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Bike maker will stay in injury suit

Taiwanese company has enough Illinois presence to be liable

BY DAVID THOMAS
Law Bulletin staff writer

A Taiwanese bicycle company will remain a party in a lawsuit filed by an Illinois woman who was injured after the fork of her bicycle snapped in half without warning, a state appeals panel ruled Friday.

The 1st District Appellate Court found that Giant Manufacturing Ltd. was within the personal jurisdiction of Janet Kowal. In 2013, Kowal sued Giant Manufacturing and other entities who sold or performed maintenance on her Giant bike in Cook County Circuit Court.

This is because Giant Manufacturing, through its U.S. subsidiary and its authorized retailers, had enough of a deliberate presence within Illinois where they could be held potentially liable in a lawsuit involving one of its products, the 1st District panel ruled in the interlocutory appeal.

"[T]he fact that there were approximately 40 Giant Bicycle authorized retailers in Illinois further demonstrates that defendant continuously and intentionally serves or targets this market," Justice Jesse G. Reyes wrote in the 21-page opinion. "[G]iven the continuous nature of Giant Manufacturing's relationship with Giant Bicycle and its authorized retailers in Illinois, the presence of Giant Manufacturing's products in Illinois was not random, fortuitous or attenuated."

Kowal purchased her Giant-brand bicycle from Westchester Wheels Inc., a then-authorized, now-shuttered Giant retailer, in 2007.

In 2013, Kowal took the bike to Hartley's Cycle Shoppe, a Hinsdale-based Giant retailer, where she had it tuned up in preparation for the (Des Moines) Register's Annual Great Bicycle Ride Across Iowa, or RAGBRAI, a 468-mile trek across the Hawkeye state.

During her RAGBRAI ride, the fork of her bike snapped, causing Kowal to fall.

According to Kenneth A. Hoffman, Kowal's attorney and a founding partner of Mitchell, Hoffman & Wolf LLC, Kowal was airlifted to the University of Iowa hospital, where she was diagnosed with a fracture in her C7 vertebrae, a displaced clavicle and a fractured thumb.

"She still suffers from the effects of the injury," Hoffman said.

Kowal sued each party in the chain of commerce: Westchester Wheels, Hartley's Cycle Shoppe, the Virginia-based Giant Bicycle and the Taiwan-based Giant Manufacturing, Giant Bicycle's parent company.

Both Giant Bicycle and Giant Manufacturing were served through the Illinois Secretary of State's Office.

Giant Manufacturing sought to quash the service, arguing it was outside the jurisdiction of Kowal's lawsuit. But Cook County Associate Judge Daniel T. Gillespie ruled that, under Illinois law, Kowal's lawsuit had specific jurisdiction over Giant Manufacturing and, thus, denied the Taiwanese company's motion.

The 1st District Appellate Court initially denied Giant Manufacturing's appeal of Gillespie's decision, but the Illinois Supreme Court directed the appellate court to hear it in January 2016.

The panel's decision revolves around the legal theories used to determine whether a court has specific jurisdiction over nonresident defendants like Giant Manufacturing.

Since 1945, the U.S. Supreme Court has held that a nonresident defendant must have "certain minimum contacts" with a forum state.

These contacts must occur as the result of the defendant's deliberate actions and not the "random, fortuitous or attenuated" actions of a consumer or third party.

The arguments regarding the specific jurisdiction of this lawsuit centered around the "stream-of-commerce" theory, which is the notion that Giant Manufacturing sells its products with the expectation that they'll be bought and used by Illinois customers.

The stream-of-commerce theory was first referenced by the U.S. Supreme Court in 1980 with the high court finding that it is not unreasonable to subject a nonresident defendant to a lawsuit if it "arises from the efforts of the nonresident defendant to serve the forum state."

The high court's decision was born out of a lawsuit filed against an out-of-state automobile retailer who was sued in Oklahoma. The U.S. Supreme Court ruled in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), that the retailer could not be sued in Oklahoma simply because the driver, who bought his car in New York, wrecked his car there.

But the U.S. Supreme Court split in *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102 (1987),

on how widely or narrowly to interpret the stream-of-commerce theory and whether it would capture a nonresident defendant within a plaintiff's personal jurisdiction.

U.S. Supreme Court Justice Sandra Day O'Connor spearheaded a narrow stream-of-commerce theory, writing in that a nonresident defendant has to be engaged in other activities, like advertising in that state or designing the product for that state's market.

Meanwhile, U.S. Supreme Court Justice William J. Brennan advocated for a broad theory in *Asahi*, writing that personal jurisdiction can be established by the nonresident defendant only being aware of the fact that their products are being marketed in the forum state.

Despite the split in reasoning, the high court in *Asahi* agreed that the Japanese metal company had very limited contact with California, thus making it unreasonable for the court to exercise jurisdiction over it.

The U.S. Supreme Court revisited the issue in *J. McIntyre Machinery Ltd. v. Nicastro*, 564 U.S. 873 (2011), but the justices again could not reach a majority consensus on how broad the stream-of-commerce theory should be.

As a result, the Illinois Supreme Court has sought to split the difference between the two approaches. In *Wiles v. Morita Iron Work Co., Ltd.*, 125 Ill. 2d 144 (1988), the court held that the nonresident defendant, a Japanese company, must be aware that its products were being marketed in Illinois in order to fall under the plaintiff's personal jurisdiction.

Additionally, the court found that "the mere presence of a product in a state, without more, is insufficient to subject a foreign manufacturer to the jurisdiction of the Illinois courts," Reyes wrote, summarizing *Wiles*.

Regardless of the theory that is used, the 1st District panel found that Giant Manufacturing has "the requisite minimum contacts with Illinois," Reyes wrote.

The panel noted Giant Manufacturing attested to the fact that it has been aware of its brand's sales in Illinois since 1988. Two of its top executives also have leadership positions at Giant Bicycle.

Giant Bicycle, in 2014, advertised on its website that it had 40 authorized retailers in Illinois.

"Also, Giant Manufacturing does not contend that the sale of Giant brand bicycles in Illinois was an isolated event," Reyes wrote. "Thus, while the record does not disclose the volume of Giant brand bicycles marketed in

Illinois, it is reasonable to infer that its commercial transactions, like those of other manufacturers, result in more than an insubstantial use and consumption in this state."

The 1st District panel also held that it was not unreasonable for the Taiwanese company to fight this lawsuit in Cook County, noting that Illinois has a strong interest in protecting its citizens from even foreign corporations as well as the fact that Giant Manufacturing "is no stranger to the United States legal system."

The 1st District panel also distinguished Giant Manufacturing's case from the case law the U.S. and Illinois supreme courts have used to map out the stream-of-commerce theory.

Unlike *Asahi*, Reyes wrote, Kowal's lawsuit is a product-liability claim, and unlike *J. McIntyre*, Giant Manufacturing's sales into Illinois were not a one-off sale.

"In sum, although we acknowledge that having to litigate in Illinois may be a burden on Giant Manufacturing as an alien defendant, the other factors nevertheless outweigh this factor," Reyes wrote. "We thus conclude that it is reasonable for Illinois to exercise personal jurisdiction over Giant Manufacturing."

First District Justice Robert E. Gordon wrote in a one-page special concurrence that while he agreed with the panel's findings, he wanted to "clarify and add to the reasoning of the majority opinion."

"Giant Manufacturing in effect set up its business to cover the entire United States through its ownership and control of its exclusive distribution of Giant-brand bicycles. It needed no formal agreement with Giant Bicycles because it owned and control the distribution of its product," Gordon wrote. "As a result, it is reasonable for Illinois to exercise personal jurisdiction over Giant Manufacturing."

One of Giant Manufacturing's attorneys, Matthew J. Egan, an equity partner at Pretzel & Stouffer Chtd., wrote in an e-mail they are discussing their next steps.

Kowal was also represented by J. Wesley Mitchell of Mitchell, Hoffman & Wolf.

Giant Manufacturing was also represented by Donald Patrick Eckler and Scott L. Howie of Pretzel & Stouffer.

Justice Bertina E. Lampkin concurred in the opinion.

The case is *Janet Kowal v. Westchester Wheels, Inc., et al.*, 2017 IL App (1st) 152293.

dthomas@lawbulletinmedia.com