Sawyer v. Hallock Plumbing, et al., No. 1254-05 Cncv (Katz, J., Jan. 10, 2008)

STATE OF VERMONT SUPERIOR COURT
Chittenden County, ss.: Docket No. 1254-05 CnC

SAWYER

v.

HALLOCK PLUMBING, et al.

ENTRY

Catamount Winnelson's Motion for Summary Judgment

Plaintiff's house burned, allegedly caused by defective insulation in an older model boiler retailed by a predecessor corporation of defendant CW. Just before the fire, a technician employed by another defendant worked on the boiler and spoke with both an employee of CW and an employee of the boiler's manufacturer. The manufacturer's technician gave advice to the

service tech on the very day of the fire, but may not have clearly instructed the tech to simply “red tag” the boiler to ensure that it was not put back into service. Retail dealer CW now moves for summary judgment, arguing that any negligence of the service tech or the manufacturer’s tech was the sole, efficient cause of the fire and that any deviation from a standard of care on its part was so remote from the injury as to insulate it from liability.

The boiler at issue, a “pre-3000 model” Slant/Fin, had become known to suffer problems of crumbling refractory insulation. To deal effectively with such a serious safety issue, its manufacturer had devised one or more fixes and had replaced a good number of the defective boilers, at no charge to homeowners. It communicated the need for and availability of these fixes and replacements through its dealer network, which included CW at the relevant times. Plaintiff has some admissible evidence suggesting that CW had information on the danger of insulation failure in pre-3000 boilers, what to do when such failures were discovered and that its employee, Lavallee, failed to pass along relevant and important safety information regarding pre-3000 Slant/Fins when he spoke with the service tech on the morning of the fire. It may be that the manufacturer’s tech also failed to pass on similar information, under circumstances in which he should have.

A retailer engaged in distributing goods to the public is liable in tort, similar to a manufacturer, for personal injuries caused by defects in products sole by it. E.g. Casetta v. U.S. Rubber Co., 260 Cal.App.2d 792, 800-01 (1968), citing Restatement (Second) Torts, § 402A, c. F. A product supplier must warn expected users of foreseeable risks that make the product unreasonably dangerous. Humble Sand & Gravel, Inc. v. Gomez, 146 S.W.3d 170, 172 (Tex. 2004). As a dealer or supplier, CW has a duty to the manufacturer

for whom it distributes to pass on pertinent warnings. Homeowners are obviously intended beneficiaries of such duties. The fact that this particular boiler may have been sold by CW's corporate predecessor, rather than CW's present incarnation, is irrelevant. The duty exists for dealers, suppliers, distributors, without regard to whether they may have been the historic seller.

The very essence of the duty to warn is intertwined with the foreseeability that a local service technician may not appreciate the particular susceptibility of pre-3000 boilers to suffer insulation failure. The fact that this tech also spoke with the manufacturer's service advisor does not insulate CW, for it cannot know what the tech will communicate with the advisor. Being possessed of pertinent knowledge of a significant safety problem, while burdened with a duty to warn and thereby pass on that knowledge, CW may become liable even if it is not the only party whose negligence led to the fire. The service tech's ability to ask the right questions or describe all pertinent evidence within his field of view are precisely the shortcomings a dealer such as CW was bound to anticipate. For this reason, we decline to hold on the present record that the chain of causation was broken by lapses subsequent to any of CW. Johnson v. Cone, 112 Vt. 459, 464 (1942). See also 9A V.S.A. § 2-318 ("A seller's warranty . . . extends to any natural person if it is reasonable to expect that such person may use . . . or be affected by the goods and who is injured in person by breach of the warranty"); Wasik v. Borg, 423 F.2d 44, 48 (2d Cir. 1970) (applying § 2-318 to third-party's property losses as well as personal injury).

Motion for summary judgment DENIED.

Dated at Burlington, Vermont, January ____, 2007.

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M. I. Katz, Judge