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Strict Product Liability

A defendant may be sued for strict product liability. The plaintiff must show that the 1) defendant is a commercial supplier or wholesaler, 2) the product was defective when it left the defendant's control, 3) the plaintiff suffered an injury because of the defective product, and 4) that resulted in damages.

Was the Defendant a Commercial Supplier?

A commercial supplier may be one who manufactures, wholesales, develops, assembles a commercial product.

Here, DishWay, developed a dishwasher powder and advertised it to the public.

Thus, DishWay would be considered a commercial supplier.

Was the Product Defective when it left the Defendant's Control?

A product may be defective in several ways, including manufacturing defect, design defect and warning defect.

Manufacturing Defect

A manufacturing defect is when the individual product leaves the assembly line different and more dangerous than all the other products.

Here, it appears that all of the dishwasher powder was defective. It was not just one batch of powder, as would be the case if it was a manufacturing defect, it was all of the dishwasher powder. Furthermore, the residue was not detectable on the eye and the facts stated that there was "no flaw in DishWay's manufacturing process".

Thus, there was not a manufacturing defect.

Design Defect

A design defect is when the specifications are defective, so all the products would have the same dangerous defect.

Here, the facts stated that UltraKlean was unaware of the amount of residue that tended to remain on aluminum cookware after a dishwasher cycle. This would likely mean that "all" the dishwasher powder produced by DishWay was defective.

DishWay may try to argue that it is not unusual to leave a harmless amount of dishwasher residue after a dishwasher cycle, however, there it was more than a little amount and it was harmful because Paul was hospitalized from the severe pain that was caused.

Thus, there was a design defect.

Warning Defect

A warning defect is when the product fails to warn of a dangerous injury that may occur when it is foreseeable that a user will use it in that way that will cause an injury.

Here, Paul used the UltraKlean in a foreseeable way because he used it to wash some aluminum pots. The product failed to warn of dangerous injury may be caused by using the product on aluminum because there was no indication that it would work differently on aluminum than on other surfaces.

Dishway, may argue that the instructions stated that the product should not be ingested, however, this argument is unpersuasive because here it was using the product on aluminum that was the issue.

Thus, there was a Warning Defect.

Who can be a plaintiff for failure to warn?

Only the buyer, relative or someone in the household, or any other foreseeable user can be a plaintiff.

Here, Paul is the buyer.

Thus, Paul may sue under a warning defect.

Actual Cause

The injury would not have occurred "but for" the product being defective.

But for the excessive residue left on the aluminum left by DishWay, Paul would not have had severe pains.

Thus, there was actual cause.

Proximate Cause

It is foreseeable that an injury may occur in a normal defective product.

It is foreseeable that ingesting too much dishwasher powder would cause severe pains. Further, since Paul had no warning of using the powder on aluminum, it is reasonable he used it to clean his aluminum pots.

Thus, there was proximate cause.

Damages

The plaintiff may recover for personal injury and personal property damages. However, plaintiff may not recover for economic damages.

Here, Paul may recover for his medical bills and other personal injury, and his pot if damages. It is unlikely he will recover any economic damages.

Defenses

Product Misuse

Here, there was no product misuse, because Paul did what he was supposed to do in cleaning his pots.

Assumption of the Risk

Here, Paul did not assume the risk because he was not aware of the dangers of the powder.

Negligent Strict Liability

The defendant may be held strictly liable under negligent strict liability. The defendant must have a duty to the plaintiff, the defendant breached the duty, and the actual and proximate cause resulted in damages.

Duty

The plaintiff must have been in the foreseeable risk of danger. The courts have used Cardozo and Andrew's to determine if the plaintiff was within the zone of danger.

Under Cardozo (majority view), a duty is owed to a foreseeable plaintiff who was within the zone of danger.

Here, Paul was a foreseeable plaintiff because he was the purchaser of the product. Paul was within the zone of danger because Paul used the product.

Under Andrew's (minority view), a duty is owed to all foreseeable plaintiffs.

Paul was a foreseeable plaintiff because he sued the product.

Standard of Care

A company has a duty to act as a reasonable prudent business would in the same industry, line of business, and location.

Here, DishWay, did not act as a reasonable prudent business because they didn't test the powder with aluminum.

Breach

DishWay breached their duty because a reasonable prudent company would have tested their product with aluminum.

Thus, DishWay Breached.

Damages

Here, Paul will recover General damages such as pains and suffering as well as specific damages such as medical expenses.

Implied Warranty of Merchantability

Here, it is the same analysis as strict liability for duty and breach because it is the same facts and rule.

DishWay, would be liable under Implied Warranty of Merchantability.

Implied warranty of Fitness

Here, it is the same analysis as strict liability for duty and breach because it is the same facts and rule.

Thus, DishWay would be liable under Implied Warranty of Fitness.

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