

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JANUARY TERM 2005

GARY BOHACK,

Appellant,

v.

KELLER INDUSTRIES, INC.,

Appellee.

CASE NO. 4D03-4611

Opinion filed January 26, 2005

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Barry E. Goldstein, Judge; L.T. Case No. 95-7490(11).

Kenneth D. Cooper, Fort Lauderdale, for appellant.

Bradley S. Fischer, Richard A. Sachs, and Lisa F. Santos of Melito & Adolfsen, Fort Lauderdale, for appellee.

PER CURIAM.

In the circuit court, appellant Gary Bohack sued appellee, Keller Industries, Inc., on claims of products liability and negligence. The product at issue was a ladder manufactured by Keller.

Before trial, Keller moved in limine to preclude Bohack from making any reference whatsoever to other ladder manufacturers. Bohack's attorney agreed to the entry of an order granting the motion, apparently unaware of its full scope. At trial, the order prevented Bohack from presenting evidence that would have been admissible under section 768.1257, Florida Statutes (2003), which, in a defective design case, allows evidence pertaining to "the state of the art of scientific and technical knowledge and other circumstances that existed

at the time of manufacture." In spite of Bohack's efforts to relax the order in limine, Keller succeeded at trial in having the court strictly enforce the wording of the pretrial order, which had been entered by a different judge.

At trial, Keller's expert violated the order in limine by testifying that "every other major manufacturer has made at least one ladder of this type at some point in time." The trial court denied Bohack's request to cross-examine the expert on whether other manufacturers had designed ladders similar to the one at issue. The court also denied the request for a mistrial.

Once Keller's expert violated the order in limine, the only effective way to cure the damage was by allowing Keller to cross-examine the expert. The testimony opened the door to cross-examination on the expert's representation concerning other ladder manufacturers. Once Keller's expert had violated the order in limine secured by Keller, the trial court abused its discretion by precluding Bohack from cross-examining the expert on that issue.

We therefore reverse the final judgment on the products liability count. We affirm the verdict for Keller on the negligence count, finding that the error described was harmless, as it pertained to the negligence issue.

Affirmed in part, reversed in part, and remanded.

WARNER, GROSS, JJ., and SILVERMAN, SCOTT, Associate Judge, concur.

***NOT FINAL UNTIL DISPOSITION OF ANY
TIMELY FILED MOTION FOR REHEARING.***