

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2010

ROBERT CLARK, LAURA CLARK and **ROBERT MALONE,**
Appellants,

v.

ODV HOLDING CO. f/k/a ROBICO SHUTTERS, INC., a Florida
corporation, and **SHELBY HOLMES OF HERON BAY SEVEN, INC.,** a
Florida corporation,
Appellees.

No. 4D08-3643

[May 26, 2010]

PER CURIAM.

Plaintiffs, Robert Clark, Laura Clark, and Robert Malone, appeal a final summary judgment entered against them on their personal injury claims against the defendants, ODV Holding Co., f/k/a Robico Shutters, Inc. and Shelby Homes at Heron Bay Seven, Inc., for negligent design of hurricane shutters and their storage system, negligent installation of the storage system, and failure to warn regarding the use of the storage system. Because disputed issues of fact existed as to whether the hurricane shutter storage system was negligently designed and installed, we reverse the trial court's summary judgment on these claims and denial of the plaintiffs' motion to amend their complaint.

We affirm, however, the trial court's summary judgment on plaintiffs' negligence claims that were based on negligent design of the shutters and negligent failure to provide adequate warnings on the storage system. The trial court correctly concluded that the danger presented by the sharp-edged shutters was open and obvious. The court also properly entered summary judgment for Robico Shutters as to plaintiffs' negligent warning claims, because the undisputed facts show that plaintiffs did not read the safety warning provided and, as such, cannot establish that the alleged failure to warn proximately caused their injuries. *See Lopez v. S. Coatings, Inc.*, 580 So. 2d 864, 865 (Fla. 3d DCA 1991); *Ashby Div. of Consol. Aluminum Corp. v. Dobkin*, 458 So. 2d 335, 337 (Fla. 3d DCA 1984).

Affirmed in part, Reversed in part and Remanded for further proceedings.

TAYLOR, GERBER and LEVINE, JJ., concur.

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Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; John B. Bowman, Judge; L.T. Case No. CACE 06-013112 (02).

Jonathan Streisfeld of The Kopelowitz Ostrow Firm, P.A., Fort Lauderdale, for appellants.

Daniella Friedman, Barry L. Davis and Michelle S. Canero of Thornton, Davis & Fein, P.A., Miami, for Appellee-ODV Holding Co. f/k/a Robico Shutters, Inc. and Ryan Burns and R. David Ravine of Marshall, Dennehey, Warner, Coleman & Goggin, Fort Lauderdale, for Appellee-Shelby Homes at Heron Bay Seven, Inc.

Not final until disposition of timely filed motion for rehearing.