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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

No. 97-CA-001080-MR

CABINET FOR HUMAN RESOURCES, COMMONWEALTH OF KENTUCKY, as Agent and Successor Guardian of CLIFFORD HUSSEY — APPELLANTS

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JOHN W. POTTER, JUDGE
ACTION NO. 91-CI-06042

LEAR SIEGLER, INC. — APPELLEE

OPINION
AFFIRMING

* * * * * * * *

BEFORE: DYCHE, EMBERTON and MILLER, Judges.

EMBERTON, JUDGE. This is a product liability action arising from the design, manufacture and sale of an alleged defective motorcycle helmet. The trial court found that the appellee, Lear Siegler, Inc., was neither the manufacturer nor distributor of the helmet, and could not be held liable as the designer of the

helmet. Appellants' claim against Siegler was dismissed and this appeal followed.

In May 1979, Siegler sold a helmet manufacturing business to Javelin. Pursuant to the sale and purchase agreement, title to the assets purchased was transferred to Javelin on June 11, 1979. The assets included the helmet shell molds and parts inventory which Siegler had purchased from the Bon Aire Company. The contract further provided that Javelin would procure liability insurance and indemnify Siegler for any products it manufactured. The sale contract did not include Javelin's purchase of the right to use Siegler's name or logo.

On September 29, 1990, Hussey, while operating his motorcycle, was involved in an accident. His helmet came off causing his head to strike the pavement and he suffered severe brain damage. The accident helmet contains Javelin's manufacturer's identification number, and August 1979, is marked as the date of its manufacture. The helmet contains no logo or other identification linking it to Siegler.

Siegler maintains that it cannot be responsible for an alleged defect in the helmet since it did not manufacture nor place the helmet into the stream of commerce. We agree that unless Siegler manufactured or otherwise placed the accident helmet into the stream of commerce, the Products Liability Act, Ky. Rev. Stat (KRS) 411.300, et. seq., does not apply to appellants' action against him.

> As we read the Act, if a claim is brought against a seller or manufacturer of a product which is alleged to have caused injury, then the PLA applies, regardless of whether the action is founded on strict liability in tort, negligence or breach of warranty. (Emphasis added).

Monsanto Co. V. Reed, Ky., 950 S.W.2d 811, 814 (1997).

Appellants recognize that Siegler did not manufacture nor place the helmet into distribution to consumers. The facts are undisputed that at the time the helmet was manufactured Siegler had only a historical connection with the business.

We are not in disagreement with appellant that a manufacturer can be liable for defects in manufacture and design. Jones v. Hutchinson Manufacturing, Inc., Ky., 502 S.W.2d 66 (1963). However, even assuming that Siegler "designed" the helmet, this act alone is insufficient to impose the principles of product liability. In Mechanical Rubber and Supply Co. v. Caterpillar Tractor Co., 80 Ill. App. 3d 262, 399 N.E.2d 722, 724, 35 Ill. Dec. 656, 658 (1980), the court explained the limitations on the application of product liability theories:

> To say that an unreasonably dangerous condition may include design defects does not mean that a party whose only connection to the product is that of the designer is liable under products liability theories. Liability is still limited to those parties in the chain of manufacturing and distributing a product. While the transactions between the parties in the distribution system may not necessarily be seller and buyer . . . nevertheless, the transaction and relationship of the parties should be a part of the distributive system for the product. Where a party merely designs a product for

> someone else there is no sale or equivalent transaction between the parties which subjects the designer to liability as part of the distributive system. Such party provides a service and subjects the party to the duty to exercise reasonable care but the party is not liable on a products liability theory. There are many parties who conceivably have some relation with the manufacture and sale of the product, but their relationship is peripheral and not directly related to the distributive process. For example, a patent licensor, a consultant, an independent engineering firm, an independent testing laboratory, a law firm or, for that matter, a transportation company or an independent warehouse, might have some relation to a product and, although perhaps related to the general economic system, they are outside the manufacturing distributing system contemplated by products liability theories. (Citations omitted).

Appellant's attempt to analogize this case to one where a successor corporation is liable for the products of its predecessor is misplaced. Under certain circumstances, a purchasing corporation which is merely a continuation of the selling corporation may be held liable for the debts and liabilities of the selling corporation including the sale of defective products. See Conn v. Fales Division of Mathewson Corporation, 835 F.2d 145 (6th Cir. 1987). The liability, however, cannot flow back to a predecessor company that did not retain any legal or practical connection with the company. Siegler did not continue to supervise, direct, or in any way participate in the manufacturing or distribution of the helmets after the sale of the business.

Although appellant has vehemently argued that this is a products liability case, his cause of action against Siegler is premised on "old-fashioned, garden variety common law negligence." Burke Enterprises, Inc. v. Mitchell, Ky., 700 S.W.2d 789 (1985). In a negligence claim, the conduct of the defendant rather than the condition of the product is the focus of the litigation. Tipton v. Michelin Tire Co., 101 F.3d 1145 (6th Cir. 1996). An elementary element of any negligence case is the breach of a legal duty by the defendant. Commonwealth, Transportation Cabinet v. Roof, Ky., 913 S.W.2d 322 (1996). Appellant maintains that under a "universal duty to exercise ordinary care," Siegler had an obligation not to sell an alleged defective product line and inventory to Javelin. Although the record does not support the contention, appellant states that Siegler knew that the design of the helmets it produced was defective. Assuming appellant's contention to be true, it would stretch the concept of duty and forseeability beyond reason to hold that Siegler breached a duty to Hussey, a purchaser of a helmet manufactured by Javelin.

The judgment of the Jefferson Circuit Court is affirmed.

DYCHE, JUDGE, CONCURS.

MILLER, JUDGE, CONCURS IN RESULT.

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