

Whitley v State of New York

2023 NY Slip Op 31162(U)

March 9, 2023

Court of Claims

Docket Number: Claim No. 135851

Judge: Linda K. Mejias-Glover

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STATE OF NEW YORK COURT OF CLAIMS

DARRYL WHITLEY,

Claimant,

DECISION AND ORDER

-v-

THE STATE OF NEW YORK,

**Claim No. 135851
Motion No. M-98652**

Defendant.

**BEFORE: HON. LINDA K. MEJIAS-GLOVER
Judge of the Court of Claims**

**APPEARANCES: For Claimant:
RICKNER, PLLC
By: Rob Rickner, Esq.**

**For Defendant:
HON. LETITA JAMES
New York State Attorney General
By: J Gardner Ryan, Esq.
Assistant Attorney General**

Defendant, the State of New York (hereinafter, the “Defendant” or the “State”) moved by Notice of motion filed with the Clerk of the Court on October 20, 2022, seeking, *inter alia*, an order dismissing so much of the filed claim as purports to assert a cause of action for damages based on a theory of strict products liability. Claimant has opposed the motion, and the State did not reply.

Relevant Factual Background

The claim, filed with the Court on January 20, 2021, seeks to recover compensatory damages for personal injuries sustained on January 19, 2020 by the Claimant, in course of performing his assigned work program, while incarcerated at the Otisville Correctional Facility (hereinafter, the “Claim”). In sum, Claimant alleges that while he was engaged in cleaning a

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dishwashing machine using hot water and germicidal cleanser, known as Germicidal Cleaner 128, which is made and supplied by Corcraft, a division of the New York State Department of Corrections and Community Services, the dilution of water and cleanser entered his left eye causing injury.

Points of Counsel

According to Defendant's counsel, Claimant's assertion of a claim of strict products liability against the State is unusual and unsound, and fails to state a viable cause of action. Counsel argues that because the sole Defendant is the State of New York, and because the State is not engaged in commerce, nor is the manufacturer of products that it places in the stream of commerce, the balance of economic incentive and consumer protection underlying all causes of action for strict products liability does not exist here. Counsel further argues that the State is a governmental entity and that any similarity between its incidental manufacturing and distribution of products for its own use, products created through the labor of incarcerated individuals, and the economically driven commercial activities of individuals and corporation in the marketplace is merely coincidental. Counsel goes on to argue that the labor of incarcerated individuals differs from that labor in the marketplace because its value is determined exclusively by the State¹, and not economic forces of competition or merit, and the benefits of such labor are exclusively retained by the State.

It is Counsel's position that the State is not in the stream of commerce or subject to strict liability for its discretionary determinations in selecting the appropriate formulas, design and characteristics of the goods and wares that it deems most suitable and elects to produce for its own use in the upkeep and maintenance of its own facilities. Counsel argues that therefore, those discretionary and administrative determinations are made within the scope of its responsibilities

¹ Counsel cites Correction Law §184.

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and no tort liability can attach. Counsel acknowledges that the State does owe the duty of reasonable care to appropriately train and equip Claimant so that he is aware of the characteristics of the materials provided to him or made available for his use and take appropriate precautions to avoid any unreasonable risk of harm in performing his program assignments. But it is counsel's argument that any breach of such duty must be assessed under the standard of reasonable care and not strict products liability.

In opposition to the motion, Claimant's counsel states that Corcraft, the manufacturer of Germicidal 128, advertises itself as an "industry program within the New York State Department of Corrections and Community Supervision," and it states that it employs "incarcerated individuals to produce goods while preparing them for release by teaching them work skills, work ethic and responsibility" (Exhibit A). Counsel points out that in *Baker v Scully*, 157 AD2d 719 [2d Dept 1990], the Court describes Corcraft as a "profit making corporation owned and operated by the New York State Department of Correctional Services." Counsel argues that in every relevant way, Corcraft operates like any other manufacturer as its products are widely distributed in the State of New York (though limited to governmental entities, etc.), it has a procedure for setting prices for its products, and it advertises its products with brochures. Counsel argues that Corcraft, though not a traditional manufacturer, should be held liable for Claimant's injuries here, because it has the same relationship with its end users that traditional manufacturers do, and because Corcraft is in the best position to provide accurate warnings about its products to those users. Counsel states that some of the ultimate users of Corcraft's products are incarcerated people, the same people who make the products in the first place, but that fact does not change the ultimate policy consideration. Counsel argues that Corcraft should not be held to a lesser duty than any other manufacturer just because it manufactures products in a prison and by law is limited to selling products to government agencies and non-profits.

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Applicable Law and Analysis

“It is well settled that a manufacturer of defective products who places them into the stream of commerce may be held strictly liable for injuries caused by its products, regardless of privity, foreseeability or due care” (*Finerty v. Abex Corp.*, 27 NY3d 236, 241 [2016], citing *Sukljian v Ross & Son Co.*, 69 NY2d 89, 94 [1986]; *Codling v Paglia*, 32 NY2d 330, 342 [1973]; *Amatulli v Delhi Constr. Corp.*, 77 NY2d 525, 532 [1991]). It is the manufacturer, and the manufacturer alone, “who can fairly be said to know and to understand when an article is suitably designed and safely made for its intended purpose” and who “has the practical opportunity, as well as a considerable incentive, to turn out useful, attractive, but safe products” (*Codling*, 32 NY2d at 340–341).

The first question to be answered is whether the State of New York can be properly deemed the manufacturer of the product, to wit: the germicidal cleanser, known as Germicidal Cleaner 128. It is and there can be no dispute to that it is. Having established the State of New York, by Corcraft, is the manufacturer of Germicidal Cleaner 128, the question to be answered is whether the State placed the product in the stream of commerce. The Court finds that based upon its sale of the product to state and federal agencies, which ultimately brings wide distribution of the product, the State does place the product in the stream of commerce.

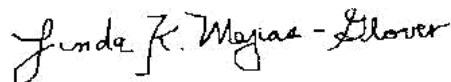
Accordingly, the State fits the characteristics of a manufacturer who may indeed be subject to liability under the theory of strict products liability. The Court finds the State’s arguments related to the use of labor by incarcerated persons to be unavailing and without any legal application to this issue of strict products liability.

Based upon the foregoing, the Court finds that Claimant has alleged a viable cause of action against the State and therefore the motion is **DENIED**.

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Dated: March 9, 2023
New York, New York



**HON. LINDA K. MEJIAS-GLOVER,
Judge of the Court of Claims**

Papers Considered:

1. Notice of Motion, Affirmation, Exhibits Annexed
2. Affirmation in Opposition, Exhibits Annexed