

Loomis v. Amazon.com LLC (2021) 63 Cal.App.5th 466

An entity may be strictly liable for defective products sold by third parties on the entity's online marketplace. Under the stream of commerce approach, an entity's participatory connection, for its personal profit or benefit, with the injury-producing product and with enterprise that created consumer demand for and reliance upon the product, calls for imposition of strict liability.

FACTS/PROCEDURE

On November 28, 2015, Plaintiff Kisha Loomis purchased a hoverboard on Amazon's website from a third-party seller listed as TurnUpUp. After gifting the hoverboard to her son for Christmas, the son plugged it into an outlet in Loomis's bedroom to charge. Loomis's boyfriend subsequently discovered a fire in her bedroom. Both her bed and the hoverboard were on fire. Loomis sustained burns to her hand and foot as a result.

Loomis brought suit against Amazon for products liability and fraud on September 2, 2016. In her complaint, Loomis alleged strict products liability, negligent products liability, and breach of warranty. Amazon moved for summary judgment on the grounds that it did not fall within the chain of distribution for product liability purposes. The trial court granted Amazon's motion for summary judgment. Loomis appealed on the ground that summary adjudication was improperly granted because of Amazon's participation in the vertical chain of distribution for the product.

HOLDING/DISCUSSION

The Court of Appeal for the Second District reversed and remanded. The primary issue on appeal was whether Amazon could be held strictly liable for Loomis's injuries that resulted from a defective product sold by a third-party seller on Amazon's website. Generally, a consumer injured by a product defect may now sue "any business entity in the chain of production and marketing, from the original manufacturer down through the distributor and wholesaler to the retailer." (*Wimberly v. Derby Cycle Corp.* (1997) 56 Cal.App.4th 618.) Recently, the Fourth District addressed the same issue when presented with "substantially identical facts" and held Amazon to be an "integral part of the overall producing and marketing enterprise that should bear the cost of injuries resulting from defective products." (*Bolger v. Amazon.com, LLC* (2020) 53 Cal.App.5th 431, 453.)

Here, the Second District agreed with the *Wimberly* Court that Amazon is a link in the vertical chain of distribution but recognized "e-commerce may not fit into a traditional sales structure." Thus, the Court found the stream of commerce approach offered an alternative basis to impose strict liability. Under the stream of commerce approach, a defendant may be strictly liable if: (1) it received a direct financial benefit from its activities and from the sale of the product; (2) the defendant's role was integral to the business enterprise such that the defendant's conduct was a necessary factor in bringing the product to the initial consumer market; and (3) it had control over, or a substantial ability to influence, the manufacturing or distribution process. While Amazon did not manufacture, sell, or physically possess the hoverboard, the Court found that the stream of commerce approach prevented these facts from furnishing an "escape hatch" to avoid strict liability. First, Amazon received a direct financial benefit from the monthly subscription fee and the 15% referral fee received on every sale of the product. Second, Amazon presented no evidence that it did not play a role in establishing a market for TurnUpUp hoverboards. Furthermore, evidence showed Amazon received \$110,645.92 from TurnUpUp hoverboard sales from September 14, 2015 to December 16, 2015. Third, the terms of Amazon's business solutions agreement (BSA) which all third-party sellers operate under demonstrate Amazon retained a substantial capacity to influence manufacturing or distribution processes through its ability to require specific safety certification, indemnification, and insurance before allowing a third party to use its online marketplace. Thus, the Court held the trial court erroneously granted summary adjudication on the strict liability claim based on a stream of commerce approach.