

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROBERT G. MERRITT,

Plaintiff,

v.

KLI, INC., f/k/a KELLER LADDERS, INC.
and ST. PAUL FIRE & MARINE INSURANCE
COMPANY,

Defendants.

ORDER

04-C-0038-C

In this civil action, plaintiff Robert G. Merritt is suing defendants KLI, Inc. and St. Paul Fire & Marine Insurance Company for negligence, strict liability and breach of warranty arising out of an accident in which plaintiff fell from a ladder manufactured by defendant. Jurisdiction is alleged under the diversity statute, 28 U.S.C. § 1332. Plaintiff is a Wisconsin citizen; defendant KLI is a Delaware corporation with its principal place of business in Florida; defendant St. Paul is a Minnesota corporation with its principal place of business in Minnesota.

The case is before the court on defendants' motion to bar the testimony of Donald Marty, an expert retained by plaintiff. If defendants prevail on that motion, they are

entitled to summary judgment because plaintiff has no other evidence to sustain his contention that his fall was the result of a defect in the ladder.

From my review of the parties' arguments and the depositions of plaintiff and his expert, I conclude that defendants have failed to prove that Donald Marty is not qualified to give an opinion about the cause of plaintiff's fall. Defendants' challenges to his qualifications are fodder for cross-examination at trial but they do not demonstrate that his opinions fail the requirements of Fed. R. Evid. 702. Therefore, defendants' motion to bar Marty's testimony will be denied, together with their motion for summary judgment.

Defendants contend that Marty is not qualified as an expert in stepladder design or stepladder accident reconstruction, but Marty is a license professional engineer with both a bachelor's and master's degree in mechanical engineering from the University of Wisconsin-Madison. He holds various memberships and certifications and has attended lectured at many continuing education courses. Before coming to any conclusions in this case, he reviewed the applicable ANSI standards, inspected the ladder from which plaintiff fell (an 8-foot Keller model 978 heavy duty fiberglass stepladder), obtained two used and one new version of the same ladder, administered laboratory bending tests to the ladders in accordance with ANSI standards and reviewed information about plaintiff's use of the subject ladder.

Defendants argue that Marty's opinion makes no sense. In fact, it is linked to his

review of ANSI standards, logical lab testing comparisons and his own knowledge of engineering principles. To the extent that defendants disagree with the conclusion, they should concentrate their efforts on rebutting it at trial. It is not so unreasonable on its face that it should be kept from the jury. Certainly, it is not “unscientific speculation” as defendants would characterize it, simply because Marty could have performed additional tests. Rather, it appears to be an informed opinion about what happened that will assist the jury in determining whether plaintiff’s fall was the result of a ladder defect.

ORDER

IT IS ORDERED that the motion filed by defendants KLI, Inc. and St. Paul Fire & Marine Insurance Company to bar the testimony of Donald Marty is DENIED; defendants’ motion for summary judgment is DENIED as well.

Entered this 2nd day of November, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge