

Lawsuite against target- court cases



Case against Target The case against Target which I will discuss is Kenneth Kabish v Target et al, filed in the District Court of Minnesota, decided on June 26, 2007, Case number: Civ No: 07-2303 (RHK/JSM).

The Plaintiff Kenneth Kabish filed a personal injury action against Target and Huff Corporation in the Hennepin County District Court. His friend had purchased a Huff bicycle from Target, but while in Utah six days later, Kabish suffered serious injuries while riding the bicycle which was defective. He filed suit demanding compensation in damages for amounts greater than \$50, 000, under strict product liability as well as for breach of implied warranties of fitness and merchantability of the product. Target moved the case to the present Court on the grounds that the charges against it could be dismissed because it was only a nominal defendant, exerting no significant control over the design and manufacture of a defective product. However Kabish filed a motion to remand the case to the Hennepin County District Court.

The decision in this case was in support of the Plaintiff. The Court held that Target's argument that it was a non-manufacturer defendant and therefore entitled to dismissal of the charges against it, would not hold good because Kabish had also filed for damages against implied warranties of fitness and merchantability. Dismissal is required only in cases where the suit is filed on the basis of only strict liability claims. As a result, the ruling of the Court effectively held that the charges against Target would not be dismissed and Target remained a viable defendant rather than a nominal party and Kabish was entitled to seek relief from Target.

COPY OF COURT CASE: (Source: Lexis Nexis)

Kenneth Kabish, Plaintiff, v. Target Corporation, Huff Corporation, Impact

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Resource Group, Inc., National Product Services Acquisition Corporation, and John Does I-X, Defendants. Civ. No. 07-2303 (RHK/JSM)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

2007 U. S. Dist. LEXIS 46411

June 26, 2007, Decided

June 26, 2007, Filed

CORE TERMS: bicycle, removal, nominal, amount in controversy, manufacturer, strict-liability, in-state, defective product, subject to dismissal, non-manufacturer, implied-warranty, contravened, diversity, removable, diversity jurisdiction, principal place of business, front

COUNSEL: [*1] For Kenneth Tabish, Plaintiff: Brian E Wojtalewicz, LEAD ATTORNEY, Wojtalewicz Law Firm, Ltd, Appleton, MN.

For Target Corporation, a Minnesota Corporation, Defendant: Brian A Wood, Eric J Steinhoff, LEAD ATTORNEYS, Lind Jensen Sullivan & Peterson, PA, Minneapolis, MN.

For Huffy Corporation, an Ohio Corporation, Defendant: Frederick - NA M Erny, LEAD ATTORNEY, Not Admitted; Michelle L Rognlien, LEAD ATTORNEY, Bowman & Brooke LLP, Minneapolis, MN.

For Impact Resource Group, Inc., an Ohio Corporation, National Product Services Acquisition Corporation, a Delaware Corporation, Defendants: Jessica R Wymore , LEAD ATTORNEY, Stich, Angell, Kreidler & Dodge, P. A., Mpls, MN US.

For Target Corporation, a Minnesota Corporation, Cross Claimant: Eric J Steinhoff, LEAD ATTORNEYS, Lind Jensen Sullivan & Peterson, PA, Minneapolis, MN.

For Huffy Corporation, an Ohio Corporation, Cross Defendant: Frederick - NA

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M Erny, LEAD ATTORNEY, Not Admitted; Michelle L Rognlien, LEAD ATTORNEY, Bowman & Brooke LLP, Minneapolis, MN.

JUDGES: Richard H. Kyle, United States District Judge.

OPINION BY: Richard H. Kyle

OPINION MEMORANDUM OPINION AND ORDER

INTRODUCTION

Plaintiff Kenneth Tabish commenced this personal-injury action in Minnesota state court [*2] against (among others) Huffy Corporation (" Huffy") and Target Corporation (" Target"), the manufacturer and distributor, respectively, of an allegedly defective bicycle. Target removed the action to this Court on May 15, 2007, asserting diversity jurisdiction. Tabish now moves to remand, arguing that this action was improperly removed because Target is an in-state Defendant. For the reasons set forth below, the Court will grant Tabish's Motion.

BACKGROUND

Tabish is a resident of Salt Lake City, Utah. (Compl. P 1.) Target is a Minnesota corporation with its principal place of business in Minneapolis. (Id. P 2.) Huffy and the remaining two Defendants are Ohio corporations with principal places of business in Ohio. (Id. PP 3-5; Notice of Removal at 2.) On September 4, 2004, Tabish's friend Joseph DeGrado purchased a Huffy bicycle from Target. (Id. P 7.) Six days later, while in Saltair, Utah, Tabish was riding the bicycle when " the front metal fender and brackets became bound to the rotating tire, causing the front wheel of the bicycle to collapse." (Id. P 8.) As a result, Tabish was thrown from the bicycle, causing him serious injuries. (Id.)

On April 25, 2007, Tabish commenced the instant [*3] action in Hennepin

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County District Court. In his Complaint, Tabish alleges that Defendants were negligent in their design, manufacture, testing, assembly, and/or inspection of the bicycle. He further asserts that Defendants are strictly liable for the bicycles defects and that Defendants breached implied warranties of fitness and merchantability. (Compl. PP 9-19.) He seeks damages in an amount " greater than \$ 50, 000." (Id. P 20.)

On May 15, 2007, Target removed the action to this Court. In its Notice of Removal (Doc. No. 1), Target asserted that the Court enjoys diversity jurisdiction over this case because the parties are completely diverse and the amount in controversy exceeds \$ 75, 000. ¹ Huff and the remaining Defendants then filed Consents to Targets removal. On May 24, 2007, Tabish filed the instant Motion to Remand.

----- Footnotes -----

¹ The basis for Targets assertion that the amount in controversy exceeds \$ 75, 000 is not clear, since the Complaint asserts only that Tabish seeks damages " greater than \$ 50, 000." Where a complaint alleges damages under the jurisdictional minimum, " the removing party . . . must prove by a preponderance of the evidence that the amount in controversy exceeds \$ 75, 000." [*4] *In re Minn. Mutual Life Ins. Co. Sales Practices Litig.*, 346 F. 3d 830, 834 (8th Cir. 2003). Because Tabish has not challenged Targets assertion that the amount in controversy exceeds \$ 75, 000, and because the Court concludes that this case must be remanded for other reasons (as set forth below), it does not reach this issue.

----- End Footnotes-----

ANALYSIS

Critical to Tabishs Motion is 28 U. S. C. § 1441(b), which provides:

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Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the state in which such action is brought.

(emphasis added). Tabish argues that, because Target is an in-state Defendant, it contravened Section 1441(b) when it removed this action on diversity grounds. Target concedes that diversity cases involving in-state defendants generally cannot be removed, but it asserts that removal was proper here because it is merely a "nominal" defendant. The Court disagrees.

In [*5] support of its argument, Target relies on Minnesota Statutes Section 544. 41, which requires the dismissal of a non-manufacturer defendant in a strict-liability action when the defendant exercises no significant control over the design or production of a defective product. *Id.*, subd. 2-3. According to Target, it is entitled to automatic dismissal from this case under Section 544. 41 because it merely sold the defective bicycle. As a result, it asserts that it is a "nominal" defendant. 2 (Mem. in Oppn at 3-10.)

----- Footnotes -----

2 The Court notes that Targets removal of this case from state court is somewhat inconsistent with the notion that it is a "nominal" defendant.

----- End Footnotes-----

Section 544. 41, however, requires the dismissal only of strict-liability claims. *Id.*, subd. 2 ("the court shall order the dismissal of a strict liability in tort claim against the . . . defendant"). Here, Tabish has asserted implied-

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warranty claims in addition to his strict-liability claims. Section 544. 41 simply does not mandate the dismissal of those claims. 3

----- Footnotes -----

3 Target also asserts that the implied-warranty claims are subject to dismissal for other reasons (besides Section 544. 41). (See Mem. in Oppn at 8-9.) Simply put, the Court cannot [*6] conclude that these claims are subject to dismissal at this juncture, because Target has not shown that Tabish can prove " no set of facts . . . which would entitle him to relief" on his claims. Conley v. Gibson, 355 U. S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957).

----- End Footnotes-----

Moreover, subdivision 2(d) of Section 544. 41 provides that a non-manufacturer defendant is not entitled to dismissal when " the manufacturer is unable to satisfy any judgment as determined by the court." That is precisely the case here because Huffy, the manufacturer of the bicycle, filed for bankruptcy on October 20, 2004. (See Huffy Mem. at 2.) See Marcon v. Kmart Corp., 573 N. W. 2d 728, 731 (Minn. Ct. App. 1998) (seller of defective product not entitled to dismissal under Section 544. 41 where manufacturer of product had filed for bankruptcy before lawsuit was brought); but see Hill v. Ziegler, Inc., No. C5-95-743, 1995 Minn. App. LEXIS 1342, 1995 WL 634996, at *3 (Minn. Ct. App. Oct. 31, 1995). As a result, Target cannot avail itself of the protections of Section 544. 41.

Because Target is not entitled to dismissal of the claims against it under Section 544. 41, it remains a viable Defendant against whom Tabish may seek relief. Target, therefore, is not a " nominal" party. See Thorn v. Amalgamated Transit Union, 305 F. 3d 826, 833 (8th Cir. 2002)

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[*7] (nominal defendant is one " against whom no real relief is sought"); Shaw v. Dow Brands, Inc., 994 F. 2d 364, 369 (7th Cir. 1993) (" A defendant is nominal if there is no reasonable basis for predicting that it will be held liable."). Hence, Targets removal of this action contravened Section 1441(b), and the case must be remanded.

CONCLUSION

Based on the foregoing, and all the files, records, and proceedings herein, IT IS ORDERED that Plaintiffs Motion to Remand (Doc. No. 7) is GRANTED and this action is REMANDED to the Hennepin County District Court pursuant to 28 U. S. C. § 1447(c). The Clerk of the Court shall mail to the Clerk of the Hennepin County District Court a certified copy of this Memorandum Opinion and Order. 4

----- Footnotes -----

4 The Court notes that Huffy recently filed two Motions to Dismiss (Doc. Nos. 24, 26.). Because the Court remands this case, the state court will resolve those Motions.

----- End Footnotes-----

Dated: June 26, 2007

s/ Richard H. Kyle

United States District Judge