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Paul (P) v. DishWay(D)

Strict Product Liability

In order to recover for strict products liability, the plaintiff must prove that the seller was a commercial seller, the product was defective, causation, and damages.

Commercial Seller

Here, D is considered to be a commercial seller as they are in the business of creating dishwasher powder. They are not considered to be a "one-time" seller, as the facts indicate that they sell through retailers and through the direct market, here to P. Thus, D is considered to be a commercial seller.

Defective Product

In order to prove a defective product, the plaintiff must prove the product was defective before it had left the manufacturer hand. There are three type of defective products, manufacturer defect, design defect and inadequate warning.

Here, the facts clearly indicate UltraKlean(UK) was defective before it had left the hands of D and reached the hands of P. Thus, the product was defective.

Manufacturer Defect

A manufacturer defect is a complete deviation of what the manufacturer intended the product to be used for.

Here, D intended UltraKlean(UK) to be a safest cleaning detergent and strongest amongst any other competitors in the market. Though they had no intentions of releasing an unsafe product, the lack of testing on aluminum cookware and not knowing that potentially dangerous amount of UK residue tended to remain on aluminum cookware is a large deviation of the intended purpose of UK being safe to use. Even though it was not detectable to the eye, this is still considered to be a manufacturer defect as D would have discovered and tested this before hand on aluminum cookware.

Thus, because there was a deviation of UK's intended purpose of being a safe detergent, it is considered to be a manufacturer defect.

Design Defect

To test for design defect, the court will use two methods to determine whether there was a defective design: (1) risk utility test and (2) consumer expectation test.

Risk Utility Test

Under the Risk Utility Test, the plaintiff must prove risk of using the product is significantly outweighs the be benefits and there is a economically feasible way to re-disgn the product.

Here the risk of using UltraKlean (UK) is significantly more risky of using instead of the benefit of cleaning the dishes as it has caused P severe stomach pain requiring P to be hospitalized. Though D may argue there is no other economical alternative to redesign the product as the residue was not detectable to the eye and there was no flaw in D's manufacturing process, P could counter argue that other detergent products do not cause the same result of damages as they could be used on aluminum products as well. Further the facts do not indicate that it would be a burden or D would redesign the UK that would meet up to industry standards of other detergents to be safely used on aluminum products.

Thus, P would prevail under the risk utility test.

Consumer Expectation Test

Under the consumer expectation test, the test is a reasonable person and objective standard that the average consumer would believe the product is safe to use.

Here, through D's advertisement of the UK, advertised wide that it was a "revolutionary, safe product with the most powerful cleaning agent ever" any consumer would believe that UK is safe to use on any type of dish. P, as the average consumer, would reasonably believe this as well and would rely that UK is a safe product to use (which is also considered to be a breach of implied warranty of merchantability which is discussed below).

Thus, P would prevail under the consumer expectation test.

Thus, after all discussed above, and P successfully being able to satisfy both the consumer expectation and risk utility test, there was a design defect of UK by D.

Inadequate Warning

If a manufacturer knows that there can be substantial harm through the use of their product, they are required to label an adequate warning to warn their consumers of the potential dangers of their product.

Here, D knew that the cleaning agent could cause severe stomach pain if ingested. Even though this true of all detergent products, D still had a duty to warn the effects it could have on aluminum as it is foreseeable by D that consumers of the product would use their detergent to clean aluminum pots. Though D will argue that they had put a proper label and warning of "should not be consumed" are inadequate as it should have included warning along the lines of "do not use UltraKlean (UK) on aluminum products. There is no excuse for D to claim that they did not know about the defect because they could have not seen the defect. It is the responsibility of the manufacturer to test products they would foreseeably see their consumers using detergent on, including aluminum pots.

Thus, D has failed to adequately warn P.

Causation

Plaintiff must prove that defendant was the causation (actual and proximate) of plaintiff's damages.

Actual

Plaintiff's injuries would not have occurred but for the product being defective before it had left the manufacturer's control.

Here, and as previously discussed, the product was defect before it had left the hands of D. Thus, P's damages of having sever stomach pain and being hospitalized would not have occurred, but for D's defective product design, defective manufacturing, and inadequate warning.

Proximate

To prove proximate causation, it must have been foreseeable by defendant that harm would be caused by their use of their product.

Here, though it would not be clearly foreseeable by D that using UK on aluminum pots would cause harm, it would be foreseeable that their consumers would use UK detergent on aluminum pots. D should have tested their products on aluminum pots as it s an average cooking utensil used universally around the world. Thus, because it is foreseeable for P to use UK on his aluminum pots, his damages are foreseeable aswell.

Thus, D is the actual and proximate causation of P's damages.

Damages

Damages must be actual (property and person) and cannot be purely economical.

Here, P experienced sever stomach pain, which required him to be hospitalized. Thus, P suffered damages.

Thus, there is a very strong argumet that P would prevail under a strict products liability claim, if he did not, he could still pottentially prevail under negligent products liability claim (dscussed below)

Negligent Products Liability

To claim a negligent products liability claim, plaintiff must prove that the defendant is a commercial seller, defendant owed a duty, defendant breached that duty, causation, and damages.

Duty

Duty Owed—Foreseeable Plaintiff

Under the majority rule, of Cardozo, a foreseeable plaintiff is one that is in the zone of danger. Under the minority approach of Andres, duty is owed to the world (any one that is a forseeable plaintiff).

Here regardless, under which jurisdiction, P would be able to prevail as he is a foreseeable plaintiff under Andrews and a foreseeable plaintiff under Cardozo as washing the dishes using the defective products and eating off of them is considered to be within the zone of danger. Thus, P is a foreseeable plaintiff regardless of jurisdiction.

Standard of Care—Reasonable Prudent Person(RPP)

RPP is a objective standard in which the court determines whether a resonable person would consider their conduct negligent in the similar circumstances.

Here, D would a standard of care to inspect their product with due care to ensure that it was safe to use. Due to the fact they did not use a RPP standard of care, they have not met their duty. Thus, D did not meet their standard of care.

Standard of Care—Professonial

This stadnard of care is determined by the same skill, education, and industry standard within the practice of field.

D would be held to a professional standard of care as it may be common in the industry of dishwashing detergent manufacturing to test their products on various cooking utensils, pots, and pans to determine whether it is safe to be used. As discussed above, because D did not use their product on aluminmum pots, they have breached the professional standard of care.

Thus, D has breached their professional standard of care.

Breach

There is breach when the defendant has fell below the obliged standard of care of similar cirumstances.

As discussed above, D has breaced the standard of care both the professional and RPP standard, thus, there is a breach.

Causation

See rule and analysis above.

Thus, D is the actual and proximate causation of P's damages.

Damages

See rule and analysis above.

Thus, P suffered damages.

Thus, for all discussed above, P could prevail under the theory of neglgient products liability.

Breach of Warranty

Express Warranty

An express warranty is written stated by the manufacture that guarantees the product is will work in a particular way.

Here, there is a express warranty by D by stating that their new dishwasher powder named UltraKlean (UK) advertised wide that it was a "revolutionary, safe product with the most

powerful cleaning agent ever." Further, the express warrant from D accurately represented that UK contained a new cleaning agent that made the product more effective than other dishwasher powders. The damages that P has offered is considered a breach of express warranty as it experienced sever stomach pain which required him to be hospitalized.

Thus, as D expressly warranted that UK was safe to use and it clearly was not, D has breached their express warranty of safety to D.

Implied Warranty of Merchantability

This warranty cannot be waived by D as it is implied in every product that the product can be used in for its prupose and it is safe to use. Because it was not safe, thus, D has breached this warranty.

Warranty for Particular Purpose

Here, P relied on the advertisement that UK was safe to use on any type of dishes (including aluminum pots) because of D's advertisment and used on his own aluminum pots. Thus, because in reliance of the use and safety of the product and D reasonably knowing any customer would rely on the advertisement of UK being safe, D has breached this duty to P.

Question #2 Final Word Count = 1704

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