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Implied Warranty: Strict Liability for Whom?

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CASES NOTED

IMPLIED WARRANTY: STRICT LIABILITY FOR WHOM?

The plaintiffs were the wives and representatives of four passengers[1] who lost their lives when a Braniff Airlines airplane crashed due to an alleged inadequately designed engine.[2] An action was brought pursuant to Florida's wrongful death[3] and survivors statutes[4] against Douglas Aircraft Corporation, the manufacturer of the ill-fated airplane and Curtiss-Wright Corporation, the manufacturer of the engine. The plaintiffs charged Douglas and Curtiss-Wright with negligence and with breach of an implied warranty that the equipment was of merchantable quality and reasonably fit for the use for which it was intended. The trial court granted Douglas'[5] motion for a summary judgment on the ground that the facts as alleged failed to state a cause of action. On the plaintiffs' appeal, *held*, reversed: an aircraft manufacturer's implied warranty runs in favor of the aircraft's passengers, even in the absence of privity. *King v. Douglas Aircraft Co.*, 159 So.2d 108 (Fla. 3d Dist. 1963).

Originally, warranty liability involved an action sounding in tort and pursued as an action on the case.[6] The contract of sale was extended to include warranties,[7] but privity of contract was a necessary element in an action for its breach.[8] Later, a more liberal right was recognized when noncontracting third parties who had previously been denied recovery due to the privity requirement were allowed recovery.[9] Members of a

1. The four passengers were Braniff pilots who were riding as passengers on the fatal flight.

2. The accident occurred following a fire in the right inboard (No. 3) engine of the four engine DC-7C. On motion for summary judgment, the plaintiffs filed the affidavit of an aeronautical engineer who expressed his expert opinion that the failure in the engine had occurred as the result of a fatigue break in the No. 11 cylinder assembly. This break was said to be "the direct result of an inadequate combustion chamber design" in the engine.

3. FLA. STAT. § 768.01 (1963).

4. FLA. STAT. § 768.02 (1963).

5. Summary judgment was granted to co-defendant Douglas only. The status on reversal is the same as when the complaint was originally filed against both Douglas and Curtiss-Wright as codefendants.

6. Ames, *The History of Assumpsit*, 2 HARV. L. REV. 1, 8 (1888); PROSSER, TORTS § 83 (2d ed. 1955).

7. *Ibid.*

8. Carter v. Hector Supply Co., 128 So.2d 390 (Fla. 1961); Lambert v. Sistrunk, 58 So.2d 434 (Fla. 1952); Turner v. Edison Storage Battery Co., 248 N.Y. 73, 161 N.E. 423 (1928); Chysky v. Drake Bros. Co., 235 N.Y. 468, 139 N.E. 576 (1923). See also 1 WILLISTON, SALES § 244 (1948).

9. Peterson v. Lamb Rubber Co., 54 Cal. 2d 339, 353 P.2d 575 (1960); Escola v. Coca Cola Bottling Co., 24 Cal. 2d 453, 150 P.2d 436 (1944); Matthews v. Lawnlite Co., 88 So.2d 299 (Fla. 1956); Hoskins v. Jackson Grain Co., 63 So.2d 514 (Fla. 1953); Smith v. Platt Motors, Inc., 137 So.2d 239 (Fla. 1st Dist. 1962); Posey v. Ford Motor Co., 128 So.2d 149 (Fla. 1st Dist. 1961); Continental Copper & Steel Indus. v. E. C. "Red" Cornelius,

household for whom foods and household items have been purchased, although third parties to the sale, are no longer denied recovery. This result is due to the extension of "strict liability" to third persons not in privity with the seller.[10] Recently, the New York Court of Appeals held[11] that privity was unnecessary in actions for breach of *express warranties*. The court stated that in the case of the breach of an express warranty, liability was based upon the type of representation made rather than upon the character of the product sold. Manufacturers have been held to a standard of "strict liability" when it was reasonable to assume that the third party consumer would be the ultimate user of the product sold.[12]

The law is well settled in Florida that a manufacturer is liable to a person injured as the result of the negligent manufacture of its product.[13] Extending this principle further, the courts have said that the manufacturer is liable when its product has been improperly or negligently designed.[14] The fact that the product in question is not itself a dangerous instrumentality has not lessened the manufacturer's liability to those injured by its product.[15] Similarly, it has been held that a manufacturer who incorporates into its product component parts constructed by another is liable for the negligent manufacture of the components.[16]

Inc., 104 So.2d 40 (Fla. 3d Dist. 1958); Ward Baking Co. v. Trizzino, 27 Ohio App. 475, 161 N.E. 557 (1928).

10. Florida Coca Cola Bottling Co. v. Jordan, 62 So.2d 910 (Fla. 1953); Blanton v. Cudahy Packing Co., 154 Fla. 872, 19 So.2d 313 (1944); Greenberg v. Lorenz, 9 N.Y.2d 195, 213 N.Y.S.2d 39, 173 N.E.2d 773 (1961).

In Mazetti v. Armour & Co., 75 Wash. 622, 135 Pac. 633 (1913), for the first time a food consumer not in privity with the manufacturer was allowed recovery.

11. Randy Knitwear, Inc. v. American Cyanamid Co., 11 N.Y.2d 5, 181 N.E.2d 399, 226 N.Y.S.2d 363 (1962); Rogers v. Toni Home Permanent Co., 167 Ohio St. 244, 147 N.E.2d 612 (1958); Baxter v. Ford Motor Co., 168 Wash. 456, 12 P.2d 409 (1932).

12. Hinton v. Republic Aviation Corp., 180 F. Supp. 31 (S.D.N.Y. 1959); Greenman v. Yuba Power Prods., Inc., 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1962).

13. Rawls v. Ziegler, 107 So.2d 601 (Fla. 1958); Tampa Drug Co. v. Wait, 103 So.2d 603 (Fla. 1958); Matthews v. Lawnlite Co., 88 So.2d 299 (Fla. 1956).

14. Matthews v. Lawnlite Co., 88 So.2d 299 (Fla. 1956); Williams v. Caterpillar Tractor Co., 149 So.2d 898 (Fla. 2d Dist. 1963); A.E. Finley & Associates, Inc. v. Medley, 141 So.2d 613 (Fla. 3d Dist. 1962). RESTATEMENT, TORTS § 398 (1934) provides:

> A manufacturer of a chattel made under a plan or design which makes it dangerous for the uses for which it is manufactured is subject to liability to others whom he should expect to use the chattel lawfully or to be in the vicinity of its probable use for bodily harm caused by his failure to exercise reasonable care in the adoption of a safe plan or design.

15. Matthews v. Lawnlite Co., 88 So.2d 229 (Fla. 1956). The plaintiff's fingers were accidently amputated by the manufacturer's aluminum chair when the plaintiff sat in the chair while "shopping" for furniture in a retail furniture store. The Florida Supreme Court said that even though the chair was not a dangerous instrumentality, the plaintiff nevertheless stated a cause of action under the theory of breach of implied warranty.

16. Boeing Airplane Co. v. Brown, 291 F.2d 310 (9th Cir. 1961); Dow v. Holly Mfg. Co., 49 Cal. 2d 720, 321 P.2d 736 (1958); A.E. Finley & Associates, Inc. v. Medley, 141 So.2d 613 (Fla. 3d Dist. 1962); Markel v. Spenser, 5 App. Div. 2d 400, 171 N.Y.S.2d 770 (1958); Wojciuk v. United States Rubber Co., 13 Wis. 2d 173, 108 N.W.2d 149 (1961); RESTATEMENT, TORTS § 400 (1934), "One who puts out as his own product a chattel manufactured by another is subject to the same liability as though he were the manufacturer." 2 HARPER & JAMES, TORTS § 28.28, at 1596 (1956).

In this connection, the great weight of authority holds that a manufacturer has its own independent duty to exercise reasonable care in testing and inspecting the component parts used in its product.[17] The question of whether the probability of negligent manufacture might be legally foreclosed by prolonged safe use, has been answered in the negative by decisions which nevertheless have held manufacturers liable after periods of seven to fifteen years of prior safe use of their product.[18]

An assembler-manufacturer impliedly warrants that its product is reasonably fit for the purpose for which it was intended to be used.[19] Florida law is to the effect that breach of an implied warranty gives rise to "strict and absolute liability" which is imposed regardless of fault.[20] Thus, when a product is defective and the defect is the proximate cause of the damage, a manufacturer can be held liable by reason of the breach of its implied warranty of fitness.[21] In Florida, a suit may be brought against manufacturers of certain products for breach of implied warranty, even though the injured party is not in direct strict contractual relationship, or privity with the manufacturer.[22] However, a retailer in Florida who is not the manufacturer of the defective product, may not be liable to a purchaser who has had an opportunity to inspect the defective product.[23]

In the instant case, the plaintiff's decedents were passengers for whose ultimate use the aircraft was built. Consequently, they were among those to whom the warranty ran and for whose death an action for the breach of that warranty could be maintained.[24] Although warranty is an

17. Alexander v. Nash-Kelvinator Corp., 261 F.2d 187 (2d Cir. 1958); Rawls v. Ziegler, 107 So.2d 601 (Fla. 1958); Tampa Drug Co. v. Wait, 103 So.2d 603 (Fla. 1958); Matthews v. Lawnlite Co., 88 So.2d 299 (Fla. 1956); Comstock v. General Motors Corp., 358 Mich. 163, 99 N.W.2d 627 (1959); MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916).

18. Carney v. Sears, Roebuck & Co., 309 F.2d 300 (4th Cir. 1962); Pryor v. Lee C. Moore Corp., 262 F.2d 673 (10th Cir. 1958); International Derrick & Equip. Co. v. Croix, 241 F.2d 216 (5th Cir. 1957); Fredericks v. American Export Lines, 227 F.2d 450 (2d Cir. 1955).

19. Hinton v. Republic Aviation Corp., 180 F. Supp. 31 (S.D.N.Y. 1959); Greenman v. Yuba Power Prods, Co., 59 Cal. 2d 67, 377 P.2d 897 (1962); Matthews v. Lawnlite Co., 88 So.2d 299 (Fla. 1956); Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 161 A.2d 69 (1960); Thomas v. Leary, 15 App. Div. 2d 438, 225 N.Y.S.2d 137 (1962).

20. Matthews v. Lawnlite Co., 88 So.2d 299 (Fla. 1956).

21. See cases cited note 19 *supra*.

22. Matthews v. Lawnlite Co., 88 So.2d 299 (Fla. 1956); Hoskins v. Jackson Grain Co., 63 So.2d 514 (Fla. 1953); Smith v. Platt Motors, Inc., 137 So.2d 239 (Fla. 1st Dist. 1962); Continental Copper & Steel Indus. v. E. C. "Red" Cornelius, Inc., 104 So.2d 40 (Fla. 3d Dist. 1958). See also Goldberg v. Kollsman Instrument Corp., 12 N.Y.2d 432, 191 N.E.2d 81, 240 N.Y.S.2d 592 (1963). These cases are limited solely to their facts. It was said by way of dicta that if the item were a dangerous instrumentality the supplier might be liable. Lambert v. Sistrunk, 58 So.2d 434 (Fla. 1952); Hector Supply Co. v. Carter, 122 So.2d 22 (Fla. 3d Dist. 1960).

23. Lambert v. Sistrunk, 58 So.2d 434 (Fla. 1952) (defective stepladder).

24. Middleton v. United Aircraft Corp., 204 F. Supp. 856 (S.D.N.Y. 1960); Hinton v. Republic Aircraft Co., 180 F. Supp. 31 (S.D.N.Y. 1959). *Cf.* Lambert v. Sistrunk, 58 So.2d

aspect of the law of contracts, the warranty is implied, rather than expressed by the precise terms of the contract of sale.[25] An implied warranty arises even though no sale occurs.[26] In *Carter v. Hector Supply Co.*[27] and *Lambert v. Sistrunk*,[28] the Florida courts refused to find a breach of implied warranty when a purchaser claimed damages against the retailer. In *Rodriguez v. Shell's City, Inc.*,[29] a similar result was reached in the case of a bystander. Thus, a fallacious dichotomy exists in Florida. Privity is not essential if the claim is made against the manufacturer of the product causing personal injury on the theory of implied warranty. But a supplier or retailer is not held to the same degree of "strict liability" even when the product causes injury to its purchaser or bystander. It seems that the Florida courts are following the "deeper pockets" theory used recently in a New York case, *Goldberg v. Kollsman Instrument Corp.*[30]

In view of these conceptual inconsistencies, the following questions seem relevant: first, if "adequate protection" is not afforded the injured "purchaser" or "user" of the product by finding the manufacturer or final assembler liable, will the Florida courts overrule *Lambert, Hector Supply* and *Rodriguez*? Second, what result will the courts reach when the supplier has the "deeper pockets" and the manufacturer is insolvent? Finally, should it matter at all who has the deepest pockets?

It is submitted that when the instant case is tried against both the final assembler (Douglas) and the component part manufacturer (Curtiss-Wright), the Florida court will not refuse to "extend liability" to the component part manufacturer. If the court follows *Kollsman Instrument* and holds that "adequate protection" is provided passengers in an action against the final assembler alone, Florida decisions will not be based on sound legal principles and reasoning but in effect on an accountant's determination of who has the more desirable balance sheet. Thus far, the instant case has not resolved any great legal problems in Florida. Basic concepts involving implied warranty are still in a state of flux. If liability

434 (Fla. 1952); Rodriguez v. Shell's City, Inc., 141 So.2d 590 (Fla. 3d Dist. 1962); Carter v. Hector Supply Co., 128 So.2d 390 (Fla. 1961).

25. Matthews v. Lawnlite Co., 88 So.2d 299 (Fla. 1956); Henningsen v. Bloomfield Motors, 32 N.J. 358, 161 A.2d 69 (1960).

26. Matthews v. Lawnlite Co., 88 So.2d 299 (Fla. 1956) (plaintiff injured by chair while sitting in it "with a view to" purchasing it).

27. 128 So.2d 390 (Fla. 1961).

28. 58 So.2d 434 (Fla. 1952).

29. 141 So.2d 590 (Fla. 3d Dist. 1962), in which a "bystander" injured by the manufacturer's product in a retail store was not permitted to recover.

30. 12 N.Y.2d 432, 191 N.E.2d 81, 240 N.Y.S.2d 592 (1963). In a fact pattern similar to that in the instant case the court said that privity was not necessary for an implied warranty action against the manufacturer of the completed product. But the court refused to extend liability to the maker of the component part which had caused the injury, solely on the ground that the injured party could derive sufficient financial protection from the manufacturer of the complete aircraft.

is found to exist against the component part manufacturer, *Lambert* and *Hector Supply* may be rendered nugatory, and would allow purchasers a right of recovery against the previously non-liable retailer. In so doing balance will be added to the law of implied warranty in Florida.

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RESCISSION OF CONTRACTS—UNILATERAL MISTAKE IN FLORIDA

The defendant-insurance company gave a check to the plaintiff in exchange for a release, following an automobile accident between the plaintiff and the defendant's insured. After this transaction the defendant learned that its insured had allowed its policy to lapse, and that it was not in force at the time of the accident. Therefore, the defendant returned the release to the plaintiff and stopped payment on its check. In this suit on the check, the defendant raised two defenses. First, that there was no consideration for the check. This defense was held to be without merit. The second defense was that the company was entitled to cancel the transaction because of its unilateral mistake of fact. On the plaintiff's motion for summary judgment, the lower court held for the defendant-insurance company. On appeal, *held*, reversed: unilateral mistake is not a ground for equitable relief in Florida. *Krasnek v. Maryland Cas. Co.*, 158 So.2d 580 (Fla. 3d Dist. 1963).

Florida's law with respect to unilateral mistake of fact is rather confused.[1] Cases concerned with such mistakes have occurred in three areas: cancellation of deeds, rescission of contracts, and rescission of bids. Since Florida courts have disregarded the factual distinctions between these types of cases, this paper will treat them together in chronological order.

The leading case on this subject in Florida is *Crosby v. Andrews*,[2] wherein it was held that a deed may be rescinded for a negligently made unilateral mistake of fact, where the negligence is not a breach of legal duty;[3] the mistake is material; and it is inequitable for the other party to benefit from the error.

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1. The confusion is not confined to the state of Florida. "The law of mistake as it actually works, as it is demonstrated in decisions, is not capable of being reduced to any broad single doctrine." 3 CORBIN, CONTRACTS 672 (1960).

2. 61 Fla. 554, 55 So. 57 (1911).

3. Concerning the negligence that caused the mistake in *Crosby*, Justice Shackleford, in his dissent, said:

> The alleged mistake would clearly seem to be not only unilateral, but entirely due to the culpable negligence and inexcusable carelessness of the complainants. If any one of them had only taken the necessary time and trouble to read the deed before executing it, the mistake . . . would have been at once discovered. All the facts were within reach of the complainants, and they had but to open