

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
May 10, 2006

MARILYN POSSA, ET AL

CIVIL ACTION

VERSUS

NUMBER 05-1307-JJB-SCR

ELI LILLY AND COMPANY, ET AL

RULING ON MOTION FOR SUMMARY JUDGMENT

Before the court is Defendant Eli Lilly and Company's Motion for Summary Judgment. Record document number 20. No opposition has been filed.

Plaintiffs filed suit in state court seeking damages for personal injuries they claim to have suffered as a result of the death of Charles Possa, III. Plaintiffs alleged that Possa took the prescription medication Prozac (fluoxetine hydrochloride) manufactured by defendant Eli Lilly and Company and Possa's death was caused by taking Prozac. Plaintiffs alleged a variety of claims against Lilly.

Defendant Lilly removed the case to this court asserting subject matter jurisdiction under 28 U.S.C. § 1332.¹ Agreeing with Lilly that the plaintiffs' claims against it are limited to those authorized by the Louisiana Products Liability Act (LPLA),² the court granted Lilly's motion for partial summary judgment. The

¹ Plaintiffs did not dispute that non-diverse defendant Dr. John S. Sardisco was improperly joined. Plaintiffs subsequently dismissed him. Record document numbers 9 and 11.

² LSA-R.S. 9:2800.51, et seq.

ruling dismissed the plaintiffs' claims based on failure to test and inspect, careless and negligent conduct, negligence, adulteration and/or misbranding, negligence per se, misrepresentation, unethical behavior, violation of the state Unfair Trade Practices and Consumer Protection Law, violation of state consumer protection statutes, unjust enrichment and breach of implied warranty claims.³ Lilly now moves for dismissal of the plaintiffs' sole remaining claim against it brought under the LPLA.

There is no need to set out the law applicable to a motion for summary judgment. This has been adequately done by the defendant in its supporting memorandum.⁴

To succeed on a claim brought under the LPLA, the plaintiff must prove, among other things, that the defendant manufactured and the plaintiff used the product which caused the alleged injuries. LSA-R.S. 9:2800.54; *Wheat v. Pfizer, Inc.*, 31 Fd.3d 340 (5th Cir. 1994); see also *Jefferson v. Lead Indus. Ass'n, Inc.*, 930 F.Supp 241 (E.D. La. 1996), adopted and aff'd 106 F.3d 1245, 1247 (5th Cir. 1997). Proof that the plaintiff used a similar product, even one chemically identical, to the alleged defective product, is not sufficient to establish liability. *Wheat, supra*; *Jefferson, supra*.

Fluoxetine hydrochloride is the generic name for Prozac, a drug manufactured by Lilly. There is no summary judgment evidence showing that Possa took Prozac manufactured by Lilly. Records from

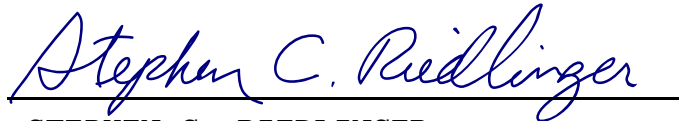
³ Record document number 10, Ruling on Motion to Dismiss.

⁴ Record document number 22, pp. 2-3.

the pharmacy which filled Possa's prescriptions contain data which identify the specific medication used to fill each prescription. In this case, those records do not reflect the numerical codes which identify Lilly as the manufacturer of the fluoxetine hydrochloride dispensed to Possa. Plaintiffs have not come forward with any evidence showing that Possa took Prozac, the form of fluoxetine hydrochloride manufactured by Lilly. Without such evidence, the plaintiffs cannot prevail on their LPLA claim against Lilly.

Accordingly, Defendant Eli Lilly and Company's Motion for Summary Judgment is granted.

Baton Rouge, Louisiana, May 10, 2006.



STEPHEN C. RIEDLINGER
UNITED STATES MAGISTRATE JUDGE