

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

DISTRICT COURT DEPARTMENT
WORCESTER DIVISION
CIVIL ACTION NO 0562CV1916

JOHN H. WITTE,
Plaintiff

v.

BEFIT, INC., d/b/a
GOLDS GYM,
SYMMONS INDUSTRIES, INC., AND
THERMOLD CORPORATION,
Defendants

RULINGS ON MOTIONS FOR SUMMARY JUDGMENT FILED BY
BEFIT, INC., d/b/a, GOLD'S GYM, SYMMONS INDUSTRIES, INC., AND
THERMOLD CORPORATION, DEFENDANTS

Defendants' motions for summary judgment came on for hearing before the court, Sullivan, J. presiding and the issues having been duly heard, it is ordered as follows:

1. The motion for summary judgment filed by Befit, Inc., d/b/a Gold's Gym is denied.
2. The motions for summary judgment filed by Symmons Industries, Inc., and Thermold Corporation are allowed.

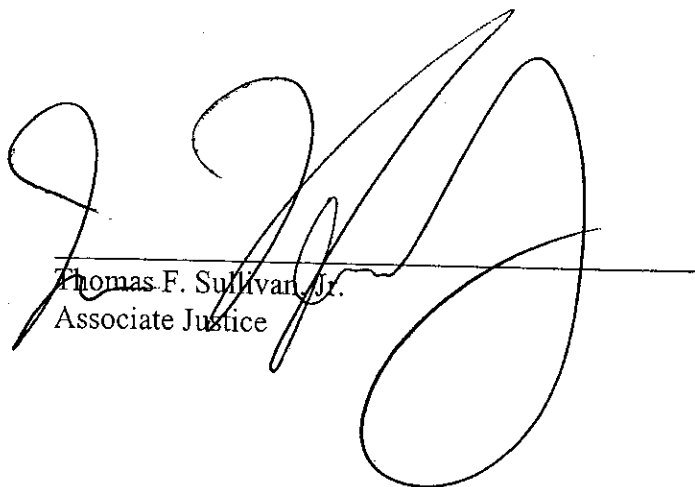
Even when the court views the proffered evidence in the light most favorable to the plaintiff, recovery against Symmons and Thermold rest upon mere possibilities, guesswork and surmise as opposed to probabilities. No rational view of the evidence permits a finding of liability against Symmons and Thermold.

The resipsa of product defect, The Restatement, Third, of Torts- Products Liability, #3,(a)

is not applicable to the instant facts. The Enrich case cited by the plaintiff supports the court's ruling. This court does not agree that it is common knowledge that shower handles, under facts similar to the instant case, ordinarily only break as the result of product defect. The present evidence, without expert testimony or expert testing, would not allow the jurors to draw the reasonable, probable inferences and conclusions needed to obtain a verdict against Symmons and Thermold.

The complaint against Befit does not suffer from the same problems. Viewing the proffered evidence in the light most favorable to the plaintiff, the fact finder could draw probable, reasonable inferences and conclusions to permit a finding of liability against Befit.

Dated: June 28, 2007



Thomas F. Sullivan, Jr.
Associate Justice