

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

DENISE VALLETTO, : CIVIL ACTION  
 : NO. 98-00430  
Plaintiff, :  
 :  
v. :  
 :  
NORDIC ADVANTAGE, INC., :  
 :  
Defendant. :

M E M O R A N D U M

Buckwalter, J.

August 25, 1998

Before the Court is defendant's motion for summary judgment, which I will grant for reasons that can be briefly stated.

In April 1994 plaintiff Denise Valletto, a New Jersey resident, purchased a NordicTrack Pro ski exerciser machine manufactured by defendant Nordic Advantage, a Minnesota corporation. After using the NordicTrack several times, Valletto began to experience foot pain and discontinued use of the machine. (Valletto Deposition at 27). She sought medical help in September 1994. She filed this lawsuit on December 11, 1997, advancing tort and contract claims.

Defendant first argues that Pennsylvania's two-year statute of limitations bars Valletto's tort claims. In response, Valletto appears to contend that the statute of limitations was tolled until April 30, 1996, when she allegedly became

"conclusively aware that the problems with her heel were directly related to the use of defendant's product." She thus apparently argues for application of Pennsylvania's "discovery rule," which tolls the running of the limitations period when an injury is not known to the plaintiff and cannot reasonably be discovered, see, e.g., Schaffer v. Larzelere, 189 A.2d 267, 270 (Pa. 1963), but that rule is completely inapposite here.

Even the most generous construction of Valletto's Complaint and deposition testimony compels entry of judgment for Nordic Advantage, as her testimony demonstrates not only her early awareness of foot pain, but also her early belief that the NordicTrack caused her pain. (Valletto Depo. at 37 (After a few weeks of using the machine, "I started to speculate that that's where the pain was coming from."); id. at 40). She has not alleged that defendant or any other party somehow impeded her discovery of either her injury or its alleged cause, and such an allegation would find no support in the record. I will accordingly enter judgment for Nordic Advantage on Valletto's tort claims.

Defendant also argues that the entry of judgment is appropriate on Valletto's breach of warranty claims. Valletto does not contest defendant's argument that she has failed to make even a prima facie case for breach of express warranty or for breach of implied warranty of merchantability, and I will

accordingly enter judgment for defendant on those claims. She does maintain that the record supports her claim for breach of implied warranty of fitness for a particular purpose. See 13 Pa. C.S.A. § 2315. In support of this claim, Valletto must show that "the seller had reason to know of the buyer's particular purpose at the time of contracting and that the buyer was relying on the seller's expertise." Altronics of Bethlehem, Inc. v. Repco, Inc., 957 F.2d 1102 (3d Cir. 1992). Yet, while Valletto acknowledges that actual reliance is an essential element of her claim, she stated flatly in her deposition that she could not recall any statements made to her by the salesperson. (Valletto Dep. at 14.) Moreover, while she also testified that she read a Nordic Advantage brochure prior to purchasing the exerciser, she has not identified any portion of that brochure that might form the basis for a breach of warranty claim, and logic suggests that defendant did not tailor its brochure in response to Valletto's "particular purpose." Indeed, the "particular purpose" on which Valletto bases her breach of warranty claim is unclear, though it was apparently "to achieve an aerobic workout" in her home. (Valletto Depo. at 15).

In addition to evidence of reliance, Valletto bears the burden of demonstrating that "(1) the product malfunctioned; (2) that [she] used the product as intended or reasonably expected by the manufacturer; and (3) the absence of other reasonable

secondary causes." Altronics, 957 F.2d at 1105. Plaintiff has offered no evidence relevant to these three factors; there is no expert testimony as to the machine's operation or supposed defects, and her doctor has stated only that use of the NordicTrack aggravated heel spurs. Confronted with this lack of evidence that defendant's product was in fact unfit for a particular purpose, I will enter judgment for defendant on plaintiff's warranty claims as well. An order follows.

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O R D E R

AND NOW, this 25th day of August 1998, upon consideration of Defendant's Motion for Summary Judgment (Dkt. # 10); Plaintiff's Response; and Defendant's Reply, it is hereby **ORDERED** that the Motion is **GRANTED** in accordance with the accompanying Memorandum, and judgment is entered for Defendant on all claims. The Clerk shall mark this case **CLOSED**.

BY THE COURT:

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RONALD L. BUCKWALTER, J.