IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DIANE BLACK, Plaintiff	:	JURY TRIAL DEMANDED
vs.	:	NO. 06 – 01,679
LABOR READY, INC., WILLIAMSPORT STEEL CONTAINER CORP. and RHEEM MANUFACTURING COMPANY, INC., Defendants	:	CIVIL ACTION Motion for Summary Judgment

OPINION AND ORDER

Before the Court is Defendant Rheem Manufacturing Company's motion for summary judgment, filed December 23, 2008. Argument on the motion was heard February 2, 2009.

Plaintiff was injured in 2004 while working at Williamsport Steel as a temporary worker, and while operating a machine which had been sold by Defendant Rheem to Defendant Williamsport Steel in 1987. Rheem was not the manufacturer of the machine but, rather, the former owner, and sold the machine as a used piece of equipment. In the instant motion for summary judgment, Rheem contends the negligence claim brought by Plaintiff against it must fail as it had no duty to Plaintiff.

The evidence is undisputed that the machine was sold with a guard in place but for some unknown reason the guard was not in place at the time of the accident. Plaintiff's expert opines that since the guard would protect only when utilized and adequately supervised, the machine was unreasonably dangerous. Plaintiff thus argues that Rheem should be held liable for selling an unreasonably dangerous machine. The problem with this argument, however, is that the ability to ensure use of the guard and the ability to supervise lay entirely with Williamsport Steel. Indeed, our Supreme Court has held that once an owner of property sells it, the duties arising from ownership pass to the new owner. Palmore v. Morris, Tasker & Co., Inc., 37 A. 995 (Pa. 1897).

Plaintiff seeks to distinguish Palmore on the basis that it involved real estate, citing McKenna v. Art Pearl Works, 310 A.2d 677 (Pa. Super. 1973), for the proposition that a

different rule applies to chattels, but the Court believes that McKenna is actually consistent with Palmore. In McKenna, the Court found potential[1] liability for injury from a machine which had been sold by one owner to another, under the following sections of the Restatement (2d) of Torts:

> § 388. Chattel Known to Be Dangerous for Intended Use. One who supplies directly or through a third person a chattel for another to use is subject to liability to those whom the supplier should expect to use the chattel with the consent of the other or to be endangered by its probable use, for physical harm caused by the use of the chattel *in the manner for which* and by a person for whose use it is supplied, if the supplier (a) knows or has reason to know that the chattel is or is likely to be *dangerous for the use for which it is supplied*, and (b) has no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition, and (c) fails to exercise reasonable care to inform them of its dangerous condition or of the facts which make it likely to be dangerous.
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> § 389. Chattel Unlikely to Be Made Safe for Use. One who supplies directly or through a third person a chattel for another's use, *knowing or having reason to know that the chattel is unlikely to be made reasonably safe before being put to a use* which the supplier should expect it to be put, is subject to liability for physical harm caused by such use to those whom the supplier should expect to use the chattel or to be endangered by its probable use, and who are ignorant of the dangerous character of the chattel or whose knowledge thereof does not make them contributorily negligent, although the supplier has informed the other for whose use the chattel is supplied of its dangerous character.
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> § 392. One who supplies to another, directly or through a third person, a chattel to be used for the supplier's business purposes is subject to liability to those for whose use the chattel is supplied, or to those whom he should expect to be endangered by its probable use, for physical harm caused by the *use of the chattel in the manner for which* and by persons for whose use the chattel is supplied (a) if the supplier fails to exercise reasonable care to make the chattel safe for the use for which it is supplied, or (b) if he fails to exercise reasonable care to discover its dangerous condition or character, and to inform those whom he should expect to use it.

Restatement (2nd) of Torts, Sections 388, 389 and 392 (emphasis added). All of these sections depend upon use of the chattel in the manner which was intended and knowledge by the seller of a dangerous condition attendant to such use.

[1] As the court in McKenna simply indicated that discovery should be allowed to proceed and, if tenable, the claim should go to trial, it cannot be said whether the machine in that case was used in the manner intended. McKenna

The exceptions to the real estate rule of non-liability are strikingly similar. The seller must know of the dangerous condition, the buyer must not know of it, and the seller must have reason to believe that the buyer will not discover it. Welz v. Wong, 605 A.2d 368 (Pa. Super. 1992). It is therefore logical that the rule of Palmore, that once an owner of property sells it, the duties arising from ownership pass to the new owner, should apply to the sale of personal property as well as real property. This is so because the rule is simply the complement of both rules which impose liability for dangerous conditions which exist at the time of the sale: if the dangerousness of something is instead due to the actions of the buyer after the sale, i.e., a breach of the duties of ownership, the seller will not be liable.

In the instant case, there is no dispute that the guard was in place when the machine was sold but that it was not in place at the time of the accident. Thus, it is clear that the machine was not being used as intended, i.e., that Rheem could not reasonably have anticipated that the machine would be used without the guard. It is also beyond dispute that Williamsport Steel realized the dangerous condition of the machine without a guard. Therefore, the requirements of the Restatement sections relied upon by McKenna are not met in this case and it appears appropriate to apply the rule of Palmore, that the duties of ownership (of ensuring the machine was used only with a guard and of providing appropriate supervision) passed to Williamsport Steel upon the sale of the machine. Accordingly, the Court agrees with Rheem that it had no duty to Plaintiff in this instance.

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v. Art Pearl Works, 310 A.2d 677 (Pa. Super. 1973)

ORDER

AND NOW, this 6th day of February 2009, for the foregoing reasons, Defendant Rheem Manufacturing Company's motion for summary judgment is hereby GRANTED. Judgment is hereby entered in favor of Rheem Manufacturing Company and against Plaintiff.

BY THE COURT,

Dudley N. Anderson, Judge

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