

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD CLEGG,

Plaintiff-Appellant,

v

CROWN EQUIPMENT CORPORATION,

Defendant-Appellee,

and

AMPRO, INC., UNR INDUSTRIES, INC.,
and STURDI-BILT ENGINEERING COMPANY,
a division of UNARCO INDUSTRIES, a/k/a
UNR INDUSTRIES, INC.,

Defendants.

UNPUBLISHED

April 22, 1997

No. 188885

Wayne Circuit Court

LC No. 94-416924

Before: Michael J. Kelly, P.J., Saad, and H.A. Beach*, JJ.

PER CURIAM.

In this products liability action, plaintiff, Richard Clegg, appeals as of right from an order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant, Crown Equipment Corporation. We affirm in part, reverse in part, and remand this matter to the trial court for further proceedings. The three listed defendants who are not appellees were dismissed from the action on June 24, 1995, with prejudice and without costs and are not involved in these appellate proceedings.

The essential facts involved in this case are not in dispute. On May 11, 1993, plaintiff, an order selector and certified forklift operator employed by Miesel-Sysco, sustained severe and permanent injuries while operating a Crown 924 forklift which was designed, manufactured and sold by defendant. At his deposition, plaintiff testified that he mounted the forklift and began moving several loads of freezer

* Circuit judge, sitting on the Court of Appeals by assignment.

pallets. Twenty minutes into his project, plaintiff attempted to change the direction of the forklift by a method referred to as “plugging.” Plugging, a maneuver commonly engaged in by forklift operators, enables the operator to change the direction of the forklift without first bringing it to a complete stop. Plugging is effectuated by shifting the direction of the forward-reverse switch. According to plaintiff, he shifted the switch forward, but the forklift continued to move backward. Plaintiff applied the brakes, then attempted to dismount the forklift but his left leg was caught between a rack of freezer pallets and the forklift. As a result of the forklift malfunction, plaintiff suffered serious injuries.

Prior to plaintiff’s accident, two other Miesel-Sysco employees experienced problems with the forward-reverse switch on the same forklift. In one instance, one of the employees returned the malfunctioning forklift to the charging rack notwithstanding Miesel-Sysco’s policy which required malfunctioning machinery to be reported and “downed.”

Following the accident, plaintiff filed suit against defendant alleging negligence and breach of implied warranties. Plaintiff claimed that the forward-reverse switch was defective and that the switch malfunctioned during plaintiff’s operation of the forklift. This malfunction prevented plaintiff from plugging the forklift and led to plaintiff’s injuries. Plaintiff also claimed that the forklift was defective in that defendant failed to equip the forklift with a “fail-safe” braking system.

Subsequently, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(10). At a hearing on June 2, 1995, the trial court, finding that plaintiff had presented insufficient evidence to indicate that the forward-reverse switch was defective, granted summary disposition on this claim. The trial court did not rule on plaintiff’s claim that the lack of a “fail-safe” braking system rendered the forklift defective. Thereafter, defendant filed a motion for summary disposition on this claim as well. In the meantime, plaintiff brought a motion for reconsideration of the trial court’s decision to grant summary disposition on plaintiff’s claim that the forklift’s forward-reverse switch was defective.

Attached to plaintiff’s motion for reconsideration was the deposition testimony of Norman Kuczynski, material handling mechanic for Miesel-Sysco. Kuczynski testified that he was in charge of repair and maintenance of all equipment located within Miesel-Sysco’s warehouse, including the forklift at issue in this case. Immediately after plaintiff’s accident, Kuczynski tested the forklift and discovered that the forward-reverse switch was defective and, therefore, the forklift would operate in “the reverse direction but not in forward.” Kuczynski’s testing revealed that there was no direct connection between the leads contained in the switch. According to Kuczynski, a direct connection is necessary in order for the switch to operate properly. Kuczynski testified that a defective forward-reverse switch would prevent the forklift operator from plugging. According to Kuczynski, in this case the “malfunction of the switch definitely stopped [the forklift] from plugging. And since it didn’t plug it did something unexpected as far as the driver was concerned.” It was Kuczynski’s opinion, based on years of operating, maintaining and repairing forklifts, that the defective forward-reverse switch caused the forklift to malfunction resulting in plaintiff’s injuries.

In spite of Kuczynski's testimony, the trial court denied plaintiff's motion for reconsideration. Thereafter, the trial court granted summary disposition to defendant on plaintiff's claim that the forklift was rendered defective by defendant's failure to equip it with a "fail-safe" braking system. This appeal ensued.

On appeal, plaintiff first claims that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10) because there was ample evidence from which a jury could have inferred that the forklift was defective and that the defect caused plaintiff's injuries. We agree.

A manufacturer has a duty to design its product to eliminate any unreasonable risk of foreseeable injury. *Ghrist v Chrysler Corp*, 451 Mich 242; 547 NW2d 272 (1996). A manufacturer is liable for negligence in the manufacture or sale of any product which might reasonably be expected to be capable of substantial harm if it is defective. *Id.* It is also liable for breach of warranty if it supplies a defective product which causes injury. *Id.* A product is defective if it is not reasonably safe for its foreseeable use. *Id.* A defect may arise from design or manufacture. *Id.* Whether proceeding under a negligence theory or a breach of warranty theory, the plaintiff must demonstrate a defect attributable to the manufacturer and a causal connection between the defect and the injury. *Lagalo, v Allied Corp*, 218 Mich App 490, 493-495; ___ NW2d ___ (1996). However, a plaintiff need not eliminate all possible causes of the accident consistent with the view that there was no defect. *Holloway v General Motors (On Rehearing)*, 403 Mich 614, 621; 271 NW2d 777 (1978).

Here, giving the benefit of any reasonable doubt to plaintiff, *Mascarenas v Union Carbide*, 196 Mich App 240, 243; 492 NW2d 512 (1992), we conclude that plaintiff presented sufficient evidence to establish that the forklift was defective in that the forward-reverse switch did not operate properly and that the defective condition of the forklift was a cause of plaintiff's injuries. As above indicated, prior to the motion for reconsideration plaintiff presented the trial court with the deposition testimony of Norman Kuczynski. Kuczynski testified that he was in charge of repair and maintenance of all equipment located within Miesel-Sysco's warehouse, including the forklift at issue in this case. Immediately after plaintiff's accident, Kuczynski tested the forklift and discovered that the forward-reverse switch was defective and, therefore, the forklift would operate in "the reverse direction but not in forward." Kuczynski's testing revealed that there was no direct connection between the leads contained in the switch. According to Kuczynski, a direct connection is necessary in order for the switch to operate properly. Kuczynski testified that a defective forward-reverse switch would prevent the forklift operator from plugging. Kuczynski indicated that in this case the "malfunction of the switch definitely stopped [the forklift] from plugging. And since it didn't plug it did something unexpected as far as the driver was concerned." It was Kuczynski's opinion, based on years of operating, maintaining and repairing forklifts, that the defective forward-reverse switch caused the forklift to malfunction resulting in plaintiff's injuries.

Clearly, Kuczynski's testimony creates a material factual dispute regarding the defective nature of the forklift. While plaintiff did not eliminate all other possible causes of the accident, plaintiff was not required to do so. *Holloway, supra*, 403 Mich App 621. Plaintiff was only required to present evidence that the forklift was defective and that the defect was a cause of plaintiff's injuries. Plaintiff has

done so in this case. Hence, we conclude that the trial court erred in granting summary disposition in favor of defendant on this claim.

Plaintiff also claims that the trial court erred in granting summary disposition as to his alternative claim that the forklift was defective because defendant failed to equip it with a “fail-safe” braking system. We disagree. Plaintiff presented no evidence of the magnitude of the foreseeable risks associated with the occurrence of the type of accident precipitating the need for the “fail-safe” braking system. Moreover, plaintiff’s expert failed to opine that installation of the electrical or electro-mechanical control system would have prevented plaintiff’s accident. Hence, plaintiff failed to present a prima facie case of a design defect premised upon the omission of a safety device, *Reeves v Cincinnati, Inc*, 176 Mich App 181, 187-188 (1989), and summary disposition was properly granted on this claim.

Affirmed in part, reversed in part and remanded for further proceedings consistent with this opinion.

/s/ Michael J. Kelly

/s/ Harry A. Beach