IN THE COURT OF APPEALS OF IOWA

No. 5-125 / 93-1833

BRITT-TECH CORPORATION, A Corporation,

Plaintiff-Appellant,

vs.

AMERICAN MAGNETICS CORPORATION, A Corporation; **and RIVER CITY DEVELOPMENT CO., LTD.**, A Corporation,

Defendants-Appellees.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Cerro Gordo County, John S. Mackey, Judge.

The plaintiff, the manufacturer of a power washer, appeals from the district court's summary judgment ruling for the defendant, the manufacturer of a component part, on plaintiff's claim for indemnification regarding damages paid pursuant to a settlement for a wrongful death action concerning an electrocution caused by the power washer. **REVERSED AND REMANDED.**

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

Jeffrey A. Boehlert and Ronald M. Rankin of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellee American Magnetics Corp.

Considered by Donielson, P.J., and Sackett and Huitink, JJ.

SACKETT, J.

This is an appeal from a trial court order sustaining defendant-appellee American Magnetics Corporation's motion for summary judgment. Plaintiff-appellant Britt-Tech Corporation, the manufacturer of a device called a power washer or industrial pressure washer,[1] sued defendant who manufactured the transformer, one of the component parts used in the washer, for indemnity for damages paid to the family and estate of Duane Hardy. Hardy was electrocuted on June 7, 1982, while using the washer. Hardy died and his family and estate sued plaintiff on the basis of strict liability. There was a jury trial.

Following our decision in *Hardy v. Britt-Tech Corp.*, 378 N.W.2d 307 (Iowa App. 1985), plaintiff paid out sums as a result of the death. Plaintiff then sought indemnity from defendant American Magnetics contending the transformer defendant manufactured was defective and was the cause of Hardy's death. The trial court determined the holding in *Hardy* conclusively established primary liability for the death of plaintiff and the trial court sustained defendant's motion for summary

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[1] In *Hardy v. Britt-Tech Corp.*, 378 N.W.2d 307, 309 (Iowa App. 1985), we described the machine as one that:

> [d]elivers a high-powered stream of water or water combined with soap for the purpose of cleaning large machines It consists of electrical and mechanical components encased in a cover and a long hose with a "wand" or gun at the end which contains a device for controlling the spray of water. Within the enclosed portion of the machine is a motor and a transformer. The purpose of the transformer is to change the 220 volts from which the machine operates to a safer 24 volts, which is then carried to the switches in the handle

judgment. This appeals follows. We reverse and remand.

In *Hardy*, it had been agreed by plaintiff's and defendant's experts Duane was electrocuted because there was a short in the transformer. We found plaintiff's expert testified at trial the short occurred because of pressure from tape outside a terminal protector which caused the protector to come into contact with low-voltage wiring and concluded the insulation was insufficient and the transformer was defective at the time it was manufactured. *Id.* at 309. We further found the expert testified the wand could have been grounded and the switches in the wand could have been made safer by enclosing them, at a low cost; and with these precautions, even if the transformer had shorted, electrocution could have been avoided. *Id.*

Plaintiff Britt-Tech initially was found by a jury to be liable to the Hardy estate on the basis of strict liability and damages were awarded. The trial court entered a judgment notwithstanding the verdict which this court reversed on the liability issue and affirmed on the damage issue. *Id.* at 307. The case was then settled and Britt-Tech paid the Hardy's damages of $738,918. [2]

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[2] Of that finding, the Iowa court was to subsequently say in *Britt-Tech Corp. v. American Magnetics Corp.*, 487 N.W.2d 671, 673 (Iowa 1992):

> Plaintiff's liability is based on the sale of a defective product unreasonably dangerous to the consumer. *Hawkeye-Security Ins. Co. v. Ford Motor Co.*, 174 N.W.2d 672, 683 (Iowa 1970). Our case law has recognized four possible grounds for indemnity: (1) express contract; (2) vicarious liability; (3) breach of independent duty to the indemnitee; and (4) primary as opposed to secondary liability. *Sweeny v. Pease*, 294 N.W.2d 819, 821, fn 1 (Iowa 1980).

Britt-Tech next filed a petition in equity seeking contribution and indemnification from two defendants, including American Magnetics Corporation.[3] Britt-Tech claimed the transformer was defective and the defect constituted a breach of warranty.

In prior proceedings, the district court granted defendants' motion for summary judgment on the issue of contribution, based on Iowa Code section 668.6, and the supreme court affirmed the granting of summary judgment. *Britt-Tech Corp. v. American Magnetics Corp.*, 463 N.W.2d 26, 30 (Iowa 1990). The case was remanded for further proceedings on the issue of indemnity.

Defendant American Magnetics filed a motion for summary judgment. It claimed *Hardy* determined Britt-Tech's actions constituted fault and this meant it could not obtain indemnity from American Magnetics due to an alleged defect in the transformer. The district court determined the jury verdict in *Hardy* conclusively established primary liability for the accident on Britt-Tech and it was not entitled to seek indemnity. The court found, even if American Magnetics were at fault for supplying a defective component part, such fault would result from American Magnetics independent act which concurred with the independent act of Britt-Tech which the jury found was the cause of Hardy's death. The court granted the motion

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[3] The second defendant, River City Development Company, Ltd., purchased the washer from Britt-Tech Corporation and sold it to decedent. Britt-Tech claimed the washer had been subjected to misuse and abuse while in the possession of River City. River City ultimately has been dismissed out. *See Britt-Tech Corp.*, 487 N.W.2d at 671.

for summary judgment. This appeal follows. Plaintiff contends the trial court erred in granting summary judgment.

Britt-Tech's position is (1) it is entitled to indemnity from American Magnetics under the principals announced in Restatement of Torts (Second), section 886B(2), and Restatement of Restitution, sections 93 and 95; and (2) the jury in *Hardy* did conclude the power washer was defective solely by reason of the condition of the transformer manufactured by defendant American Magnetics and, therefore, summary judgment is inappropriate in the instant case.

Summary judgment is appropriate only when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. On appeal of a summary judgment ruling, an appellate court must decide whether a genuine issue of fact exists and if the law was correctly applied. *Ottumwa Housing Authority v. State Farm Fire & Casualty Co.*, 495 N.W.2d 723, 726 (Iowa 1993). Indemnity cases are essentially equitable in nature. *Howell v. River Prods. Co.*, 379 N.W.2d 919, 921 (Iowa 1986). However, even in equity cases, an appellate court does not find facts de novo in an appeal from a summary judgment. *Farm & City Ins. Co. v. Anderson*, 509 N.W.2d 487, 489 (Iowa 1993).

The party moving for summary judgment has the burden of showing the nonexistence of a genuine issue of material fact. *Hofco, Inc. v. National Union Fire Ins. Co.*, 482 N.W.2d 397, 400 (Iowa 1992). A fact question is generated if

reasonable minds could differ on how the issue should be resolved. *Hoefer v. Wisconsin Educ. Ass'n Ins. Trust*, 470 N.W.2d 336, 338 (Iowa 1991).

In *Hardy*, 378 N.W.2d at 310, we found:

> Plaintiff's cause of action is predicated on an alleged defect in one component part -- "the transformer." Even though the trial court determined that changes had been made to the machine, defendant's expert testified those changes would not have affected the function of the transformer.
>
> Considering the evidence in the light most favorable to plaintiff, the jury can determine that the changes were not made to, nor did they affect, the function or operation of the transformer. The motion for judgment notwithstanding the verdict should be reversed.

Id.

Plaintiff argues, while it was liable to Hardy for the defect in the transformer, it should not be precluded from obtaining full indemnity against defendant American Magnetics, the manufacturer of the transformer.

A party seeking to establish in an independent action a right to indemnity as a theory of recovery must plead and prove three basic elements: (1) it was legally liable to the injured third party; (2) the settlement was reasonable; and (3) the facts are such as to give rise to a duty on the part of the indemnitor to indemnify the indemnitee. *Stalter v. Iowa Resources, Inc.*, 467 N.W.2d 586, 589 (Iowa App. 1991).

There is evidence plaintiff was legally liable to the Hardy estate. In *Hardy*, 378 N.W.2d at 311, the jury's verdict against Britt-Tech was upheld and the case was remanded only on the issue of damages. Settlement before judgment is obtained does

not bar the right to indemnity. *Stalter*, 467 N.W.2d at 589. We find no basis to this argument.

Defendant does not challenge on summary judgment the reasonableness of the settlement but does contend plaintiff's claim is barred by the statute of limitations. We have considered defendant's arguments on the statute of limitations issue and find them to be without merit.

Plaintiff contends there are facts giving rise to a duty on defendant's part. Defendant argues plaintiff's primary fault precludes an action for indemnity. Restatement of Torts (Second), section 886B(2), recognizes the following relationships in which indemnity may be granted:

> (d) The indemnitor supplied a defective chattel or performed defective work upon land or buildings as a result of which both were liable to the third person, and the indemnitee innocently or negligently failed to discover the defect;
>
> (e) The indemnitor created a dangerous condition of land or chattels as a result of which both were liable to the third person, and the indemnitee innocently or negligently failed to discover the defect;

Restatement of Torts (Second), § 886B(2)(d), (e) (1979).

Section 93 of the Restatement of Restitution provides in part:

> (1) Where a person has supplied to another a chattel which because of the supplier's negligence or other fault is dangerously defective for the use for which it is supplied and both have become liable in tort to a third person injured by such use, the supplier is under a duty to indemnify the other for expenditures properly made in discharge of the claim of the third person, if

> the other used or disposed of the chattel in reliance upon the supplier's care and if, as between the two, such reliance was justifiable.

Restatement of Restitution, § 93(1) (19___); *Peters v. Lyons*, 168 N.W.2d 759, 767-68 (Iowa 1969).

Restatement of Restitution, section 95 provides one is entitled to indemnity "where a person has become liable with another for harm caused to a third person because of his negligent failure to make safe a dangerous condition of . . . chattels, which was created by the misconduct of the other . . . ."

The evidence in *Hardy* presented a fact question of whether a defect in the transformer rendered plaintiff's product defective. The jury in *Hardy* found liability. Defendant manufactured the transformer.

There is a fact question of whether plaintiff was required to pay without active fault of its own because of initial negligence of another. *See Sweeny v. Pease*, 294 N.W.2d 819, 821 (Iowa 1980).

There is no basis to relieve defendant, as manufacturer of an allegedly defective component part, from responsibility for its action because the part failed when used in a machine manufactured by another. We reverse and remand.

REVERSED AND REMANDED.