CASE REPORT: APPELLATE WIN FOR SRBC CLIENTS IN PRODUCT-LIABILITY CASE

Christensen v. Thornton, 83 Mass.App.Ct. 1133 (June 3, 2013)

David A. Barry and William F. Benson of Sugarman, Rogers, Barshak & Cohen, P.C. in Boston, Massachusetts recently secured a victory in the Massachusetts Appeals Court on behalf of their clients Emerson Electric Co. and W.W. Grainger, Inc. In this product liability case involving an industrial fan, the issues on appeal were whether the trial court judge properly dismissed plaintiff's failure-to-warn claim on a motion *in limine* before trial, and whether the judge properly granted directed verdict to Emerson and Grainger on plaintiff's other claim, after plaintiff's counsel's opening statement.

In August 2003, David Christensen, then a 33-year old drywall contractor, injured his right, dominant hand when he tripped at the home of Dana Thornton and his hand contacted the moving blades of an industrial exhaust fan manufactured by Emerson and distributed by Grainger. The plaintiff sued Emerson and Grainger for negligence and breach of warranty, and also asserted a negligence claim against homeowner Thornton. Christensen contended that the fan was defectively designed because it did not have a guard affixed at the time of manufacture and sale, and that its warning labels were inadequate. Christensen also claimed that defendant Thornton maintained an unsafe condition at his home because he mounted the fan without a guard in a high-traffic area near an unfinished threshold on his garage stairs.

Emerson and Grainger contended that because the fan was intended to be mounted in a wall or duct, and hard-wired into the electrical system by a qualified electrician, many of its applications did not require a guard. Emerson and Grainger made

a guard available as an additional component for end users who wanted one for a particular application.

On the first day of trial, Emerson and Grainger successfully argued that plaintiff could not proceed with his failure-to-warn claim because the danger presented by the fan was obvious as a matter of law, and there was no evidence that any inadequacy in the fan's warning labels caused plaintiff's accident. Accordingly, before the jury was impaneled on the first morning of trial, the trial judge granted Emerson and Grainger's motion *in limine* precluding plaintiff from advancing a failure-to-warn claim.

Then, after plaintiff's opening statement, Emerson and Grainger successfully argued that plaintiff could not proceed with his negligence and breach-of-warranty claims against them because plaintiff needed, and did not have, an expert witness to support his theory that the fan was defectively designed due to the absence of a standard guard. The trial judge therefore granted Emerson and Grainger's motion for directed verdict after plaintiff's counsel's opening statement. The case against Thornton proceeded to trial and resulted in a verdict for the plaintiff against Thornton.

On appeal, Christensen argued that the trial judge improperly granted Emerson and Grainger's motion *in limine* dismissing the failure-to-warn theory and their directed verdict motion. Christensen pointed out that the defendants had made the same insufficiency arguments unsuccessfully at summary judgment. And Christensen contended that under the circumstances he did not need an expert to proceed with his design-defect claim.

In a unanimous opinion, the Massachusetts Appeals Court upheld both of the trial judge's rulings. The Court made clear that, when ruling on a motion for a directed verdict

after an opening statement, a trial judge may consider not only the words spoken during the opening statement, but also the facts developed in discovery and laid out in the summary judgment record. The Appeals Court agreed with the trial court judge that Christensen was required to present expert testimony to support his theory that the fan should have been manufactured and sold with a guard, especially considering that the product was an industrial fan and that a preinstalled guard would "invoke additional considerations," such as its effect on the fan's cost and performance. The Appeals Court cautioned that the power to dismiss a case after plaintiff's opening statement should be "exercised cautiously" but held that "given the obvious failure in the plaintiff's opening to meet an element of proof, the extraordinary ruling of dismissal was warranted."

The Appeals Court also held that the trial judge properly rejected the plaintiff's failure-to-warn theory as a matter of law because the danger presented by the spinning blades of an industrial fan was, the Court agreed, obvious as a matter of law.

4837-6273-5380, v. 1