

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES J. HYATT and DWANA	§	
J. HYATT,	§	
	§	No. 327, 2006
Plaintiffs Below,	§	
Appellants,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
TOYS “R” US, INC.,	§	C. A. No. 99C-12-152
	§	
Defendant, Third-Party	§	
Plaintiff Below,	§	
Appellee,	§	
Cross-Appellant,	§	
	§	
v.	§	
	§	
RAND INTERNATIONAL	§	
LEISURE PRODUCTS, LTD.,	§	
t/a Ross Bicycles USA Ltd.,	§	
a foreign corporation,	§	
	§	
Third-Party Defendant	§	
Below, Cross-Appellee.	§	

Submitted: May 9, 2007

Decided: July 9, 2007

Before **STEELE**, Chief Justice, **BERGER** and **RIDGELY**, Justices.

**ORDER**

This 9<sup>th</sup> day of July, 2007, on consideration of the briefs and arguments of the parties, it appears to the Court that:

1) On September 5, 1998, James J. Hyatt purchased a fully assembled bicycle from Toys “R” Us (TRU). On October 16, 1998, after riding it a total of approximately 20 miles, Hyatt lost control of the bicycle, fell, and suffered injuries when the right pedal snapped off. Hyatt and his wife sued TRU, claiming breach of the implied warranty of merchantability and negligence, based on faulty design and/or assembly of the bicycle. TRU filed a third-party complaint against Rand International Leisure Products, Ltd. (Rand), the bicycle manufacturer.

2) At the end of the first trial, the Superior Court declared a mistrial, *sua sponte*, finding that the record “totally muddles [the] issues....”<sup>1</sup> At the end of the second trial, the trial court granted Rand’s motion for a directed verdict, but allowed the jury to consider both the negligence and warranty claims against TRU. The jury decided that TRU was not negligent in assembling the bicycle in a manner that proximately caused Hyatt’s injuries, but that TRU breached its warranty of merchantability. The jury awarded \$100,000 to Hyatt and nothing to Hyatt’s wife. TRU moved for judgment notwithstanding the verdict and Hyatt’s wife moved for a new trial on her damages claim. One year later, the trial court granted TRU’s motion, holding:

I am not persuaded that the submission of both issues [negligent assembly and breach of the implied warranty of merchantability] to a jury is erroneous as a matter of law. I am persuaded that it was

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<sup>1</sup>Appellants’ Appendix, A-51.

erroneous to do so in this case. The alleged defect in this case could only have resulted from negligent assembly. No evidence was presented that this product was defective in any way other than by the alleged cross-threading of the pedal assembly. Thus to submit both claims to the jury in this case was to invite confusion. Once the jury determined that Toys-R-Us was not negligent in assembling the bicycle there was no rational basis for a finding that the alleged defect existed at the time of sale.<sup>2</sup>

3) On appeal, Hyatt argues that the trial court erred because there was evidence to support the jury's finding that TRU breached its warranty of merchantability. The elements of a such a claim are:

(1) that a merchant sold the goods; (2) that such goods were not "merchantable" at the time of sale; (3) that plaintiff was damaged; (4) that the damage was caused by the breach of the warranty of merchantability; and (5) that the seller had notice of the damage.<sup>3</sup>

To be "merchantable," the goods must be "fit for the ordinary purposes for which such goods are used...."<sup>4</sup> We conclude that Hyatt presented sufficient evidence to support his breach of warranty claim.

4) It was undisputed that TRU is a merchant and sold the bicycle; Hyatt was injured; and TRU had notice of the injury. The critical, and hotly disputed, issue was whether the bicycle was merchantable at the time it was sold. TRU presented evidence about the skill and care used by its employees when assembling bicycles.

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<sup>2</sup> *Hyatt v. Toys-R-Us*, 2006 WL 1484908 at \*2 (Del. Super.).

<sup>3</sup> *Neilson Business Equipment Ctr., Inc. v. Monteleone*, 524 A.2d 1172, 1175 (Del. 1987).

<sup>4</sup> 6 *Del. C.* § 2-314(2)(c).

Based on his examination of the bicycle and the other witnesses' testimony, TRU's expert opined that the pedal had been properly threaded and assembled. Indeed, Hyatt acknowledged that he did not notice anything wrong with the right pedal when he took the bicycle home, and that the bicycle operated normally until the accident.

5) Hyatt's experts, however, testified that the pedal was not fully threaded into the crank arm and that it was cross-threaded. The cross-threading caused the pedal to be about 12 degrees off of the proper 90 degree alignment. The improper alignment, in turn, caused the retaining washer to fail and the pedal to fly off the crank arm. The fact that Hyatt never noticed the problem was not surprising, according to one of Hyatt's experts, who explained that many of his bicycle customers do not realize that they have a cross-threaded pedal. The one thing that all experts agreed upon was that, if properly threaded, the pedal assembly would not have dislodged as it did.

6) If the jury believed Hyatt's experts, it could have concluded that the bicycle was delivered to Hyatt in an unmerchantable condition because the pedal was improperly threaded. TRU's assistant store director testified about the bicycle assemblers' training, and offered the view that the bicycle was "delivered properly" to the Hyatts. But, at her deposition, she observed the bicycle and saw that the pedal axle was at an angle. She then responded to Hyatt's question:

Q. And if [the bicycle] were sold in that condition, it would be a – you'd be selling something that wasn't fit for the way it was supposed to be used?

A. Yes, the way the bike sat in that room that day, if it was sold that way, it should not have been.<sup>5</sup>

7) The real problem in this case, is not so much whether there was evidence of breach of warranty; it is whether the jury's answers to the two liability questions can be reconciled. The jury said TRU was not negligent in assembling the bicycle, but that TRU did breach its warranty of merchantability. The trial court concluded that, having determined that TRU was not negligent in assembling the bicycle, there was no rational basis on which the jury could find that the bicycle was unfit at the time of sale.

8) We find *Bell Sports, Inc. v. Yarusso*<sup>6</sup> instructive on this point. Yarusso was injured in a motorcycle accident and sued the helmet manufacturer on theories of breach of express and implied warranties, as well as negligence. The jury found that the manufacturer had not negligently designed the helmet, but that it breached an express or implied warranty in selling the helmet to Yarusso. In finding no fatal inconsistency between the two answers, this Court explained:

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<sup>5</sup>Appellant's Appendix, A-41.

<sup>6</sup>759 A.2d 582 (Del. 2000).

A claim for breach of warranty, express or implied, is conceptually distinct from a negligence claim because the latter focuses on the manufacturer's conduct, whereas a breach of warranty claim evaluates the product itself. See *Cline v. Prowler Indus. of Md., Inc.*, Del. Supr., 418 A.2d 968, 978, n.19 (1980) (the focus of a negligence claims is the manufacturer's conduct and the breach of an accepted standard of conduct); *Borel v. Fibreboard Paper Prod. Corp.*, 5th Cir., 493 F.2d 1076, 1094 (1973) (in a products liability case with inconsistent verdicts, it is within the jury's prerogative so long as evidence supports the finding); *Community Television Serv. v. Dresser Indus., Inc.*, D.S.D. 435 F. Supp. 214, 216 (1977) (jury could find defendant neither negligent nor strictly liable while finding as a matter of law that representations in a brochure created an express warranty that defendant breached.) Based on the foregoing authorities, we find no fatal inconsistency between the jury's verdict negating negligence by finding breach of warranty.<sup>7</sup>

9) In this case, the only testimony about the actual process of assembling the bicycle came from TRU's witness, who described a careful process performed by well-trained employees. The jury, thus, could have concluded that TRU's conduct was not negligent. But there was evidence that the bicycle was cross-threaded at the time it was delivered to Hyatt. By analyzing the evidence from the perspective of the condition of the bicycle at the time of sale, rather than the manner in which it came to be in that condition, the jury could have concluded that TRU breached its warranty of merchantability. Accordingly, we conclude that the trial court erred in granting the judgment notwithstanding the verdict, and that the jury's verdict in Hyatt's favor should be reinstated.

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<sup>7</sup>759 A.2d at 594.

10) Two issues remain. First, Hyatt's wife seeks a remand for determination of her motion for a new trial on her damages claim. Because the trial court never reached that motion, we agree that a remand is warranted. Second, TRU argues in its cross appeal that it should be allowed to pursue claims against Rand for contribution and/or indemnity based on breach of warranty. We find no merit to this argument. The bicycle was not merchantable because it was sold in a condition that made it unsafe. There was no evidence that Rand manufactured a defectively designed or constructed product. Accordingly, TRU has demonstrated no factual basis on which to reverse the trial court's decision directing a verdict in favor of Rand.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are AFFIRMED in part and REVERSED in part. This matter is REMANDED for further action in accordance with this decision. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger  
Justice