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Paul v. DishWay

Products Liability- Duty

A products liability claim can be brought against a manufacturer and others in the chain of the production and distribution. A manufacturer is the one who brings goods in the stream of commerce. Under this doctrine, the manufacturer and the rest in the chain can be liable under Strict products liability, Negligence, Warranty of Merchantability, Misrepresentation, and Intent.

Here, DishWay developed a new dishwasher powder "UltraKlean" and was selling this in commerce, thus they are manufacturers and can be held liable under various tort theories.

A manufacturer owes duty and is strictly liable for the products they put into stream of commerce. Here, DishWay owes Paul as Paul is a foreseeable plaintiff who would be a potential consumer.

Strict Products Liability- Breach

Manufacturers are held strictly liable and if they breach their duty, they are strictly liable for damages. To prove if the breached duty, we need to first analyze under which three defects occurred on their part.

Manufacturing Defect

When the product leaves the manufacturer's place and the product materially alters to as to cause harm and the manufacturer can foresee the material alteration, there is a manufacturing defect. Here, even though DishWay did not know that a potentially dangerous amount of UltraKlean residue tended to remain on aluminium cookware after wash cycle, it was not unusual for dishwasher powders to leave harmless amount of residue on different surfaces. In the business of dishwasher powder manufacturing, DishWay could have foreseen that many of their product users would use it on aluminium cookware which would eventually cause harm. Moreover, during their product development they tested their product on different mediums but aluminium. This was a mistake on their part which they should have therefore known and foreseen.

Warning Defect

There is a warning defect if the manufacturer does not properly warn the consumers of the ingredients, uses, accurate information of the product, etc.

Continuing the above analysis and applying the facts here, since DishWay did not test on the aluminium surface, they should have printed a warning which accurately noted that the product was not tested on the aluminium surfaces. Had this warning been printed, Paul would have read the instructions and not used the product on his aluminium pots, thereby also avoiding stomach pain. DishWay's can argue that they had printed instructions on the product which stated that the product should not be ingested and a reasonable person would know to wash

their pots properly to remove residues of the powder. However, this is a clear warning defect on DishWay's part.

Design Defect

There is design defect if the product could have been made in a different way whereby the risks would not outweigh the costs.

Risk Utility Test:

DishWay could show that as advertised their product was a revolutionary, safe product with the most powerful cleaning agent ever, whereby it was accurately advertising their product contained a new cleaning agent that made the product more effective than other dishwasher powders. Despite of this accurate statement, there was still a risk which DishWay knew of that the cleaning agent could cause stomach pain if ingested. DishWay could have tried to make their product more advanced such that it did not cause stomach pains and was safer with leftover residue since they were in a business of cleaning products which if left as if by any reasonable person could be easily ingested on a plate, spoon etc. The costs to advance this technology would not have been much since DishWay was already experimenting to make their product more effective than other dishwasher powders. Thus, DishWay's design was defective.

Causation

Actual- But for the Defendant's breach, the plaintiff was harmed. Here, had DishWay warned on their label or possibly could have modified their design, Paul would have not used the powder on his aluminium pots, which inadvertently would not have left residue and caused him stomach ache. Thus, DishWay is actual cause of Paul's stomach ache.

Proximate- When Defendant's breach is a foreseeable cause of the Plaintiff's harm. Here, DishWay could foresee that people use aluminium utensils at large and could use their powder to wash them. Thus, they could foresee Paul using their powder on aluminium pots and thus getting stomach ache.

Damages

Paul suffered damages due to Dishway's Breach.

Defences

Assumption of Risk

When Plaintiff knowing assumes risk of the product knowing that the product is harmful, may decrease Defendant's liability. Here, Paul can argue, he wasn't aware of the powder leaving residue for aluminium pots and thus cannot have assumed the risk. Thus, this will not be a defense for DishWay.

Negligence

Duty- A manufacturer owes duty to all foreseeable Plaintiffs (Cordozo rule) or all Plaintiffs

(Andrew's rule). Paul is a potential foreseeable plaintiff who is owed duty.

Breach- Standard of care- A Defendant owes standard of care to plaintiff as a reasonable person would. Here, DishWay owed Paul a reasonable standard of care by informing him of their product in a diligent manner.

Casuation

See Supra

Damages

See Supra

Defenses

Assumption of Risk

See Supra

Contributory Negligence

A plaintiff is barred from recovery if plaintiff's fault is even 1%. Here, Paul cannot be seen negligent on his part, and thus this defence will not work for DishWay.

Comparative Negligence

A plaintiff's recovery is barred to the percentage of his fault. As discussed, Paul cannot be held negligent and thus this defence will also not work for DishWay

Warranty of Merchantability

All products always come with warranty of merchantability when the product is introduced in the stream of commerce. Here, Paul could assume that the powder would not harm his pots and could rely on the warranty of merchantability of the product.

Misrepresentation

DishWay misrepresented when it advertised that their product was more effective than other dishwasher powders specially when they knew their powder could cause stomach pain if ingested like all other detergent products.

Intent

When Manufacturer knew or should have known their intent to sell the product would materially harm the consumer. DishWay intended to introduce this powder into stream of commerce of all dishwasher detergent but did not particularly experiment or warn regarding the residue on aluminium products and harm it could cause. Which may be inferred that they did not want to know the final result on aluminium product and thus did not experiment on those. However, the court may not find intent on part of DishWay for Paul's stomach ache.

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