IN THE COURT OF APPEALS OF IOWA

No. 0-577 / 99-470
Filed January 24, 2001

BRITT-TECH CORPORATION,
a Corporation,
Plaintiff-Appellant,

vs.

AMERICAN MAGNETICS CORP.,
a Corporation,
Defendant-Appellee.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Cerro Gordo County, Paul W. Riffel, Judge.

The plaintiff appeals from the district court's dismissal of an indemnification claim against the defendant. **AFFIRMED.**

Larry J. Cohrt of Swisher & Cohrt, Waterloo, for appellant.

Roy M. Irish of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, L.L.P., Des Moines, for appellee.

Heard by Huitink, P.J., and Mahan and Vaitheswaran, JJ.

VAITHESWARAN, J.

Britt-Tech Corporation settled a wrongful death action with the estate of Duane Hardy, then sought indemnification from a component parts manufacturer, American Magnetics Corporation (hereinafter "AMC"). The district court dismissed the indemnification petition. On appeal, Britt-Tech argues the fact questions raised in this indemnity action were conclusively decided against AMC in the original wrongful death action and the court's dismissal should accordingly be reversed. We affirm.

I. Background Facts and Proceedings

Britt-Tech manufactured a power washer. The power washer contained a transformer manufactured by AMC. Britt-Tech sold the power washer to River City Development Co., Ltd., which eventually transferred it to Duane Hardy. Hardy was electrocuted while using the power washer. He died and Hardy's estate sued Britt-Tech. A jury rendered a verdict for the Hardy estate but the district court entered a judgment notwithstanding the verdict. On appeal, our court reversed the district court's ruling and remanded the case for a new trial on damages. *Hardy v. Britt-Tech Corp.*, 378 N.W.2d 307 (Iowa App. 1985). The parties settled the case on remand.

Britt-Tech then sought contribution and indemnity from River City and AMC. The court granted both defendants' motions for summary judgment on the contribution claims. Our highest court affirmed that ruling but remanded the case for consideration of Britt-Tech's indemnification claims. *Britt-Tech Corp. v. American Magnetics Corp.*, 463 N.W.2d 26, 29 (Iowa 1990).

River City moved for summary judgment on Britt-Tech's indemnity claim and again prevailed before the district court. On appeal, the Iowa Supreme Court affirmed the district court's decision, holding as a matter of law that a manufacturer held strictly liable may not seek indemnity from a purchaser or user based on a theory of misuse or alteration. *Britt-Tech Corp. v. American Magnetics Corp.*, 487 N.W.2d 671, 674 (Iowa 1992).

AMC separately moved for summary judgment on Britt-Tech's indemnity claim, asserting the jury verdict against Britt-Tech in the wrongful death action precluded Britt-Tech from obtaining indemnity. The district court granted the motion.

In an unpublished opinion, our court reversed the ruling in favor of AMC and remanded the case for resolution of certain fact issues. Following a trial on remand, the district court dismissed the indemnity claim against AMC. The district court concluded:

> The preponderance of the evidence supports the Defendant's position that the transformer was not in a defective and unreasonably dangerous condition when it left its control and the product was made defective by subsequent events beyond its control which could not have been reasonably foreseen by the Defendant.

This appeal followed. As this indemnity action was filed and tried in equity, our review is de novo. Iowa R. App. P. 4; *Israel v. Farmers Mut. Ins. Ass'n of Iowa*, 339 N.W.2d 143, 146 (Iowa 1983).

II. Contentions on Appeal

Britt-Tech contends the district court's conclusion is contrary to the jury's findings in the original wrongful death action and our court's findings on appeal of that action. Specifically, Britt-Tech contends the jury in the wrongful death action

"found the transformer was defective and unreasonably dangerous at the time the power washer was initially sold." Britt-Tech maintains the district court "erred in redetermining whether the transformer was defective and unreasonably dangerous when produced after the issue had been fully litigated" in the wrongful death action.

AMC responds the jury in the wrongful death action was never specifically asked to decide the following issues raised in this case: (1) whether there was a defect in the transformer when it left AMC's hands; (2) whether the defect was a result of misuse and abuse after the transformer left AMC's hands; and (3) whether the misuse and abuse was reasonably foreseeable by AMC. Instead, AMC maintains the trial in the wrongful death action focused on whether the power washer as a whole was defective at the time of sale, without any reference to particular components of the power washer. These arguments implicate the doctrine of issue preclusion.

III. Issue Preclusion

Issue preclusion "prevents the parties from relitigating issues previously resolved in prior litigation if certain prerequisites are established." *Van Oort Construction Co., Inc. v. Nuckoll's Concrete Service, Inc.*, 599 N.W.2d 684, 689 (Iowa 1999). Those prerequisites are:

> 1) The issue concluded must be identical;
> 2) The issue must have been raised and litigated in the prior action;
> 3) The issue must have been material and relevant to the disposition of the prior action;
> 4) The determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.

Id. Ordinarily, issue preclusion may be invoked only if the parties to both actions are the same or there is privity between the party against whom issue preclusion

is invoked and the party against whom the issue was decided in the first litigation. *American Family Mut. Ins. Co. v. Allied Mut. Ins. Co.*, 562 N.W.2d 159, 164 (Iowa 1997).

We assume without deciding that AMC, the party against whom the doctrine of issue preclusion is being invoked, is in privity with Britt-Tech, the party against whom the issue was decided in the first litigation. *See Allied*, 562 N.W.2d at 164 (noting privity requirement satisfied where one acquires interest in subject matter affected by the judgment through or under one of the parties); *cf. Hawley v. Davenport*, 242 Iowa 17, 22, 45 N.W.2d 513, 517 (1951) (discussing privity where an injured party filed successive actions against potential indemnitor and indemnitee).

Turning to the first of the four prerequisites set forth above, we agree with AMC that the issues concluded in the wrongful death action are not identical to the issues in this action. The issues in the first action were whether the power washer was defective and unreasonably dangerous and proximately caused Hardy's death. The primary issues in this case are whether the transformer in the power washer was defective and whether the transformer was made defective by subsequent events beyond AMC's control which were not reasonably foreseeable by AMC.

With respect to the first issue of whether the transformer was defective, it is true the parties to the wrongful death action elicited testimony about the transformer. However, the jury was only asked to decide whether the power washer as a whole was defective. In answering yes to this question, the jury could have determined any number of components within the washer were

responsible for the defect in the washer as a whole. The jury instruction addressing the elements of proof made no mention of a transformer nor was the jury asked to render special findings concerning defects in the transformer. Indeed, in this indemnity action, our court reversed the district court's grant of summary judgment in favor of AMC precisely because we believed there was a fact question as to whether a defect in the transformer rendered the power washer defective. We would not have needed to do so if this issue had been conclusively established in the wrongful death action. Accordingly, we conclude the question of whether the transformer was defective was not conclusively decided in the wrongful death action.

With respect to the second issue, whether subsequent misuse and abuse beyond AMC's control and not reasonably foreseeable by AMC caused the electrocution, we again conclude this issue was not conclusively decided against AMC in the earlier litigation. Although there was extensive testimony about subsequent misuse and abuse by various owners, including Hardy, this evidence did not implicate AMC, but Britt-Tech. The jury was instructed that Britt-Tech would not be responsible if it delivered the power washer "in a safe condition and subsequent mishandling, alteration, or other causes beyond his control render the product defective, unless mishandling or alteration or other cause beyond his control was reasonably foreseeable by the defendant." By finding Britt-Tech liable, the jury must have concluded the misuse and abuse was reasonably foreseeable by Britt-Tech. There was no finding, either express or implied, that the misuse and abuse was reasonably foreseeable by AMC.

As Britt-Tech cannot satisfy the first prerequisite to application of the issue preclusion doctrine, it cannot succeed on its issue preclusion claim. Accordingly, we need not proceed to the remaining three prerequisites.

IV. Indemnity

Britt-Tech does not challenge the sufficiency of the evidence to support the district court's conclusion that the transformer was free from defect and not unreasonably dangerous when it left AMC's control. Britt-Tech also does not challenge the evidence supporting the court's conclusion that the product was made defective by unforeseen subsequent events beyond AMC's control. However, even if it had, we find ample factual support for those conclusions. Accordingly, we affirm the district court's conclusion that AMC is not entitled to indemnity.[1]

AFFIRMED.

[1] Additionally, although not argued by AMC in this appeal, there is authority to suggest a manufacturer is entitled to indemnity from a parts supplier only if the manufacturer was not itself negligent in either creating or failing to discover the defect. 63B Am. Jur. 2d Products Liability § 1748 (1997).