

SUPERIOR COURT
OF THE
STATE OF DELAWARE

JAN R. JURDEN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Date Submitted: February 12, 2004
Date Decided: June 15, 2004

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RE: **Gary Thompson v. Reinco, Inc. and Opdyke, Inc.**
C.A. No. 01C-04-076 JRJ

Dear Counsel:

I have reviewed the briefs and relevant caselaw regarding the choice of law issue raised in Defendant Opdyke's Motion for Summary Judgment.¹ For the reasons set forth below, the Court concludes that Delaware law applies in this case.

¹ The Court recognizes that the choice of law issue could be critical in this case because Delaware is not a strict tort liability state, whereas the other states implicated, Pennsylvania and Maryland, are strict liability states. *See Rasmussen v. Uniroyal Goodrich Tire Co.*, No. 93C-04-058, 1995 WL 945556 at *1, Quillen, J. (Del. Super. Ct. Aug. 18, 1995) (citing *Cline v. Prowler Indus. of Md., Inc.*, 418 A.2d 968 (Del. 1980) (holding that the doctrine of strict liability is preempted in Delaware by the Uniform Commercial Code in sales cases)).

In deciding choice of law, Delaware Courts apply the “most significant relationship” test as set forth in the Restatement (Second) of Conflicts, §§ 6, 145-46.² Under the Restatement, the Court has considered the following:

(a) The place where the injury occurred

“In personal injury actions, there is a rebuttable presumption in favor of the law of the state where the injury occurred, unless some other state has a more significant relationship to the action.”³ Although the accident in this case occurred in Maryland, there does not appear to be any other significant contact with Maryland. “The place of injury does not play an important role ‘when the place of injury can be said to be fortuitous or when for other reasons it bears little relation to the occurrence and the parties with respect to the particular issue (see § 146, Comments *d-e*).’”⁴ Under the circumstances of this case, the place of injury in Maryland bears little relation to the underlying product liability action.

(b) The place where the conduct causing the injury occurred

The hydroseeder was originally manufactured by defendant Reinco, Inc. in New Jersey. It was eventually sold to Martom Landscaping Co. by a Pennsylvania corporation, defendant Opdyke, Inc. Although the hydroseeder was sold in Pennsylvania, the sales contract makes clear that it was to be delivered to Martom Landscaping in Delaware. The hydroseeder was then installed by Martom Landscaping on a truck that was purchased and registered in Delaware. On the day of the accident, the plaintiff was performing a job for Martom Landscaping in Maryland.

“Modern choice of law considerations suggest that the jurisdiction where the product is marketed has a greater interest than a jurisdiction where a product is manufactured, developed, or tested.”⁵ Consequently, the fact that the product was manufactured in New Jersey is not very significant under the facts of this particular case. While Reinco urges that Pennsylvania law should apply because the product was sold in Pennsylvania, the fact that the hydroseeder was delivered to a company working in Delaware, presumably for use in Delaware, gives Delaware an equal or stronger relationship to this case than Pennsylvania.

²*Travelers Indemnity Co. v. Lake*, 594 A.2d 38 (Del. 1991).

³ *Smith v. DaimlerChrysler Corp.*, C.A. No. 94-C-12-002 JEB, 2002 Del. Super. LEXIS 434 (Del. Super. Ct. Nov. 20, 2002) (citing *Lake*, 594 A.2d at 47; Restatement of Conflict of Laws § 146).

⁴*Rasmussen v.* 1995 WL 945556 at *2 (citations omitted).

⁵*Rasmussen*, 1995 WL 945556 at *2.

(c) The domicile, residence, nationality, place of incorporation and place of business of the parties

The plaintiff is a Delaware resident and worked out of Delaware. Martom Landscaping, the company that last purchased, installed, and used the hydroseeder, is a Delaware corporation based in New Castle, Delaware. Defendant Opdyke, Inc. is a Pennsylvania corporation based in Hatfield, Pennsylvania. Defendant Reinco, Inc. is a New Jersey corporation also based in New Jersey. The various residences of each party do not present an overwhelming choice of law. But the Court finds it is significant that the injured plaintiff resides and works in Delaware, for a Delaware corporation that has its principal place of business in Delaware. Consequently, this action has a stronger relationship with Delaware than with any other state.

(d) The place where the relationship, if any, between the parties is centered

Defendant Reinco asserts that there is no single state in which the relationship between the parties is centered. To an extent, this assertion is correct. Essentially the product was manufactured in New Jersey, sold in Pennsylvania, delivered to Delaware, and was being used in Maryland at the time of the accident. However, the hydroseeder was clearly being delivered to Delaware for use in this state. Although the injury actually occurred in Maryland, it was the delivery of the product to a Delaware resident for use in Delaware that provides the pivotal moment which ultimately brought all the parties together. Having determined that the place of injury was fortuitous, the relationship between all the parties is predominantly centered on the delivery and intended use in Delaware.

* * *

The Court finds that the other factors enumerated in the Restatement (Second) of Conflicts, §§ 6, 145-46, do not compel a different conclusion. For the above reasons, defendant Opdyke, Inc.'s Motion for Summary Judgment is **GRANTED IN PART** on the choice of law issue. The Court reserves decision on the other substantive issues that were raised by the Motion for Summary Judgment and defendant Reinco, Inc.'s Opposition.

Very truly yours,

/s/ Jan R. Jurden

Jan R. Jurden
Judge

JRJ/pac
Original to Prothonotary