

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANGELIQUE RIVERA,	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 99-1244
v.	:	
	:	
MOSSBERG INDUSTRIES, INC.,	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, J.

April 20, 2000

Presently before the Court in this strict liability cause of action is Defendant Mossberg Industries, Incorporated's ("Defendant") Motion for Summary Judgment. Pursuant to said Motion, Plaintiff Angelique Rivera's ("Plaintiff") response thereto, and Exhibits provided by both parties, Defendant's Motion will be granted for the reasons set forth below.

I. BACKGROUND

Plaintiff was employed at Al-Mar Precision Company, a machine shop/plastic molding company. Plaintiff's duties included working on a molding machine and a plastic processing machine, referred to as a granulator or grinder. As part of her job duties, Plaintiff was required to discard plastic that had not molded properly into the grinder for recycling purposes. On February 6, 1998, the grinder that Plaintiff was operating became jammed with a piece of plastic. She turned the machine off and waited at least one more minute before attempting to dislodge the piece of plastic that was jammed within the cutting chamber of the machine. Initially, she opened the machine by lifting the hopper with her right hand, and used her left hand

to dislodge the plastic. When the plastic did not dislodge, Plaintiff reversed the process by opening the machine and holding the hopper with her left hand. Believing that she had more dexterity, she decided to use her right hand in an attempt to dislodge the plastic. She pulled and pushed at the obstruction to no avail. Plaintiff exerted increased force and ultimately cleared the blades, only to have three of her fingers amputated from her dominant right hand.

Plaintiff contends that her actions created a hidden hazard that a worker who attempts to free a piece of plastic from a cutting chamber may exert enough pressure on the rotor assembly located in the cutting chamber to cause serious injury such as the one sustained by her. Plaintiff files the within action alleging that Defendant is liable for her injuries. There is uncontroverted evidence that the granulator involved in the accident was manufactured by Ramco Industries, Inc. (“Ramco Industries”), whose assets Defendant purchased in 1979.

The Model 810 Plastic Granulator

The machine by which Plaintiff was injured is a plastic granulator, or grinder. Such machines are typically used to cut up plastic scrap into small bits, so that the bits of plastic can be re-fed into molding machines. The granulator consists of a rotary cutter assembly mounted in a housing which is supported by a base assembly. A motor is mounted on the rear of the base, which drives the rotary cutter shaft by means of a guarded V-belt.

A hopper assembly is affixed to the top of the cutter housing with a front-facing inlet. The plastic is pushed into the hopper inlet, and it falls by gravity into the cutting area. A pair of knives attached to a rotatable rotor contacts the plastic and carries it up against a pair of bed knives, where it is cut into small pieces. If the pieces are not small enough to pass through a perforated screen, which surrounds the bottom of the rotor, the pieces are carried around by the

rotor and re-cut by the knives until they are reduced in size sufficient enough to pass through the screen. The small bits of plastic which pass through the screen are collected in a drawer-like receptacle within the base of the machine.

The machine was originally designed with a limit switch, which was wired into the control circuitry to act as an interlock. The function of the interlock was to cut electric power to the machine if the hopper was tipped forward about its pivots, so as to expose the rotor chamber. Simply stated, the granulator was manufactured so that, unless the hopper was bolted shut, the machine could not be operated. The bolt and interlock device was designed so that an operator could not open the hopper and gain access to the cutting machine at any time--whether the granulator was powered or not.

Sometime after the date of the manufacture of the granulator, the safety bolt and interlock device were removed from the machine. In order to operate the machine without the bolt and interlock device, the granulator had to be completely re-wired, thereby allowing for the machine to operate with full power.

Plaintiff seeks punitive damages and claims that Defendant is liable under principles of successor liability for: (a) strict liability, for alleged defective design and failure to warn; (b) negligence; and (c) breach of warranty. Defendant files the instant Motion for Summary Judgment arguing that judgment should be entered in its favor because Plaintiff cannot state a prima facie strict liability claim for the following reasons: (a) a risk-utility analysis establishes that the granulator was not defective; (b) the product was not defective at the time of sale; (c) Plaintiff cannot establish a prima facie failure-to-warn claim; and (d) Plaintiff assumed the risk of her injury. Plaintiff responds by stating that there are sufficient facts to support a

jury's finding that the granulator was defective, that the alleged substantial change in the granulator's condition was a foreseeable event, and that Plaintiff did not assume the risk of her injury.

II. STANDARD

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). The moving party has the burden of demonstrating the absence of any genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A factual dispute is “material” if it might affect the outcome of the case under the governing substantive law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Additionally, an issue is “genuine” “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Id.

On summary judgment, it is not the court's role to weigh the disputed evidence and decide which is more probative; rather, the court must consider the evidence of the non-moving party as true, drawing all justifiable inferences arising from the evidence in favor of the non-moving party. See id. at 255. If a conflict arises between the evidence presented by both sides, the court must accept as true the allegations of the non-moving party. See id.

If the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party to “set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). In doing so, the non-moving party must “do more than

simply show that there is some metaphysical doubt as to the material facts.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). If the evidence of the non-moving party is “merely colorable,” or is “not significantly probative,” summary judgment may be granted. Anderson, 477 U.S. at 249-50.

III. DISCUSSION¹

A. Product Line Exception--Successor Liability

Under Pennsylvania law, the general rule is that when one corporation sells or transfers its assets to another corporation, the second company does not become strictly liable for the liabilities of the parent company. Conway v. White Trucks, a Div. of White Motor Corporation, 885 F.2d 90 (3d Cir.1989). Although this is the general rule in Pennsylvania, many exceptions have arisen, including the “product line exception.” Dawejko v. Jorgensen Steel Co., 434 A.2d 106 (Pa.Super.1981). There are certain factors that must be considered when applying the product line exception, including whether the successor corporation advertised itself as an ongoing enterprise; whether the successor maintained the same product, name, personnel, clients, and properties; whether the successor acquired the predecessor's name and good will; and whether it required the predecessor to dissolve. Id. at 111. Other factors that the court may apply include those from the "tripartite test" for imposing strict liability upon successors, consisting of three factors: (1) the virtual destruction of the plaintiff's remedies against the original manufacturer caused by the successor's acquisition of the business, (2) the successor's

1. Plaintiff's negligence and breach of warranty claims must fail as a matter of law. Plaintiff's only viable claim against Defendant as a successor in interest sounds in strict liability. Plaintiff admits in her Complaint that Defendant did not manufacture the granulator, but argues that Defendant is liable as a successor to the machine's manufacturer. Because the “product line” exception does not extend to breach of warranty and negligent claims, both claims shall fail.

ability to assume the original manufacturer's risk- spreading role, and (3) the fairness of requiring the successor to assume a responsibility for defective products that was a burden necessarily attached to the original manufacturer's good will being enjoyed by the successor in the continued operation of the business. Dawejko, 434 A.2d at 109, (citing Ray v. Alad Corporation, 19 Cal.3d 22, 31, 136 Cal.Rptr. 574, 579, 560 P.2d 3, 9).

Even though Pennsylvania recognizes these factors as important to an analysis of successor liability, the Dawejko court found that the formulation from Ramirez v. Amsted Indus. Inc., 431 A.2d 811, was the best and adopted it as the rule. Dawejko, 434 A.2d at 111. It provides:

[W]here one corporation acquires all or substantially all the manufacturing assets of another corporation, even if exclusively for cash, and undertakes essentially the same manufacturing operation as the selling corporation, the purchasing corporation is strictly liable for injuries caused by defects in units of the same product line, even if previously manufactured and distributed by the selling corporation or its predecessor.

Id., at 110, (citing Ramirez v. Amsted Indus., Inc., 431 A.2d 811, 825 (N.J.1981)). The court cautioned that it did not want to frame this exception too tightly, saying that "it should be phrased in general terms, so that in any particular case the court may consider whether it is just to impose liability on the successor corporation." Id. at 111 (emphasis added). However, the product line exception does not apply for the successor if the predecessor company still exists to be held liable for the injury. Conway, 885 F.2d at 91.

The product line exception, as it was adopted in Pennsylvania, was developed in response to deficiencies in the holdings of strict liability and products liability cases. Ramirez, 431 A.2d at 825. Generally, corporations are held strictly liable for injuries from defects in

products that they manufacture. Corporations make allowances for such liability by spreading the risk cost out to consumers. Id. at 821. When the manufacturers ceased to exist as viable entities, consumers were left with a void, there being no existing entity from which they could seek compensation for their injuries. Pennsylvania court decisions have, so to speak, filled the void by holding successor corporations strictly liable for the defects of the original manufacturer, in certain circumstances. Defendant has not conceded that it is the successor to Ramco Industries for purposes of strict liability, however, the issue was not briefed. Therefore, notwithstanding Defendant's belief that it is not Ramco Industries successor for purposes of strict liability, based on the limited relevant facts of record, we will pursue Plaintiff's strict liability claim.

B. Strict Liability

Under a theory of strict liability the plaintiff must show two things: (1) the product was defective and was so when it left the manufacturer and (2) the defective product caused the plaintiff's injury. Berkebile v. Brantly Helicopter Corp., 462 Pa. 83, 337 A.2d 893 (1975). Before a case of strict liability goes to the jury, the trial judge determines as a matter of law whether the product is defective. Mackowick v. Westinghouse Electric Co., 525 Pa. 52, 575 A.2d 100 (1990).

Pennsylvania adopted the Restatement of Torts (Second) 402A explaining strict liability in Webb v. Zern, 422 Pa. 424, 220 A.2d 853 (1966). Section 402A imposes strict liability on the seller of any product "in a defective condition unreasonably dangerous to the consumer." Comment I to the Restatement states that the product "sold must be dangerous to the extent beyond that which would be contemplated by the ordinary consumer who purchases it, with ordinary knowledge common to the community as to its characteristics." A manufacturer of

a product is not the insurer of its product. Azzarello v. Black Brothers Co., Inc. 480 Pa. 547 (1978). However, it is responsible for making the product safe which in some instances requires certain warnings to accompany the product about "the possible risks and inherent limitations." Berkebile, 337 A.2d at 902.

Comment j to the Restatements of Torts (Second) 402A provides:

In order to prevent the product from being unreasonably dangerous, the seller may be required to give directions or warning, on the container, as to its use.... [Where the] danger is not generally known, or if known is one which the consumer would reasonably not expect to find in the product, the seller is required to give warning against it, if he has knowledge, or by the application or reasonable, developed human skill and foresight should have knowledge, of the presence of the . . . danger.

“A warning of inherent dangers is sufficient if it adequately notifies the intended user of the unobvious dangers inherent in the product.” Mackowick v. Westinghouse Electric Co., 525 Pa. 52, 575 A.2d 100 (1990). The determination of whether a warning is adequate and whether a product is "defective" due to inadequate warnings are questions of law to be answered by the trial judge. Id. at 56, 575 A.2d at 102. A manufacturer is not required to warn consumers of open and obvious dangers, but must warn the consumer of latent defects. Hon., 835 F.2d 510 (3rd.Cir 1987).

Failure to Warn

It is undisputed that the granulator at issue had no warnings on it at the time of the accident. According to Plaintiff's expert, soundproofing material was added to the outside of the hopper sometime after the date of manufacture. Defendant claims that this soundproofing material covered the warnings that were attached to all of the Model 810

granulators when they left the control of Ramco Industries. Plaintiff does not dispute this fact in any of her pleadings.

Defendant contends that the granulator machines manufactured by Ramco Industries in the 1970's contained the following warnings:

CAUTION
ROTATING KNIVES
ELECTRICAL HAZARDS

1. NO unauthorized person may open, clean, work on or otherwise tamper with this plastic granulator.
2. NO authorized person cleaning or working on this granulator shall do so without first disconnecting it electrically from the power source.
3. FAILURE to read and observe above rules and/or failure to wear eye or hearing protective devices as furnished by the owner of this grinder are made serious offenses under Public Law 91-596.

ALL EMPLOYEES ARE WARNED THAT THE EMPLOYER UNDER OSHA
MUST TAKE IMMEDIATE DISCIPLINARY ACTION UP TO AND
INCLUDING DISMISSAL FOR FAILURE TO COMPLY WITH
THESE PRECAUTIONARY WARNINGS

WARNING
ROTATING BLADE
KEEP HAND OUT

WARNING
DISCONNECT AND LOCKOUT
POWER BEFORE OPENING HOPPER

In Davis v. Berwind Corporation, Pa., 690 A.2d 186 (1997), the plaintiff was injured when she placed her hand into a meat blender, after she had turned the equipment off, believing that the blades were inoperative. In reality, the blades continued to spin and she sustained injuries to her hand. The machine contained an interlocking safety device that had been removed by the employer. It also contained a visible warning that stated, "DANGER,

KEEP FINGERS OUT OF DOOR OPENINGS.” The plaintiff proceeded with a theory of failure to warn. Specifically, there were no warnings advising users that it was dangerous to put one’s hand into the machine after it was turned off.

The Pennsylvania Supreme Court upheld the Pennsylvania Superior Court’s grant of judgment n.o.v. in favor of the defendant. The court concluded that the warnings about keeping fingers out of the door openings was sufficient, as a matter of law, and that she was injured because she failed to heed this warning.

In the case at bar, Plaintiff does not dispute, and in fact concedes, that the granulator at issue was manufactured with warnings. In her Brief, Plaintiff maintains that all operating instructions for the grinder saw are identical or substantially similar to the warning that states, “KEEP HAND OUT OF CUTTING CHAMBER WHILE MACHINE IS UNDER POWER.” This could be true, but because Plaintiff does not dispute that the Model 810 granulator contained the warnings as stated on page 9, and pursuant to the Pennsylvania Supreme Court’s holding in Davis, Plaintiff’s failure to warn claim must fail as a matter of law. In other words, the original warnings were sufficient to warn a user. Thus, the product was not defective for failure to warn when it left defendant’s control.

Foreseeability

Section 402A reads:

(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if (a) the seller is engaged in the business of selling such a product and, (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

Therefore, a manufacturer may not be held liable for injuries sustained in conjunction with the use of a product which is made unsafe by changes subsequent to the time the product left the manufacturer's possession, as long as the manufacturer could not have reasonably foreseen the alteration. See Powell v. Drumheller, 539 Pa. 484, 493 (1995).

As stated above, the granulator was not in the same condition that it was in when it left Ramco Industries' possession. The granulator was designed so that the bolt and interlock device had to be in place in order for power to flow to the machine. Sometime after the date of the manufacture, both the bolt and the interlock device were removed (as were any warnings) from the granulator. As manufactured, the granulator could not operate without the bolt and interlock device, and therefore, the machine had to be re-wired when these parts were removed. While not completely accurate, Defendant claims that had the bolt and interlock device been in place, the accident would not have occurred because Plaintiff would not have had access to the cutting chamber.²

Had the machine been left intact, the safety gate and connecting interlocks would have rendered this tragic industrial accident an impossibility. On closer analysis, then, Plaintiff does not seek to premise liability on any defect in the design or manufacture of the machine but on the independent, and presumably foreseeable, act of a third party in destroying the functional utility of the interlock device. Principles of foreseeability, however, are inapposite where a third party affirmatively abuses a product by consciously bypassing built-in safety features.

Plaintiff claims that the removal of the bolt and interlock device was not a substantial change, but a foreseeable one in which the manufacturer should have anticipated. In

2. It is not disputed that the interlock device could be removed with the assistance of a wrench.

furtherance of this argument, Plaintiff contends that the issue of what warnings, if any, were made by the manufacturer concerning the removal of the bolt and interlock device is within the purview of the jury and not of this Court.

“The foreseeability of misuse or alteration of a product, in either case, is part of the analysis of a negligence action, not a products liability action.” Brantner v. Black & Decker Mfg. Co., 831 F.Supp. 454, 457 (W.D.Pa.1993); see Griggs v. BIC Corp., 981 F.2d 1429, 1433 (3d Cir.1992)(citations omitted); see also Malinoski v. Glass Equipment Development, Inc., 869 F.Supp. 308, 312 (M.D.Pa. 1994)(an aversion to inclusion of foreseeability analysis in products liability claims has been expressed by the Third Circuit Court of Appeals). Plaintiff asserts that Defendant should have foreseen the third-party’s alteration of the granulator, and argues that at the least, should have placed sufficient warnings on the machine to prevent the very alterations that took place. However, this argument creates an overlap between Plaintiff’s claim for strict products liability and her claim for negligence. The focal point of the Court’s foreseeability analysis cannot be on whether or not there were sufficient warnings on the granulator that would preclude the alteration, for such focus would be on the manufacturer’s conduct, rather than the granulator’s design. To follow Plaintiff’s argument in this respect would serve to divert the Court’s attention from product, as designed and manufactured, to the reasonableness of the manufacturer’s failure to provide adequate warnings--an issue that falls within the guise of a negligence analysis.

Furthermore, the granulator was manufactured with a fixed safety device that required substantial effort to remove. It is undisputed that the granulator left the control of Ramco Industries in this condition. The bolt and interlock device were provided as a safety

measure, in contemplation of the very injury that Plaintiff sustained. For reasons unknown to this Court, and the parties involved, these safety features were removed. Based on the Record, I am unable to find that there is any evidence that would allow a jury to find that the removal of the bolt and interlock devices were within the contemplation of the manufacturer at the sale date. Approximately twenty years passed between the sale date and the date of the incident at issue here, and it appears from the Record that Plaintiff's employer was in possession and had control of the granulator the entire time. See Rooney v. Federal Press Co., 751 F.2d 140, 143 (3d Cir.1984).

While it may be foreseeable that an employer will abuse a product to meet its own self-imposed production needs, responsibility for that willful choice may not fall on the manufacturer. Absent any showing that there was some defect in the design of the granulator at the time the machine left the practical control of Ramco Industries, Defendant may not be found liable under a strict products liability theory.

Notwithstanding the granulator's changed conditions, Plaintiff contends that the granulator was, in fact, defective when it left the practical control of Ramco Industries. However, in applying the risk-utility analysis below, Plaintiff fails to make her argument applicable to the granulator, as manufactured.

Risk-Utility Analysis

In determining whether a product is unreasonably dangerous or defective, the court will weigh the social utility of the product and the unavoidable risks the product contains. Some Pennsylvania courts have adopted a list of factors to consider while making this determination:

- (1) The usefulness and desirability of the product--its utility to the user and to the public as a whole.
- (2) The safety aspects of a product--the likelihood that it will cause injury, and the probable seriousness of the injury.
- (3) The availability of a substitute product which would meet the same need and not be a unsafe;
- (4) The manufacturer's ability to eliminate the unsafe character of the product without impairing its usefulness or making it too expensive to maintain its utility.
- (5) The user's ability to avoid danger by the exercise of care in the use of the product.
- (6) The user's anticipated awareness of the dangers inherent in the product and their avoidability, because of general public knowledge of the obvious condition of the product, or of the existence of suitable warnings or instructions.
- (7) The feasibility, on the part of the manufacturer, of spreading the loss of setting the price of the product or carrying liability insurance.

Phillips v. A.P. Green Refractories Co., 630 A.2d 874, 881 (1993)(citations omitted). After weighing the above factors, if the court concludes that the product is unreasonably dangerous, the risk of loss must be allocated to the manufacturer. Riley v. Becton Dickinson Vascular Access, 913 F.Supp. 879, 882 (E.D.Pa. 1995). However, if the court concludes that the product is not unreasonably dangerous, it must find for the manufacturer. Id.

Plaintiff acknowledges that the granulator itself has a usefulness (factor one); that there does not appear to be a substitute product that would meet the same need and not be unsafe (factor three); but states that it seems possible for the manufacturer to spread any loss implicated by a safer design in a variety of ways (factor seven). Therefore, Plaintiff is conceding that factors

one and three weigh in favor of the manufacturer. There remain four factors for consideration under the risk-utility analysis.

***Gravity of the Risk of Harm and Ability to Eliminate It
(Factors Two and Four)***

Plaintiff provides the Court with expert testimony as support for its theory that the manufacturer should have and could have employed reasonable alternative devices to prevent access to the cutting chamber--i.e., the risk of harm. Plaintiff's expert outlines four ways to eliminate the risk of harm, one of which is that a "lock-out device" be added to the granulator.

The expert stated that:

On approach to elimination of the hazard as far as operators are concerned is simply to prevent them from having access to the cutting chamber. This can be accomplished by securing the hopper in such a way that an operator simply does not have the tools necessary to gain access to the danger area. For example, one scrap granulator manufactured by a competitor, which was seen in use at Al-Mar, has the hopper bolted securely in place with four bolts.

It seems uncontroverted that Plaintiff's expert was unaware of the fact that the granulator did, in fact, contain a similar bolt system. Thus, when Ramco Industries designed and manufactured the granulator, it did so with a consideration of the risk of harm involved in this case and, in fact, eliminated the harm by manufacturing the bolt and interlock system. Plaintiff's expert testimony provides that the granulator, unaltered and as manufactured, was safe. Therefore, the second and fourth factors in the risk-utility analysis must weigh in Defendant's favor.³

The User's Ability to Avoid Danger by Exercising Care in the

3. The granulator, in its unaltered form, met the specifications that Plaintiff's expert testified would be necessary to make for a safer machine. Therefore, the second factor must weigh in favor of Defendant.

Use of the Product (Factor Five)

The threshold analysis in factor five focuses on the condition of the product at the time it was marketed, and whether that condition justifies placing the risk on the manufacturer. Azzarello, 480 Pa. 547, not whether the plaintiff assumed the risk. “Risk-utility analysis is an objective test that focuses on the product” and the fifth factor requires consideration of the “extent to which the hypothetical ‘average user’ of the product--not the plaintiff--could avoid injury through the use of due care. Surace, 111 F.3d at 1050.⁴ In other words, the user’s ability to avoid injury by the exercise of care in the use of the product appears to be a design factor that may justify a more or less exacting design depending on the facts. Id. at 1050-52.

In order to determine whether the ordinary user would have been able to avoid the danger of the injury suffered, courts look to see if the average user could relatively easily use the same product more safely. Van Buskirk v. The West Bend Co., 1999 WL 424289, *7 (June 24, 1999). The issue then is whether or not Plaintiff exercised care in trying to dislodge the plastic with her hands.

The evidence shows that there were other ways to dislodge the plastic. Plaintiff’s deposition provides evidence that she had seen her supervisor and a co-worker remove plastic stuck between granulator blades by pushing it through with a tool. Furthermore, Plaintiff’s supervisor also testified that when plastic was tightly stuck in the blades, she would use a crowbar to “pry it out.” Plaintiff was aware of alternative procedures that could be utilized to

4. Notwithstanding the fact that Plaintiff provided this objective standard, her argument rapidly evolves into one that applies a subjective analysis of the fifth factor of the risk-utility analysis.

dislodge plastic from the granulator blades. Notwithstanding, Plaintiff chose to attempt to remove the plastic with her own hands--a method that appears from the record--to be not only the least effective, but the most dangerous. As Plaintiff acknowledges, there were safer ways to clear plastic from the granulator blades. Therefore, the fifth factor weighs in Defendant's favor.

The User's Anticipated Awareness of the Dangers and Their Avoidability (Factor Six)

There is no doubt that a granulator is a dangerous product when the blades are exposed. However, it is undisputed that the granulator was not in the same condition as it was when it was manufactured, and as manufactured, the granulator contained a bolt and interlock device that served to guard the blades' exposure. Clearly, the manufacturer was aware of the dangers inherent in a granulator that exposed its blades, and manifested this awareness in designing the granulator with the very safety features that were removed by a third party prior to Plaintiff's accident. Moreover, Plaintiff was aware that the blades of a granulator were capable of amputating her fingers.⁵ The sixth factor weighs in favor of Defendant.

Assumption of the Risk

Assumption of the risk is a viable defense in strict liability cases. Surace v. Caterpillar, Inc., 111 F.3d 1039, 1054 (3d.Cir.1997)(citations omitted). To prevail on an assumption of the risk defense, a defendant must show "that the plaintiff knew of the defect and voluntarily and unreasonably proceeded to use the product or encounter a known danger."

Wagner v. Firestone Tire & Rubber Co., 890 F.2d 652, 657 (3d Cir.1989) (citation omitted).

"[W]hether the plaintiff knows of the existence of the risk, or whether he understands and

5. Q: . . . if you put your hand near the blade when the blade was moving it could cut your fingers off, correct?
A: Yes.

appreciates its magnitude ... is a question of fact, usually to be determined by the jury under proper instructions from the court. The court may itself determine the issue only where reasonable men could not differ as to the conclusion.” Mucowski v. Clark, 404 Pa.Super. 197, 202, 590 A.2d 348, 350 (1991) (quoting Staymates v. ITT Holub Indus., 364 Pa.Super. 37, 49, 527 A.2d 140, 146 (1987)).

It is important to focus on the direct deposition testimony of Plaintiff in order to determine whether or not she knew of the existence of the risk, and/or whether she understood and appreciated its magnitude. In pertinent part, Plaintiff testified as follows:

Q: Did you know that there was a blade inside the [Ramco] machine that cut up the plastic into pieces?

A: Yes.

Q: And you know the blade was sharp, right?

A: Yes.

Q: And you know that if your hands came in contact with the blade it could cut you, correct?

A: Right.

Rivera Dep., 86:13-24.

Q: You knew that the blades were sharp enough so that when it put big pieces of plastic in the top it chopped them up and came in small pieces out the bottom, correct?

A: Yes.

Q: And that if you put your hand near the blade when the blade was moving it could cut your fingers off, correct?

A: Yes.

Id. at 86:13-20; 87:2-13.

Q: So you know that the blade could turn inside the machine even when the power was off, right?

A: Yes.

Id. at 96:4-6.

Seemingly, Plaintiff admitted that she was aware that the blades were extremely sharp and could cut her fingers. Furthermore, Plaintiff's deposition provides that she was aware that her efforts to dislodge the plastic stuck between the blades could result in her fingers being cut:

Q: At that time you were pushing the plastic down, you knew that it was stuck in the blades, right?

A: Right.

Q: And you know that you were trying to jam it down through the blades, right?

A: Yes.

Q: And you knew that if you put your hand down in between those two blades that your hand could get cut, right?

A: Yes.

Id. at 155:17-156:2.

In complete disregard of the risk she was taking, Plaintiff proceeded to try to dislodge the plastic inside the granulator. She admitted to knowing of the existence of the risk and she understood the potential severity of the consequences of her actions. While this is usually a question for a jury, I conclude that reasonable people could not differ as to the conclusion that Plaintiff assumed the risk and accepted the potentially severe consequences of placing her hand into the blade column of the granulator.

IV. CONCLUSION

Plaintiff filed the within action against the manufacturer of a granulator that was neither defective, nor unreasonably dangerous at the time it entered the market. Plaintiff's own

expert testified that a security device, such as a bolt device would have prevented the type of injury that was sustained in this case. As manufactured, the granulator did, in fact, contain a bolt and interlock device that was intended to remain in tact while the granulator was in use. However, due to a third-party's alteration and removal of the bolt and the interlock device, Plaintiff suffered the unfortunate injury upon which this cause of action is based. Pennsylvania utilizes a risk-utility analysis that, when applied to the case sub judice, weighs heavily in favor of Defendant (at least 6 of 7 factors favor Defendant). Notwithstanding, Plaintiff assumed the risk of substantial injury when she used her hand to dislodge a piece of plastic, knowing full-well that other options were readily available to her. Therefore, Defendant's Motion for Summary Judgment is granted, and Plaintiff's Complaint is dismissed.

An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANGELIQUE RIVERA,	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 99-1244
v.	:	
	:	
MOSSBERG INDUSTRIES, INC.,	:	
Defendant.	:	

ORDER

AND NOW, this 20th day of April, 2000, upon consideration of Defendant Mossberg Industries, Incorporated's Motion for Summary Judgment, and Plaintiff Angelique Rivera's response thereto, it is hereby ORDERED and DECREED that said Motion is GRANTED with prejudice.

It is further ORDERED that the Clerk mark this case CLOSED.

BY THE COURT:

RONALD L. BUCKWALTER, J.