

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

WINFRED D.,

Plaintiff and Appellant,

v.

MICHELIN NORTH AMERICA, INC.,
et al.,

Defendants and Respondents.

B195416

(Los Angeles County
Super. Ct. No. BC328314)

ORDER MODIFYING OPINION
AND DENYING REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on August 7, 2008, be modified as follows:

1. On page 2, in the second full paragraph (“Plaintiff filed this personal injury action”), at the end of the first sentence, replace “and breach of warranty” with “in the right rear tire.” The corrected sentence will read:

Plaintiff filed this personal injury action against the designer and the manufacturer of the tire, alleging defects in the right rear tire.

2. On page 2, in the second full paragraph (“Plaintiff filed this personal injury action”), at the end of the last sentence, insert a period after “defendants” and delete the

rest of the sentence (“voting 9-3 on the breach of warranty claim”). The corrected sentence will read:

The jury returned a verdict for defendants.

3. On page 16, in the second full paragraph (“On August 16, 2006, the jury was instructed”), delete in its entirety the second sentence (“On August 18, 2006, the jury returned . . . foreseeable to defendants?”) and replace it with the following sentence:

On August 18, 2006, the jury returned a special verdict in Michelin’s favor, voting 12-0 as to a manufacturing defect and 11-1 as to a design defect.

4. On page 17, in the first full paragraph (“Here, the substantive issue”), in the first sentence, delete “or breach of warranty.” The corrected sentence will read:

Here, the substantive issue was whether Winfred’s vehicular accident was caused by a tire defect, as he asserted, or by overloading the van with produce, as Michelin contended.

5. On page 33, in the first full sentence (“Accordingly, Yukevich’s arguments . . . on the other.”), delete “or the warranty was breached.” The corrected sentence will read: Accordingly, Yukevich’s arguments affected the central issue in the case: whether the van was overloaded, on the one hand, or whether the tire was defective, on the other.

6. On page 33, delete the first full paragraph in its entirety (“Michelin argues that the jury verdicts . . . tainted the entire verdict.”), and replace it with the following paragraph:

Michelin contends that the jury verdict establishes a lack of prejudice because it was “not close.” (See *Krotin v. Porsche Cars North America, Inc.* (1995) 38 Cal.App.4th 294.) But closeness of the verdict is only one of several factors considered in determining whether an error was prejudicial. (See *Whiteley*

v. Philip Morris, Inc. (2004) 117 Cal.App.4th 635, 655–657, 664–665; *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 570–571.) Regardless, the trial court’s erroneous evidentiary rulings, which permitted Michelin to parade Winfred’s illicit, intimate conduct before the jury — smearing his character and inflaming the jury — likely tainted the entire verdict.

There is no change in the judgment.

Respondents’ petition for rehearing is denied.

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MALLANO, P. J.

ROTHSCHILD, J.

NEIDORF, J.*

* Retired Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.