

Skilled Lawyering Saves Defendant from Default Judgment in Products Liability Lawsuit



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In a products liability lawsuit against the manufacturer and seller, a plaintiff asserted claims of strict products liability, breach of warranty, negligence, gross negligence, and consumer fraud. One defendant filed a successful motion to dismiss for failure to state a claim and was dismissed from the suit. But the other defendant failed to respond, and faced a motion for entry of default judgment. After litigation at the district court that resulted in an appeal, the Eighth Circuit recently affirmed dismissal of both defendants.

Lessons Learned:

Skilled lawyering can overcome the failure to file an answer...sometimes. Failing to timely respond to a complaint can be devastating to a case. This can often mean that the plaintiff gets awarded everything that they asked for. But not always. As illustrated by this case, skilled lawyering can sometimes overcome a default judgment. By closely studying the complaint, the rules of civil procedure, and the jurisprudence that controls the prerequisites for entry of a default judgment, a lawyer can sometimes find a procedural or substantive loophole to save a case from default.

A threadbare complaint cannot form the basis for entry of default. The Eighth Circuit rule seen in this case is that “a court must not enter default without first determining whether the unchallenged facts constitute a legitimate cause of action.” In this case, the reason that the defaulting defendant ultimately still prevailed was because the complaint was insufficient to state a claim, constituting mere “legal conclusions and recitations of the elements of the causes of action.” Under well-settled federal precedent, this is insufficient.

The importance of following the rules of civil procedure. In opposing the defendant’s motion to dismiss, the plaintiff attempted to fix his deficient complaint by introducing facts not previously alleged. However, because the factual allegations were not included in his complaint they were not considered in evaluating the motion to dismiss. This procedural folly, among others illustrated in this case, show the importance of litigating in strict compliance with the rules of civil procedure. Even where facts or valid substantive motions might win the day, they can be thwarted by procedural non-compliance.

Case reference: *Glick v. W. Power Sports, Inc., d/b/a Fly Racing; Leatt Corp.*, No. 18-3173 (8th Cir. Dec. 5, 2019).