

[Cite as *Roberts v. Performance Site Mgt, Inc.*, 2004-Ohio-2820.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Tabitha Carver Roberts,	:	
	:	
Plaintiff-Appellant,	:	No. 03AP-784
v.	:	(C.P.C. No. 01CVB10-10762)
	:	
Performance Site Management, Inc.	:	(REGULAR CALENDAR)
et al.,	:	
	:	
Defendants-Appellees.	:	
	:	

O P I N I O N

Rendered on June 1, 2004

Greenebaum Doll & McDonald PLLC, and Harry D. Rankin; Jones, Dietz & Schrand PLLC, and H. Douglas Jones, for appellant.

Montgomery, Rennie & Jonson, Douglas W. Rennie and G. Todd Hoffpauir, for appellee Komatsu America International Company.

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, J.

{¶1} Plaintiff-appellant Tabitha Carver Roberts ("plaintiff"), individually and in her capacity as Administratrix of the Estate of her deceased husband, Jereimiah Roberts ("Roberts"), appeals from a March 3, 2003 judgment of the Franklin County Court of

Common Pleas granting the summary judgment motion of defendant-appellee, Komatsu America International Company ("defendant" or "Komatsu") and dismissing plaintiff's claims against defendant with prejudice. Plaintiff assigns the following error on appeal:

THE TRIAL COURT ERRED IN GRANTING KOMATSU'S MOTION FOR SUMMARY JUDGMENT BECAUSE GENUINE ISSUES OF MATERIAL FACT EXIST THAT KOMATSU BREACHED ITS DUTY TO JEREIMIAH ROBERTS BY PROMOTING THE SALE AND INCLUSION OF A KNOWN DANGEROUS ATTACHMENT TO BE INCORPORATED INTO THE KOMATSU TRACKHOE.

Because defendant did not have a duty to warn of potential harm that could result when another manufacturer's allegedly dangerous and defective coupler mechanism was installed on an excavator manufactured by defendant after the excavator left defendant's hands, we affirm.

{¶2} The relevant facts are undisputed. On December 6, 2000, Performance Site Management, Inc. employed Roberts as a pipe layer who worked in a trench box laying sanitary sewer pipe on a construction site. A co-worker, Roger Harrell, operated a Komatsu PC400 excavator, also referred to as a "track hoe," to dig trenches for the pipe. The Komatsu excavator was equipped with a hydraulic quick hitch coupler system that was installed on the end of the excavator's arm to permit its operator to quickly change other excavator attachments, most commonly different sized buckets. To dig the trenches for the pipe Roberts was laying, Harrell alternated between a three-foot wide bucket and a five-foot wide bucket, each weighing in excess of 2,000 pounds. According to Harrell, he used the Hendrix coupler to change the larger bucket to a smaller one, performed a safety test to ensure that the bucket was securely attached to the coupler mechanism on the excavator, and turned the excavator's arm toward the trench box. The bucket

disengaged, fell on Roberts, and crushed him. Roberts died at the scene of the accident from his injuries.

{¶3} Komatsu, which manufactured the excavator at issue, distributed an "Allied Manufacturer Attachment Directory" (the "directory") to its dealers in 1998, listing attachments that could be used with Komatsu's construction equipment. The attachments for Komatsu excavators included buckets, augers, vibratory plates, and couplers, among several others. At least 23 manufacturers of couplers were listed for the Komatsu excavator, including the coupler at issue (the "Hendrix coupler"), which was manufactured by Hendrix Manufacturing Company ("Hendrix"). The names, addresses, and telephone numbers for the over 100 attachment manufacturers listed in the directory were also provided. The directory expressly advised:

The sole purpose of this directory is to provide a reference source of the various attachments available and the manufacturers who produce them. The listing of an attachment does not imply approval by Komatsu nor does it suggest the size or model of tool for each Komatsu machine. Retail customers and dealers should contact the allied equipment manufacturer with questions concerning the proper match of attachment and Komatsu machine for each application. * * *

* * *

The attachments listed in this directory have not been designed, tested, or manufactured by Komatsu Ltd. or Komatsu America International Company and these companies assume no responsibility for their performance. The attachment manufacturer and/or selling dealer are solely responsible for any failure, personal injury, or property damage caused by the use of this equipment.

* * *

The allied attachment information was supplied by the attachment manufacturers and its accuracy was not verified by Komatsu Ltd. or Komatsu America International Company but merely provided for the convenience of its dealers and customers as a general depiction and description of the attachment and its usage. * * *

{¶4} Performance Site Management purchased the Komatsu excavator at issue from Columbus Equipment Company, which sold Komatsu-built construction equipment, including excavators, and also sold various lines of excavator attachments made by third-party manufacturers, such as Hendrix. Columbus Equipment installed the Hendrix coupler on the Komatsu excavator at Performance Site Management's request after Columbus Equipment purchased the excavator from Komatsu. The parties do not dispute that Hendrix designed the coupler mechanism and provided the instructions and hardware for installation of the coupler mechanism on the Komatsu excavator and for its operation. No evidence was presented that Komatsu was involved in or had input into the design of the Hendrix coupler mechanism or its installation onto the Komatsu excavator.

{¶5} On October 31, 2001, plaintiff filed a complaint against Komatsu and other defendants for the fatal injuries Roberts suffered. In product liability claims against Komatsu, plaintiff alleged that Komatsu was negligent and strictly liable for selling, designing, manufacturing, and/or assembling the Komatsu excavator equipped with a Hendrix coupler and for failing to warn, or adequately warn, potential consumers of the dangerous propensities of the Hendrix coupler system and the foreseeable harm that could result when it was used on a Komatsu excavator. Plaintiff sought compensatory damages, punitive damages, reasonable attorney fees, costs, and interest.

{¶6} On November 26, 2002, Komatsu moved for summary judgment. Though providing no explanation for its decision, the trial court sustained Komatsu's motion in an order entered March 3, 2003, which became final and appealable by entry of the court's July 2, 2003 judgment disposing of all the related claims in the case.

{¶7} On appeal, plaintiff asserts the trial court improperly granted summary judgment to defendant Komatsu because material questions of fact exist with respect to plaintiff's claims. Plaintiff contends the claims should have been submitted to a jury rather than allowing the trial court to summarily resolve them.

{¶8} An appellate court's review of summary judgment is conducted under a de novo standard. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41; *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588. Summary judgment is proper only when the movant demonstrates: (1) no genuine issue of material fact exists, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds could come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence most strongly construed in its favor. Civ.R. 56; *State ex rel. Grady v. State Emp. Relations Bd.* (1997), 78 Ohio St.3d 181, 183.

{¶9} Pursuant to Civ.R. 56(C), the moving party bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record demonstrating the absence of a material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. Once the moving party discharges its initial burden, summary judgment is appropriate if the non-moving party does not respond, by affidavit or as otherwise

provided in Civ.R. 56, with specific facts showing that a genuine issue exists for trial. *Dresher*, at 293; *Vahila v. Hall* (1997), 77 Ohio St.3d 421, 430; Civ.R. 56(E).

{¶10} To prevent an adverse summary judgment in a product liability action against a manufacturer based on a failure to warn, the plaintiff must establish that the manufacturer had a duty to warn, the duty was breached, and the plaintiff's injury proximately resulted from the breach. *Barker v. Wal-Mart Stores, Inc.* (Dec. 31, 2001), Franklin App. No. 01AP-658, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77; *Freas v. Prater Constr. Corp., Inc.* (1991), 60 Ohio St.3d 6. Where there is no duty, there can be no actionable negligence. *Mussivand v. David* (1989), 45 Ohio St.3d 314, 318; *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282; *Westfield Ins. Co. v. HULS Am., Inc.* (1998), 128 Ohio App.3d 270, 283, appeal not allowed, 83 Ohio St.3d 1460. Thus, a manufacturer cannot be held liable for a failure to warn unless the plaintiff first establishes that the manufacturer had a duty to warn. *Hanlon v. Lane* (1994), 98 Ohio App.3d 148, 153, appeal not allowed, 71 Ohio St.3d 1491. The question of whether a manufacturer had a duty to warn is a question of law for the court. *Mussivand*, supra; *Malone v. Miami Univ.* (1993), 89 Ohio App.3d 527, 529-530, jurisdictional motion overruled, 68 Ohio St.3d 1410.

{¶11} "The duty imposed upon a manufacturer in a strict liability action for failure to warn is the same as that imposed upon the manufacturer in a negligence action for failure to warn." *Hanlon*, supra, citing *Crislip v. TCH Liquidating Co.* (1990), 52 Ohio St.3d 251, 256-257. See, also, *Prater Constr.*, at 9. "[A] negligence action is an *alternative* to a strict liability cause of action for failure to warn," with each imposing "liability on a manufacturer for the failure to warn foreseeable users of a product's hazardous or

unreasonably dangerous condition." (Emphasis sic.) *Crislip*, at 256, 257; *Prater Constr.*, supra. Generally, to prevail, a plaintiff must prove that the product was defective when it left the manufacturer's hands. *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 322.

{¶12} Although a manufacturer is subject to potential liability based on a failure to warn, it is nevertheless well established that, pursuant to the "component parts doctrine," a manufacturer generally has no duty to warn of dangers that may cause harm on integration of its component part or product into an end product or system, where the manufacturer is not involved in the final product's design or assembly. See *Brennaman v. R.M.I. Co.* (1994), 70 Ohio St.3d 460; *Temple*, paragraph four of the syllabus (holding "[t]here is no duty to warn extending to the speculative anticipation of how manufactured components, not in and of themselves dangerous or defective, can become potentially dangerous dependent upon their integration into a unit designed and assembled by another"); *Searls v. Doe* (1986), 29 Ohio App.3d 309, 312 (determining the manufacturers of component parts have "no duty to warn plaintiff of a potentially dangerous or defective design of a system, where defendants were not responsible for the design and manufacture of the entire system and where the component parts, not in and of themselves dangerous or defective, were manufactured in accordance with specifications"); *Martinez v. Yoho's Fast Food Equipment*, Franklin App. No. 02AP-79, 2002-Ohio-6756, ¶33-35 (finding no liability for a manufacturer whose component was not in and of itself dangerous or defective). See, also, Restatement of the Law 3d, Torts (2001), Section 5; *Davis v. Komatsu America Indus. Corp.* (Tenn.2001), 42 S.W.3d 34,

38-39 (containing an extensive list of citations and noting that "every court presented with the issue has adopted the components parts doctrine").

{¶13} Plaintiff does not contend that the Komatsu excavator, without the Hendrix coupler, was in and of itself dangerous or defective, but asserts the general rule does not apply in this case to relieve Komatsu of liability. Plaintiff contends the Komatsu excavator was an incomplete product because it could not be operated effectively without the use of an attachment such as the Hendrix coupler. Therefore, plaintiff submits, the "product" in this case is the "Komatsu excavator equipped with a Hendrix coupler," not the Komatsu excavator or the Hendrix coupler as products distinct from one another. See R.C. 2307.71(L)(1)(a) (stating a "product" is an object that "is capable of delivery itself, or as an assembled whole in a mixed or combined state, or as a component or ingredient"). Plaintiff avers that the Hendrix coupler is dangerous and defective and, as a consequence, when it was installed onto a Komatsu excavator, the final, integrated product became dangerous and defective as well.

{¶14} Plaintiff accordingly asserts that Komatsu had a duty to warn potential customers of the danger and risk of harm that could be caused by using a Hendrix coupler on a Komatsu excavator because: (1) Komatsu knew of the danger and potential for injury associated with the Hendrix coupler, having been sued in 1996 for injuries resulting from use of a Hendrix coupler on a Komatsu excavator, and (2) Komatsu approved and marketed, through distribution of its directory, the sale and use of the Hendrix coupler with the Komatsu excavator. Thus, plaintiff asserts, not only was Komatsu's duty to warn established in this case, but sufficient evidence was presented from which reasonable minds could infer that Komatsu breached its duty to warn.

{¶15} In support, plaintiff relies on *Waltz v. Zapata Off-Shore Co.* (C.A.5, 1970), 431 F.2d 100, and *Mosier v. American Motors Corp.* (S.D.Tex.1967), 303 F.Supp. 44, affirmed, 414 F.2d 34 (C.A.5, 1969). An analysis of these cases, however, reveals they are significantly different from the instant case. In both *Waltz* and *Mosier*, a defective component was incorporated into the end product before the end product left the manufacturer's hands. Here, the allegedly defective coupler mechanism was not installed on the Komatsu excavator until after the excavator left Komatsu's hands. Specifically, Columbus Equipment installed the Hendrix coupler onto the Komatsu excavator at Performance Site Management's request after the equipment dealer purchased the excavator from Komatsu. Accordingly, *Waltz* and *Mosier* are not relevant to the circumstances present in this case.

{¶16} Not only is plaintiff's argument lacking legal support, the evidence presented to the trial court does not support plaintiff's contentions. Instead, the evidence establishes that the general rule applies in this case with the result that Komatsu owed no duty to warn about the allegedly dangerous coupler system. Hendrix's engineers, who were responsible for the design of the Hendrix coupler, testified unequivocally that Komatsu was not consulted and did not participate in the design of the coupler. Komatsu merely provided Hendrix with general information regarding the dimensional measurements for the end of the Komatsu excavator's arm. Hendrix provided all the instructions and hardware to install the coupler on the Komatsu excavator and to operate the coupler system, and Columbus Equipment installed the Hendrix coupler, at Performance Site Management's request, onto the Komatsu excavator.

{¶17} Because the record contains no evidence that Komatsu either participated in the design of the allegedly defective coupler system or assembled the final, integrated product, Komatsu had no duty to warn of dangers associated with the Hendrix coupler mechanism. *Temple; Searls*, supra. See, also, *Acme Steak Co. v. Great Lakes Mechanical* (Sept. 29, 2000), Mahoning App. No. 98-CA-146 (finding a component part manufacturer was not subject to liability for the completed product where the manufacturer reviewed design drawings and specifications but was not involved in the design or construction of the integrated system); *Martinez*, at ¶34 (determining there is no duty to warn where a component manufacturer offers assistance but does not provide recommendations for assembling its non-defective product with other products).

{¶18} Relying on *Cincinnati v. Beretta U.S.A. Corp.* (2002), 95 Ohio St.3d 416, 422, plaintiff nevertheless contends that Komatsu had a duty to warn users of the potential dangers and risks of harm associated with the Hendrix coupler because Komatsu marketed and promoted the Hendrix coupler in the directory it distributed to its dealers.

{¶19} *Beretta* is factually distinguishable from the case before us. In *Beretta*, the Ohio Supreme Court found the defendants had a duty of care to ensure that firearms were safe for their intended use and to warn of risks associated with the firearms where the defendants manufactured, distributed and marketed the allegedly dangerous and defective firearms. Here, in contrast, even if Komatsu arguably "marketed" the Hendrix coupler, it is uncontroverted that Komatsu did not manufacture or distribute the allegedly defective product. Plaintiff's reliance on *Beretta* is thus unavailing.

{¶20} Plaintiff further contends that Komatsu had a responsibility to independently test or inspect the Hendrix coupler mechanism or request information from Hendrix regarding the safety of its coupler and then to report the results in its directory, advising users of the potential risks associated with the Hendrix coupler.

{¶21} Contrary to plaintiff's contentions, Komatsu did not have a duty to make an independent determination or to request, verify, and provide information from Hendrix regarding the safety of the Hendrix coupler mechanism when it is installed on a Komatsu excavator. A manufacturer is "not required to procure plans of the entire system, review those plans, and independently determine whether their respective component parts would function in a safe fashion." *Searls*, at 311.

{¶22} Here, the limited purpose of the directory to "provide a reference source of the various attachments available and the manufacturers who produce them" "for the convenience of [Komatsu's] dealers and customers," together with Komatsu's express disavowal of approval of any of the numerous attachments listed, simply does not show that Komatsu "promoted" or specifically recommended the use of a Hendrix coupler over any other coupler or attachment. Such limited assistance does not give rise to a duty to warn. See *Martinez*, at ¶34.

{¶23} Further, Komatsu's dissemination of marketing or promotional literature does not give rise to a duty to warn absent evidence that Komatsu provided instructions for or was involved in the design, construction, or assembly of the coupling mechanism or the final, integrated "product." *Schaffer v. A.O. Smith Harvestore Products, Inc.* (C.A.6, 1996), 74 F.3d 722, 730. As previously noted, the record contains no evidence that

Komatsu instructed on or was otherwise involved in the design of the Hendrix coupler or its installation on the Komatsu excavator.

{¶24} Also weighing against the imposition of a duty to warn based on Komatsu's dissemination of its directory is evidence that the end-users of the allegedly dangerous and defective product neither relied upon nor were influenced by Komatsu's directory when deciding to have the Hendrix coupler installed on the Komatsu excavator. To the contrary, evidence was presented that Performance Site Management had purchased 10 to 12 Hendrix couplers by 1994, before Komatsu's directory was published and before Performance Site Management purchased the Komatsu excavator and the Hendrix coupler at issue here. The Columbus Equipment salesman responsible for the Performance Site Management account testified he did not use Komatsu's directory in his efforts to sell the equipment to Performance Site Management. Also notable is evidence that the Hendrix coupler was considered the "coupler of choice" in Ohio, with a significant market share estimated to 90 percent, before the directory was published.

{¶25} In sum, even when the evidence is viewed in a light most favorable to plaintiff, Komatsu's "marketing" of the Hendrix coupler in its directory does not give rise to a duty requiring Komatsu to warn of potential dangers associated with the Hendrix coupler.

{¶26} Plaintiff finally argues that, as between an innocent pipe layer and a manufacturer who "promoted" an allegedly dangerous attachment to be used with its own non-defective product, "morals, justice, and policy considerations" require that a duty to warn be imposed upon Komatsu in this case.

{¶27} Plaintiff's argument notwithstanding, the Ohio legislature has not placed a duty to warn on the manufacturer of a non-defective component part of an integrated product. See R.C. 2307.76 (relating to a product manufacturer's duty to warn). Had the legislature intended to impose such a duty, it could have done so.

{¶28} Further, although past reported incidents may have made Komatsu aware of the risk of inadvertent bucket drops and the potential for injury when a Hendrix coupler was installed on a Komatsu excavator, Komatsu owed no duty to warn the end-users in this case about the risk. Uncontroverted evidence was presented that, at the time of Roberts' accident, Performance Site Management and Harrell, the excavator operator, were already aware of the risk of an inadvertent bucket drop occurring with the Hendrix coupler. There is no duty to warn of a danger of which the user is aware. See *Temple*, at 325; *Vermett v. Fred Christen & Sons Co.* (2000), 138 Ohio App.3d 586, 613, appeal not allowed, 90 Ohio St.3d 1490; *Livengood v. ABS Contractors Supply* (1998), 126 Ohio App.3d 464, 466. See, also, R.C. 2307.76(B) (stating that a product is not defective due to lack of warning or an inadequate warning as a result of the failure of the product's manufacturer to warn about a risk that is a matter of common knowledge).

{¶29} Finally, policy considerations do not necessarily favor imposing responsibility on the manufacturer of a non-defective component of a potentially dangerous final product rather than on the manufacturer of the defective component or the assembler of the final product or system. To do so would encourage the ignorance of manufacturers or assemblers of defective components or products and would provide a disincentive to them to conduct safety testing and issue warnings regarding their defective

and dangerous products or systems. *Childress v. Gresen Mfg. Co.* (C.A.6, 1989), 888 F.2d 45, 48-49 (applying Michigan law).

{¶30} Based on the foregoing, we conclude that, because Komatsu was not responsible for the design of the Hendrix coupler mechanism and did not assemble the allegedly dangerous and defective coupler mechanism onto the Komatsu excavator, Komatsu had no duty to warn of dangers associated with use of the Hendrix coupler. Accordingly, the trial court did not err in granting summary judgment, as a matter of law, to Komatsu on plaintiff's product liability claims. Because plaintiff had no basis to proceed on her claims for compensatory damages against Komatsu, her claims for punitive damages were also properly dismissed. Accordingly, plaintiff's single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN and KLATT, JJ., concur.
