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BLOG

Florida Court Declines to Find Exculpatory Clauses Preclude Strict Products Liability Claims

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In a matter of first impression, a Florida appeals court recently held that a retailer's exculpatory clause does not apply to claims brought under a theory of strict products liability.

In *Harrell v. BMS Partners, LLC,* the plaintiff purchased a motorcycle from a local retailer and alleged that the motorcycle soon began to "wobble, thrash, and violently turn," causing him to lose control and sustain serious bodily injuries in the ensuing crash.[1] As a result of his injuries, the plaintiff sued the retailer for its alleged negligence in assembling, setting up, servicing, repairing, and/or inspecting the motorcycle.[2] He also asserted strict products liability claims arising out of alleged manufacturing defects, design defects, and failure to warn by the retailer.[3]

The defendant retailer moved to dismiss the plaintiff's claims in their entirety based on an exculpatory clause present in the parties' sales contract, which provided,

> "I . . . RELEASE BMS FOR ANY LIABILITY OR RESPONSIBILITY IN ANY WAY FOR PERSONAL INJURY OR DEATH, OR OTHER DAMAGES TO ME INCLUDING PROPERTY DAMAGES, OR MY FAMILY HEIRS, OR ASSIGNS WHICH MAY OCCUR FROM MY OPERATION OR OWNERSHIP OF THE MOTORCYCLE I AM PURCHASING FROM BROWARD MOTORSPORTS WHICH MAY BE DUE OR IN PART TO HAVE BEEN CAUSED BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF BROWARD MOTORSPORTS[.] . . . I AM AWARE THAT THIS IS A RELEASE OF LIABILITY AND A CONTRACT BETWEEN MYSELF AND BROWARD MOTORSPORTS AND SIGN IT OF MY OWN FREE WILL."[4]

The trial court granted the retailer's motion to dismiss.[5]

On appeal, because the clause expressly disclaimed liability for claims "due or in part to have been caused by the negligence or gross negligence of Broward Motorsports," the parties agreed that the claims sounding in negligence had been released.[6] However, the issue of strict liability was a closer call.

The plaintiff argued that the exculpatory clause, by its plain language, only applied to negligence-based claims, and so the trial court erred in dismissing the strict liability claims as well.[7] The defendant retailer contended that the broad language disclaiming "*any* liability or responsibility in *any* way clearly reflect[ed] the parties' agreement to relieve Defendant of liability for any potential tort claim, including claims for strict products liability."[8]

Whether an exculpatory clause can preclude a plaintiff from asserting strict products liability claims differs from state to state.[9] Here, the appellate court in *Harrell* acknowledged that no other Florida court had yet addressed the issue of whether an exculpatory clause insulating a retailer from strict liability for personal injuries contravenes Florida public policy.[10] The appellate court held that it did, finding that Florida has "implicitly recognized that as a matter of public policy, rather than of contractual understanding, a duty should be placed on manufacturers to warrant the safety of their products."[11]

In reaching its decision, the *Harrell* court examined in depth the holding from *Loewe v. Seagate Homes, Inc.*[12] There, another Florida appellate court considered whether an exculpatory clause that purported to release a contractor from liability for failure to comply with building codes violated public policy.[13] The *Loewe* court held the clause void because the policy behind Florida's regulation of building contractors and construction was to protect public safety.[14] Although *Loewe* differed significantly in that it involved building codes and statutes, the *Harrell* court concluded that "[i]t follows logically" from *Loewe* that an exculpatory clause purporting to absolve a retailer of liability from strict liability in tort likewise violates public policy.[15] The *Harrell* court also found that "other jurisdictions' decisions support[ed] this decision."[16]

The decision in *Harrell* reflects an ongoing tension between protecting "the party who is probably least equipped to take the necessary precautions to avoid injury," and a "countervailing policy that favors the enforcement of contract."[17] However, after *Harrell*, it is clear that exculpatory contracts and clauses remain "disfavor[ed]" in Florida.[18] Florida retailers should be aware of the implications of this ruling with respect to potential strict liability claims arising from the sale of their products.

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[1] 350 So. 3d 361, 364 (Fla. 4th DCA 2022).

[2] *Id*.

[3] *Id*.

[4] *Id.*

[5] *Id.* at 364–65.

[6] *Id.* at 365.

[7] *Id.*

[8] *Id.* (emphasis added) (internal quotations omitted).

[9] *See, e.g.*, *Chicago Steel Rule & Die Fabricators Co. v. ADT Sec. Sys. Inc*., 327 Ill. App. 3d 642, 650-53 (2002) (in a case of first impression, holding that an exculpatory clause between two commercial parties can preclude one of the commercial parties from bringing property damage claims based on strict products liability under Illinois law); *but see Boles v. Sun Ergoline, Inc*., 223 P.3d 724, 726–27 (Colo. 2010) (holding exculpatory agreement releasing manufacturer or seller from strict products liability violated public policy and was void under Colorado law) *and McGraw-Edison Co. v. Ne. Rural Elec. Membership Corp*., 678 N.E.2d 1120 (Ind. 1997) (holding same under Indiana law).

[10] *Id.* at 367.

[11] *Id*. (quotations and citation omitted).

[12] 987 So. 2d 758 (Fla. 5th DCA 2008).

[13] *Id.*

[14] *Id.* at 760 ("[A] party may not contract away its responsibility to comply with a building code when the person with whom the contract is made is one of those whom the code is designed to protect.").

[15] *Harrell*, 350 So. 3d at 368.

[16] *Id.* (collecting cases from Colorado, Illinois, California, Indiana, Kansas, Third Circuit, and Fifth Circuit).

[17] *Harrell*, 350 So. 3d at 365.

[18] *Id.*

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