

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MARCOS ARBAIZA,

Plaintiff,

CV 96-1224 (RJD)

-against-

**MEMORANDUM AND ORDER**

DELTA INTERNATIONAL MACHINERY CORP.,

Defendant.

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DEARIE, District Judge.

Plaintiff Marcos Arbaiza brings this products liability action claiming strict liability, negligence and breach of warranty for injuries suffered while cutting a piece of aluminum on a table saw manufactured by defendant Delta International Machinery Corporation ("Delta"). Delta has moved for summary judgement on the plaintiff's strict liability and negligence claims.

A. The Accident

The plaintiff, born in El Salvador in 1971, came to the United States in 1992. Shortly thereafter he began working for J. Sussman Incorporated, ("J. Sussman") a manufacturer of "architectural metal specialities" such as windows and skylights.

He speaks and reads very little English. By September of 1996, the plaintiff had been working for two or three years at J. Sussman, and was earning \$5.50 an hour. He had been taught how to use a table saw on the job.

On September 26, 1996, the plaintiff was asked to "rip" a quarter of an inch off the length of several 10 foot pieces of aluminum. He joined two of his co-workers, Jose and Francisco, around a table saw. The blade guard on this table saw had been removed, so that the blade was exposed. Francisco stood at the "front" of the machine and pushed the aluminum through the blade. Jose stood at the opposite end of the table, holding the ends of the aluminum as it came through the blade, to prevent the aluminum from shifting. The plaintiff stood between them, facing the blade, helping to guide the material as it came through the blade. The plaintiff supported the piece as it came through the blade with his right hand, on which he wore a wool glove for protection against the metal heated by the friction of the blade.

The trio cut the aluminum strips for about two hours. At some point, Jose stepped away. About seven inches into the next cut, while the plaintiff was grasping the material as it came through the blade with his right hand, the material jerked back through the blade, pulling the plaintiff's hand with it.

The plaintiff's right middle and ring fingers were amputated at the mid-phalangeal (knuckle) level. His right index finger was circumferentially lacerated and was successfully replanted.

B. Table Saws at J. Sussman

There are at least five table saws in use at J. Sussman. The table saw in question was a Delta Unisaw Model 34-761 ("Unisaw") from which the blade guard had been completely removed. According to his deposition, the plaintiff had never seen a blade guard on a table saw.

Steve Sussman, the grandson of the company's founder, currently is the vice president and general manager of J. Sussman. In his deposition he admitted that the table saw came with a "split guard" (more accurately a splitter-mounted blade guard), but that it had been removed at least one year prior to the accident. Mr. Sussman had never himself used a table saw with a blade guard.

Mr. Sussman testified that he decided to remove the blade guard after speaking with his foreman and men who found it "very difficult" to do their work when the blade guard was in place because it hid partially hid any piece they were working on. In addition, when they worked with aluminum, the cutting process created "burrs" which accumulated in the guard, making it even

harder to see. Finally, because there was a risk that the aluminum would hit the metal splitter and "bind," during cutting, the foreman felt that it was more dangerous to work with the blade guard than without it. Although they would try out a blade guard when they purchased a machine, they would shortly "laugh at it and determine it wasn't very practical for what we were doing." After the first month, the blade guards were almost never used.

Mr. Sussman testified that he never had a guard for a table saw that he was satisfied with. Mr. Sussman asserted that he had looked for other guards, but had only seen "similar" ones. He denied that he had ever seen a guard that was attached to the side of the table saw by an "over-arm."<sup>1</sup>

Mr. Sussman acknowledged that most of the time the table saws were used without guards. When the decision was made not to use the guard, it would most often be partly unbolted from the table and "flipped over." Occasionally, the guard would be completely removed and kept under the table, in one of the closets, or in a metal cabinet along the wall. Some blade guards were left attached but flipped over, in anticipation of a visit

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<sup>1</sup> See the description of the "Uniguard," infra p.7.

from OSHA, "to show that we tried." There were no formal rules about when to use a blade guard.

Mr. Sussman also admitted that a blade guard could have been used on the job plaintiff was working on when he was injured, but only "with difficulty and with risk." The machine is still being used without a guard today.

### C. Blade Guards

There are two types of blade guards at issue in this case:

1) the standard splitter-mounted blade guard which came with the Unisaw; and 2) the "Uniguard," a blade guard mounted on pivoting arms, which was available from Delta at the time the Unisaw was sold.

#### 1. Splitter-mounted blade guard

The Unisaw came with a see-through splitter-mounted blade guard assembly. A splitter-mounted blade guard performs three functions. 1) The "splitter" is a flat metal plate that sticks out of the table, behind the blade and on the same plane as the blade. The function of the splitter is to guide the newly split pieces of wood away from each other, as freshly cut wood has a tendency to stick together and jam the blade. 2) The splitter also has little anti-kickback "fingers" to prevent the wood from accidentally "kicking back" at the table saw operator. As the

wood pieces are guided away from each other by the splitter, the fingers run along the wood. If the wood were pulled back toward the blade, the fingers would hook into the wood, preventing it from moving backwards. 3) Finally, a clear piece of plastic, attached to the top of the splitter, reaches back to cover the blade. This plastic hood is spring mounted, so as the wood moves toward the blade, the hood rides over it until the wood has passed through.

This guard is useful when the table saw is being used to make "through-cuts," when the blade comes out the top side of the material. Delta concedes that there are cuts that cannot be made with this blade guard in place. These are "non-through cuts," such as "rabbeting," "dadoing," and "tenoing,"<sup>2</sup> where the blade does not cut all the way through the material. In addition, "re-sawing" cannot be performed with this blade guard in place.<sup>3</sup> To make these cuts one must remove a couple of bolts to rotate or "flip" the blade guard out of the way, or take the blade guard

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<sup>2</sup> Dadoing is cutting a groove in a piece of wood. Rabbeting is cutting a groove on the edge of a piece of wood as in molding. Tenoing is one part of a mortise as seen in face frames for cabinets and doors.

<sup>3</sup> Re-sawing is splitting a board to make it thinner, i.e. splitting a 2 by 6 into two 1 by 6's. The blade guard only rises up three and a half inches.

off the table entirely. When Delta equips a table with a splitter-mounted blade guard, it does not provide any alternative protection for an operator performing the above cuts.<sup>4</sup>

## 2. Uniguard

The Unisaw came equipped with the above splitter-mounted blade guard as standard equipment. As an option Delta made available the "Uniguard" overarm blade guard.

The Uniguard differs from the splitter-mounted blade guard in one important way: the blade guard is not attached to the splitter, but is an independent "basket" attached to a long pivoting aluminum arm rising from the side of the table. This blade guard can be swung up and out of the way while positioning the piece to be cut, and then lowered back down over the blade. In addition, the Uniguard's splitter is not affixed to the table, but can be retracted so that it does not obstruct non-through cuts. Due to this design, many of the non-through cuts can be done with the Uniguard in place. According to the Instruction Manual the Uniguard "has practically no operational limitations", and makes "even rabbeting safer."

## 3. Opinion of Stanley Fein, Engineer

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<sup>4</sup> Although for the non-through cuts at least, the wood itself covers the blade.

Plaintiff has included a affidavit from his expert, Mr. Stanley Fein, a consulting engineer. In Mr. Fein's opinion, "the relative ease of disabling the [splitter-mounted blade] guard and the likelihood that it would not be used made the saw defective" and that "a proper, non-removable, and interlocked guard would have prevented injury to Mr. Arbaiza had it been used." In addition, Mr. Stein noted that "the saw lacked proper warnings . . . ."

Mr. Fein cites a National Safety Council Data Sheet on table saws for the proposition that inadvertent blade contact is the cause of most table saw injuries. "Kickback," where the blade seizes the stock being cut and hurls it back toward the operator, is a less obvious hazard. According to Mr. Fein, even if the splitter-mounted blade guard had been in place it might not have prevented Mr. Arbaiza's accident, as the anti-kickback fingers are designed to anchor into wood, not metal, and would not have prevented the aluminum strip being pulled back toward the blade. The Uniguard would provide protection against an operator's fingers being drawn into the blade as a result of kickback, as the Uniguard's basket covers the entire blade.

According to Mr. Fein, the Uniguard should be sold as standard equipment with the Unisaw, and it should be

"interlocked" so that disabling the Uniguard disabled the saw. In his opinion, this would not significantly interfere with the use of the Unisaw, as the Uniguard can be used for almost all types of cuts. Mr. Fein recognizes that certain cuts cannot be performed with the Uniguard in place and suggests that one table in the shop be designated specifically for those cuts.

D. Warning label

The table saw had a warning label at knee height near the wheel used to angle the blade. It reads, in pertinent part:

Danger  
For Your Own Safety  
1. Read and Understand Instruction Manual before  
Operating Table Saw  
3. Use Saw Blade Guard and Splitter for "Through  
Sawing"  
4. Keep Hands Out of Path of Saw Blade  
6. Know How to Avoid Kickbacks  
9. Never Reach Around Saw Blade

Mr. Fein noted that the warning label was inconspicuously located, in extremely small print, and was in English only. Finally, the plaintiff had seen the label and noticed that it was written in English, but had never asked anyone what it said.

**DISCUSSION**

A. Summary Judgment Standard

A motion for summary judgment should be granted only where

"there is no genuine issue as to any material fact." Fed. R. Civ. Pro. 56(c). In evaluating these motions, "the inferences to be drawn from the underlying facts . . . must be viewed in the light most favorable to the party opposing the motion."

Matsushita Electric Indus. Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (quoting United States v. Diebold, Inc., 369 U.S. 654, 655 (1962)).

At the same time, however, the existence of a factual dispute alone is insufficient to defeat a motion for summary judgment; the non-moving party must offer affirmative evidence in support of its position. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). Summary judgment may be entered against any party "who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 321 (1986).

#### B. Products Liability

If a manufacturer places a defective product on the market that causes injury, that manufacturer may be liable for the ensuing injuries. Liriano v. Hobart Corp., 1998 WL 547071 (N.Y.) citing Codling v. Paglia, 298 N.E.2d 622, 628 (1973). In New York there are three broad categories of product defects: (1)

mistakes in manufacturing which render the product dangerous and cause harm; (2) absence of, or inadequacy of warnings accompanying a product which causes harm and; (3) defects in design. De Rosa v. Remington, 509 F. Supp 762, 765 (E.D.N.Y. 1981) (citations omitted), Voss v. Black & Decker Mfg. Co., 450 N.E.2d 204, 207 (1983).

#### 1. Design Defect<sup>5</sup>

To determine, for purposes of strict liability, whether a product is defectively designed, New York courts employ a negligence type of balancing test: "a defectively designed product is one which, at the time it leaves the seller's hands, is in a condition not reasonably contemplated by the ultimate consumer, and is unreasonably dangerous for its intended use; that is one whose utility does not outweigh the danger inherent in its introduction into the stream of commerce." Robinson v Reed Prentice Div. of Package Mach. Co., 403 N.E.2d 440, 443 (1980). Another way to characterize this balancing test is that "the foreseeability and gravity of the harm created by the product [should be weighed against] the feasibility of a more safe

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<sup>5</sup> Plaintiff has also pleaded negligence. "Negligence and strict liability for design defect are, in New York, almost functionally equivalent." DeRosa v. Remington Arms Co. Inc., 509 F. Supp. 762, 766 (E.D.N.Y. 1981).

design." Del Cid v. Beloit Corp., 901 F. Supp. 539, 552 (E.D.N.Y. 1995). Only where the foreseeability and gravity of the harm is so slight, or where the "product would be unworkable [were] the alleged missing feature added, or would be so expensive as to be priced out of the market," will the manufacturer be able to escape liability. Id. (quoting Micallef v. Miehle Co., 348 N.E.2d 571, 577 (1976)).

A plaintiff therefore must show that the "product, as designed, presents an unreasonable risk of harm to the user." Voss, 59 N.Y.2d at 107. The plaintiff must also show that the alleged defective design proximately caused the injury, in that it was a "substantial factor" in causing his or her injury. Del Cid, 901 F. Supp at 552, (citing Voss).

These elements generally present questions of fact. As the Court noted in Del Cid, "proximate cause, negligence and foreseeability normally are questions of fact, and are rarely suitable for determination as a matter of law." Id. at 549.

a. Unreasonable Risk of Harm

"The plaintiff . . . is under an obligation to present evidence that the product, as designed, was not reasonably safe because there was a substantial likelihood of harm and it was feasible to design the product in a safe manner." Voss, 450

N.E.2d at 208. The plaintiff has raised a material issue of fact that the table saw was not reasonably safe as designed, because it did not come with a guard that would remain attached to the table during a wide range of cutting operations.

The plaintiff has submitted evidence that because the splitter mounted blade guard had to be "flipped over" or removed for all non-through cuts, and was not very useful for through cuts, it was removed from the table altogether, providing no protection at all. As there was no blade guard in place, there was a substantial likelihood of operator injury.

The plaintiff has also submitted evidence that it was feasible to design the product in a safe manner. There is evidence that the far more versatile Uniguard did not need to be removed from the table to perform virtually any cuts.

The defendant asserts that the removeable nature of a splitter mounted blade guard cannot constitute a design defect. See David v. Makita U.S.A., Inc., 649 N.Y.S.2d 149, 151 (1996) (failure to permanently attach blade guard not a design defect where: 1) the blade guard had to be removable to permit non-through cuts; and 2) where the plaintiff had offered no expert testimony that the use of a removable blade guard rendered the saw not reasonably safe); see also Banks v. Makita U.S.A.,

Inc., 641 N.Y.S.2d 875, 877 (1996) (no design defect where the use of the power saw would be "limited and rendered useless for many of its intended functions if a blade guard was permanently attached").

These cases are however inapposite. Here the plaintiff has not claimed that the table saw was defectively designed because the blade guard was not permanently affixed to the table via the splitter, which is clearly unfeasible, but that the table saw was defective because the blade guard was not independently affixed to the table by a swiveling arm.

b. Proximate Cause

The plaintiff must prove that the defect was the proximate cause of his injury. Del Cid, 901 F. Supp. at 552. To prove proximate cause, the plaintiff must show that the design defect was "a substantial factor" in causing the injury. Voss, 450 N.E.2d at 209.

The defendant argues that the plaintiff cannot prove that the removable nature of the splitter-mounted blade guard was the proximate cause of the plaintiff's injury because J. Sussman was so "committed to not using blade guards," that even had the table saws been provided with Uniguards, the defendant would have dismantled the Uniguards with acetylene blow torches.

However, there is evidence that J. Sussman would have used a more flexible blade guard. Mr. Sussman testified that they would "try-out" a guard blade initially, until it proved itself unworkable. He also testified that he continued to search for a better blade guard, but that those he saw were "similar" to the splitter-mounted blade guard. The plaintiff has raised a material issue of fact that the absence of a more flexible guard blade was the proximate cause of the plaintiff's injuries.

## 2. Warning Defect

Although the defendant did provide a warning to "Use Saw Blade Guard and Splitter for Through Cutting," the defendant argues that it was under no duty to warn about the specific dangers to an operator using a saw without the blade guard, as the dangers were "readily discernable."

### a. Duty to Warn

A manufacturer has a duty to warn against latent dangers resulting from foreseeable uses of its product which it knew or should have known. Rastelli v. Goodyear Tire & Rubber Co., 591 N.E.2d 222, 225 (1992); Darson v. Guncalito Corp., 545 N.Y.S.2d 594, 596 (1989); Miller v. Anetsberger Bros., 508 N.Y.S.2d 954, 956 (1986) ("A manufacturer . . . may be liable for failure to warn of the consequences of using the machine when the safety

devices are inoperative"). A manufacturer does not have a duty to warn of a danger associated with a reasonably foreseeable misuse when that danger is "readily discernible" or the "injured party is already aware of the specific hazard." Baptiste v. Northfield Foundry & Machine, 584 N.Y.S.2d 221, 223

(1992) (defendants had no duty to warn of the specific danger of using a table saw without a guard, when the plaintiff had used the table saw for years, knew of another employee being injured on a table saw, and had attended a meeting where employees were told never to remove safety guards). Whether a particular way of misusing the product is reasonably foreseeable, and whether the warnings which accompany a product are adequate to deter such potential misuse are ordinarily questions for the jury. Johnson v. Johnson Chemical Co., Inc., 588 N.Y.S.2d 607, 610 (1992).

Here the plaintiff has raised a material issue of fact that the defendant had a duty to warn of the potential risk of injury to an operator using the table saw without a blade guard. Because the guard had to be removed to perform other cuts it was reasonably foreseeable that an operator would "misuse" a table saw for a through-cut without a blade guard in place.

The defendant argues that it was not under a duty to warn of the specific risks of injury, because "[the plaintiff] most

certainly knew what would happen if his flesh and blood hand came into contact with the blade of the machine." However, the plaintiff was injured because of the aluminum "kicking back," and dragging his fingers back into blade. The likelihood of a kickback is not readily discernible, and there is no evidence that the plaintiff was aware of the danger of kickback.

Finally, the plaintiff has raised an issue of fact that the warning was inadequate when it was placed at knee height, was in small print and in English only.

b. Proximate Cause

The plaintiff in a products liability action premised on inadequate warning must prove causation. Belling v. Haugh's Pools, Ltd., 511 N.Y.S.2d 732, 733 (1987). Mr. Arbaiza admitted that he did not read the warning on the table saw. According to the defendant, even if label had been in Spanish, it would not have prevented plaintiff's accident because he would have ignored it altogether.

However, in Johnson, 588 N.Y.S.2d at 610, the court held that the consumer's failure to read warning label on a "roach fogger" did not necessarily sever the causal connection between the alleged inadequacy of the warning and the accident. The court noted that the intensity of the warning language, and the

prominence with which the language is displayed are factors to be considered in deciding whether there is a causal connection. See LaPaglia v. Sears Roebuck & Co., Inc., 531 N.Y.S.2d 623 (1988) (the fact that the plaintiff ignored certain warnings in the instruction manual did not preclude a finding that he would have ignored a "prominently displayed" warning label on the machine itself).

The case law suggests strongly that the question of whether a particular warning was adequate is a question of fact that should be left to the jury. Bickram v. Case I.H., 712 F. Supp. 18, 22 (E.D.N.Y. 1992); Zampardi v. Miller Johannisberg GmbH 1990 WL 68871 (E.D.N.Y.) (although plaintiff conceded that warnings were present on the press, "the adequacy and specificity of such warnings with regard to the cylinders reversing as they allegedly did, present jury questions"); Frederick v. Niagra Mach. & Tool Works, 486 N.Y.S.2d 564, 565 (1985) ("[T]he type of notice required under the circumstances, the obviousness of the danger and the extent of plaintiff's knowledge are issues appropriate for resolution by the jury.").

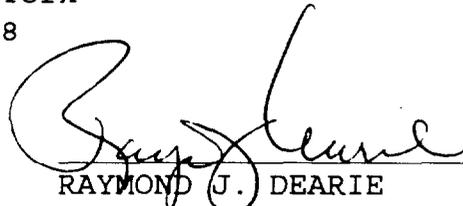
## **CONCLUSION**

The plaintiff has raised a material issue of fact that the

Unisaw was defectively designed. The plaintiff has also raised a material issue of fact that the defective design of the saw proximately caused his injuries. The adequacy of the warning is a question of fact for the jury. The defendant's motion for summary judgement is denied.

SO ORDERED.

Dated: Brooklyn, New York  
October 5, 1998

  
RAYMOND J. DEARIE  
United States District Judge