Chrisafis v Costco Wholesale Corp.
2025 NY Slip Op 35571(U)
January 14, 2025
Supreme Court, Queens County
Docket Number: Index No. 721207/21
Judge: Karina E. Alomar
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable **KARINA E. ALOMAR** IA PART 23
Justice

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ESTHER H. CHRISAFIS,

Plaintiff,

-against-

COSTCO WHOLESALE CORPORATION, PRINCE GLOBAL SPORTS LLC, EKTELON, INC., AUTHENTIC BRANDS GROUP LLC, BLACKROCK INC., LEONARD GREEN & PARTNERS, L.P., GENERAL ATLANTIC SERVICE COMPANY, L.P., LION CAPITAL LLP, ESCALADE, INCORPORATED, ESCALADE, INCORPORATED d/b/a and a/k/a PRINCE GLOBAL SPORTS LLC, and ESCALADE, INCORPORATED d/b/a and a/k/a AUTHENTIC BRANDS GROUP LLC

Defendants.

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Index No.: 721207/21
Motion Date: 12/12/24
Motion Seq. No.: 4

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COUNTY CLERK
QUEENS COUNTY

The following numbered papers read on this motion by defendants Authentic Brands Group LLC, Prince Global Sports LLC, Escalade, Incorporated, Escalade Incorporated d/b/a and a/k/a Prince Global Sports LLC, and Escalade, Incorporated d/b/a and a/k/a Authentic Brands Group LLC for summary judgment in favor of the moving defendants and dismissing plaintiff's complaint and any crossclaims against them.

PAPERS	NUMBERED
Notice of Motion-Affidavits-Exhibits	97 – 109
Opposition Papers	111 – 117
Opposition Papers	118 – 119
Replying	121 – 124

Upon the foregoing cited papers, it is ordered that defendants motion for summary judgment is determined as follows:

Plaintiff commenced the instant product liability action to recover for injuries she allegedly sustained on October 1, 2018, because of attempting to open a ping-pong table from its closed vertical position to an open horizontal position, the ping-pong table collapsed, causing injury to her right foot. Plaintiff alleges that the table was purchased from defendant, Costco Wholesale Corporation at its Westbury, New York location and was sold, manufactured, distributed and placed into commerce in a defective, dangerous and or malfunctioning condition. Defendants now move for summary judgment on the grounds that plaintiff is unable to state the date which the table was purchased and does not have any documentary proof that the table was purchased from Costco. Moreover, plaintiff is unable to prove the elements of a products liability claim against any of the defendants.

Pursuant to CPLR 3212, the burden on a motion for summary judgment rests with the moving party to bring forth sufficient proof to enable a court to determine entitlement to judgment as a matter of law (*see Zuckerman v New York*, 49 NY2d 557, 560 [1980]). Where the moving party makes a *prima facie* showing, "the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of triable issues of fact which require a trial of the action" (*Wallice v Waterpointe at Oakdale Shores, Inc.*, 249 AD2d 383, 383 [1998]; *Toure v Avis Rent A Car Sys.*, 98 NY2d 345 [2002]).

"In a product liability action, identification of the exact defendant whose product injured the plaintiff is generally required" (*Hymowitz v Eli Lilly & Co.*, 73 NY2d 487, 504 [1989], *cert denied* 493 US 944 [1989]). The plaintiff may establish the identity of the manufacturer or seller through circumstantial evidence; such evidence "must establish that it is reasonably probable, not merely possible or evenly balanced, that the defendant was the source of the offending product" (*Healey v Firestone Tire & Rubber Co.*, 87 NY2d 596, 601-602 [1996]). "Speculative or conjectural evidence of the manufacturer's identity is not enough" (*id*. at 602). Thus, a party outside the manufacturing, selling or distribution chain cannot be held liable on a strict products liability claim (*Reed v Watts Water Tech., Inc.*, 212 AD3d 740, 741 [2d Dept 2023]). "On a motion for summary judgment, a defendant who asserts that it did not manufacture the allegedly defective product has the initial burden of establishing, as a matter of law, that it did not do so" (*Abulhasan v Uniroyal-Goodrich Tire Co.*, 14 AD3d 900, 901 [3d Dept 2005]). The defendant cannot rely on gaps in the plaintiff's proof to meet its prima facie burden (*Universal Resources Holdings, Inc. v North Penn Pipe & Supply, Inc.*, 129 AD3d 1671, 1671 [4th Dept 2015]).

In support of defendants' motion, defendants submit, among other things, inspection photographs, amended license agreements from July 2013 and May 2016, along with the affidavits of Jay Dubiner of Authentic Brands Group and Michael Guerzini of Escalade.

Jay Dubiner, Chief Legal Officer for Authentic Brands Group LLC, stated in his affidavit that ABG is a brand development, marketing and entertainment company that licenses its trademarks to third parties that sell, manufacture and market products and services under those trademarks. Moreover, ABG is a limited liability company whose members include investment funds managed by BlackRock Inc., General Atlantic Service Company, L.P., Leonard Green & Partners, L.P. and Lion Capital LLP (the "ABG Members"). None of the ABG Members are involved in ABG's day-to-day operations. He further attested that on May 1, 2012, Prince Sports, Inc., Prince Sports Holdings, LLC, Prince Sports Management Holdings, LLC and Prince Sports Acquisition Holdings Corporation (collectively "Prince") filed a Chapter 11 Bankruptcy petition in the United States Bankruptcy Court for the District of Delaware. On June 19, 2012, the Bankruptcy Court issued an Order approving the sale of certain Prince assets. Pursuant to an amended license agreement dated July 1, 2013, ABG-Prince, LLC c/o ABG, as the successor in interest to Prince, subsequently licensed the use of the "Prince" trademark to DMI Sports, Inc. until December 31, 2017. Pursuant to a subsequent amended license agreement dated May 1, 2016, ABG-Prince, LLC c/o ABG licensed the "Prince" trademark to Indian Industries Inc. d/b/a Escalade Sports.

He further testified that ABG does not and did not at any time, sell, manufacture, distribute or market the subject ping-pong table. He explained that the relationship between ABG and the ABG Members is and always has been simply that the ABG members own existing interests in ABG. These companies are investment funds. They are not and never have been involved in selling, manufacturing, distributing or marketing ping-pong tables or in ABG's daily operations.

Michael Guerzini, Vice President of Corporate Compliance for Escalade Sports i/s/h/a/ Escalade Incorporated, also testified. He stated that Escalade is a manufacturer of consumer sporting goods and recreational products, including basketball, table tennis, archery, darting, fitness, pickleball, game room, billiards, outdoor law and tailgate games, and playground equipment. Escalade markets its products under various consumer brands distributed through major sporting goods retailers, mass merchandisers, specialty dealers, and online retailers across the United States and internationally. He was advised by counsel that the plaintiff has been unable to specify the exact date of purchase of the subject ping-pong table, only that it was 14-16 years ago. Escalade did not manufacture, sell, distribute or market any Prince-branded ping-pong tables during said period. Additionally, he attested that Escalade did not begin manufacturing Prince-branded ping-pong tables until after May 1, 2016. See, amended license agreement between ABG-Prince, LLC c/o Authentic Brands Group and Indian Industries Inc. d/b/a Escalade Sports. According to Escalade’s customer report for the years 2016 to 2017, Escalade did not sell or distribute Prince-branded ping-pong tables through any Costco warehouses in the United States. Moreover, he reviewed the submitted photographs of said table and affirmed that Escalade did not design, manufacture, sell, distribute or market the ping-pong table in question.

In opposition to the motion, plaintiff submits, inter alia, a copy of a Costco receipt dated May 26, 2008, unclear photographs, an affidavit of plaintiff and Robert H. Chrisafis, the son of the plaintiff.

The receipt provided states that an item described as “Sven by Kettler Outdoor Aluminum Table Item #306289” was purchased by George Chrisafis on May 26, 2008.

Esther H. Chrisafis states in her affidavit that the table in question was purchased in May of 2008. She further states that since the making of this motion, she was given an Order Confirmation by her brother-in-law, George Chrisafis indicating the date of purchase of a similar ping pong table, one month later in time after the plaintiff already purchased the table from Costco. She further confirmed that at the time of the accident, the table was approximately ten years old, was made partly of metal, and had been kept in the basement of the house for the majority of the time that the table was owned. She claimed various injuries as a result of the table, including, but not limited to, a right toe fracture, and as a result had a laceration repair in addition to a second procedure. She further claims that prior to the accident she was active, however, now she is unable to walk any great distances.

Robert H. Chrisafis also submitted an affidavit stating that at the time of the accident he was fourteen years old and accompanied his mother to the Costco in Westbury, New York, and knows for a fact that his mother purchased the ping pong table from this location. Moreover, he stated that the table was delivered to their house in Douglaston, New York and has been kept in the basement of their home for many years. Moreover, he explained that it was only moved to the garage a few months prior to the inspection in November of 2022.

In further opposition to the motion, attorneys for defendant, Costco take the position that it does not oppose co-defendants' arguments that plaintiff has not, and cannot, demonstrate where and when the ping pong table was purchased. However, he attests that the motion fails at the threshold as they fail to establish that they did not inherit Prince's liabilities as its successors in interest. Moreover, it explains that the motion did not address whether co-defendants assumed liabilities from Prince when they subsequently acquired interest in Prince, who plaintiff claims manufactured the ping pong table. Counsel characterizes the motion as premature, as further discovery is needed, including financial records and depositions, to resolve these issues of liability. Counsel highlights the fact that co-defendants do not dispute that when Prince filed for bankruptcy, Authentic became Prince's successor in interest. The bankruptcy order reflects that some, if not all, liabilities were also assumed. Additionally, although the amended license agreements are provided, they reference agreements which were not attached in support of the motion and did not provide the original license agreements. In essence, counsel argues that unless co-defendant can demonstrate that none of them inherited Prince's liabilities, the motion is premature.

In reply, movants take the position that plaintiff had three years from the time of commencement of the action to identify the manufacture of the table and produce proof of purchase. As to the photographs provided by plaintiff, movant states that the order confirmation is but a partial copy, and shows that Kettler, which is a separate company, was likely the manufacturer and/or distributor of the table in question. Now, on reply, movants provide the original license agreement dated April 22, 1997, it states that Prince trademark to non-party Dart Mart, Inc., and the agreement, effective through December 31, 2000, Dart Mart agreed to indemnify Prince "against any claims, liabilities and expenses arising out of the licensee's activities hereunder or out of any defect (whether hidden or obvious) in a license Article or arising from personal injury… Additionally, a June 1, 2004 agreement was referenced wherein Dart Mart licensing period was extended to December 21, 2009. Movant takes the position that based upon the foregoing, plaintiff's purchase of the subject ping-pong table would have occurred during the licensing period between Prince and non-party Dart Mart, Inc. More importantly, as the License Agreement makes clear, any liabilities that may arise out of the use of the "Prince" trademark during said period would fall on Dart Mart, Inc.

Based on the evidence submitted herein, there are clear questions of fact as to co-defendant's liabilities as successors in interest in relation to Prince, thus requiring further discovery and depositions to determine the proper entity or entities who are liable for the sale, distribution and manufacturing of the ping-pong table at the time period in question.

Accordingly, defendant's motion is denied in its entirety.

This constitutes the decision and order of this Court.

Date: January 14, 2025

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HON. KARINA E. ALOMAR, J.S.C.

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