

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002862-MR

MARLA J. RIEDLING AND
MARTIN A. RIEDLING

APPELLANTS

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE THOMAS L. WALLER, JUDGE
ACTION NO. 98-CI-00492

HAY DAY, INC.

APPELLEE

OPINION
REVERSING AND REMANDING
** **

BEFORE: BUCKINGHAM, DYCHE AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Marla J. Riedling and Martin A. Riedling have appealed from an order entered by the Bullitt Circuit Court on August 23, 2000, which granted summary judgment in favor of Hay Day, Inc. Having concluded that the trial court erred by granting summary judgment to Hay Day because the Riedlings have presented a genuine issue as to a material fact, we reverse and remand.

In July 1996 Martin Riedling purchased a used Kubota farm tractor from Hay Day. Hay Day, which is owned by Mr. and Mrs. Robert Shickel, is an Indiana corporation, located in

Lanesville, Indiana.¹ Hay Day's primary business is the sale of hay and straw. However, Hay Day also performs some repair work on farm equipment and sells some used equipment and vehicles. Kubota, the manufacturer of the tractor, is a Japanese corporation with a sister company doing business in the United States. The American division of Kubota is headquartered in Torrence, California.²

It was revealed during discovery that the Riedlings' tractor was manufactured in the early 1970's by the Japanese division of Kubota. The tractor was manufactured for sale in the Japanese market, and its warnings, labels and instruction manuals were printed in Japanese script. Further, the tractor was designed differently from its counterpart that was sold in the U.S. market. Due to the demands of the rice farmer, the Japanese model is much lighter in weight, is equipped with tires more suitable for traction in marsh-like conditions, has a smaller turning radius, and, most importantly, does not come equipped with many of the safety features that are standard on Kubota

¹Lanesville, Indiana, is located in southern Indiana west of Louisville, Kentucky. Apparently, Hay Day either knew that Mr. Riedling lived in Kentucky or it regularly did business in Kentucky; thus it was subject to Kentucky jurisdiction through its long-arm statute. Kentucky Revised Statutes (KRS) 454.210.

²The U.S. Division of Kubota Tractor Company was initially named in the lawsuit. However, the Bullitt Circuit Court granted Kubota summary judgment after it was proven that the tractor was not manufactured by Kubota's U.S. division. There has been no appeal of that ruling.

tractors designed for sale in the U.S. market.³ Hay Day purchased the used tractor from Georgia Auto Parts located in Braselton, Georgia. According to Shickel, no alterations or repairs were made to the tractor by Hay Day from the time of its purchase until its sale to Mr. Riedling. Shickel claims that he merely changed the fluids and sold the tractor "as is."

Mr. Riedling claimed that during the sale negotiations with Hay Day that he noted the Japanese script on the tractor and that he specifically asked Shickel whether there were any differences between the American Kubota tractor and the Japanese Kubota tractor. Mr. Riedling alleged that Shickel told him the tractor "was just like the American one that was here [at Hay Day's]." Mr. Riedling stated that Shickel told him that "the only difference [between the Japanese and American Kubota tractors] is the model number on the front." Mr. Riedling claimed that he "realized that the United States has got a different set of safety features than anybody else" and that he interpreted Shickel's comments to imply that the tractor contained all the safety features that would have been included in a 1970's model Kubota tractor that had been manufactured for sale in the United States. Mr. Riedling claimed that when he purchased the tractor that he relied on these expressed representations by Shickel.

³The tractor in question was allegedly sold on what is known in the industry as the "gray market", i.e., it was illegally imported into the U.S. In 1997 Kubota Manufacturing of America brought suit against several alleged importers of Japanese Kubota tractors. The suit accused the defendants of infringing on Kubota's U.S. trademark.

Shortly after Mr. Riedling began using the tractor, he discovered a problem with the engine. Mr. Riedling informed Shickel of the problem and Shickel agreed to pay for one-half of the cost of the new parts if Mr. Riedling agreed to install them himself. These terms were acceptable to Mr. Riedling and the new engine parts were bought and installed on the tractor.

After the tractor was repaired it ran well, but Mr. Riedling did have a problem when the tractor on one occasion "rolled-over" on him. Mr. Riedling then purchased and installed a roll-bar and a seatbelt on the tractor. This incident occurred prior to the accident which is the subject matter of this action.

On July 7, 1997, Mrs. Riedling was using the tractor to mow her lawn, when she was thrown from the tractor and into the path of the mower.⁴ The tractor and mower continued to run and Mrs. Riedling was run over by the mower. She suffered a partial amputation of her right hand, multiple fractures to her fingers, an 18-inch laceration to her right thigh, and a puncture wound on her left thigh.⁵

On July 6, 1998, the Riedlings filed a complaint in Bullitt Circuit Court against Hay Day, Kubota, and the City of Pioneer Village.⁶ The complaint alleged (1) a breach of implied

⁴The tractor, which does not contain a mower, was pulling a mower.

⁵Apparently, Mrs. Riedling was not wearing the seatbelt at the time of this accident.

⁶Kubota and Pioneer Village were both granted summary judgment in the case prior to this appeal. Pioneer Village had
(continued...)

and express warranties by Kubota and Hay Day, (2) that the product was unreasonably dangerous due to a defective design and/or manufacture, and (3) that Hay Day was negligent in its sale of the tractor to the Riedlings. The complaint sought compensatory and punitive damages for personal injury and loss of consortium.

On July 5, 2000, Hay Day filed a motion for summary judgment⁷ claiming (1) that Hay Day had specifically disclaimed any warranties on the tractor, (2) that as an occasional seller of used tractors, Hay Day was exempt from liability under the Kentucky Products Liability Act; (3) that Mrs. Riedling's own negligence was the proximate cause of her injuries; and (4) that Hay Day's sale of the allegedly "gray market" tractor did not violate any statute, regulation, or common-law duty. On August 23, 2000, the trial court granted Hay Day's motion for summary judgment and dismissed the Riedlings' complaint against it.⁸ This appeal followed.

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, stipulations, and

⁶(...continued)
been originally named in the complaint because the accident took place on a city right-of-way, just off the Riedlings' property. Following the dismissal of Kubota and Pioneer Village, the plaintiffs amended their complaint to include Georgia Auto Parts for its role in importing a "gray market" tractor.

⁷Kentucky Rules of Civil Procedure (CR) 56.01.

⁸On November 7, 2000, the trial court entered an order denying the Riedlings' motion to set aside the summary judgment and this second order was amended to include finality language by an order entered on November 28, 2000.

admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”⁹ There is no requirement that the appellate court defer to the trial court since factual findings are not at issue.¹⁰ “The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.”¹¹ Summary “judgment is only proper where the movant shows that the adverse party could not prevail under any circumstances.”¹² Consequently, summary judgment must be granted “only when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor. . . .”¹³

The Riedlings claim that the trial court erred by granting a summary judgment to Hay Day and by dismissing their claim for breach of an express warranty because there is a genuine issue as to a material fact. Specifically, the Riedlings point to Mr. Riedling’s deposition testimony, wherein he stated:

⁹CR 56.03.

¹⁰Goldsmith v. Allied Building Components, Inc., Ky., 833 S.W.2d 378, 381 (1992); Scifres v. Kraft, Ky.App., 916 S.W.2d 779, 781 (1996).

¹¹Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476, 480 (1991).

¹²Id. (citing Paintsville Hospital Co. v. Rose, Ky., 683 S.W.2d 255 (1985)).

¹³Huddleston v. Hughes, Ky.App., 843 S.W.2d 901, 903 (1992) (citing Steelvest, supra).

Q: Did this tractor have anything on it that the other tractors that you were looking at including the new Kubotas did or didn't have?

A: The new Kubota would have come with the new - the U.S. safety equipment on it.

Q: And you had seen the new ones with the U.S. safety equipment on it?

A: I had seen the new ones.

Q: At Parrish and the other place that you had gone to?

A: I had seen the new tractors, and being in business I realized that the United States has got a different set of safety features than anybody else. So if it's here, you know, it's hard to look at something and tell something is missing.

Q: Do you know what the U.S. tractors have that this Kubota tractor didn't have as far as safety features?

A: Well, I was told they had a switch seat to shut the tractor down.

Q: What do you mean by that?

A: If you come off the seat or you are not sitting in the seat, the tractor stops.

Q: On a diesel?

A: When it was explained to me it wasn't explained that there was a difference between safety options, between a diesel and gas, so. The clutch pedal safety. This tractor had no safeties on it. But it's kind of too late for me to find that out now.

Q: Not necessarily by too late, I mean, you saw the new ones while you were looking and then you saw this one. Did Hay Day tell you this tractor had any safety features on it, or did you even ask them that question?

A: I had asked him about the tractor because it has Japanese writing all over the tractor.

Q: And what were you told?

A: And I was told it was just like the American one that was here.

Q: I'm sorry?

A: It's just like the American model. The only difference is the model number on the front.

Q: Who told you that?

A: That's Robert [Shickel].

Q: Anything else?

A: Basically that's about it.

Later in Mr. Riedling's deposition, the issue of an express warranty was again addressed:

Q: So you had seen new Kubota tractors of approximately this height before you purchased this Japanese market tractor; is that right?

A: That's correct.

Q: Had you actually looked at 7100 Model Kubota tractors before you purchased this tractor?

A: I may have.

Q: Did Mr. Shickel say anything to you about this tractor being similar to the U.S. versions of this tractor?

A: He said it was just like it except for the stickers.

Hay Day responds to the Riedlings' argument by pointing to one answer provided by the Riedlings to the interrogatories where they allege only generally that the tractor did not have adequate safety mechanisms to prevent the injuries to Mrs. Riedling and another instance in Mr. Riedling's deposition where he answered that the only warranty provided by Hay Day was a general guarantee that the tractor would run for 30 to 90 days. Hay Day argues that these statements constitute an admission by the Riedlings that they were not claiming a breach of an implied or express warranty. We disagree.

While it is certainly arguable that various portions of Mr. Riedling's testimony are inconsistent, the resolution of such a conflict in the evidence is properly reserved for a jury.¹⁴ When Mr. Riedling's testimony is considered in the light most favorable to the Riedlings' case, it is clear that a genuine issue of material fact exists regarding any implied and express warranties that were made by Hay Day.

Hay Day is correct when it claims in its brief that none of the other claims made by the Riedlings can survive the summary judgment. Hay Day contends that summary judgment was proper as to any claim that the tractor was defective or

¹⁴Meyers v. Chapman Printing Co., Ky., 840 S.W.2d 814, 822 (1992).

unreasonably dangerous under Kentucky's Product Liability Act¹⁵ since the tractor was more than eight years old and since Hay Day was only an occasional seller of used farm equipment.¹⁶ However, we conclude that it is unnecessary to address these issues since the Riedlings have conceded in their brief that they "have pursued no claim under KRS 411.310 that the tractor was defective." Additionally, we conclude that it is unnecessary to address any claim against Hay Day related to the alleged illegal importation of the tractor since the Riedlings have not made such a claim against Hay Day.¹⁷ Therefore, the only surviving claims against Hay Day are for breach of an express and/or implied warranty and general negligence in selling the tractor.¹⁸

Accordingly, since the Riedlings have presented a genuine issue as to a material fact, the summary judgment of the Bullitt Circuit Court in favor of Hay Day is reversed and this matter is remanded for further proceedings consistent with this Opinion.

ALL CONCUR.

¹⁵KRS 411.300 to 411.350.

¹⁶See KRS 411.310 (creating presumption of no liability for seller of used equipment eight years or older).

¹⁷We find no support for the existence of these claims in either the original complaint or the appellants' brief on appeal. We note that to the extent these claims exist, they have been alleged against Georgia Auto Parts and not against Hay Day.

¹⁸We note that the negligent sale claim does not appear to be addressed by the appellee's brief. As best as we can determine, this issue is very similar to the breach of warranty claim, and would involve the same genuine issues of material fact.

BRIEF FOR APPELLANT:

Brentley P. Smith
Louisville, Kentucky

BRIEF FOR APPELLEE:

P. Kevin Ford
Louisville, Kentucky