

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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In re: BRIDGESTONE/FIRESTONE, INC.,)
TIRES PRODUCTS LIABILITY) Master File No. IP 00-9374-C-B/S
LITIGATION) MDL No. 1373
_____) (centralized before Hon. Sarah Evans
) Barker, Judge)
THIS ORDER RELATES TO:)
)
TESSIE ARROYO) Individual Case No. IP 01-5457-C-B/S
Plaintiff,)
v.)
)
BRIDGESTONE/FIRESTONE, INC., et al.,)
Defendants.)

ORDER ON FORD’S MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on the summary judgment motion filed by Defendant Ford Motor Company (“Ford”). For the reasons set forth below, Ford’s motion for summary judgment is GRANTED.

Facts

The facts relevant to this motion for summary judgment are fully set forth in this court’s ruling on the motion for summary judgment filed by defendant Bridgestone/Firestone North American Tire, LLC (“Firestone”) and will not be repeated

here. *See Arroyo v. Bridgestone/Firestone*, 2003 WL 430491 (S.D. Ind. Feb. 11, 2003).

In the earlier decision, we held that summary judgment in favor of Firestone must be granted because the plaintiff had failed to present sufficient evidence (circumstantial or otherwise) from which a jury could reasonably infer that her tires were defective, and that such defect was the proximate cause of a tire failure that led to her, both of which are required under California law.

Discussion

The plaintiff's complaint and further explanation in her opposition to Ford's motion for summary judgment suggest that her products liability claims against Ford are based on three possible theories. First, she apparently maintains that Ford is liable by virtue of its sale of a vehicle with defective tires. Second, she asserts that the defective design of the Ford Explorer, when coupled with its defective tires, caused her accident and injuries. Finally, her papers suggest the theory that the defective design of the Explorer rendered it unstable when her tire failed (regardless of whether that failure was attributable to a defect in the tire), thus causing her to lose control of the Explorer. (The plaintiff agrees that the Explorer did not roll over.)

The first two theories are precluded by the Court's prior entry of summary judgment, because the Court has already held that, as a matter of law, the plaintiff has failed to present evidence that would allow a reasonable factfinder to determine that her

tires were defective. *See id.* at *4. The question therefore remains whether she has met this burden with respect to her claim of a stability defect in the Explorer.

As explained in the Court's earlier order, the Ford Explorer that Ms. Arroyo was driving, including its tires, was destroyed shortly after the accident and was therefore not available for expert inspection. We have previously rejected Ford's argument that the unavailability of the subject Explorer for expert examination in itself defeats a plaintiff's claim as a matter of law. *See Saksa-Mydlowski v. Bridgestone/Firestone*, Cause No. IP 02-5667-C-B/S (Order on Motion for Summary Judgment dated Nov. 9, 2004). As we explained in that decision, the claim of design defect in the Explorer can be supported by testing on like vehicles and other circumstantial evidence.

Furthermore, in our earlier order in this case, we noted that California law provides that the elements of defect and proximate cause may be proved by circumstantial (as well as direct) evidence. 2003 WL 430491 at *2 (citing *Dimond v. Caterpillar Tractor Co., et al.*, 65 Cal. App. 3d 173, 177 (Cal. Ct. App. 1976), and *Elmore v. American Motors Corp.*, 70 Cal.2d 578, 583-84 (Cal. 1969)). However, the plaintiff bears the burden of proving that the defective product supplied by the defendant was a substantial factor in bringing about *her* injury. *Rutherford v. Owens-Illinois, Inc.*, 16 Cal. 4th 953, 968 (Cal. 1997).

Ms. Arroyo has presented no case-specific expert evidence to support her claims,

relying entirely on the MDL plaintiffs' core expert reports.¹ The Court will assume, without deciding, that the portions of those reports designated by the plaintiff in her response to Ford's motion are sufficient to create a question of fact regarding a design defect in the Explorer. However, the MDL core expert reports designated by the plaintiff contain no opinion regarding the relationship among the alleged Explorer defect, Ms. Arroyo's loss of vehicle control, and her subsequent collision. This lack of evidence would leave the jury to speculate as to the possible causes of her collision.

Because Ms. Arroyo has not identified evidence that would allow a reasonable juror to conclude that the claimed defect in the Explorer was the *cause* of her accident, Ford is entitled to judgment as a matter of law on her claims for strict liability and negligence (Counts 1 and 2).

Ms. Arroyo has also brought claims for negligence, misrepresentation, breach of express and implied warranty, and related claims under a number of California statutes regarding unfair or unlawful business practices.² Each claim is expressly premised on an alleged *tire* defect. This court has already held that the plaintiff lacks the requisite

¹Ford objects to her adoption of these reports because it was untimely. The Court overrules that objection and will consider in its determination of this motion the portions of those reports Ms. Arroyo has designated in opposition to Ford's motion.

² Specifically, these claims (alleged in Counts 3 through 11 of the complaint) include alleged violations of the California Consumers Legal Remedies Act; unfair competition; unfair and deceptive trade practices; false and misleading statements; fraud, misrepresentation and deceit; and intentional infliction of emotional distress.

evidence of tire defect necessary to defeat summary judgment. Ford is therefore also entitled to summary judgment on these claims.

Conclusion

For all of the above reasons, Ford's motion for summary judgment is GRANTED as to all claims of the plaintiffs' complaint.

It is so ORDERED this _____ day of April, 2005.

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

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