

**Ingles v Glover Mach., Inc.**

2021 NY Slip Op 33439(U)

August 31, 2021

Supreme Court, Nassau County

Docket Number: Index No. 601785/2018

Judge: David P. Sullivan

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SUPREME COURT - STATE OF NEW YORK  
COUNTY OF NASSAU

PRESENT: HON. DAVID P. SULLIVAN,  
*Supreme Court Justice.*

IAS/TRIAL PART 22

-----X  
DENIS INGLES and ZULMA INGLES,

Plaintiffs,

Index No. 601785/2018  
Motion Seq. Nos. 003, 005  
Motion Submitted: 06/21/2021

-against-

GLOVER MACHINERY, INC., HOLZ-HER US,  
INC., and RELIABLE WOODWORKING  
MACHINERY, INC.,

Defendants.

-----X  
RELIABLE WOODWORKING MACHINERY, INC.,

Third-Party Plaintiff,

-against-

ADVANCED STORE FIXTURES, INC.,

Third-Party Defendant.

-----X  
HOLZ-HER US, INC.,

Second Third-Party Plaintiff,

-against-

ADVANCED STORE FIXTURES, INC.,

Second Third-Party Defendant.

-----X

The following papers read on these motions:

Notice of Motion (Holz-Her).....	1
Opposition (Plaintiff) .....	2
Reply.....	3
Notice of (Cross-Motion) (Reliable).....	4
Opposition (Plaintiff) .....	5
Reply.....	6

The Court has been presented with two motions for summary judgment, seeking dismissal of the complaint by Defendant Holz-Her and Defendant Reliable, pursuant CPLR §3212. Plaintiff has opposed each motion, and the Court has received timely replies. It should be noted that neither Defendant Glover nor Third-Party Defendant Advanced have submitted any papers on the pending applications. Based upon the following, the motion by Defendant Holz-Her is hereby granted to the limited extent as set forth below; in addition, the motion by Defendant Reliable is hereby granted in full, over opposition.

On or about September 2013, Third-Party Defendant Advanced purchased a woodworking machine designed and made by Defendant Holz-Her. The seller of this particular machine was Defendant Glover, who although a separate entity, was an authorized retail seller of machines made by Defendant Holz-Her. At the time of the resale to Third-Party Defendant Advanced, the machine was in good working order and contained all of the necessary components to operate safely and correctly.

Plaintiff Denis had been employed by Third-Party Defendant Advanced since approximately 2010, performing carpentry work, despite not being a formally trained carpenter. He had used the subject machine on several occasions and was aware that it required frequent cleanings in order to operate properly. Although he was not the one who removed the safety

hood on the machine, he was aware that it was removed in order to allow more efficient operation; that is, to be cleaned without the need to shut the machine down entirely and waiting for it to start back up again. On July 31, 2015, while performing his work duties, Plaintiff Denis attempted to clean the machine while it was operating in order to prevent debris buildup; unfortunately, in so doing, his hand was sucked into the machine and lacerated by the spinning blade, causing severe injuries to his left hand.

Plaintiffs then commenced the within action, seeking recovery for the personal injuries sustained. Plaintiffs' complaint alleges ten (10) separate causes of action sounding in general negligence with a reference to *res ipsa loquitur*, product liability, breach of implied warranty, strict liability, breach of express warranty, products liability for a design defect, an unspecified section of the Labor Law, products liability for a failure to warn, a claim under Labor Law §200, and a claim for loss of consortium. Defendant Glover, having failed to answer the complaint or appear in the action, has been deemed in default on the issue of liability pursuant to the decision and order of Hon. Jack L. Libert, J.S.C., dated April 29, 2019. In addition, in a stipulation dated January 25, 2021, Plaintiff has withdrawn all causes of action against Defendant Reliable except for its first and tenth causes of action, for general negligence and loss of consortium.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Alvarez v. Prospect Hospital, 68 NY2d 320, 508 NYS2d 923 (1986). To make a prima facie showing, the motion must be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. Id. Once a prima facie showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to

establish the existence of material issues of fact which require a trial of the action. Id.; *see also* Zuckerman v. City of New York, 49 NY2d 557, 427 NYS2d 595 (1980).

To establish a prima facie case of negligence, a plaintiff must establish the existence of a duty owed by a defendant to the plaintiff, a breach of that duty, and that such a breach was a proximate cause of injury to the plaintiff. Comack v. VBK Realty Associates, Ltd., 48 AD3d 611, 852 NYS2d 370 (2<sup>nd</sup> Dept., 2008).

As a preliminary matter, the Court is satisfied that Plaintiffs third, fifth, seventh, and ninth causes of action are completely inapplicable to the case at bar. The evidence before the Court is clear that there are not any provisions of the Labor Law that are salient to the instant case with respect to Defendant Holz-Her; likewise, breach of warranty, either implied or express, does not apply herein as and against Defendant Holz-Her, who did not sell the subject machine to Third-Party Defendant Advantage. Plaintiffs second and fourth causes of action are simply duplicative and indistinguishable from Plaintiffs sixth and eighth causes of action and lack any merit beyond such. The Court is satisfied that Defendant Holz-Her has established its entitlement to judgment as a matter of law herein on these causes of action, and no such triable issue can be found in opposition. Thus, Defendant Holz-Her's motion is granted with respect to Plaintiffs second, third, fourth, fifth, seventh, and ninth causes of action and same are hereby dismissed forthwith.

Manufacturers may be held strictly liable for injuries caused by their products because of a mistake in the manufacturing process, because of a defective design, or because of inadequate warnings regarding the use of the product. Singh v. Gemini Auto Lifts, Inc., 137 AD3d 1002, 27 NYS3d 637 (2<sup>nd</sup> Dept., 2016). To establish a prima facie case in a strict liability action predicated on a design defect, a plaintiff must show that the manufacturer marketed a product

which was not reasonably safe in its design, that it was feasible to design the product in a safer manner, and that the defective design was a substantial factor in causing the injury. Pierre-Louis v. DeLonghi America, Inc., 66 AD3d 859, 887 NYS2d 628 (2<sup>nd</sup> Dept., 2009). To recover on a strict products liability cause of action based upon inadequate warnings, a plaintiff must demonstrate that if adequate warnings had been provided, the product would not have been misused, and that the failure to warn was a substantial cause of the events that produced the injury. Rampersaud v. Hsieh Hsu Machinery Co., Ltd., 196 AD3d 614, 2021 NY Slip Op 04386 (2<sup>nd</sup> Dept., 2021).

Material alterations at the hands of a third party which work a substantial change in the condition in which the product was sold by destroying the functional utility of a key safety feature, however foreseeable that modification may have been, are not within the ambit of a manufacturer's responsibility. Hernandez v. Biro Manufacturing Co., 251 AD2d 375, 674 NYS2d 72 (2<sup>nd</sup> Dept., 1998). On the other hand, a post-delivery material alteration of a product does not automatically defeat a right to recover under a theory based upon a failure to warn. Montufar v. Shiva Automation Service, 256 AD2d 607, 683 NYS2d 125 (2<sup>nd</sup> Dept., 1998).

In the instant case, the Defendant Holz-Her has demonstrated its entitlement to judgment as a matter of law dismissing Plaintiffs' strict liability for a design defect claim. In support of the motion, Defendant Holz-Her has submitted a copy of the pleadings, the deposition transcript of Plaintiff as well as a deposition transcript from each party to the within action. The Court is satisfied that the safety feature that prevented the hood from being opened was fully installed and operational when Third-Party Defendant Advanced received the subject machine, but that at some point prior to Plaintiff Denis' operation of the machine in July 2015, the interlock making the feature operate correctly had been bypassed, allowing the safety hood to be removed and the

interior of the machine accessed while the machine was running. This material alteration was the proximate cause of Plaintiff Denis' injuries, despite its foreseeability. Plaintiffs' opposition papers fail to raise a triable issue of fact on this claim. Accordingly, the portion of Defendant Holz-Her's motion seeking dismissal of Plaintiffs' sixth cause of action is hereby granted and same is dismissed.

Turning next to the portion of the motion seeking dismissal of the remaining causes of action, the Court is not satisfied that Defendant Holz-Her has met its burden. It is undisputed in the record before the Court that there was a safety manual that came with the subject machine; however, it is also undisputed that there were not any warnings contained on the actual safety hood that became removable while the machine was on and the motor running. Given the state of the evidence, including the expert affidavit from Plaintiff in opposition, the Court finds that a question of fact still exists as to whether or not adequate warning was provided by Defendant Holz-Her and is a question best reserved for a jury. See Pierre-Louis at 861-862, 631; see also Montufar at 608, 126. Accordingly, the remaining portions of the motion by Defendant Holz-Her seeking dismissal of Plaintiffs' first, eighth, and tenth causes of action are hereby denied.

In consideration of the cross-motion by Defendant Reliable, the Court is satisfied that it has also met its burden on the motion warranting dismissal of Plaintiffs' first and tenth causes of action as asserted against it. The evidence before the Court indicates that at all times when its serviceperson worked on the subject machine, the safety hood was in place; more importantly, not anyone from Defendant Reliable performed the electrical bypass on the machine such that the hood could be removed while the machine was operational. Although Plaintiffs' opposition papers attempt to establish Defendant Reliable as a contract service provider who had taken full

and exclusive responsibility for the maintenance and operation of the subject machine, the record before the Court belies such assertion. Defendant Reliable completed two separate repairs of the subject machine, neither of which were related to the injury suffered by Plaintiff Denis. Therefore, the cross-motion by Defendant Reliable is hereby granted in full, over opposition, and the complaint and any cross-claims against them are hereby dismissed; additionally, the third-party complaint against Third-Party Defendant Advantage for indemnification and contribution has been rendered moot and is also dismissed.

Defendant Reliable shall file and serve a copy of the within order with notice of entry upon all parties within thirty (30) days from the date of this order. Thereafter, the remaining parties shall participate in a final certification conference before this Court on November 16, 2021.

Finally, in light of the foregoing, the caption is hereby amended to read as follows: "DENIS INGLES and ZULMA INGLES, Plaintiffs, against GLOVER MACHINERY, INC. and HOLZ-HER US, INC., Defendants. HOLZ-HER US, INC., Third-Party Plaintiff, against ADVANCED STORE FIXTURES, INC., Third-Party Defendant."

This hereby constitutes the Decision and Order of this Court.

Dated: August 31, 2021  
Mineola, New York

ENTER

  
HON. DAVID P. SULLIVAN, J. S. C.

**ENTERED**

**Sep 02 2021**

NASSAU COUNTY  
COUNTY CLERK'S OFFICE