

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DALYN HORNBERGER and LISA HORNBERGER,	:	NO. 04-00,083
Plaintiffs	:	
	:	
vs.	:	
	:	CIVIL ACTION
KURTZ KAWASAKI and KAWASAKI MOTOR	:	
CORP., U.S.A.,	:	
Defendants	:	
	:	
vs.	:	
CHRIS SNYDER,	:	
Additional Defendant	:	Motion for Summary Judgment

**OPINION AND ORDER**

Before the Court is Defendant Kawasaki Motor Corp., U.S.A.'s Motion for Summary Judgment, filed July 20, 2005. Argument on the motion was held August 26, 2005.

Plaintiffs' claim of strict products liability<sup>1</sup> arises out of an injury Plaintiff Dalyn Hornberger suffered to two of his fingers after he placed his hand on the drive chain of his Kawasaki ATV while his cousin, Additional Defendant Chris Snyder, was sitting on it with the engine running and Mr. Snyder backed up, pinching Plaintiff's fingers between the chain and sprocket.<sup>2</sup> Plaintiffs contend the ATV was defective in failing to have a warning sticker on the ATV itself<sup>3</sup> and also in failing to have a chain guard. In its Motion for Summary Judgment, Kawasaki argues the claim is barred by assumption of the risk, adequacy of the warning as a matter of law, and a reckless and unforeseeable misuse of the product as a matter of law.

Assumption of the risk is an affirmative defense in a strict products liability case. Childers v. Power Line Equipment Rentals, Inc., 681 A.2d 201 (Pa. Super. 1996). The defense of assumption of the risk requires the defendant to show that the plaintiff was subjectively

---

<sup>1</sup> The claim of negligence against this Defendant was withdrawn at the time Plaintiffs filed their brief in opposition to the instant motion.

<sup>2</sup> Plaintiff was attempting to measure the chain slack.

<sup>3</sup> There is a warning about this particular hazard in the Owner's Manual.

aware of the facts which created the danger but voluntarily and unreasonably proceeded to encounter such; thus, if a plaintiff fully understands the specific risk and voluntarily chooses to encounter it, he is said to have assumed the risk. Karim v. Tanabe Machinery, Ltd., 322 F. Supp. 2d 578 (E.D. Pa. 2004). Further, a plaintiff's knowledge and understanding of the risk may be shown by circumstantial evidence. Frey v. Harley Davidson Motor Company, Inc., 734 A.2d 1 (Pa. Super. 1999).

In the instant case, not only is the risk of injury obvious from simply looking at the chain and sprocket area of the ATV, Plaintiff's own deposition testimony clearly shows he was aware of the specific risk involved herein. Plaintiff testified that he read the particular warning in the Owner's Manual which addresses this specific risk in clear and simple terms:

## **!WARNING**

### **HAZARD**

Trying to measure chain slack when the engine is running or the rear wheels are turning.

### **WHAT CAN HAPPEN**

Your hands can get caught in the chain and be severely injured.

### **HOW TO AVOID THE HAZARD**

Before inspecting chain slack, stop the engine and apply the parking brake.

In light of such a specific description of the risk and the obvious nature of such to a reasonable person, the Court cannot help but conclude that Plaintiff fully understood such but nevertheless voluntarily chose to encounter it when he grabbed the chain with his hand while his cousin was sitting on the ATV and the engine was running. Moreover, Plaintiff's statement that he "didn't think about" the risk at the time he encountered it cannot defeat application of the doctrine of assumption of the risk, in light of the nearly overwhelming evidence that Plaintiff did indeed fully understand the specific risk and voluntarily chose to encounter it. See Karim, supra, (finding plaintiff's self-serving statement that "[he] didn't think [he] was in harm's way" inadequate to overcome his admissions regarding the risk of his fingers getting caught in the

box). Therefore, summary judgment in Defendant Kawasaki's favor is appropriate on the basis of assumption of the risk.<sup>4</sup>

**ORDER**

AND NOW, this 1<sup>st</sup> day of September 2005, for the foregoing reasons, the Motion for Summary Judgment filed by Kawasaki Motor Corp., U.S.A. is hereby granted. Judgment is hereby entered in favor of Defendant Kawasaki Motor Corp., U.S.A. and against Plaintiff.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Gerald Hanchulak, Esq., 345 Wyoming Avenue, Scranton, PA 18503  
Robert Sanzo, Esq., 1515 Market Street, Ninth Floor, Philadelphia, PA 19102  
John Campana, Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson

---

<sup>4</sup> In light of this disposition, the Court will not address the other two grounds offered in support of the motion.