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2002 Decisions

Opinions of the United  
States Court of Appeals  
for the Third Circuit

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1-24-2002

## Helena Chem Corp v. Nelson

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NOT-PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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NOS. 00-3700 AND 01-1252

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HELENA CHEMICAL CO., A DELAWARE CORPORATION

v.

JESSE NELSON, SR., d/b/a NELSON FARMS  
Appellant in 00-3700

Helena Chemical Company,  
Appellant in 01-1252

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On Appeal from the United States District Court  
for the District of New Jersey  
(D.C. Civil No. 97-cv-05662)  
District Judge: Honorable Jerome B. Simandle

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Submitted Under Third Circuit LAR 34.1(a)  
January 8, 2002  
Before: MANSMANN, RENDELL and FUENTES, Circuit Judges

(Filed: January 23, 2002)

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MEMORANDUM OPINION

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RENDELL, Circuit Judge.

Helena Chemical Co. ("Helena") sued Nelson Farms seeking payment for chemicals and spraying services, and Nelson Farms counterclaimed, asserting that Helena's improper application of herbicides had damaged its fields. The District Court entered summary judgment in favor of Nelson Farms for negligence, and against Nelson Farms on its claim under the New Jersey Consumer Fraud Act (the "Consumer Fraud Act"), N.J.S.A. 56:8-2. The jury determined damages, and Nelson Farms was awarded \$310,826 for the negligence claim.

Nonetheless, Nelson Farms appealed, contending that the judge should have found that Helena's actions violated the Consumer Fraud Act because Helena "knowingly

ignored label directions and applied the pesticide [improperly]," because the misrepresentation by Helena was of a type contemplated by the Consumer Fraud Act such that the issue should have been submitted to the jury, and because the court erred in failing to find that the violations of federal and state law were "aggravating circumstances" within the meaning of *Cox v. Sears Roebuck*, 647 A.2d 454 (N.J. 1994), sufficient to give rise to a violation of the Consumer Fraud Act. We have jurisdiction under 28 U.S.C. § 1291, and our review of a summary judgment decision is de novo.

The District Court first considered whether a statement by Helena that it would match a competitor in quality and price amounted to fraudulent inducement to contract. It found that, at most, Helena may have breached an oral guarantee of quality, which does not violate the Consumer Fraud Act by itself, but must be accompanied by aggravating circumstances. See *D'Ercole Sales, Inc. v. Fruehauf Corp.*, 501 A.2d 990, 997-98, 1001 (N.J. Super. Ct. App. Div. 1985). The District Court found that Nelson Farms had put forth no evidence of aggravating circumstances and, in particular, that there was no evidence of "concealment of an intent to provide inferior service from the outset." On appeal, Nelson Farms urges us to hold that the repeated application of the herbicide after Helena's employees realized it was not mixing well amounted to aggravating circumstances. But we agree with the District Court that this does not rise to the level contemplated by the statute. Finally, the District Court reasoned that Helena's statement was "puffing" rather than fraud under the Consumer Fraud Act. See *Gennari v. Weichert Co. Realtors*, 672 A.2d 1190 (N.J. Super. Ct. App. Div. 1996), *aff'd as modified*, 691 A.2d 350 (N.J. 1997) (requiring that the misrepresentation must be material to the transaction, must be false, and must induce the buyer to make the purchase).

The District Court next rejected Nelson Farms' argument that Helena's failure to follow the instructions on the label amounted to an unconscionable business practice because it violated statutes that regulate the use of herbicides. The District Court found no basis in law for this argument and reasoned that misuse of herbicides can be remedied

without reliance on the Consumer Fraud Act through the herbicide statutes' own enforcement provisions.

We agree that summary judgment against Nelson Farms on its Consumer Fraud Act claim was appropriate, essentially for the reasons in the District Court's opinion. We agree that there was no evidence that either Helena's statement or its use of herbicides violated the Consumer Fraud Act. The improper herbicide application did not constitute an "unconscionable commercial practice," in part because it did not reflect the lack of "good faith, honesty in fact and observance of fair dealing" that Cox requires. *Id.* Moreover, Helena's statement that it would meet the quality and cost of its competitor did not constitute a misrepresentation. Instead, it was an assurance given, but Helena then failed to perform in accordance with the assurance. No one alleges that the company lacked the qualifications and was not competent; rather, it just did not follow the label.

Also before us is Helena's cross-appeal from the District Court's denial of its motion for a new trial or remittitur on the ground that the jury awarded excessive damages. In its opinion, the District Court examined in detail the presentations made by competing experts, the calculations of the quantity of each crop that was lost or damaged, and the evidence as to the value of these crops. We conclude that the District Court did not abuse its discretion in denying this motion and that the jury's damage verdict was not "so grossly excessive as to shock the judicial conscience." *Murray v. Fairbanks Morse*, 610 F.2d 149, 153 (3d Cir. 1979) (internal quotation marks and citations omitted).

Finally, Helena cross-appealed from the order granting Nelson Farms' motion to add prejudgment interest to the final judgment. We agree with the District Court that this was an appropriate addition, as the New Jersey Court Rules expressly provide for interest without requiring that it be requested in the complaint or in pretrial submissions.

In sum, for the reasons set forth by the District Court in its opinion, we will AFFIRM.

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TO THE CLERK OF COURT:

Please file the foregoing memorandum opinion.

/s/ Marjorie O. Rendell  
Circuit Judge