

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

JAMES AYLING : CIVIL ACTION  
RUTH AYLING, h/w :  
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 :  
v. :  
 :  
 :  
FIFE CORPORATION : NO. 04-5404  
MAXCESS INTERNATIONAL CORPORATION :

**MEMORANDUM AND ORDER**

M. FAITH ANGELL  
CHIEF UNITED STATES MAGISTRATE JUDGE

February 2, 2006

On May 11, 2005, the parties filed a notice of consent to have me conduct all further proceedings in this action, and, on May 12, 2005, the Honorable Timothy J. Savage ordered that the case be referred to me for all further proceedings and the entry of judgment. *See* Docket Entries Nos. 8 and 9.

Presently before this Court is Defendants Fife Corporation and Maxcess International Corporation, the parent corporation to Fife Corporation, Motion for Summary Judgment. In their motion for summary judgment, Defendants argue that there is no evidence that the type of leak that occurred would have been prevented by a permanent drip tray. *See* Defendants' Memorandum of Law in support of their Motion for Summary Judgment at 11.<sup>1</sup> Upon consideration of this motion, Plaintiffs' response, the record, and the applicable caselaw, and as discussed more fully below, Defendants' motion will be denied.

**I. FACTUAL BACKGROUND<sup>2</sup>**

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<sup>1</sup>Hereinafter Defendants' Memo.

<sup>2</sup>The factual history is compiled from a review of the original record of the Court of Common Pleas of Philadelphia County, Defendants' motion for summary judgment, their memorandum in support of their motion, inclusive of all exhibits thereto; Plaintiffs' response, their memorandum in support of their response, with exhibits, and the record of this court. All facts, and reasonable inferences therefrom, are considered in the light most favorable to the non-moving

I begin by presenting the facts, drawing all reasonable inferences in favor of Plaintiffs, the non-moving parties. *See e.g., Hamilton v. Leavy, et al.*, 322 F.3d 776, 782, n. 4 (3d Cir. 2003).

On or about October 20, 2002, at approximately 11:30 p.m. Plaintiff James Ayling reported to work the third shift at the Kurz-Hastings Plant in Philadelphia, Pennsylvania, where he was employed as a Special Coater. *See Defendants' Memo, Exhibit C at 16-17.* He worked in the Coating Department in which large machines processed and manufactured laminates on items such as credit cards and snack food bags. *See Plaintiffs' Memorandum of Law in support of their response to Defendants' motion for summary judgment at 1<sup>3</sup>; Defendants' Memo, Exhibit C at 33.*

Shortly after Mr. Ayling's arrival at work, he began working on Machine Number 29 (#29), which was approximately two (2) stories high and 75 to 80 feet long. *Id.* at 47. Upon starting #29, one or more of the web guides<sup>4</sup> on the third level of the machine required adjustment, so Mr. Ayling and Frank Maguire, a co-worker, proceeded up the steel stairway to the third level. After adjusting the web guide, Mr. Ayling began to step down from the catwalk on the third level, slipped, and fell down a set of diamond plate metal steps to the second level. *Id.* at 88-91.

Mr. Maguire helped Mr. Ayling from the second level to ground level, and he also assisted Mr. Ayling to a chair, due to pain in his right ankle. *See Defendants' Memo, Exhibit C at 93-95.* Mr. Ayling took off his right shoe and noticed oil on his hands. He subsequently saw oil on the front and the heel of the shoe's sole. A small amount of oil was also on the back of the heel of his left shoe. *Id.* at 174-176. Mr. Ayling remained seated until he went home at 4:30 a.m. *Id.* at 101.

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party.

<sup>3</sup>Hereinafter Plaintiffs' Memo.

<sup>4</sup>Web guides keep the film straight as it processes through the entire machine. *See Defendants' Memo, Exhibit C at 49.*

The incident was reported to Mr. Ayling's supervisor, George Schaefer, who then went to the third level and noticed oil on the catwalk surface. *See* Defendants' Memo, Exhibit E. Mr. Schaefer had rags placed on top of the oil deposits and issued a work order to repair the oil leaks at the web guides. *Id.*; Defendants' Memo, Exhibit D at 36.

Mr. Ayling asserts that had the web guides been equipped with a drip tray, the hydraulic fluid would not have leaked onto the diamond plate steel catwalk, and Mr. Ayling would not have stepped in the oil that dripped from the web guides. He would not have slipped and fallen on the catwalk and injured himself. *See* Plaintiffs' Memo at 4.

## **II. MOTION FOR SUMMARY JUDGMENT**

In their motion for summary judgment, Defendants assert that they cannot be liable to Mr. and Mrs. Ayling because there is no evidence that the type of leak that occurred would have been prevented by a permanent drip tray. *See* Defendants' Memo at 11.

## **III. DISCUSSION**

### **A. Legal Standard**

Summary judgment is appropriate only where there exists no genuine issue as to any material fact, such that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56©).

“When the non-moving party bears the burden of persuasion at trial, the moving party may meet its burden on summary judgment by showing that the nonmoving party's evidence is insufficient to carry its burden of persuasion at trial.” *Brewer v. Quaker State Oil Refining Corp.*, 72 F.3d 326, 329 (3d Cir. 1995); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 2552-53, 91 L.Ed.2d 265 (1986). A non-moving party creates a genuine issue of material fact when it provides evidence ‘such that a reasonable jury could return a verdict for the non-moving

party'. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1996); *Lawrence v. National Westminster Bank New Jersey*, 98 F.3d 61, 65 (3d Cir. 1996).

## **B. Analysis**

While Defendants assert that they cannot be liable to the Aylings because there is no evidence that the type of leak that occurred would have been prevented by a permanent drip tray, Plaintiffs claim that the evidence establishes that the source of the leak was Defendants' product. They aver that Mr. Ayling's injury would not have occurred if Defendants had included a drip tray with its web guides as "required" equipment, rather than as an "option". See Defendants' Memo at 11 and Plaintiffs' Memo at 5.

The Pennsylvania Supreme Court has adopted the strict products liability doctrine in Section 402A of the Restatement (Second) of Torts.<sup>5</sup> To prevail under section 402A, a plaintiff must prove the existence of 1) a product; 2) the sale of a product; 3) a user or consumer; 4) a defective condition, unreasonably dangerous; and 5) causation. If any of these requisite elements remains unsatisfied, § 402A has no applicability. *USA v. Union Corp*, 277 F. Supp. 2d 478, 492 (E.D.Pa. 2003) (internal citations omitted).

See also *Booth v. Black & Decker, Inc.*, 166 F. Supp. 2d 215, 222 (E.D.Pa. 2001). "A product is defective if it lacks any element necessary to make it safe for its intended use or contains any

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<sup>5</sup>Section 402A of the Restatement (Second) of Torts states:

(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.

(2) The rule stated in Subsection (1) applies although

(a) the seller has exercised all possible care in the preparation and sale of his product, and

(b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.

condition that makes it unsafe for its intended use. There are three different types of defective conditions that can give rise to a strict liability claim: design defect, manufacturing defect, and failure-to-warn defect. The defect must have existed at the time that the product left the manufacturer's hands." *Id.* (internal citations omitted). "Liability for a design defect attaches where there is a discrepancy between the design of a product causing injury and an alternative specification that would have avoided the injury." *Id.*

That there is a product which was sold to the Kurz-Hastings Plant in Philadelphia, Pennsylvania for its laminating business is evident. What remains at issue is whether or not the web guide was the cause of Mr. Ayling's injury and, if it did cause his injury, was it due to an unreasonably dangerous design defect. These questions preclude the granting of a motion for summary judgment.

Apparently, it was oil on Mr. Ayling's shoe that caused him to slip down the flight of steps and injure his ankle, but, it is difficult to know the exact source of that oil, or its quantity. It is also not possible, at this stage of the litigation, to state that because the web guide did not have a drip tray, the machine was defective, and that defect caused Mr. Ayling to fall and injure his ankle.

At the time of his accident, Mr. Ayling was not aware of any leaking oil or any problem with the floor on the third floor of #29, nor did he notice anything unusual while he was there. *See* D.T. 4/21/05, 84, 87, 91. Nonetheless, the oil he found on his shoes after his fall, leads one to surmise that there was oil on the catwalk. The question then becomes, from where did this oil come? Mr. Schaefer testified to a variety of possibilities regarding the source of oil leaks at the plant. *See* Defendant's Memo, Exhibit D. He described hot oil leaks, as well as chill water and antifreeze. At one point, Mr. Schaefer related the difficulty in getting to the source of a leak. He was asked his

belief concerning the source of the oil on the catwalk that night.

Q: All right. Now, when Mr. Ayling reported this incident to you did you believe it was one of those drips from those stems that dripped onto the catwalk?

A: I don't think that I as I sit here and recollect that I would believe it was anything. All I merely said and knew that was, there was oil on the catwalk surface, okay, and that's why as I sit back and try to clarify everything for everybody here, the basic web guide unit any oil that would come off of that is not where our leak problem was always originating from, especially at the top level because, like I say, the basic leaks that would only take place are the ones that we always worried about that would get on the film and we had to have maintenance build those stainless steel collection trays.

. . . . .

In other words, when you – when your car's using oil, whether you're burning it out the tailpipe or you're dripping it from a gasket underneath, you have to add oil from the top and when you add oil from the top sometimes we always don't get it in the filler and it overflows and will roll down the valve cover onto your spark plug and in this particular case I believe what you see here is if this reddish color oil was actually used for the hydraulic oil to fill it I believe that it was anything that may have pyramided or got spilled or dripped down from the can or the person adding it. D.T. 10/4/05, 60.

It remains to be established whether or not the web guide was the cause of Mr. Ayling's injury, and if it was the cause, was it due to a design defect? Genuine issues of material fact exist that must be resolved by a jury. The granting of a motion for summary judgment would be inappropriate.

#### **IV. CONCLUSION**

Consistent with the above discussion, the motion for summary judgment filed by Defendants is denied.

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**ORDER**

AND NOW, this 2<sup>nd</sup> day of February, 2006, upon consideration of Defendants' motion for summary judgment, Plaintiffs' response, and consistent with the above discussion, it is hereby **ORDERED** that the Motion of Defendants Fife Corporation and Maxcess International Corporation, Parent Corporation to Fife Corp. for Summary Judgment (Docket Entry No. 21) is **DENIED**.

BY THE COURT:

S/ M. FAITH ANGELL  
M. FAITH ANGELL  
CHIEF UNITED STATES MAGISTRATE JUDGE