

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

JEFFREY S. FICHTER, ET AL.	:
Plaintiffs,	:
	: CIVIL ACTION NO. 06-CV-877
v.	:
	:
PROFESSIONAL ATHLETICS	:
Defendant.	:

MEMORANDUM ORDER

AND NOW, this ___ day of June, 2007, upon consideration of Plaintiffs’ Motion for Partial Summary Judgment on Liability (Doc. 10), Defendant’s Response (Doc. 14), and Plaintiffs’ Reply (Doc. 15), **IT IS HEREBY ORDERED AND DECREED** that Plaintiffs’ Motion is **GRANTED**.

Defendant, Professional Athletics, Inc., shall be held strictly liable for the injuries to Plaintiff, Jeffrey Fichter, Jr. (“Jeffrey”), which resulted from Defendant’s sale of a defective product.

The record reflects the following facts. On July 18, 2005, Jeffrey was severely injured when he attempted to use the “Jr. Mini Training Bar” (“Bar”), a children’s implement purchased from the Defendant by his parents, Plaintiffs Jeffrey Fichter, Sr. and Beverly Fichter (“Fichters”). According to Plaintiffs, Defendant is a distributor of the Bar, which was manufactured by Fenner Manufacturing, LLC (“Fenner”) and was advertised as a preschool training aid designed for use by a beginning gymnast weighing up to seventy (70) pounds. At the time of the incident, Jeffrey was four years old and weighed thirty-four (34) pounds.

Plaintiffs argue that the Bar was defectively manufactured and unreasonably dangerous, then supplied to Defendant, who subsequently sold the Bar to Plaintiffs. Specifically, Fenner executed

a sworn affidavit accepting full responsibility for the design and manufacture of the instant device.¹ (Pls.' Mtn. Summ. J. 2.) Inasmuch as the seller of a defective and unreasonably dangerous product may be held strictly liable for injuries caused by the foreseeable use of such a product, and given that the manufacturer of the product in question has sworn that the product was manufactured and sold in a defective condition, this Court agrees with Plaintiffs that summary judgment on the issue of liability against Defendant seller in this case is proper.

1. Summary Judgment Pursuant to Fed. R. Civ. P. 56

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

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis of its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant’s initial Celotex burden can be met simply by “pointing out to the district court that there

¹Plaintiffs argue and Defendant has not contested Fenner’s statement that the product in question was sold to Plaintiffs in a defective condition; that the post holes through which the spring-loaded pins were supposed to engage were erroneously drilled off-center; that the off-centered holes would under certain circumstances impede the spring-loaded pins from completely engaging to secure the posts in place, and may permit one side of the bar to slide down during use; that the defective holes were the result of the misplacement of the posts in the drill press during the manufacturing process; and that the unit contained no warnings regarding the misaligned holes or the dangers posed by disengaged pins. (Pls.’ Mtn. Summ. J. 2; Exh. A, Aff. Robert Fenner.)

is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. "[I]f the opponent [of summary judgment] has exceeded the 'mere scintilla' [of evidence] threshold and has offered a genuine issue of material fact, then the court cannot credit the movant's version of events against opponent, even if the quality of the movant's evidence far outweighs that of its opponent." Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255.

2. Liability

Under Pennsylvania law, strict liability may be imposed upon sellers of defective products that are unreasonably safe. See Webb v. Zern, 220 A.2d 853, 854 (Pa. 1966) (adopting the Restatement (Second) of Torts § 402A as the law of Pennsylvania). The Restatement provides that one

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

Restatement (Second) of Torts § 402A.

In this case, Plaintiffs have supported their argument with an uncontested affidavit from the manufacturer of the product, and Defendant fails to offer any evidence to rebut, that the product was unquestionably defective, and that the defective product appeared essentially unaltered from the time it was shipped from his facility until the time he examined photographs of the product in Plaintiffs' possession for purposes of the affidavit.

Because there exists no genuine issue of material fact regarding whether Defendant sold Plaintiffs a defective product that directly caused injuries to Jeffrey, and because a seller of a defective product may be held strictly liable for injuries caused by the foreseeable use of such product, this Court hereby grants Plaintiffs' motion.

BY THE COURT:

/S/ Petrese B. Tucker

Hon. Petrese B. Tucker, U.S.D.J.