

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

MICHAEL WERT and : CIVIL ACTION
PRISCILLA E. WERT :
v. :
STANLEY BOSTITCH, INC. and :
STANLEY WORKS, INC. : NO. 97-5349

M E M O R A N D U M

McGLYNN, J.

OCTOBER , 1998

In this personal injury action, initially filed in the Court of Common Pleas of Philadelphia and removed to this court on diversity grounds (28 U.S.C. §1332(a)(1)), plaintiffs asserted claims based on negligence, breach of warranty and products liability.

Husband plaintiff was injured while operating a pneumatic fastening tool provided by his employer. The tool was manufactured and sold to plaintiff's employer by defendant.

The matter was tried to a jury. At the close of the plaintiffs' case, the court granted the defendants' Rule 50 motion as to the negligence and breach of warranty counts. The court also granted a Rule 50 motion as to the "defective design" theory of products liability, but submitted the "failure to warn" theory to the jury, who found in favor of the defendants.

Plaintiffs have filed a motion for a new trial which essentially challenges the dismissal of the negligence, breach of warranty and defective design claims, as well as the jury instructions with respect to the failure to warn products liability claim.

The historical facts are basically undisputed.

Husband plaintiff was employed in the shipping department of a company that manufactures louvers of varying dimensions. It was his job to construct the crates in which the louvers were shipped.

In performing his work, he used a pneumatic tool called a tacker, which fires a fastener (in this case a staple) to join pieces of lumber. Plaintiff had used this tool continuously for approximately 8 months, and over that period of time had driven thousands of staples. On the day of the accident, he inadvertently fired two staples into his left hand causing serious injury.

The defendant is in the business of designing, manufacturing and selling sundry fasteners and pneumatic tools used to drive such fasteners. Its product line includes a wide variety of fasteners from small trigger activated fasteners to large industrial nailers. There are two basic activating mechanisms; one, a contact trip model recommended for high volume, rapid fire applications where precision is not a concern to the user (bump nailing); the other is the sequential trip model recommended for precision applications. At the time of the accident, plaintiff was using a contact trip fastener. Over the years, plaintiff's employer had purchased more than 100 pneumatic fastening tools of both kinds from the defendant. Each purchase included a manual which clearly describes the operational characteristics and differences between the contact trip and sequential trip models. The manual expressly warned the user about the propensity of the contact trip tool to recoil and drive a second fastener. The fastener used by plaintiff had attached a permanent warning label instructing all users to read the operator's manual before using the tool.

Under Rule 59(a), a new trial may be granted "on all or part of the issues . . . in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore

been granted at law in the courts of the United States.” Fed. R. Civ. P. 59(a). According to the Third Circuit, “[a] new trial is appropriate only when the verdict is contrary to the great weight of the evidence or errors at trial produce a result inconsistent with substantial justice.” Roebuck v. Drexel Univ., 852 F.2d 715, 735-36 (3d Cir. 1988). When the basis of a motion for a new trial is an alleged error involving a matter within the sound discretion of the trial court, such as the court’s evidentiary rulings or points of charge to the jury, the trial court has wide latitude in ruling on the motion. Link v. Mercedes-Benz of North America, Inc., 788 F.2d 918, 921-22 (3d Cir. 1986). Specifically, the court must “view all the evidence and inferences drawn therefrom in the light most favorable to the party with the verdict.” Marino v. Ballestas, 749 F.2d 162, 167 (3d Cir. 1984). To constitute proper grounds for granting a new trial, an error, defect, or other act must affect the substantial rights of the parties. Fed. R. Civ. P. 61.

The court’s inquiry in evaluating a motion for a new trial on the basis of trial error is twofold: (1) the court must first determine whether an error was made in the course of the trial; and (2) the court then must determine “whether that error was so prejudicial that refusal to grant a new trial would be inconsistent with substantial justice.” Bhaya v. Westinghouse Elec. Corp., 709 F. Supp. 600, 601 (E.D. Pa. 1989) (quoting Fed. R. Civ. P. 61), aff’d, 922 F.2d 184 (3d Cir. 1990), cert. denied, 501 U.S. 1217 (1991).

I. Rule 50

(a) Breach of Warranty

Plaintiffs brought a claim for breach of implied warranty of merchantability under section 2-314 of the Uniform Commercial Code. To establish this claim, plaintiffs must demonstrate that the particular tool used by Mr. Wert was not “merchantable.” 13 Pa. C.S.A. § 2314. Under

the Uniform Commercial Code, merchantable goods must:

(1) pass without objection in the trade under the contract description; (2) in the case of fungible goods, are of fair average quality within the description; (3) are fit for the ordinary purposes for which such goods are used; (4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; (5) are adequately contained, packaged, and labeled as the agreement may require; and (6) conform to the promises or affirmations of fact made on the container or label if any.

Id. Under a warranty of merchantability, the seller warrants only that the goods are of acceptable quality “when compared to that generally acceptable in the trade for goods of the kind.” Step-Saver Data System, Inc. v. WYSE Technology, 939 F.2d 91, 107 (3d Cir. 1991).

In the instant case, there is no evidence that the contact trip staple gun was not merchantable. The evidence showed that the contact trip model had a propensity to recoil and drive a second fastener. See Day 2, N.T. 100, lines 8-16. Therefore, the particular staple gun used by Mr. Wert, in recoiling and driving a second staple, performed the way it was expected to perform. Furthermore, as conceded by plaintiffs’ expert, the contact trip tool was safe and/or fit for its intended use - high volume, rapid fire applications. See Day 2, N.T. 67, lines 8-25.

Plaintiffs alternatively argue that the contact trip model was not compatible with the crate construction being performed by Mr. Wert at the time of the accident. However, the lack of compatibility does not constitute a breach of an implied warranty of merchantability. See Step-Saver, 939 F.2d at 107. Accordingly, the breach of warranty claim was appropriately dismissed under Rule 50(a).

(b) Negligence

Next, plaintiffs contend that the court erroneously dismissed their negligence claim. Plaintiffs' negligence claim was based upon defendants' alleged failure to provide plaintiffs' employer with the appropriate staple gun for building a crate. To establish a negligence cause of action, the plaintiff must demonstrate that the defendant owed a duty of care to the plaintiff, the defendant breached that duty, the breach resulted in injury to the plaintiff, and the plaintiff suffered actual loss or damage. Martin v. Evans, 711 A.2d 458, 461 (Pa. 1998).

Here, there is no evidence that defendants breached any duty owed to plaintiffs. It was the employer, a "sophisticated purchaser" of staple guns that assigned the contact trip stapler to plaintiff. There is nothing in the record that shows why the particular staple gun was assigned to Mr. Wert, or that defendants had knowledge of its use for crate construction. As the court stated, "[t]he record is barren of any suggestion that [Defendants] didn't supply the proper product." Day 2, N.T. 84, lines 15-17. Accordingly, plaintiffs failed to establish a cause of action for negligence.

© Design Defect

Plaintiffs also contend that the court erroneously dismissed their claim for defective design. At trial, plaintiffs alleged that the staple gun was defective and that defendants designed, manufactured and placed it into the stream of commerce in an unreasonably dangerous condition. Pennsylvania law requires that the plaintiff prove two elements in a product liability action: that the product was defective, and that the defect was a substantial factor in causing the injury. Spino v. John S. Tilley Ladder Co., 696 A.2d 1169, 1172 (Pa. 1997). Specifically in a design defect case, the question is whether the product could have been designed more safely. Id.

Plaintiffs' expert testified that the contact trip mechanism should have been designed with a two independently operated legs rather than one solid piece. Day 2, N.T. 70, lines 8-12. The testimony from plaintiffs' expert, however, failed to demonstrate how the alternate design would have prevented the accident and the injury to Mr. Wert. Plaintiff's hand could have been struck simultaneously by two trips as easily as a single one.

Moreover, it seems obvious that a two leg contact mechanism would undercut the "bump nailing" utility of the device because the operator would be required to manipulate the tool in a precise manner so that both legs come into contact at the same time.

II. Jury Instructions

Next, plaintiffs contend that the court's instruction to the jury regarding the "heeding presumption" was inappropriate and erroneous because the doctrine is limited to warnings for prescription drug cases. The court charged, "whenever a direction or instructions, precautions and warnings are provided, the manufacturer of a product has the right to assume that the user will read and follow the instructions." Day 3, N.T. 38, lines 16-19.

In Pavlik v. Lane Limited/Tobacco Exporters Intern., the Third Circuit presumed "that when an individual uses a product he or she has read and heeded any warning labels attached to that product." Pavlik v. Lane Limited/Tobacco Exporters Intern., 135 F.3d 876, 886 (3d Cir. 1998). Accordingly, the warnings placed on the staple gun, informing Mr. Wert of the need to read the manual to avoid injury, were sufficient and presumed to have been read. Thus, the doctrine does apply and the charge to the jury was not erroneous.

Finally, plaintiffs contend the court erred in refusing to charge the jury that Mr. Wert was not required to show that he had read the product manual to find defendants liable. Plaintiffs

base this contention on the insufficiency of the warnings placed on the staple gun itself.

However, because the warnings were found to be adequate at trial, this claim has no merit. The court was not required to instruct the jury that they could find defendants liable even if Mr. Wert did not read the manual. See id. Mr. Wert testified that he had read the warnings placed on the staple gun but not the manual.

Accordingly, the motion for a new trial is denied.

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O R D E R

AND NOW, this day of OCTOBER, 1998, upon consideration of plaintiffs' motion
for a new trial, and defendants' response thereto, it is hereby

ORDERED that the motion for a new trial is DENIED.

BY THE COURT:

JOSEPH L. McGLYNN, JR. J.