

# Civil Procedure

Eric M. Fink

[efink@elon.edu](mailto:efink@elon.edu)

336.279.9334

Office Hours [by appointment](#)

Fall 2017

Room 206

Mondays, Wednesdays, & Fridays, 1:30 – 3:15 pm

## Summary Judgment

Sally Schlimazel (domiciled in Florida), was injured when she cut her foot on a chair at the home of her neighbor, Freddie Frankel. The chair was designed by Mebelmacher Designs (incorporated and having its principal place of business in NC). Schlimazel sued Mebelmacher in the U.S. District Court for the Middle District of North Carolina, asserting a claim under state law based on strict liability for a defective product. (Assume Schlimazel seeks more than \$75,000 in damages and the court has diversity jurisdiction.)

Under the applicable state law, the elements of Schlimazel's claim is as follows:

- The defendant designed the product;
- The product's design rendered it unreasonably dangerous in its normal intended use;
- The defective design was the proximate cause of the plaintiff's injuries.

Also under the applicable law, the defendant in a product liability suit based on an alleged design defect may assert, as an affirmative defense, that the dangerous condition of the product resulted from the manufacturing process, not the design itself.

After discovery has concluded, Mebelmacher moves for summary judgment, arguing that Schlimazel has failed to meet her burden of proof that her injury was caused by a defect in the chair, and that any defect in the chair resulted from the manufacturing process, not the design.

The evidentiary record based on discovery includes the following evidence:

### **Summary of Sally Schlimazel Deposition Testimony:**

Schlimazel testified in her deposition that she cut her bare foot on the "outside bottom edge of the chair where the base meets the sides," resulting in severe lacerations. She later

examined the chair and determined that the edge was “razor sharp, sharp enough that if you were to rub your finger across the bottom outside edge of the chair, you would shave skin off your finger.” The chrome was flush with the plywood but the edge was sharp all the way around the 360 degrees of the base.

Schlimazel went to the emergency room, where a doctor found that Schlimazel had a severed tendon. Following the doctor’s advice, Schlimazel underwent surgery, followed by six months of physical therapy.

### **Summary of Freddie Frankel Affidavit**

Schlimazel submitted a sworn affidavit from her neighbor, Freddie Frankel. Frankel stated in the affidavit that he bought the chair at a Miami furniture store a few years before the incident. He’d never noticed the sharp edge on the chair, and as far as he knew, nobody had ever been injured by it before.

### **Summary of Milo Mebelmacher Deposition Testimony:**

Milo Mebelmacher, founder and president of Mebelmacher Designs, testified in his deposition that he designed the Swivel Tub Chair. Mebelmacher licensed the design to Hahn, Inc., which is the exclusive licensed manufacturer of the chairs.

The chair consists of a “tub” seat attached to a plywood base in a manner that permits the “tub” to tilt and swivel. A chrome veneer, about one-sixteenth of an inch thick, is affixed to the outside of the base. The diameter of the base is about two inches less than the diameter of the tub, and the bottom of the tub is about three inches off the floor. (*See Mebelmacher Deposition, Exhibit A*)

The chair was designed for residential use. Mebelmacher assumes that people commonly walk barefoot in their homes. Nonetheless, he never anticipated that someone might put their foot in the area between the tub seat and the top of the base.

He was familiar with the use of clear plastic pieces known as “edge guards.” These are used to protect the bottom edge of the metal on chrome-trimmed furniture. The Swivel Tub Chair was not designed with an edge guard because it did not seem necessary. Although it was technically feasible, it would have ruined the look of the chair to add a wood or cloth trim around the edge of the chrome veneer.

If the chair were manufactured with the chrome veneer extending beyond the plywood, it would create a surface that would cut bare skin. This would be a dangerous condition. The Swivel Tub Chair was specifically designed so that the plywood and chrome would be flush. This was not noted on the design drawing because it is so obvious. The drawings do not include all details: “I don’t put in all the screws, I don’t put in the dowels, I don’t put in the mechanisms.... I don’t specify things that are not my problems. These are done by the engineers in the plant.”

A designer’s role is to make a conceptual sketch, to provide a full-sized detail and working sketch, and to supervise the making of a model. The purpose of the supervision is to assure that the finished product looks right. The designer’s responsibilities are “aesthetic and not engineering.” The manufacturer’s inspectors occasionally “let something go through that isn’t exactly right.” In all factories some quality problems get through. Other than the



Mebelmacher Deposition, Exhibit A

Figure 1: Tub Chair

present action, Mebelmacher has not received a single complaint of injury involving any of its furniture designs.

### **Summary of Julius Hahn Deposition Testimony**

Julius Hahn, founder and president of Hahn, Inc., testified that his company manufactures the Swivel Tub Chair at its High Point, North Carolina factory. Hahn distributes the chairs to various retailers around the country, including the Miami store where Mr. Frankel bought the chair allegedly responsible for Schlimazel's injury.

Mebelmacher generally furnishes Hahn with a pencil sketch of the furniture design, as well as a working sketch giving the actual dimensions of the piece and specifying the exterior material to be used. The Swivel Tub Chair was designed so that the chrome veneer edge would be flush with the plywood and the edges of the veneer would be sanded down. Chrome veneer is sharp because it is thin. However, the chair was not designed to have sharp edges. Hahn considers a sharp edge to be a manufacturing defect, not a design defect. Nothing prevented the placement of a protective trim along the bottom of the Swivel Tub Chair. Plastic edge guards have been added to similar chairs in the last few years.

### **Question**

Should the court grant summary judgment in favor of Mebelmacher?