Filed 7/7/20 Ruiz v. Omniturn CA5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

LUIS RUIZ, Plaintiff and Appellant, v. OMNITURN, Defendant and Respondent.	F077571 (Kern Super. Ct. No. BCV-15-101639-DRL) **OPINION**

APPEAL from a judgment of the Superior Court of Kern County. David R. Lampe, Judge.

Young Wooldridge and Thomas A. Brill for Plaintiff and Appellant.

Clifford & Brown, Michael L. O'Dell and Dennis P. Gallagher II for Defendant and Respondent.

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Appellant Luis Ruiz was severely injured while operating a lathe to thread PVC pipe. At the time of the incident, appellant was working for his employer, Bilfinger Water Technologies, Inc., which was formerly known as Johnson Screens, Inc. (Johnson Screens).

The lathe at issue has a plastic guard to protect the operator from pipe debris. In normal use, the operator prepares the lathe for operation, slides a section of pipe onto its spindle, puts the guard down, and starts the machine. To start the lathe, the operator places his or her hands on each side of the lathe's controller and presses two black buttons. Once

started, the lathe trims and threads the pipe. The lathe automatically stops when the operation is finished. However, it takes about five to 10 seconds from the completion of the cutting operation to when the spindle stops turning.

The lathe was designed, manufactured, and built by Johnson Screens around 2008. Respondent sold several component parts of the lathe to Johnson Screens, including the controller and operator's control station (with the two black buttons as described above). However, respondent was not involved in any way with the design, development or manufacture of the lathe.

On January 20, 2015, appellant loaded a 10-foot section of pipe into the lathe, put the guard down, and started the machine. At some point before the spindle and pipe stopped spinning, appellant reached for the pipe. His glove "adhered" to the spinning pipe and severed three of his fingers.[1] Appellant had not seen that the pipe was still spinning.

Complaint

On December 8, 2015, appellant filed a civil complaint against respondent, among others.[2] The complaint alleged causes of action for products liability and negligence. Respondent filed an answer which contained a general denial and several affirmative defenses. Among these affirmative defenses, respondent asserted that an unnamed third party altered or otherwise used nondefective component parts, and that the third party's alteration or use of the component parts (and not any act or omission of respondent) was the sole cause of appellant's injury. This is generally referred to as the "component parts doctrine."

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[1] Appellant's fingers were likely pinched between the rotating pipe and a support.

[2] The complaint identified respondent as "Omniturn." Respondent filed an answer, identifying itself as "NC ELECTRONIC SERVICES, INC., wrongfully sued and served as OMNITURN."

Motion for Summary Judgment

In a motion dated December 11, 2017, respondent sought summary judgment against appellant (or, in the alternative, summary adjudication of each of the complaint's causes of action). The motion was made on the grounds that each of appellants' causes of action failed under the component parts doctrine. The motion argued that appellant has no support for his claim that the components manufactured by respondent were defective; and that respondent cannot be liable for the use of its nondefective components in other products (e.g., the lathe) that it did not design. Appellant opposed the motion, arguing that respondent's controller component was defectively designed. Appellant claimed the operator's control station has no way of indicating whether the machine was still in operation. Respondent objected to the assertion.

With its opposing papers, appellant filed a declaration from his expert, which said that the "two button safety feature" of the operator's control station was insufficient for a process like threading a 10-foot pipe, which can take up to 45 seconds. Appellant's expert acknowledged that there is "nothing wrong with this design in and of itself" and would be "sufficient" if used in a machine with a "very quick operational time."

In an order dated March 28, 2018, the court granted respondent's motion for summary judgment "on the grounds that the component parts doctrine provides an absolute defense."

Appellant appeals.

DISCUSSION

I. The Law

A. Summary Judgment

"A defendant moving for summary judgment must show that one or more elements of a cause of action cannot be established or that there is a complete defense to the cause of

action. [Citations.]"[3] (*Brady v. Calsol, Inc.* (2015) 241 Cal.App.4th 1212, 1217, fn. omitted (*Brady*); see also Code Civ. Proc., § 437c, subd. (p)(2).)[4] A defendant moving for summary judgment on an affirmative defense must " ' "show that undisputed facts support each element of the affirmative defense.…" ' " (*Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 468 (*Consumer Cause*).) If the defendant does not meet this burden, the motion must be denied. (*Ibid*.)

To carry its burden, the defendant must present its own "evidence, and not simply point out that the plaintiff does not possess, and cannot reasonably obtain, needed evidence." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854, fn. omitted (*Aguilar*).) For example, a defendant can support its motion with an admission (see §§ 2033.060, 2033.210, 2033.410) from the plaintiff that he or she has not discovered evidence to support his or her claim. (*Aguilar*, at p. 855.) However, simply *arguing* that the plaintiff has no evidence is insufficient. (*Ibid*.)

Among its moving papers, the defendant must file a "separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed." (§ 437c, subd. (b)(1).) "Facts not contained in the separate statements do not exist.' [Citations.]" (*Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 175, accord, *City of Pasadena v. Superior Court* (2014) 228 Cal.App.4th 1228, 1238, fn. 4.)

A party moving for summary judgment cannot depend on the allegations in its own pleadings to make or supplement the evidentiary showing required for summary judgment. (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 720, fn. 7; *Thornton v. Victor Meat Co.* (1968) 260 Cal.App.2d 452, 462.)

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[3] The parties agree the component parts doctrine is an affirmative defense. We will assume, without deciding, that it is.

[4] All further statutory designations are to the Code of Civil Procedure unless otherwise stated.

If defendant meets its initial burden, "the burden shifts to the plaintiff … to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (§ 437c, subd. (p)(2).) To satisfy this burden, plaintiff must "set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." (*Ibid*.)

We review the record de novo and resolve doubts in favor of the party opposing summary judgment. (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 717.)

1. Component Parts Doctrine

"California law recognizes three types of product defects for which a product supplier may be liable: manufacturing defects, design defects, and warning defects. [Citation.]" (*Ramos v. Brenntag Specialties, Inc.* (2016) 63 Cal.4th 500, 507.)

An important limitation on product supplier liability is known as the component parts doctrine. The doctrine "applies (1) when a supplier provides a component or raw material that is not itself defective (by virtue of a manufacturing, design, or warning defect), (2) the component or raw material is changed or transformed when incorporated through the manufacturing process into a different finished or end product, and (3) an end user of the finished product is allegedly injured by a defect in the finished product. [Citation.]" (*Ramos v. Brenntag Specialties, Inc.*, *supra*, 63 Cal.4th at pp. 507–508.) In such circumstances, the component supplier is not subject to liability for the injury unless the supplier substantially participated in the integration of the component into the design of the product; the integration of the component causes the product to be defective; and the defect in the product causes the harm. (*Id.* at p. 508.)

By its own terms, the doctrine does not apply when the component itself causes injury when used in the manner intended by the product supplier. (*Ramos v. Brenntag Specialties, Inc.*, *supra*, 63 Cal.4th at p. 504.)

B. Analysis

1. Respondent Failed to Carry its Initial Burden on Summary Judgment

Respondent bore the initial burden "to establish evidentiary facts of *every* element necessary to entitle him to judgment. [Citation.]" (*Enterprise Leasing Corp. v. Shugart Corp.* (1991) 231 Cal.App.3d 737, 744, italics added; see also § 437c, subds. (p)(2) & (o); *Consumer Cause, Inc.*, *supra*, 91 Cal.App.4th at p. 468.) Even if a defendant produces overwhelming evidence as to all but one of the elements, summary judgment must be denied. (*Consumer Cause, Inc.*, at p. 468.) If respondent failed to carry this burden, appellant need not present even a scintilla of evidence challenging the missing element. (*Ibid.*)

The component parts doctrine has three elements, the first of which is that the component supplied by the defendant "is not itself defective." (*Ramos v. Brenntag Specialties, Inc.*, *supra*, 63 Cal.4th at pp. 507–508.) But respondent did not assert in its "separate statement" (§ 437c, subd. (b)(1)) that the controller it supplied was not defectively designed. The absence of design defects (as well as manufacturing or labeling defects) is clearly a "material fact" necessary to invoke the component parts doctrine. As a result, respondent was required to assert in its separate statement that the controller (and other components it supplied) were not themselves defectively designed, and then support that assertion with evidence.[5] (See § 437c, subd. (b)(1).) Yet, respondent failed to include (and support) a factual allegation that the controller was not defectively designed.[6] Even

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[5] If respondent had done so, it would have become appellant's burden to show that the evidence was conflicting as to whether or not the components supplied by respondent were defective.

[6] Respondent did allege facts concerning other elements of the component parts doctrine, including evidence tending to show that it was not involved in the design or manufacture of the lathe. Respondent also adduced evidence it claims shows that any alleged defect of its components was not the cause of appellant's injuries. However, none of this obviates the fact that respondent failed to include lack of design defect in its separate statement and, as a result, included no supporting evidence for that omitted fact. "The party moving for summary judgment has the burden initially to establish evidentiary

the trial court's ruling expressly noted that respondent did not submit any "undisputed facts that the components it supplied were not 'defective.' " This is a fatal law for a summary judgment motion predicated on the component parts doctrine.[7]

Respondent argues that by asserting the component parts defense, it "automatically implicated" that the controller was not defective. Respondent contends that a moving defendant can satisfy its initial summary judgment burden by "identifying" the lack of evidence contrary to its position. Respondent says the lack of a defect here "was initially argued by negation in that no evidence existed of a design defect." However, to carry its initial burden on summary judgment, respondent had to present *evidence* and could "not simply point out that the plaintiff does not possess, and cannot reasonably obtain, needed evidence." (*Aguilar*, *supra*, 25 Cal.4th at p. 854, fn. omitted.) Arguing that the plaintiff has no evidence of a design defect is insufficient. (See *ibid.*)

Respondent suggests that evidence offered by appellant in opposition to the motion showed lack of defect. For example, respondent cites to appellant's expert declaration, filed in opposition to the motion, in which the expert says "[t]here is nothing wrong with this design [of the control station] in and of itself." However, this does not change the fact that respondent failed to carry its own *initial* burden – a necessary prerequisite before we look to appellant's evidence. "The party moving for summary judgment has the burden

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facts of *every* element necessary to entitle him to judgment. [Citation.]" (*Enterprise Leasing Corp. v. Shugart Corp.*, *supra*, 231 Cal.App.3d at p. 744, italics added.) The fact that respondent carried its burden as to some elements of the component parts doctrine does not excuse it from the requirement to establish *all* of its elements.

Similarly, respondent's inclusion of alleged facts tending to show the controller had no *manufacturing* defect is unavailing.

[7] The trial court concluded otherwise, holding that the undisputed facts respondent submitted concerning other elements of the component parts doctrine were sufficient to shift the burden to the plaintiff. However, respondent was required to establish each element of the component parts doctrine before the burden would shift to appellant. (See *Anderson v. Metalclad Insulation Corp.* (1999) 72 Cal.App.4th 284, 289–290 [moving defendant must establish *each* element of affirmative defense].)

initially to establish evidentiary facts of every element necessary to entitle him to judgment. [Citation.]" (*Enterprise Leasing Corp. v. Shugart Corp.*, *supra*, 231 Cal.App.3d at p. 744.) "Only if the evidence of the moving party considered in light of the issues raised by the pleadings would, *standing alone*, support judgment in his favor does the court look to evidence presented by the opposing party. [Citation.]"[8] (*Ibid.*, italics added; see also *Twaite v. Allstate Ins. Co.* (1989) 216 Cal.App.3d 239, 251.)

Respondent relies on cases like *Lee v. Electric Motor Division* (1985) 169 Cal.App.3d 375. However, in *Lee*, there was no allegation the component part was "in itself defective." (*Id.* at p. 388.) Moreover, while respondent says *Lee* controls this case because both involve nondefective components, the absence of design defect was not properly established in the present case.

Because respondent failed to carry its initial burden, the burden never shifted to appellant to show a dispute of material fact, and we do not reach any issues related thereto.[9] (See *Johnson v. United States Steel Corp.* (2015) 240 Cal.App.4th 22, 39.)

DISPOSITION

The judgment is reversed, and the matter remanded for further proceedings consistent with this opinion. Appellant to recover costs on appeal.

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[8] Nothing in this opinion precludes respondent from filing a properly supported motion for summary judgment on remand.

[9] Nor do we address any other contention rendered immaterial by our holding.

POOCHIGIAN, J.

WE CONCUR:

LEVY, Acting P.J.

SNAUFFER, J.