



AMERICAN AERIAL LIFT v. JOSE PEREZ

629 So. 2d 169 (1993) | Cited 0 times | District Court of Appeal of Florida | October 5, 1993

SCHWARTZ, Chief Judge.

The appellee Perez was seriously injured when he was knocked off a "scissors-lift" which had been commercially leased by the appellant, American Aerial Lift, Inc., to his employer, a painting contractor. He recovered a jury verdict and judgment against American Aerial Lift on the theory that the "scissors-lift" was defectively designed in that it employed two chains, rather than a fixed gate, to guard the entrance to the lift and that the upper chain was set too low. We reverse the judgment for a new trial on the liability issues alone.

I.

The lift in question had been manufactured some years before the accident by Mark Industries and sold by its distributor, Mark Equipment Center of South Florida, Inc., to another commercial lessor, American Hi-Lift of Florida, Inc. American Hi-Lift then sold the equipment to the present appellant, American Aerial Lift. While there were conflicts in the evidence as to whether Mark Industries had originally manufactured the lift with the allegedly required gate, there was no question that the gate was not present when the lift was sold to the present appellant, and that it did not alter it thereafter. On the basis of its claim that, if it were negligently or strictly liable for the defect, any or all of the other entities in the distribution chain--manufacturer, distributor, and previous owner--might also be similarly responsible, American Aerial Lift requested the trial court to permit the jury to assess the liability, if any, of those entities on the verdict form. This request was then correctly denied on the basis of our then-extant-and-controlling decision in *Fabre v. Marin*, 597 So.2d 883 (Fla. 3d DCA 1992). Since that time, however, *Fabre* was reversed by the Supreme Court in *Fabre v. Marin*, ___ So.2d ___ (Fla. Case nos. 79,869 & 79,870, opinion filed, August 26, 1993)[18 FLW S453]. *Fabre* requires reversal of the judgment below so that the jury may be given the opportunity to apportion the respective liability of these entities.¹

II.

On the other hand, we hold, in accordance with a unanimity of authority in Florida and elsewhere, that the appellant, as the commercial lessor of the equipment in question, is strictly liable under Restatement (Second) of Torts § 402A (1965) and *West v. Caterpillar Tractor Co.*, 336 So.2d 80 (Fla. 1976) for a design defect, such as the one alleged here, which existed at the commencement of the lease.² *W.E. Johnson Equip. Co. v. United Airlines, Inc.*, 238 So.2d 98 (Fla. 1970); *Amoroso v. Samuel Friedland Family Enters.*, 604 So.2d 827 (Fla. 4th DCA 1992), review granted, 618 So.2d 1369 (Fla.



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1993); *Futch v. Ryder Truck Rental, Inc.*, 391 So.2d 808 (Fla. 5th DCA 1980); *Bachner v. Pearson*, 479 P.2d 319 (Alaska 1970); *Cintrone v. Hertz Truck Leasing & Rental Serv.*, 45 N.J. 434, 212 A.2d 769 (1965); *Miles v. General Tire & Rubber Co.*, 10 Ohio App. 3d 186, 460 N.E.2d 1377 (1983); *Kemp v. Miller*, 154 Wis. 2d 538, 453 N.W.2d 872 (1990); Allan E. Korpela, Annotation, Products Liability: Application of Strict Liability in Tort Doctrine to Lessors of Personal Property, 52 A.L.R.3d 121 (1973).³ There is no need to repeat, here, the reasons for that rule which have been explicated in the cited cases far above our poor power to add or subtract.

We specifically reject the appellant's claim, however, that it makes any difference that the scissors-lift was apparently a used piece of equipment or that there is an apt analogy between such a case and the rule that sellers of second-hand goods are not ordinarily strictly liable for design defects. See *Keith v. Russell T. Bundy & Assocs.*, 495 So.2d 1223 (Fla. 5th DCA 1986).⁴ As was said in *Kemp*, 154 Wis. 2d at ___, 453 N.W.2d at 879:

Budget maintains that a commercial lessor, like a seller of used products, may not be held strictly liable for defects that arise in a leased product after it leaves the manufacturer and the original seller and while it is under the ownership and control of the lessor. We disagree.

The rationale underlying the imposition of strict liability on manufacturers and sellers is that the risk of loss associated with the use of defective products should be borne by those who have created the risk and who have reaped the profit by placing a defective product in the stream of commerce.

Accordingly, we hold that a commercial lessor may be held strictly liable in tort for damages resulting from the lease of a defective and unreasonably dangerous product.

Accord *Barrett v. Superior Court*, 222 Cal. App. 3d 1176, 272 Cal. Rptr. 304 (1990); *Tillman v. Vance Equip. Co.*, 286 Or. 747, 596 P.2d 1299 (1979).

III.

Since a new trial is required on grounds unrelated to the damages issue, the new trial shall be confined to issues of the liability of the defendant and of the other entities allegedly responsible for the condition of the defective equipment. See *Purvis v. Inter-County Telephone & Telegraph Co.*, 173 So.2d 679 (Fla. 1965); *Griefer v. DiPietro*, ___ So.2d ___ (Fla. 4th DCA Case no. 92-0237, opinion filed, September 8, 1993)[18 FLW D1966], and cases cited; *Royal Indemnity Co. v. Muscato*, 305 So.2d 228, 229 (Fla. 4th DCA 1974), cert. denied, 321 So.2d 76 (Fla. 1975); *Larrabee v. Capeletti Bros., Inc.*, 158 So.2d 540 (Fla. 3d DCA 1963); see also *D.R. Mead v. Cheshire of Fla., Inc.*, 489 So.2d 830 (Fla. 3d DCA 1986).

Reversed and remanded.



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Disposition

Reversed and remanded.

1. There is no claim that the plaintiff's employer was guilty of any negligence in causing the accident. Compare *Allied-Signal, Inc. v. Fox*, ___ So.2d. ___ (Fla. Case no. 80,181, opinion filed, August 26, 1993) [18 FLW S455]; *Schindler Corp. v. Ross*, ___ So.2d ___ (Fla. 3d DCA Case no. 92-1835, opinion filed, October 5, 1993).
2. While we agree with the appellant that the jury charge on the subject was confusing and defective, no further discussion of this point is required since the error will undoubtedly be corrected at the retrial which we have already required.
3. The arguments for this result are summarized as follows: . . . (1) in some instances the lessor, like the seller, may be the only member of the marketing chain available to the injured plaintiff for redress; (2) as in the case of the seller, imposition of strict liability upon the lessor serves as an incentive to safety; (3) the lessor will be in a better position than the consumer to prevent the circulation of defective products; and (4) like sellers and manufacturers, commercial lessors and bailors are in a position to control their risk through the adoption of inspection and maintenance procedures and to pass on to the lessee the costs of the protective measures and of insurance. 3 *American Law of Products Liability* 3d § 36:19, at 24-25 (1987)(footnotes omitted).
4. Indeed, *Keith*, which involved a seller of a used piece of machinery, was decided by the same court which had earlier emphatically adopted the rule that a lessor is strictly liable. *Futch*.

