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PROPORTIONATE RESPONSIBILITY AFTER *JCW ELECTRONICS, INC. V. GARZA*

THE FACTS OF THE CASE

JCW Electronics, Inc. (“JCW”) installed collect-only telephones for inmates use under a 1998 contract with the Port Isabel Police Department. On 14 November 1999, Rolando Montez was arrested for public intoxication and placed in the Port Isabel jail. Following arrangements to make bail with his mother, he was found dead in his cell, hanging from a telephone cord.

Montez’s mother, and the mother of his son, sued the City of Port Isabel for Montez’s death. JCW was subsequently named as a Defendant. At trial, the jury found in favor of the Plaintiffs for their negligence, misrepresentation, and *breach of implied warranty of fitness* claims. The jury found Montez 60% responsible, the City of Port Isabel 25% responsible, and JCW 15% responsible.

JCW’S APPEAL

JCW claimed that the 60% responsibility attributed to Montez barred Montez’s recovery of claims under Chapter 33 of the Texas Civil Practice and Remedies Code. The Court of Appeals affirmed the breach of implied warranty of fitness findings since there was some evidence that JCW represented to the Port Isabel Chief of Police that the phones would be safe for unattended or unsupervised use by inmates. However, the Court of Appeals held that Chapter 33 did not apply to a claim for a breach of implied warranty. Specifically, the Court of Appeals stated that “any extension of Chapter 33’s proportionate responsibility scheme to UCC Article 2 could potentially disrupt and override the UCC’s expressed purpose of furthering uniformity among the states.”

TEXAS SUPREME COURT’S REVIEW

The Texas Supreme Court granted review to determine whether Chapter 33’s proportionate responsibility scheme *did* extend to breach of implied warranty claims.

The Supreme Court explained that the legislature has repeatedly modified comparative fault rules in tort cases over two decades. In 1987, it noted that the legislature replaced the existing statutory and common law schemes with Chapter 33's comparative responsibility framework.

In 1995, it replaced comparative responsibility with proportionate responsibility. Then in 2003, more changes were made. However, Montez died in 1999, thus the 1995 changes applied.

The Plaintiffs directed the Court to the 1987 version that had expressly provided for the apportionment of responsibility in negligence, strict liability, and UCC Article 2. breach of implied warranty claims, when the damages sought were for personal injury, death or property damage.

The Plaintiffs noted that the 1995 amendments deleted mention of the specific theories of liability, providing instead that the chapter should apply "*to any cause of action based on tort* in which a Defendant, settling person, or responsible third-party is found responsible for a percentage of the harm for which relief is sought." Thus, the Plaintiffs argued that a breach of implied warranty claim was not a cause of action based in tort.

The Texas Supreme Court disagreed with this position. In fact, it noted that the 1995 version actually expanded the scope of proportionate responsibility. Contrary to the Plaintiffs' contention that an implied warranty *cannot* be a cause of action based on tort, the Court noted that a breach of implied warranty can be (1) in contract or (2) in tort, depending on the circumstances.

The Court noted that the true nature of a claim is identified by examining the damages alleged. It indicated that when those damages are purely economic, the claim sounds in contract. However, a breach of implied warranty claim alleging damages for death or personal injury sounds in tort. Accordingly, the Court felt that the legislature did not intend to exclude breach of implied warranty claims from its proportionate scheme in its 1995 version of Chapter 33.

The Court then focused on the definition of a tort. According to Section 33.003 of the Texas Civil Practice Remedies Code, a cause of action based on tort can include (1) negligence or (2) products liability. Thus, according to the Court, Chapter 33 must apply to implied warranty claims because the claims for an implied warranty is one basis for a products liability action.

It also noted that it, along with Courts from many other jurisdictions, has historically included breach of implied warranty claims as part of the mix when comparing fault in tort-based litigation.

The Court held that Chapter 33 of the Texas Civil Practice Remedies Code continued to apply to implied warranty claims after the 1995 amendments by the legislature. Thus, the legislature's proportionate responsibility scheme of 1995 applied to the Montez's jury's verdict in this case.

It noted that Chapter 33 is quite clear that a claimant may not recover damages if his percentage of responsibility is greater than 50%. Thus, because the jury found the decedent negligent (and apportioned him 60% of their responsibility toward his death) his contributory negligence barred recovery in this case.

WHAT THIS MEANS AND WHERE DO WE GO

Without question the Texas Supreme Court "extended" the scope of proportionate responsibility found in Chapter 33 of the Texas Civil Practice and Remedies Code. Some may argue that they didn't "extend" the responsibility, but rather solidified it. Either way, Defendants now have firmer ground in breach of implied warranty claims.

If Defendants that are fortunate enough to have jurors place 51% responsibility on Plaintiffs, the Court's holding in JCW will serve as another safeguard to avoid runaway juries.

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