Samuels v Smith Cairns Ford
2019 NY Slip Op 34658(U)
December 10, 2019
Supreme Court, Westchester County
Docket Number: Index No. 59920/2017
Judge: Charles D. Wood
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To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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LUCY SAMUELS, as Administratrix of the Estate of HOPETON SAMUELS, Deceased, and LUCY SAMUELS, Individually,

Plaintiff,

-against-

SMITH CAIRNS FORD, SMITH CAIRNS FORD OF WHITE PLAINS, INC., SMITH CAIRNS FORD LINCOLN MERCURY, INC., SMITH CAIRNS LINCOLN, INC., and FORD MOTOR COMPANY,

Defendants.

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DECISION & ORDER
Index No. 59920/2017
Sequence Nos. 2&3

WOOD, J.

New York State Courts Electronic Filing ("NYSCEF") Documents Numbers 42-115, were read in connection with separate summary judgment motions of defendants Smith Cairns entities ("Smith Cairns") (Seq 2), and Ford Motor Company ("Ford") (Seq 3), based upon the supporting affirmations of their counsel, as well as various exhibits, including an affidavit of an engineer.

By his Administratrix, deceased party brings suit against manufacturer, and dealerships after deceased's van allegedly spontaneously changed its gear from park to acceleration. This is a wrongful death action arising from a fatal motor vehicle accident that occurred in White Plains on July 1, 2015. Decedent purportedly placed a 2001 Ford Econonline E-350 van into "Park" but it rolled forward and ran decedent over as he walked in front of it, causing his death.

NOW based upon the foregoing, the summary judgment motion is decided as follows:

It is well settled that "a proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]; see Orange County-Poughkeepsie Ltd. Partnership v Bonte, 37 AD3d 684, 686-687 [2d Dept 2007]; see also Rea v Gallagher, 31 AD3d 731 [2d Dept 2007]). Once the movant has met this threshold burden, the opposing party must present the existence of triable issues of fact (see Zuckerman v New York, 49 NY2d 557, 562 [1980]; see also Khan v Nelson, 68 AD3d 1062 [2d Dept 2009]). Conclusory, unsubstantiated assertions will not suffice to defeat a motion for summary judgment (Barclays Bank of New York, N.A. v Sokol, 128 AD2d 492 [2d Dept 1987]). A party opposing a motion for summary judgment may do so on the basis of deposition testimony as well as other admissible forms of evidence, including an expert's affidavit, and eyewitness testimony (Marconi v Reilly, 254 AD2d 463 [2d Dept 1998]). In deciding a motion for summary judgment, the court is required to view the evidence presented "in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof submitted by the parties in favor of the opponent to the motion" (Yelder v Walters, 64 AD3d 762, 767 [2d Dept 2009]; see Nicklas v Tedlen Realty Corp., 305 AD2d 385, 386 [2d Dept 2003]). The court must accept as true the evidence presented by the nonmoving party and must deny the motion if there is "even arguably any doubt as to the existence of a triable issue" (Kolivas v Kirchoff, 14 AD3d 493 [2d Dept 2005]); Baker v Briarcliff School Dist., 205 AD2d 652,661-662 [2d Dept 1994]). The court's function on this motion for summary judgment is issue finding rather than issue determination (Sillman v Twentieth Century Fox Film Corp., 3 NY2d 395 [1957]). Summary judgment is a drastic

remedy and should not be granted where there is any doubt as to existence of a triable issue (68 NY2d 320,324). Further, CPLR 3212(b), specifically provides that "the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact".

The Greenburgh Police Department responded to the scene. Detective Jason Perry, who is trained as an accident reconstruction investigator, led the scene investigation. The investigation showed that the accident occurred due to "pedestrian confusion/driverless vehicle," as "the operator of the vehicle unsuccessfully attempted to re-enter the vehicle after it began to roll" and was "run over in the process" (Greenbugh PD Records, NYSCEF Doc No. 54). Detective Perry testified that based on the rough condition of the van at the time of the accident, as documented in the Mechanical Inspection Report and the Greenburgh PD record, that decedent failed to maintain the van in a safe and proper fashion. He opined that the mechanical deficiencies contributed to the accident, most importantly a loose shifter linkage that led to the transmission slipping out of gear (Case Supplement Report NYSCEF Doc No. 54 at p. 8).

Approximately eight months after commencing this action, on April 9, 2018, plaintiff had the van inspected by mechanic Donald Fregans of Fregans Automotive, in the presence of Mechanic Craig Bertagni. Fregans found that the van had an obvious problem that should have been corrected during normal maintenance, and that the emergency brake had not been maintained properly and if applied it would not have worked at all (Donald Fregans Report, NYSCEF Doc No. 57).

On January 15, 2019, Hugh D. Mauldin, P.E., inspected the van on behalf of Ford, and found that it was in an extremely poor condition and state of disrepair. He observed that the rear disk, rotors, and drum of the van's parking brake showed excessive corrosion. Mauldin opined

that the van does not have any defects that contributed to or caused the accident because its transmission works properly, and as designed. Particularly, Mauldin's testing showed that the van can be engaged in Park and, once it is in Park, the van's wheels cannot move. Based on Mauldin's testings, and to a reasonable degree of engineering certainty, it is mechanically impossible for the van to move after its transmission is engaged in park. Mauldin opined that the accident could only have occurred if decedent failed to engage the van's transmission in Park. Further, Mauldin opined that even if it were true that the van had a very loose shifter like the Town of Greenburgh mechanic described in his report, this is evidence of poor maintenance, as opposed to a design or manufacturing defect. Mauldin explains that even if the van's shifter linkage could be described as very loose, this is not evidence of a defect, because his testing conclusively shows that the van's shifter linkage, regardless of its condition, does not prevent the operator from engaging the transmission into Park, the van's transmission cannot pop out of the Park gear after it is engaged in Park.

The records from Smith Cairns show that decedent took the van to that dealership for service only on one occasion after he purchased the van in 2001. There is no evidence in the record indicating that decedent took the van to Smith Cairns for service or maintenance after June 2002, or to any other vehicle dealership or repair shop.

Each defendant argues that plaintiffs have failed to establish that a manufacturing defect caused this accident, and that the sole proximate cause of the accident was decedent's own failure to maintain his vehicle. Plaintiff alleges two products theories of liability. Strict products liability for a design and manufacturing defect and breach of warranty.

The record reflects that decedent purchased the van new from co-defendant Smith Cairns

on or about September 8, 2001. At the time of the accident, the van had over 113,000 miles. According to Ford, the transmission of the van was designed and manufactured to remain stationary in the Park gear when its transmission is engaged in Park (Matthew Fyie Dep, NYSCEF Doc No. 52 at p 52). If the van is in Park, its stays parked. The van is also equipped with a brake shift interlock feature so the transmission shift selector lever cannot be moved from the Park latch position with the vehicle running unless the brake pedal is depressed.

The Owner's Guide, which was given to decedent advises customers that their vehicle brings a scheduled maintenance guide to make tracking routine service, and contains clear instructions on how to shift the van to different gears and properly place the van in Park. Additionally, the van came with a Warranty Guide, which advises customers that proper maintenance guards against major repair expenses resulting from neglect or inadequate maintenance.

Together with the reports and testimony, defendants claim that decedent was the only person who drove the van, never claimed that it had any defects or complained that its transmission did not work properly. According to Ford, the van was designed and manufactured in accordance with the written safety standards of the National Highway Traffic Safety Administration (NHTSA), and was not subject to any recalls associated with plaintiffs' defect allegations in this case.

Thus, defendants argue that each is entitled to summary judgment because: plaintiffs' products liability claims against defendants based on design and manufacturing defects and failure to warn are devoid of merit, and are unsupported by any evidence; and plaintiffs's breach of warranty claims are time barred.

As a procedural manner, plaintiffs' breach of warranty claim fails because the four year statute of limitations has long expired as decedent purchased the van in 2001. Uniform Commercial Code § 2–725, provides that a cause of action for breach of a contract of sale must be commenced within four years after it accrues. The action accrues when the breach occurs and, in the absence of a warranty explicitly extending to future performance, a breach occurs when tender of delivery is made, not on the date that some third party sells it to plaintiff (Heller v U.S. Suzuki Motor Corp., 64 N.Y.2d 407, 410, 411 [1985]) .

Turning to the merits of their motions, defendants argue that plaintiffs' claims against defendants must be dismissed because the evidence firmly establishes that the van was devoid of any defects that would have contributed to or proximately caused the accident, and that something other than a defect in the van caused the accident. In addition, plaintiffs' claims against defendants based on failure to warn must be dismissed because the record establishes that the van came with an Owner's Guide and Warranty Guide, which contained clear instructions and warnings on how to shift its transmission, use the parking brake, service and maintain the van.

To establish a prima facie case in a strict products liability action predicated on a design defect, a plaintiff must show that "the manufacturer marketed a product which was not reasonably safe in its design, that it was feasible to design the product in a safer manner, and that the defective design was a substantial factor in causing the plaintiff's injury" (Pierre-Louis v. DeLonghi Am., Inc., 66 A.D.3d 859, 861, [2d Dept 2009]). A manufacturer may be held liable for placing into the stream of commerce a defective product which causes injury (Gebo v Black Clawson Co., 92 N.Y.2d 387, 392 [1998]). This burden is also imposed on a "wholesaler,

distributor, or retailer who sells a product in a defective condition"(Pierre-Louis v DeLonghi Am., Inc., 66 A.D.3d 859, 860, [2d Dept 2009]). "[w]hether an action is pleaded in strict products liability, breach of warranty, or negligence, the plaintiff must prove that the alleged defect is a substantial cause of the events which produced the injury" (Fahey v A.O. Smith Corp., 77 AD3d 612, 615[2d Dept 2010]).

Ford points out that plaintiffs cannot successfully rebut Ford's evidence through the conclusory affidavit of Geragni or Fregan's Report, as they are not automotive or mechanical engineers and both lack any expertise in the design, development or manufacturing of the component which plaintiffs allege were defective in the van. Also plaintiffs fail to refer to any measurement, tests or other expert analysis or studies that would support plaintiffs's allegations of a design or manufacturing defect in the van. After reading these reports, the court gives little weight to these plaintiff submitted affidavits as they are mere conjecture, insufficient to defeat a summary judgment motion.

Ford also argues that the overwhelming admissible evidence submitted indicates that the accident was caused something other than a defect in the van and something that cannot be attributed to Ford.

On their respective motions, defendants submitted evidence constituting a prima facie showing that, as a matter of law, the van in question was not defective at the time it left either Ford's or Smith Cairns entities' hands (Narciso v Ford Motor Co., 137 AD2d 508, 509 [2d Dept 1988]). There is also no competent evidence that defendants carelessly and negligently failed to repair and/or replace parts which would have prevented the van from rolling forward after being placed in Park, creating a dangerous defective condition and failed to advise and/or warn

decedent of that condition.

In opposition to these motions, plaintiffs assert (among other things) that according to New York State Inspection records, inspections were performed and the van passed both emission and safety standards; and that there is a serious dispute between the records of Smith Cairns Ford Service Department and Hopeton Samuels' son, Andre Samuels, who said that he went with his father on at least four occasions to Smith Cairns Ford for Service. Plaintiffs have not submitted sufficient evidence of any alleged design defect in the van to oppose defendants' motion for summary judgment on the merits, nor did plaintiffs present admissible evidence sufficient to raise a question of fact as to their conclusory and speculative allegations that Ford negligently manufactured the allegedly defective van.

Additionally, plaintiffs' claims against Ford based on failure to warn must also be dismissed because the record shows that the van contained explicit warnings and instructions with decedent failed to follow, despite being aware of them.

The arguments by the parties not explicitly addressed herein have been reviewed and deemed to be devoid of merit. This constitutes the Decision and Order of the Court.

For the stated reasons, it is hereby:

ORDERED, that defendants Smith Cairns entities' motion for summary judgment (Seq 2) is granted, and the complaint is dismissed as against them;

ORDERED, that defendant Ford Motor Company's motion for summary judgment (Seq 3) is granted, and the complaint is dismissed as against them.

The Clerk shall mark his records accordingly.

Dated: December 10, 2019
White Plains, New York

HON. CHARLES D. WOOD
Justice of the Supreme Court

To: All Parties by NYSCEF