

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>AARON RUSSO,</p> <p>Plaintiff,</p> <p>vs.</p> <p>FROST CUTLERY COMPANY, LLC, and PANTHER TRADING COMPANY, INC.,</p> <p>Defendants.</p>	<p>Case No. LACL132212</p> <p>RULING ON DEFENDANT FROST CUTLERY COMPANY, LLC'S MOTION FOR SUMMARY JUDGMENT</p>
---	--

Before the Court is a Motion for Summary Judgment filed by Defendant Frost Cutlery Company, LLC (hereinafter “Frost”) on September 30, 2015. Plaintiff Aaron Russo filed his Resistance to the Motion on October 15, 2015. A hearing was held on the Motion on November 4, 2015. Plaintiff Russo was represented by attorney Adam Witosky, Defendant Frost was represented by attorneys Andrew Hall and Michael Kuehner, and Defendant Panther Trading Company, Inc. (hereinafter “Panther”) was represented by attorney Stephen Doohen. Having reviewed the court file and considered the arguments of the parties, the court enters the following ruling.

Factual and Procedural Background

In July 2013, Russo ordered a folding knife from the Cutlery Corner Network, a shopping network owned and operated by Frost. The knife itself was manufactured and packaged by Panther and then provided to Frost for delivery to Russo. The knife was delivered to Russo’s home in secure and undamaged packaging on July 15, 2013.

When Russo removed the knife from its packaging and attempted to open it, the blade did not release as intended. The knife’s quick-release mechanism was not functioning properly, requiring Russo to use his fingers to manually lift the blade. When he tried to close the knife, he

was unable to do so using only his right hand. Instead, Russo held the safety button down with his right thumb and placed his left pointer finger and thumb near the top of the blade while attempting to close the blade. The blade's tension and resistance required so much force to close the blade that, when it unexpectedly closed, the blade came down so fast it cut Russo's left pointer finger to the bone. The cut required six stitches and has left Russo's finger permanently scarred and stiff in the joint.

On February 24, 2015, Russo brought suit against Frost and Panther. In his Petition, Russo asserted claims of negligence and product liability for manufacturing defects against both Frost and Panther. In response, Frost filed a Motion for Summary Judgment claiming that it was statutorily immune from liability for any of the knife's manufacturing defects and that it did not act negligently by failing to inspect the knife for defects. Russo contests these arguments.

Legal Standard

Pursuant to Rule 1.981 of the Iowa Rules of Civil Procedure, summary judgment is only appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Robinson v. Poured Walls of Iowa, Inc.*, 553 N.W.2d 873, 875 (Iowa 1996). A material issue of fact is a factual dispute that might affect the outcome of the suit and is considered genuine only if it is such that a reasonable jury could return a verdict in favor of the nonmoving party. *Fees v. Mut. Fire & Auto. Ins. Co.*, 490 N.W.2d 55, 57 (Iowa 1992).

The court considers pleadings, depositions, answers to interrogatories, admissions on file, and affidavits in determining whether summary judgment is proper. Iowa R. Civ. P. 1.981(3). The court views all evidence in the light most favorable to the resisting party, affording him or her all reasonable inferences that can be drawn from the record. *Wernimont v. Wernimont*, 686 N.W.2d 186, 189 (Iowa 2004). If, based on the evidence presented, reasonable minds could

differ on how the issue should be resolved, summary judgment is not appropriate. *Smith v. CRST Int'l, Inc.*, 553 N.W.2d 890, 893 (Iowa 1996).

Analysis

1. Strict Liability

Russo first argued Frost was strictly liable for his injuries under a theory of product liability for defects in the knife's manufacture. Frost rejected this assertion, noting that, as the knife's seller and not manufacturer, it was immune from liability under Iowa Code section 613.18(1)(a). Section 613.18(1)(a) provides that a person who "wholesales, retails, distributes, or otherwise sells" a product but is not the assembler, designer, or manufacturer is immune from any suit based on strict liability in tort arising solely from alleged defects in the original design or manufacture of the product.

The court ruled on this matter during the November 4, 2015 hearing. Because it is undisputed that the knife was packaged by the manufacturer (Panther), sent to Frost for sale prepackaged, and received by Russo securely sealed and undamaged, section 613.18(1)(a) applies. Because Frost was merely an intermediary with no role in the assembly, design or manufacture of the knife, it cannot be held strictly liable for a manufacturing defect. As such, Russo's strict liability claim against Frost in Count I of the Petition is dismissed.

2. Negligence

The remaining claim against Frost, Count III of the Petition, is Russo's contention that Frost acted negligently by not inspecting the knife before shipping it to Russo. As Russo contends, Frost owed a duty to ensure the products it sold did not pose a risk of harm to the public through inherent defects. Frost resists this claim, arguing that it had no duty to inspect the knife and was thus not negligent.

At the outset, it is important to differentiate between claims of strict liability and negligence. While each can be a product liability claim, they differ in important ways. Unlike strict liability where it is only the product itself at issue, negligence claims require the court to look at the defendant's conduct. Negligence claims require a showing of an existing duty "to conform to a standard of conduct to protect others, failure to conform to that standard, proximate cause, and damages." *Van Essen v. McCormick Enters. Co.*, 599 N.W.2d 716, 718 (Iowa 1999).

Frost argues it was under no duty to inspect the knife before shipping it to Russo and, as such, its failure to do so did not fall below the required standard of care. The court thus must determine the requisite standard of care.

Russo cites to sections 1 and 2 of Restatement (Third) of Torts: Product Liability as the controlling authority regarding Frost's alleged negligence. However, as the Iowa Supreme Court's holding in *Wright v. Brooke Grp. Ltd.*, 652 N.W.2d 159, 169 (Iowa 2002) indicated, the adoption of this portion of Restatement (Third) was merely "for product defect cases," superseding Restatement (Second) of Torts section 402A. Like *Wright*, Restatement (Second) section 402A and the superseding sections of Restatement (Third) pertain to strict liability rather than negligence. As the Court indicated earlier in its decision, the bases for liability under theories of strict liability and negligence differ. *Id.* at 164.

Russo's remaining claim against Frost is one of negligence, not product defect. Russo is not, as *Wright* spells out, "seeking to recover damages on the basis of a design defect." *Id.* As noted above, the Iowa Code provides Frost immunity in this regard, shielding it from being held strictly liable for a product defect. Instead, the remaining claim—negligence—alleges that Frost fell below the required standard of care. Restatement (Third) sections 1 and 2 only address a party's duty as it relates to strict liability. Because these sections only provide for seller liability

on the basis of strict products liability and not negligence, they are not dispositive in the present claim. In *Spaur v. Owens-Corning Fiberglas Corp.*, 510 N.W.2d 854, 864 (Iowa 1994), a negligence case which discussed a duty to warn, the Court cited with approval the Restatement (Second) of Torts § 402, “[a] seller of goods likewise has no duty to inspect or test a product for danger ‘who neither knows nor has reason to know that it is, or is likely to be, dangerous....’”

For a claim of negligence, Restatement (Third) of Torts: Liability for Physical Harm has been adopted by the Iowa Supreme Court and is controlling. *Thompson v. Kaczinski*, 774 N.W.2d 829 (Iowa 2009). Under Restatement (Third) section 7(a), a party normally has a “duty to exercise reasonable care when the actor’s conduct creates a risk of physical harm.” However, section 7(b) specifies that this duty can be modified or completely displaced when “an articulated countervailing principle or policy warrants denying or limiting liability in a particular class of cases.”

Frost’s conduct in this case does not fall within the general duty outlined by Restatement (Third) because it did not “create a risk of physical harm.” Restatement (Third) of Torts: Liability for Physical Harm § 7(a). The drafters of Restatement (Third) defined risk-creating conduct as conduct by an actor that results in greater risk to another than the other would have faced absent the conduct. *Id.* at § 7 cmt. o. Nothing Frost did increased the risk Russo faced. Frost received the knife already packaged by Panther and did nothing to alter it before delivering it to Russo. Frost was merely an intermediary. Had the knife been delivered directly from Panther to Russo, Russo would have faced the same risk of harm he did with it passing through Frost. The only risk Russo faced was caused by the manufacturer of the knife. Frost played no part in this process. Frost merely delivered a product prepared and packaged by another party.

Frost had no reason to suspect there was anything dangerous about the knife it received from Panther. It did not know, nor did it have any reason to know, the knife was in any way defective. Frost had no duty to inspect the knife and discover its manufacturing defect before shipping it to Russo. Frost merely received the packaged knife from Panther and sent it to Russo.

Because Frost's conduct did not create a risk of physical harm to Russo, Frost owed no duty to Russo. Without any owed duty, there can be no breach of duty. Accordingly, Frost did not act negligently. Considering the evidence in the light most favorable to Russo, there is no basis upon which a reasonable jury could rule in his favor on this issue. As there are no material facts in dispute regarding Frost's negligence, Frost is entitled to judgment as a matter of law. Summary judgment is proper and Russo's negligence claim against Frost in Count III of the Petition is dismissed.

Order

IT IS ORDERED that Frost Cutlery Company, LLC's Motion for Summary Judgment filed on September 30, 2015 is GRANTED and Counts I and III of the Petition against Frost Cutlery Company, LLC are DISMISSED.



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
LA CL132212 RUSSO V FROST CUTLERY CO AND PANTHER TRADING CO

So Ordered

A handwritten signature in black ink that reads "Karen A. Romano". The signature is written in a cursive style.

Karen A. Romano, District Court Judge,
Fifth Judicial District of Iowa