motion for summary judgment, the court's role is not to evaluate the evidence and decide the truth of the matter, but to determine whether there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Credibility determinations are the province of the factfinder. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

Discussion

The Court is authorized to grant summary judgment in favor of the party seeking access to certain evidence when that party's adversary has engaged in the spoliation of that evidence. Spoliation is defined as "the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation." Capogrosso v. 30 River Court E. Urban Renewal Co., 482 Fed. Appx. 677, 682 (3d Cir. 2012) (quoting Mosaid Techs. Inc. v. Samsung Elec. Co., 348 F. Supp. 2d 332, 335 (D.N.J. 2004)). It "occurs where: the evidence was in the party's control; the evidence is relevant to the claims or defenses in the case; there has been actual suppression or withholding of evidence; and, the duty to preserve the evidence was reasonably foreseeable to the party." Bull v. United Parcel

Service, Inc., 665 F.3d 68, 73 (3d Cir. 2012). The factors that determine appropriate sanctions for spoliation are: "(1) the degree of fault of the party who altered or destroyed the evidence; (2) the degree of prejudice suffered by the opposing party; and (3) whether there is a lesser sanction that will avoid substantial unfairness to the opposing party and, where the offending party is seriously at fault, will serve to deter such conduct by others in the future." Schmid v. Milwaukee Elec. Tool Corp., 13 F.3d 76, 79 (3d Cir. 1994).

In this design defect case, as in Schmid, there is no suggestion that the Plaintiff acted egregiously or out of ill will, there is sufficient evidence to fairly try the design defect claim, and granting summary judgment would be unfair to the Plaintiff. Lesser sanctions will enable the case to proceed; the harsh sanction of dismissal is inappropriate.

Conclusion

For these reasons,

IT IS ORDERED this 22nd day of February, 2018 that Defendants' motion for summary judgment due to spoliation of evidence [9] is hereby DENIED.

/s/ Joseph H. Rodriguez
JOSEPH H. RODRIGUEZ
U.S.D.J.