

Verrazono v. Gehl Company (2020) DJDAR 5901

“Ordinary consumer expectations” test not applicable where expert testimony will be essential to assist jury in understanding pros and cons of plaintiff’s arguments.

FACTS: Verrazono (P) was a duly trained all-terrain forklift (“telehandler”) operator who suffered two amputated limbs as a result of an industrial accident, in which the 28,000-pound telehandler P was operating tipped over, pinning P’s arm and leg under the machine.

- At the time of his accident, P was driving without a seatbelt, across steeply graded terrain, with the “boom” in an elevated position - all factors the operator’s manual warned increased risk of roll over.
- After the accident, P sued the manufacturer, Gehl Company (D), for strict product liability.
- P claimed the telehandler was defectively designed because it lacked features necessary to prevent unsafe use, such as non-removable doors and a system which forced operators to wear a seatbelt.
- D claimed the existing safety features on the machines were sufficient. These included a “roll over protective system” that enclosed operators inside a steel cage, a system that allowed the machine to safely traverse graded terrain of +/-10 degrees, a two-point seatbelt, and numerous safety stickers.
- At trial, both parties relied on expert witnesses. P’s experts testified that the allegedly defective design caused or significantly increased the severity of P’s injury; D’s experts testified that P’s injury was caused not by any design defect but rather P’s own unsafe operation of the machine.

PROCEDURAL POSTURE: Following trial, the jury returned a verdict in favor of Gehl Company, finding that the manufacturer’s product design was not defective.

- On appeal, P argued that the trial court failed to instruct the jury on the consumer expectations test.

HOLDING: The First Appellate Court held that the requested jury instruction was properly declined.

DISCUSSION: In its opinion, the First Appellate Court discussed the consumer expectations test that courts use to establish defective design in strict product liability cases and the circumstances under which a jury instruction using the consumer expectations test is appropriate. The court then explained why a jury instruction as to the consumer expectations test would have been inappropriate in this case.

(1) Consumer Expectations Test Appropriate Where Common Sense is Sufficient to Recognize Defect
Citing the California Supreme Court in *Soule v. General Motors (1994)*, the *Verrazono* Court explained that the consumer expectations test is reserved for straightforward cases in which ordinary common sense is all a juror needs to determine whether a product is defective. In such cases, expert testimony is unnecessary because the product’s defective design “is apparent to the common reason, experience and understanding of its ordinary consumer.”

- The “consumer expectations” applied under the test are those of the “reasonable consumer” - rather than the subjective expectations of a particular plaintiff.
- Expert witness testimony generally precludes an instruction under the consumer expectations test. However, the Court noted an important exception to this general rule in cases involving specialized products used by a small subset of consumers. In these cases, limited expert testimony on the expectations of the product’s *actual* consumers “may be proper” if those expectations go “beyond the lay experience common to all jurors.”

(2) Jury Could Not Use Common Sense to Determine Whether D’s Design Was Defective

Turning to the case before it, the *Verrazono* Court reasoned that the “competing expert testimony at trial showed [that] whether or not the lack of [allegedly necessary] features constituted a design defect was not an evaluation the jurors were equipped to make in the absence of expert testimony.”

- The Court reasoned that the telehandler’s allegedly defective design was not a matter resolvable by reference to an ordinary consumer’s expectations. The Court added that the jury could only determine whether the telehandler was defectively designed by hearing the testimony of experts - rather than through its own independent evaluation of machine’s “objective attributes.” Consequently, the Court held that the consumer expectations test jury instruction was properly denied at trial.