STATE OF MICHIGAN

COURT OF APPEALS

JOEL GENNETTE and LIBERTY MUTUAL INSURANCE COMPANY,

Plaintiffs-Appellees,

v

MAGNETEK INCORPORATED, formerly known as GEMCO ELECTRIC COMPANY,

Defendant-Appellant.

UNPUBLISHED
December 18, 1998

No. 197635
Macomb Circuit Court
LC No. 93-001952 NP

Before: Murphy, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment, following a jury trial, awarding Joel Gennette (plaintiff) $1,500,000 in this product liability action. We affirm.

Plaintiff's right hand, wrist, and part of his forearm were crushed by the ram of a power press when a sprocket became disengaged from the woodruff key on the shaft of a rotary cam limit switch manufactured by Gemco Electric Company (Gemco) that was attached to the power press. Because of the separation, the shaft did not turn in unison with the sprocket, and the switch did not properly signal the brake of the press. Plaintiff argued, in part, that defendant should have provided instructions and snap rings to use with the grooves already existing on the shaft.

Defendant contends that the trial court erred in finding that plaintiff established a prima facie case of negligent product design. Although defendant is not specific about the particular ruling of the trial court being challenged, we will review the issue as a challenge to the trial court's rulings denying defendant's motions for directed verdict and judgment notwithstanding the verdict. Therefore, we must examine the testimony and all legitimate inferences that may be drawn in the light most favorable to the plaintiff. *Matras v Amoco Oil Co*, 424 Mich 675, 681; 385 NW2d 586 (1986). If reasonable jurors could honestly have reached different conclusions, the motion should have been denied. *Id*. at 681-682. If reasonable jurors could disagree, neither the trial court nor this Court has the authority to substitute its judgment for that of the jury. *Id*. at 682.

We reject defendant's first argument that, under *Owens v Allis-Chalmers Corp*, 414 Mich 413; 326 NW2d 372 (1982), plaintiff was required to present evidence regarding the frequency of this type of accident. *Owens* indicates that a plaintiff must establish "an issue of fact concerning any unreasonable risk at the time of the design or manufacture," *id*. at 432, and that a combination of the magnitude of the risk and the reasonableness of the proposed alternative design is critical to assessing whether a question of fact is presented on that issue. *Id*. at 430. Because the *Owens* Court did not preclude the plaintiff's action merely on the basis of her failure to provide evidence regarding the incidence of forklift rollovers, *id*., plaintiff's failure to present evidence concerning the frequency of this type of press accident did not entitle defendant to a directed verdict or judgment notwithstanding the verdict. See also *Reeves v Cincinnati, Inc*, 176 Mich App 181, 185-189; 439 NW2d 326 (1989) (Although plaintiffs lacked a statistical breakdown of the risks of injuries caused by presses with and without interlocking barrier guards, testimony that power presses in general were unsafe because of unavoidable cycling was sufficient to raise a question of fact regarding the magnitude of the risks).

We likewise reject defendant's second argument that plaintiff failed to set forth adequate proof concerning the reasonableness of a proposed alternative design. Contrary to the premise of defendant's argument, plaintiff's theory at trial was that snap rings should have been provided in addition to, rather than as a replacement for, the set screw used to hold the sprocket in place. The testimony indicating that the cost of snap rings was minimal, that snap rings could easily have been installed, especially in light of the fact that the shaft of the rotary cam limit switch had snap ring grooves, that they would have provided an additional safeguard to keep the sprocket in place, that they would have stayed on permanently, and that they would not affect the switch's utility constituted evidence from which a reasonable juror could have concluded that this additional precaution was feasible.

Defendant next argues that it owed no duty of care because it is only a component part manufacturer. This Court has explained that the obligation that generates the duty to avoid foreseeable injury to another does not extend to the anticipation of how manufactured components, not in and of themselves dangerous or defective, can become potentially dangerous dependent on the nature of their integration into a unit designed, assembled, installed and sold by another. *Portelli v IR Construction Products Co, Inc*, 218 Mich App 591, 603-604; 554 NW2d 591 (1996). In this case, however, as discussed above and below, issues of fact existed regarding whether the switch itself was unreasonably dangerous or defective. Therefore, defendant's status as a component manufacturer does not entitle it to a different standard of care. Defendant cannot escape its duty merely by labeling the switch a component part.

Defendant further argues that the sophisticated user defense negated any duty to warn. Defendant suggests that Compass Industrial Controls (Compass), which installed defendant's switch on the press operated by plaintiff, was a sophisticated user, and therefore it owed no duty to instruct or warn Compass regarding any potential dangers posed by the switch. The rationale behind the sophisticated user doctrine is that the manufacturer markets a particular product to a class of professionals that are presumed to be experienced in using and handling the product. *Id*. at 601. Because of this special knowledge, the sophisticated user will be relied on by the manufacturer to disseminate information to the ultimate users regarding the dangers associated with the product; thus, the

manufacturer is relieved of a duty to warn. *Id*. We reject defendant's assertion that the defense applies here because, although Compass recommended the purchase of defendant's switch and installed the switch on the press plaintiff was operating at the time of his injury, plaintiff's employer, Radar Industries, actually purchased the switch from Gemco for use on its press. Because the evidence indicated that Radar was not a sophisticated user, we conclude that the defense is inapplicable.

Finally, defendant contends that plaintiff also failed to establish a prima facie case that it defectively manufactured the switch by improperly setting the woodruff key into the shaft of the switch. Viewing the testimony and other evidence suggesting that the woodruff key was not installed on the switch according to industry standards or Gemco blueprints in the light most favorable to plaintiff, we conclude that reasonable jurors could disagree on whether defendant negligently manufactured the rotary cam limit switch. Therefore, the trial court correctly denied defendant's motions for directed verdict and JNOV. *Matras*, *supra*.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage