

COMMONWEALTH OF MASSACHUSETTS  
BERKSHIRE, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO. 86-0500

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MARIE A. CATALANO (RUEL), )	
Plaintiff )	
v. )	DEFENDANT, SKAN-A-MATIC
JENSEN FABRICATING ENGINEERING, )	CORP.'S, MEMORANDUM IN
INC., LEA MANUFACTURING CO., )	SUPPORT OF ITS MOTION FOR
AND SKAN-A-MATIC CORP., )	SUMMARY JUDGMENT
Defendants )	
_____ )	

I. STATEMENT OF THE CASE

This is a products liability case arising from Marie Ruel's hand injury while working for General Electric Company ("GE") on August 25, 1984. In June 1989, Ruel added Skan-A-Matic as a defendant, alleging negligence in design, manufacture, maintenance and installation of an electric eye and component parts installed in an acid etch machine, and breaches of express and implied warranties. Defendant Lea Manufacturing then asserted a cross claim alleging Skan-A-Matic was responsible for Ruel's injuries and demanded indemnification or contribution accordingly.

II. UNDISPUTED FACTS

**The Accident**

Marie Ruel usually worked on an acid etch machine in Building 61 at GE. However, on August 25, 1984, she was instructed to work in Building 42 on another acid etch machine similar, but not identical, to the one in Building 61. The acid etch machine generally treats zinc oxide discs as a part of an

assembly line operation. The  $ZO_2$  discs come off a lapping machine where they were fabricated after which the disc operator then feeds the loaded trays on to a conveyor belt into an acid etch machine which mechanically lowers the trays into a solution for a period of time. The trays are pushed along on driven conveyor wheels, and then once inside the machine, by pusher bars actuated by photo electric eyes.

When she arrived at Building 42 the acid etch machine was not in operation, and she observed two other workers trying to turn it on. She volunteered to help. She looked at the front of the machine and noted the conveyor wheels were not turning. Then, walking around to the back of the machine, she pushed all the buttons to turn it on and nothing happened. From there, she went to the electrical box on the wall, pulled the lever down to shut off the power to the machine, and then pushed the lever up. Pushing all the buttons on the back of the machine, the machine still did not start. She then pushed a tray of work into the machine past its electric eyes. Again, nothing happened. She noted there was already a tray of work inside the machine. She proceeded to reach inside the machine past the electric eyes to remove the tray of work she had inserted. She heard a click and two pusher bars came down on her hand, injuring her. Plaintiff's deposition, at 16-17 (Exhibit A).

#### **The Etch Machine**

The acid etch machine involved in Plaintiff's injury was sold to GE in the summer of 1982. At the time of its delivery of the etch machine, it contained mechanical "limit switches."

Choon deposition, at 12 (Exhibit B); Stefan deposition, at 16-17, 19 (Exhibit C).

The limit switches were actually extended arms with rollers on them, with the rollers designed to make contact with the sides of trays inserted into the machine. When the extended arms sensed contact with the sides of the trays, the switch activated the machine to lower its internal gate and the machine began its cycle. Stefan deposition, at 20-21. Once the etch machine was installed and operating, GE experienced problems with the machine because trays would migrate on the conveyor from side to side and would not always contact switches on both sides as necessary to activate the machine. Stefan deposition at 20, Choon deposition at 13.

Owing to these problems, an electrician from GE's maintenance department removed the limit switches from the machine and installed two pairs of photoelectric eyes supplied by Skan-A-Matic. Choon deposition, at 15, 23, 77. Choon testified "the electric eyes might have been a little less stable" in their housing than the previous limit switches. Id., at 38, 84. However, he had "no idea why <a tray of work stopped between two photoelectric eyes on the date of the Plaintiff's accident> other than it may have been slightly cocked or whatever. I don't know why it stopped where it stopped." Id., at 47.

### **The Defectiveness of the Eyes**

Choon identified two scenerios which could affect the operation of the electric eyes.<sup>1</sup> First, the dust could gather on the eyes. Choon said that GE had no preventative maintenance program for the machine or its eyes, and the eyes were not cleaned periodically but would only be wiped when the machine ceased to function and maintenance personnel were called in to get it running again. Id., at 56, 77. Second, the eyes could become loose in their sockets, but this too was a maintenace problem rather than anything over which eyes' manufacturer had control. Id., at 92-96.

After reviewing Plaintiff's deposition account of how the accident occurred and the computer program which sequenced the machine's operation, the GE engineer most familiar with the machine concluded the gate's fall onto Plaintiff's hand had nothing to do with the electric eyes. Stefan deposition, at 77-78. The engineer, who had installed the etch machine and programmed its operations stated that the gate would come down automatically 120 seconds after the machine's power was turned on. Id.

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<sup>1</sup> Choon identified four scenerios, two of which could be ruled out because the eyes were checked after the accident and found to be operational. The other scenerios were (3) lack of alignment of the pairs of eyes, and (4) that the module had burned out. See Choon deposition, at 95-97.

In the course of discovery, Plaintiff was asked to identify the exact nature of the defect or defective condition of the eyes which caused her injuries. Plaintiff responded that GE electrician Joseph Choon stated the electric eyes may have been defective on the date of the accident. Plaintiff's interrogatory answers, #7(a) (Exhibit D). Plaintiff's have not identified any expert witnesses who would testify as to the defectiveness of the eyes. *Id.*, #14.

### III. ARGUMENT AND AUTHORITY

#### THERE IS NO EVIDENCE TENDING TO SHOW THAT A PRODUCT DEFECT ATTRIBUTABLE TO SKAN-A-MATIC CAUSED THE PLAINTIFF'S INJURIES

Rule 56 mandates the entry of summary judgment "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex v. Catrett, \_\_\_ U.S. \_\_\_, 106 S.Ct. 2548, 2552-2553 (1986). Where no showing can be made that a product defect was the proximate cause of plaintiff's injuries, plaintiff's claim is subject to summary judgment. Morillo v. Clippard Instrument Labs, Inc., 27 Mass. App. Ct. 1112 (1989).

In the Morillo case, summary judgment was rendered on plaintiff's claim where his expert was unable to explain how the valves furnished by Clippard had anything to do with causing the accident. *Id.* Although one of the valves leaked air, there was no expert opinion or logical explanation of its involvement in causing the machine to fall on plaintiff's hand. The expert testified that the leak could cause the machine to fall if a

button was pressed, but none was pressed at the time of the accident.

"This leaves entirely unexplained what caused the accident or, speaking more strictly, how either valve furnished by Clippard had anything to do with it." Morillo, supra at 1112. Where there is no more than a showing of a possibility of a causal relationship between a product's condition and an accident, judgment is proper prior to submission of the case to a jury. McNeill v. American Cyanamid Company, 3 Mass. App. Ct. 738 (1975).

In this case, Plaintiff is unable to explain how any alleged defect about the electric eyes caused the etch machine bar to fall on her hand. The possible scenerios which might have the eyes activating the bar to fall are each attributable to GE's conduct and not to any defect of the eyes at the time they left Skan-A-Matic's possession.

#### IV. CONCLUSION

For all the foregoing reasons, Skan-A-Matic Corp. respectfully requests the Court to grant its motion for summary judgment on Plaintiff's claims and Lea Manufacturing Co.'s cross claims against it.

SKAN-A-MATIC CORP.,  
Defendant

By \_\_\_\_\_  
JOHN B. STEWART (BBO #551180)  
MORIARTY, DONOGHUE & LEJA, P.C.  
1331 Main Street  
Springfield, MA 01103  
(413) 737-4319