TRAVIS HEAP, a minor, by his parents and natural guardians THOMAS HEAP and SUSAN HEAP and THOMAS HEAP and SUSAN HEAP, Individually, Plaintiffs	:	IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
vs.	:	NO. 01-01,465
THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF WILLIAMSPORT, PENNSYLVANIA, a Pennsylvania Corporation, CRYSTAPLEX, INC., a Corporation, CRYSTAPLEX, INC., as a Division of ATHLETICA, INC., ATHLETICA, INC., A Corporation and LAIRD PLASTICS, INC., a Corporation, Defendant	:	JURY TRIAL DEMANDED
	:	PRELIMINARY OBJECTIONS

Date: June 28, 2002

OPINION AND ORDER

Before the Court are Preliminary Objections of Defendants' Young Men's Christian Association, Crystaplex and Athletica.[1] Defendant Young Men's Christian Association (hereinafter "YMCA") filed Preliminary Objections to Plaintiff's Complaint on September 19, 2001. Defendants Crystaplex, Inc. and Athletica, Inc.[2] also filed Preliminary Objections to Plaintiff's Complaint on October 5, 2001. Argument was held before this Court on November 5, 2001.

[1] Crystaplex and Athletica's Preliminary Objection are one in the same.
[2] Hereinafter referred to as Crystaplex.

Facts

The following relevant facts are alleged in the Complaint.

Plaintiff, Travis Heap, is a minor with a date of birth of March 13, 1991. Plaintiff's claim was brought on his behalf by his parents and natural guardians, Thomas and Susan Heap for pain and suffering, medical bills and expenses, loss of earnings and/or earning capacity.

On September 8, 1999, Travis Heap sustained severe injuries to his chin and lower jaw when he struck a protruding and unprotected portion of a horizontal "shelf" or rail of the roller hockey rink at the Young Men's Christian Association of Williamsport, (hereinafter YMCA). At the time, he was a participant in a roller hockey program conducted by the YMCA. Travis had completed the competitive portion of the activity and was simply skating around recreationally. This was a usual and common practice of participants of the roller hockey program. Travis Heap, either directly or through his parents Tom and Susan, paid a fee for his use of the facilities for the roller hockey league.

The design of the hockey rink was such that there was an extension of the rink enclosure toward the recreation area. This extension accommodates seating for players participating in the games. The extension is indistinguishable from the remainder of the outer rink surface. The outer rink consists of an opaque white bottom portion, a clear top portion, and a horizontal rail, or small shelf, between these two portions that protrudes out between the top and bottom portions. This extension is where Travis struck his chin and lower jaw.

Plaintiffs' Complaint alleges that the rink was purchased and installed at the YMCA on or about February of 1997, the facility was known as the Pickelner Arena. The

YMCA hired Defendant Crystaplex to install the rink on the premises. Crystaplex and/or Athletica and/or Laird manufactured, supplied, sold and installed the rink at the YMCA. Employees of the YMCA did help with the installation process. Crystaplex Inc. is a division of Athletica, Inc. and/or Laird Plastics, Inc. Plaintiffs claim that all Defendants are jointly and severally liable.[3]

Plaintiffs assert three counts against each of the moving Defendants as to their liability. The counts are based upon negligence, strict liability and breach of warranty. The YMCA and Crystaplex demur to the strict liability in tort and breach of warranty claims and also demur to the allegations that Plaintiff/Parents are entitled to recover loss of consortium as set forth in paragraph 87 of the Complaint.

Discussion

The essence of the demurrers filed by Defendants is that the rolling rink in question was not a product sold under the theory pertaining to strict liability for defective products as stated under Restatement of Torts, 2nd 402A. Defendants argue it was not the sale of a product that reached the user without substantial change and that the walls and panels which were sold were erected upon the YMCA's real estate and became a part of it. The YMCA also asserts that it cannot be deemed to be a manufacturer or seller of such a product. As to the breach of warranty the demurrers are based on the proposition the Complaint does not allege that there was no sale of goods when the YMCA charged a fee to Plaintiffs to permit the minor Plaintiff to skate on the rink. Therefore, the warranty of implied fitness for its intended purpose established under the Uniform Commercial Code cannot apply.

[3] A summary of the facts has been taken from the Complaint filed September 7, 2001.

The essence of the Complaint of Plaintiffs is that the objecting Defendants are in the business of supplying a consumer recreational product, this skating rink, and use thereof, and this involves subjecting the minor Plaintiff as a user to its alleged defect. Thus, Defendants might be considered the suppliers of products which could endanger the public and which are subject to strict liability under the theories of 402A. *See,* ***Coopersmith v. Herko, Inc.***, 29 Pa. D&C 4th 73 (C. P. Dauphin Co. 1996) and ***Elgiczi v. Dorney Park Coaster Company***, 34 Pa. D&C 4th 494 (C.P. Lehigh Co. 1996). Obviously, pleadings and the evidence of the case may establish that Plaintiffs' essential contentions cannot be supported, including whether the facts as to the rink make it a "product" under 402A. At this time, however, Plaintiffs should be allowed the opportunity to attempt to prove their claims.

This Court believes that the objections of Defendants as to strict liability claims may be appropriate, however, not at this stage of the proceedings. The Court believes that a determination in this regard cannot be made until such stage as either a judgment on the pleadings or summary judgment is appropriate.

The Court finds that the allegations in the Complaint do not allege a sale of goods that is covered by the Uniform Commercial Code.

Under Pennsylvania law, paragraph 87 of Plaintiff's Complaint seeks loss of consortium of a child. The controlling case law of ***Brower v. City of Philadelphia***, 557 A.2d 48 (1998) and ***Fields v. Graff***, 784 F. Supp. 224 (E.D.Pa. 1992) clearly states Pennsylvania law does not recognize this cause of action.

O R D E R

The Preliminary Objections of Defendants YMCA and Crystaplex demurring to the counts and allegations of strict liability are denied. The demurrer to Count 6 and Count 7 as apply to breach of warranty allegations are sustained, and the allegations as to breach of warranty are stricken from the Complaint.

Paragraph 87 of the Complaint seeking loss of consortium of a child is also stricken from the Complaint.

Plaintiffs shall have a period of twenty days from the date of notice of this Order in which to file an amended complaint.

BY THE COURT:

William S. Kieser, Judge

cc: Joy R. McCoy, Esquire
Christopher M. Reeser, Esquire
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Judges
Paul Petcavage, Law Clerk
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