STATE OF MICHIGAN

COURT OF APPEALS

GREENFIELD DIE & MANUFACTURING CORP.,

Plaintiff-Appellant,

v

CAPTIVE FASTENER CORP.,

Defendant-Appellee,

and

JOHN H. POWERS, INC.,

Defendant.

UNPUBLISHED
March 9, 2004

No. 244310
Wayne Circuit Court
LC No. 96-639805-CK

Before: Owens, P.J., and Talbot and Murray, JJ.

PER CURIAM.

Plaintiff, Greenfield Die and Manufacturing Corp., appeals as of right from the jury's verdict of no cause of action regarding plaintiff's claims for breach of warranty. We affirm.

I. Material Facts

Defendant, Captive Fastener Corp., manufactured products that were distributed by John H. Powers, Inc. (JHP), the company from which plaintiff ordered certain part components. Plaintiff had been previously using fasteners from Penn Engineering and Manufacturing Company (PEM), one of defendant's competitors. Plaintiff would then supply its parts to Kavlico Corporation, one of its customers, with brackets,[1] which were then used to mount pollution sensors that would be sent to Ford Motor Company (Ford) and placed in its engines. Plaintiff did not have a direct relationship with defendant; rather, its relationship was with JHP.

[1] The brackets supplied to Ford were stamped and painted by plaintiff, and then plaintiff would insert two studs into the brackets.

In September or October 1995, plaintiff procured materials from JHP because its regular supplier was unable to provide the capacity of parts required by plaintiff. Plaintiff placed five orders for M-5 studs, which are designated as "HFH M5-15-Z1."[2] In early 1996, it was discovered that there was a problem with the fasteners at Ford, and Ford rejected the parts after testing. The fasteners were breaking off upon their affixation to the engines at Ford. As a result, plaintiff manufactured new brackets and reassembled the studs onto the brackets, and also reassembled some of the sensors onto the new brackets. Plaintiff was subsequently placed on conditional status, although the problem was resolved and the customer was not lost. Plaintiff incurred approximately $451,000 or $461,089.13 in costs to solve the problem relating to the fastener recall.

Martha Remski was employed by plaintiff from September 1995, to November 1998, as a materials manager, the position responsible for managing the inflow of materials in the manufacturing facility. Remski did not personally contact JHP to request a materials certification for the fasteners. Remski testified that plaintiff would not have purchased fasteners from defendant if they were made of low carbon steel and heat treated by the case hardening method.

Darryl Melone, an engineer for plaintiff, was responsible for some of plaintiff's accounts, including the Kavlico account. Melone used the PEM "HFH" designation for the fasteners because he had been informed that defendant had the same designation. Melone requested a materials certification in February 1996, after the fasteners began to break at Ford. In March 1996, Melone discovered that the parts had been made from a different material and used a different heat treatment process than required by plaintiff. After seeing the breakage, Melone determined that defendant's fasteners did not meet Ford's specifications[3] and that they were not properly made. Although Melone performed a visual inspection of the part, he was unable to determine the material or heat treatment process used from such inspection.

According to Kenton Powers, president of JHP, defendant's fasteners were comparable to those of PEM. Although defendant utilized its own "HCH" designation rather than PEM's "HFH" designation, Powers indicated that the HCH product was similar to the HFH product regarding performance ratings and physical size of the part. Additionally, regarding the comparability of defendant's parts to PEM parts, Randy Carbora, defendant's executive vice-president, testified that nothing indicated that defendant's parts were identical to PEM parts. Customers using the "HFH" designation are not asking for a "PEM" part; rather, the "HFH" designation is a generic description of the part. The materials or heat treatment procedure used in the manufacture of the fasteners was not identified in defendant's catalog.

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[2] The "HFH M5-15-Z1" designation refers to a heavy head stud or fastener, which has metric M5 threading, is fifteen millimeters in length, and has a clear zinc finish.

[3] It was undisputed that defendant did not meet the requirements of Ford's specifications, known as the WA 950, which required the fasteners supplied to be made from medium carbon steel and heat treated with the quench and temper method.

Powers had been working with plaintiff's purchasing agent, Don Blase, and informed Blase that JHP did not sell PEM parts. Powers was not informed of the end use of the parts, and did not receive the Ford WA 950 specification. Additionally, Powers was not informed that the fasteners had to comply with those specifications. Additionally, Lana Rae Feiberg, a former office manager at JHP, testified that Blase made no special inquiries regarding the steel or heat treatment process used, nor did he request a materials certification prior to the breakage problems. Similar to Powers, Feiberg did not receive the Ford specification, and had not been informed of the end use of the product.

Plaintiff eventually returned approximately 1,089,000 of the fasteners, reasoning that the part did not comply with the Ford specification. As noted, it was undisputed that the part supplied by defendant did not meet Ford's specification. Douglas Hughes, a Ford engineer, determined that the root cause of the problems relating to the fastener was that the supplier's part did not meet Ford's part print requirements or specifications for materials or heat treatment. According to Hughes, defendant's part would not meet Ford's specifications if it was made from low carbon steel and heat treated with the case hardening method.

II. Jury Instructions

This Court reviews claims of instructional error de novo. *Cox v Flint Bd of Hosp Managers*, 467 Mich 1, 8; 651 NW2d 356 (2002). "Jury instructions should include 'all the elements of the plaintiff's claims and should not omit material issues, defenses, or theories if the evidence supports them.'" *Id*. (citation omitted). "Instructional error warrants reversal if the error 'resulted in such unfair prejudice to the complaining party that the failure to vacate the jury verdict would be "inconsistent with substantial justice."'" *Id*. (citations omitted).

A. Causation Defense Instruction

Plaintiff first argues that the trial court erred in instructing the jury as follows:

> If you find that the plaintiff, Greenfield Die, failed to obtain certification from defendant Captive Fastener that the material met Ford Motor Company's specification prior to accepting these studs, you must find that any alleged misconduct on the part of the defendant corporation did not cause the damages, and you must return a verdict in favor of the defendant.

Plaintiff contends that the instruction was erroneous because it was immaterial whether plaintiff obtained the Ford certification, and because the product would have worked properly if defendant's product would have been what a reasonable jury could find defendant warranted it to be, i.e., an HFH or PEM equivalent. Plaintiff further contends that any error in providing the instruction would not be harmless because it specifically removed from the jury the question of whether Ford would have rejected the parts had the parts not broken.

Regardless of whether the instruction was erroneous, we find that any such error would have been harmless. Plaintiff's action involves three theories of liability, which include breach of express warranty, breach of implied warranty of merchantability, and breach of implied warranty of fitness for a particular purpose. In *Sullivan Industries, Inc v Double Seal Glass Co, Inc*, 192 Mich App 333, 353; 480 NW2d 623 (1991), this Court held that "[t]o the extent that the

drafters of the UCC considered a buyer's misconduct as a defense in a warranty action, they apparently conceived of it in terms of proximate cause." [4] Based on defendant's argument that plaintiff's conduct in failing to comply with Ford's standards barred any recovery by plaintiff in this case, the trial court instructed the jury on proximate cause with respect to each of plaintiff's claims. *Sullivan*, *supra* at 353-354. However, as noted by defendant and indicated by the jury's verdict, the jury did not reach the issue of causation. Here, the jury determined that although defendant made an express warranty that became part of the basis of the bargain between defendant and plaintiff, the goods conformed to that express warranty. The jury also determined that the goods did not fail to conform to any implied warranties of merchantability or fitness for a particular purpose. Accordingly, any potential error in the instruction would have been harmless, as the jury never reached the issue of causation.

Plaintiff's argument that the instruction was not harmless ignores the fact that the instruction specifically addressed the issue of whether defendant "caused" plaintiff's damages, an issue that the jury did not reach. The jury is presumed to understand and follow the court's instructions. *Bordeaux v Celotex Corp*, 203 Mich App 158, 164; 511 NW2d 899 (1993). Thus, we presume that the jury understood and followed the court's instructions.

B. Inspection Defense Instruction

Plaintiff also contends that the following jury instruction was erroneously given:

> Before we go to describing the deliberation in the jury room, there's one more instruction I need to give you. The last one was on causation. This one is that Michigan law provides that when the buyer, before entering into the contract, has examined the goods or the sample or model as fully as he desired or has

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[4] See also Comment 13, MCL 440.2314 ¶ 13:

> In an action based on breach of warranty, it is of course necessary to show not only the existence of the warranty but the fact that the warranty was broken and that the breach of the warranty was the proximate cause of the loss sustained. In such an action an affirmative showing by the seller that the loss resulted from some action or event following his own delivery of the goods can operate as a defense. Equally, evidence indicating that the seller exercised care in the manufacture, processing or selection of the goods is relevant to the issue of whether the warranty was in fact broken. Action by the buyer following an examination of the goods which ought to have indicated the defect complained of can be shown as matter bearing on whether the breach itself was the cause of the injury.

"Official comments to the UCC, though lacking the force of law, are useful aids in construing and interpreting its sections." *Power Press Sales Co v MSI Battle Creek Stamping*, 238 Mich App 173, 181; 604 NW2d 772 (1999).

> refused to examine the goods, there is no implied warranty with regard to defects, which an examination ought in the circumstances to have been revealed to him.
>
> If you find that the plaintiff examined the goods or sample as fully as it desired or refused to examine the goods or sample, then thee [sic] is no implied warranty with regard to defect, which an examination ought in the circumstances to have revealed.

Plaintiff argues that the above instruction was erroneous because it failed to clarify that an implied warranty claim may have merit if a reasonable visible examination, without testing, would not have revealed the defect in defendant's product.

As indicated by plaintiff, the instruction provided conforms to the language of the applicable statutory provision, which provides:

> [W]hen the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him . . . . [MCL 440.2316(3)(b).]

Although plaintiff concedes that the instruction mirrors the language of the statute, plaintiff contends that the instruction, as given, was incomplete, in that the jury should also have been instructed that only a visual inspection was required to escape the mandates of the statute.

Pursuant to MCL 440.2316(3)(b), "the buyer must have in fact examined the goods . . . or must have refused a demand by the seller that he do so . . . ." *Ambassador Steel Co v Ewald Steel Co*, 33 Mich App 495, 503; 190 NW2d 275 (1971). As stated in *Ambassador*, this section applies only to defects that would have been revealed upon examination. *Id*. In *Michigan Mut Liability Ins Co v Fruehauf Corp*, 63 Mich App 109, 117-118; 234 NW2d 424 (1975), this Court clarified that under this section, a buyer is required only to examine as a prudent person would under the same circumstances. The Court further indicated that an examination must be reasonable. *Id*. at 118.

Although plaintiff contends that the trial court should have instructed the jury that only a mere visual examination was necessary, we find that the instruction sufficiently apprised the jury of the law. Here, the trial court's instruction mirrored the language contained in the statute. Plaintiff relies on *Ambassador*, *supra*, for its proposition that Michigan law provides that an implied warranty claim may have merit if a reasonable visual examination, without testing, would not have revealed the defect. Contrary to plaintiff's position, however, *Ambassador* does not provide that a mere visual examination would, in every case, defeat the exclusionary provision in MCL 440.2316(3)(b). Rather, *Ambassador* focuses on the reasonableness of the examination, which relates to the statutory provision that excludes an implied warranty regarding defects that an examination "ought in the circumstances" to have revealed. A trial court does not commit error requiring reversal if the parties' theories and the applicable law were presented to the jury adequately and fairly. *Stoddard v Manufacturers Nat'l Bank of Grand Rapids*, 234 Mich App 140, 163; 593 NW2d 630 (1999). Accordingly, as the jury instruction properly set forth the law as stated in MCL 440.2316(3)(b), we find no error requiring reversal regarding the trial court's jury instruction relating to that provision.

III. Evidentiary Issues

Plaintiff next argues that the trial court abused its discretion by excluding the following evidence from trial: (1) testimony from Ray Twisdom, plaintiff's proposed expert witness, regarding the failure of the fasteners and his opinion testimony that the fasteners were not fit for any conceivable use in the automotive or other industry; (2) Melone's testimony that a "tap test" performed at Ford plants revealed that the parts broke when tapped; and (3) evidence that defendant's product did not meet its own quality standards for hardness. We disagree.

A trial court's evidentiary decisions are reviewed for an abuse of discretion. *Barrett v Kirtland Community College*, 245 Mich App 306, 325; 628 NW2d 63 (2001). An abuse of discretion is found only in extreme cases in which the result is so palpably and grossly violative of fact and logic that it evidences perversity of will, a defiance of judgment, or the exercise of passion or bias. *Id*. Relevant evidence "means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. Relevant evidence is generally admissible, MRE 402, but may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, MRE 403. A trial court's decision regarding a close evidentiary question ordinarily does not amount to an abuse of discretion. *Hilgendorf v St John Hosp & Medical Center Corp*, 245 Mich App 670, 707 n 49; 630 NW2d 356 (2001).

Plaintiff first contends that the trial court should have permitted Twisdom to testify at trial on the test results he obtained regarding defendant's fasteners. Plaintiff argues that Twisdom's testimony would have demonstrated that the fasteners were not fit for use in any application, that the fasteners were not comparable to the "HFH" description. The trial court explicitly excluded Twisdom's testimony on relevancy grounds, and seemingly excluded the other proposed evidence on the same basis.

As indicated by the exhibits addressed in the separate record regarding Twisdom's proposed testimony, it is evident that the tests performed compared defendant's part in relation to the Ford WA 950 requirements. However, defendant did not contest the fact that its fasteners did not comply with the WA 950 requirements, as defendant conceded that it did not utilize medium carbon steel or the quench and temper method of heat treatment. As this evidence had no tendency to make the existence of a fact of consequence more or less probable, the trial court did not abuse its discretion by excluding it.

Plaintiff also argues that the trial court should have permitted Twisdom and Melone to testify that the parts were not "good at all," and that the trial court should have permitted it to present evidence that defendant's fasteners did not meet its own manufacturing standards and/or procedures. It was undisputed that defendant's parts did not meet Ford's specifications, which required that the parts be made from medium carbon steel and heat treated with the quench and temper method. The evidence presented at trial demonstrated that Ford rejected the parts because the parts did not meet their specifications. Plaintiff did not propose evidence that would demonstrate that HFH parts were required to be made from medium carbon steel and heat treated with the quench and temper process. Instead, plaintiff sought to introduce evidence that the parts made with low carbon steel and heat treated with the case hardening method were poorly made in general.

Plaintiff's claim was based on three theories of liability, breach of express warranty, breach of implied warranty of merchantability, and breach of implied warranty of fitness for a particular purpose. An express warranty is created when a seller sets forth a promise or affirmation, description, or sample with the intent that the goods will conform to that representation. *Latimer v William Mueller & Son, Inc*, 149 Mich App 620, 630; 386 NW2d 618 (1986). In order to prove a breach of implied warranty of merchantability, the plaintiff must show that the product left the manufacturer in a defective condition and that the defect caused the plaintiff's injuries. *Jodway v Kennametal, Inc*, 207 Mich App 622, 629; 525 NW2d 883 (1994). A product is defective if it is not "reasonably fit for its intended, anticipated or reasonably foreseeable use." *Gregory v Cincinnati, Inc*, 450 Mich 1, 34; 538 NW2d 325 (1995) (citations omitted). In order to demonstrate a breach of implied warranty of fitness for a particular purpose, a plaintiff must demonstrate that the "seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods . . . ." MCL 440.2315.

The proposed testimony relating to the nature of defendant's product as manufactured is irrelevant to each of plaintiff's theories for breach of warranty. The proposed evidence would have no bearing with respect to a claim for breach of an express warranty because plaintiff's theory related to the fact that the HCH part did not meet its definition of the HFH part ordered, i.e., that the part was not made from medium carbon steel or heat treated with the quench and temper method. Additionally, the evidence is not relevant to plaintiff's claim for breach of implied warranty of merchantability because it does not relate to the causation of plaintiff's injuries, i.e., that the parts were rejected by Ford because they did not meet its specifications. Similarly, such evidence is irrelevant to plaintiff's claim for breach of warranty of fitness for a particular purpose because the particular purpose also related to Ford's usage of the fasteners and its product specifications. Further, any probative value of the proposed evidence is outweighed by the prejudicial effect it would have, as the evidence would have misled the jury and confused of the issues. MRE 403. Accordingly, we find that the trial court did not abuse its discretion in excluding the proposed evidence because it was irrelevant and unduly prejudicial.

Affirmed.

/s/ Donald S. Owens
/s/ Michael J. Talbot
/s/ Christopher M. Murray