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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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DEAN A. DICKIE,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 09 L 4463
	)	
CANNONDALE CORPORATION, WELLGO	)	
CORPORATION AND RRB BICYCLES, LTD.,	)	The Honorable
	)	Kathy M. Flanagan,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Mason and Justice Fitzgerald Smith concurred in the judgment.

**ORDER**

¶ 1 *Held:* Summary judgment affirmed where circuit court properly determined there was insufficient evidence to support claims of breach of warranties and fraudulent inducement and negligent misrepresentation.

¶ 2 This appeal arises from a bicycle accident in which plaintiff Dean A. Dickie (Dickie) was injured while riding a bicycle manufactured by defendant Cannondale Corporation (Cannondale) and purchased from defendant RRB Bicycles, Ltd (RRB). Dickie filed suit against Cannondale, RRB, and defendant Wellgo Corporation (Wellgo) claiming strict liability, negligence, breach of

express and implied warranties, fraudulent inducement and negligent misrepresentation. Cannondale filed a motion for summary judgment which the circuit court granted and Dickie appealed. For the following reasons, we affirm the judgment of the circuit court.

¶ 3

### BACKGROUND

¶ 4

Dickie purchased a bicycle manufactured by Cannondale from RRB in the summer of 1998. Ronald Boi (Boi) is the owner of RRB, which was an authorized dealer of Cannondale's bicycles. At RRB, Dickie expressed an interest in purchasing a bicycle that had the ability to travel on the streets of a suburb and on bicycle trails. After talking with Boi, Dickie decided to buy one of Cannondale's bicycles because it had the features he wanted.

¶ 5

The pedals that came with the bike were clipless. The pedals were manufactured in Taiwan by Wellgo and added to the frame and fork of the bicycle, which was manufactured at Cannondale's factory in Pennsylvania. Clipless pedals hold the rider's feet to the pedal so that a rider may pedal as hard as he or she desires. The owner's manual that came with the bicycle stated that the rider should engage with the clipless pedal by pressing his or her shoe cleat into the pedal. To describe the process of how the foot locks into the pedals, the owner's manual uses the phrase "work like ski bindings \* \* \* a plate on the sole of the shoe clicks into a spring-loaded fixture on the pedal." The service instructions that were also included with the purchase of the bicycle state that in order to disengage from the pedal: "remove by twisting your heel to the outside." At the time of the purchase, Boi explained to Dickie how the clipless pedals worked. The cover of the bicycle owner's manual stated "Handmade in the USA."

¶ 6

On August 27, 1999, Dickie was riding the bicycle on a biking trail. During the bike ride, Dickie had successfully engaged and disengaged from the clipless pedals several times. As Dickie exited the bike trail, he entered a parking lot and as an automobile pulled away, he saw a

concrete oval island filled with grass, dirt and trees was in his path. Dickie had approximately two seconds between when he observed the curb and when his bicycle came in contact with it. Dickie was unable to disengage from the pedals and there was no involuntary release mechanism which would allow for disengagement upon impact. Dickie flipped over the handlebars, landed on his hip and was severely injured.

¶ 7 Dickie subsequently filed suit against Cannondale, RRB and Wellgo for strict liability, negligence, breach of express and implied warranties, fraudulent inducement and negligent misrepresentation. RRB was voluntarily dismissed after it was held that plaintiff's claims against RRB were time barred. Wellgo, located in Taiwan, was dismissed with prejudice based on lack of personal jurisdiction. After years of extensive discovery and litigation, Cannondale filed a motion for summary judgment, which was granted by the circuit court. This timely appeal followed.

¶ 8 ANALYSIS

¶ 9 On appeal, Dickie argues that the circuit court erred in granting summary judgment in favor of Cannondale because there were issues of material fact in his claim for: (1) breach of warranties; and (2) fraudulent inducement and negligent misrepresentation.

¶ 10 The purpose of summary judgment is not to decide issues of fact but to determine whether any genuine issue of fact exists. *Kobus v. Formfit Co.*, 35 Ill. 2d 533, 538 (1966). A motion for summary judgment is properly granted if the pleadings, depositions and admissions on file, together with any affidavits and exhibits, when construed strictly against the moving party and liberally in favor of the opponent (*Killeen v. R.W. Dunteman Co.*, 78 Ill. App. 3d 473, 475 (1979)) show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law (*Fooden v. Board of Governors*, 48 Ill. 2d 580, 586

(1971)). Summary judgment is a drastic measure and should only be granted if the movant's right to judgment is clear and free from doubt. *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986). Where a reasonable person could draw divergent inferences from undisputed facts, summary judgment should be denied. *Pyne v. Witmer*, 129 Ill. 2d 351, 358 (1989); *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 154 Ill. 2d 90, 102 (1992). We review the circuit court's granting of a motion for summary judgment *de novo*. *McNamee v. State of Illinois*, 173 Ill. 2d 433, 438 (1996).

¶ 11

## Affidavit

¶ 12

Initially, we address Cannondale's argument that Dickie's affidavit, attached to his response to Cannondale's motion for summary judgment, cannot be used to contradict Dickie's prior deposition testimony to place material facts in issue. We agree. When a party makes admissions which are as “deliberate and unequivocal as to matters within its knowledge,” those admissions will conclusively bind that party and that party will be unable to later contradict those admissions. *Baker–Wendell, Inc. v. Cohon & Associates, Ltd.*, 100 Ill. App. 3d 924, 929 (1981). This rule is well accepted in summary judgment cases. See *Schmahl v. A.V.C. Enterprises, Inc.*, 148 Ill. App. 3d 324, 331 (1986); *Smith v. Ashley*, 29 Ill. App. 3d 932, 935 (1975); *Fontaine v. Hadlock*, 132 Ill. App. 2d 343, 347 (1971); *Meier v. Procius*, 17 Ill. App. 2d 332, 335 (1958). The judicial policy behind this rule is that once a party has given sworn testimony, he should not be allowed to commit perjury and change his testimony so as to avoid the consequences of his prior testimony. *Smith*, 29 Ill. App. 3d at 935; *Commonwealth E. Mortgage Co. v. Williams*, 163 Ill. App. 3d 103, 108-09 (1987).

¶ 13

We find that the cases involving summary judgment that have held that a counter-affidavit does not place in issue material facts that were removed by a party's deliberate admission under oath, are directly applicable. Dickie contends that the affidavit merely

supplements and clarifies his deposition. However, for example, in Dickie's deposition he testified that the reason he purchased the bike was that he wanted to ride it on the street and on bike trails. Nothing in Dickie's testimony evinced that he relied on any statement that the pedals were made by Cannondale or were made in the USA. Eleven years after his deposition, Dickie's affidavit states that the reason he bought the bike was his reliance on the fact that the bike was made in the USA and had clipless pedals that worked like ski bindings. This is not clarification but contradiction. See *Meier*, 17 Ill. App. 2d at 335; *Fountaine*, 132 Ill. App. 3d at 347. The circuit court properly determined that Dickie's affidavit improperly contradicted his earlier deposition testimony and cannot be used to create a material fact.

¶ 14

#### 1. Breach of Warranties

¶ 15

##### A. Express

¶ 16

We now turn to Dickie's contention that the circuit court erred in granting summary judgment in favor of Cannondale when the court determined that the statements made in Cannondale's brochures regarding the bicycle were not an express warranty. Dickie argues that the statement that the bicycle was "Handmade in the USA" contained in the owner's manual was an express warranty that all of the parts were manufactured in the USA and the fact that the clipless pedals were manufactured in Taiwan was a breach of this express warranty. Dickie contends that this statement was made in a document presented during the bargaining process and became part of the bargain and that he relied on the statement when he purchased the bike.

¶ 17

Cannondale responds that its statement "Handmade in the USA" was not an express warranty that all parts of the bicycle were manufactured in the USA. Cannondale contends that it never warranted the nation or state of origin of the manufacturer of the component part clipless pedals. Cannondale asserts it never made an affirmation or a promise that each and every

component part of the bicycle was made by Cannondale. No documents published by Cannondale stated that it manufactured all components; in fact, Cannondale manufactures the frame of the bicycle at its factory in Pennsylvania, after which the component parts are added. Cannondale claims that in the absence of any representation as to where the clipless pedals were manufactured, there was no express warranty.

¶ 18 Dickie also argues that the statement that the clipless pedals "work like ski bindings" contained in the owner's manual was a breach of an express warranty because there was no automatic emergency release mechanism. Dickie contends that he relied on this statement and understood it to mean that, like ski bindings, the pedals would release upon exertion of force in order to prevent injuries, and became a basis for the purchase.

¶ 19 Cannondale responds that nothing in the brochures states that the pedals would automatically disengage in emergency situations. Cannondale maintains that the phrase "works like ski bindings" is a reference as to how to clip your foot into the pedal. Cannondale argues that when read in the context in which the statement was used, the words describe the way in which clipless shoes are secured to the pedal, so that the foot will not come loose involuntarily. Cannondale claims that in regards to disengaging from the pedal, there is nothing in the brochures that states that the pedals will automatically disengage in an emergency. Cannondale contends that the phrase was not an express warranty that the shoe would involuntarily release during an emergency. Cannondale additionally argues that the service instructions gave specific instructions for disengaging the pedals by "twisting your heel to the outside."

¶ 20 Cannondale further responds that Dickie did not consider this phrase when he purchased the bicycle. Cannondale points to Dickie's interest in a bicycle that was made to ride on streets as well as bike trails, and Dickie's own deposition testimony that the pedals were not a

consideration in the purchase of the bicycle. Cannondale claims that these admissions are conclusive evidence that the statement was not a basis of the bargain between the parties.

¶ 21 Whether an express warranty exists, is to be determined by the language used and the surrounding circumstances of the parties. *Id.* Express warranties are enforceable if the statements at issue are: (1) affirmations of fact or promise which relate to the goods and become part of the basis of the bargain; or (2) descriptions of the goods which are made part of the basis of the bargain. 810 ILCS 5/2-313 (West 1998); see *Redmac, Inc. v. Computerland of Peoria*, 140 Ill. App. 3d 741, 743 (1986). If the goods fail to conform to the affirmations or promises, the seller may be held accountable for breach of warranty. *Weng v. Allison*, 287 Ill. App. 3d 535, 537 (1997).

¶ 22 We find that Cannondale's representations did not create an express warranty. There was no promise that the pedals would automatically disengage on impact. Also, Cannondale's service instructions explained to Dickie how to disengage from the pedal. Further, the "Handmade in the USA" statement was general and was not a promise that all components were made in the U.S.A. Cannondale's promise was that the completed bicycle was assembled in the U.S. and that is a true statement. Therefore, summary judgment was appropriate because there was no express warranty.

¶ 23 B. Implied

¶ 24 Dickie contends that the circuit court erred in granting summary judgment in favor of Cannondale when the court determined that Cannondale's and RRB's representations were not an implied warranty for a particular purpose. Dickie claims that he explained to a salesperson at RRB what he was looking for in a bicycle and that he relied on the salesperson's expertise and knowledge with respect to Cannondale's bicycle and purchased the bicycle pursuant to this

expertise. Dickie argues that when the pedals did not disengage they were unfit for the purpose for which Dickie intended them. Dickie maintains that the warranties made by Cannondale through its registered agent, RRB, created an implied warranty of fitness for a particular purpose, which Cannondale breached.

¶ 25 Cannondale responds that in order to breach an implied warranty, Dickie had to prove that the pedals were not fit for the particular purpose for which they were used. Cannondale argues that the pedals were fit for their intended purpose and the design of the pedal met industry standards and is used industry wide. Cannondale points to Dickie's expert witness's testimony that the release mechanism on the pedal was common. In response to the question by Cannondale's attorney, "Do you have an opinion as to whether the clipless pedals in terms of their functionality, did they function the way they should have, to your knowledge, from what you know of the case?" Dickie's expert witness responded "As far as I know, they did." Cannondale claims that Dickie has proffered no evidence in support of his claim that the pedals were not fit for the purpose they were designed for.

¶ 26 Cannondale further responds that it is not liable for RRB's salesperson's statements because there is no privity, as RRB is not an employee of Cannondale, acting within the scope of employment, at the time the alleged representations were made. Cannondale maintains that it cannot be held liable for Dickie's reliance on statements made by RRB personnel and regardless, the bicycle suited the particular purpose for which Dickie purchased it.

¶ 27 To prove a breach of an implied warranty of fitness for a particular purpose, a plaintiff must show (1) a sale of goods, (2) that the seller had reason to know of any particular purpose for which the goods are required, (3) that plaintiff, as buyer of the goods, was relying upon seller's skills or judgment to select suitable goods, and (4) that the goods were not fit for the particular



purpose for which they were used. *Crest Container Corp. v. R.H. Bishop Co.*, 111 Ill. App. 3d 1068, 1073–74 (1982). Our courts have found that a cause of action for breach of an implied warranty requires only a showing that the goods are unfit for their intended purpose, regardless of whether they contain a “defect.” *Malawy v. Richards Manufacturing Co.*, 150 Ill. App. 3d 549, 560 (1986); *Maldonado v. Creative Woodworking Concepts, Inc.*, 342 Ill. App. 3d 1028, 1034 (2003).

¶ 28 The circuit court, in its memorandum opinion and order, found that Dickie's expert testified that the pedals were fit for their intended purpose and performed as designed. The court concluded that there was no evidence in the record to support any breach of implied warranty.

¶ 29 We agree and find no evidence of a breach of an implied warranty of fitness for a particular purpose. Dickie testified at his deposition that he purchased the bike to ride on streets and trails, not anything relating to the pedals or where the pedals were manufactured. Dickie failed to establish that the pedals were not fit for the purpose in which they were intended. Therefore, summary judgment was appropriate because there was no evidence of a breach of implied warranty of fitness for a particular purpose on the pedals or any part of the bicycle. Dickie failed to show any material facts that were at issue.

¶ 30 2. Fraudulent Inducement and Negligent Misrepresentation

¶ 31 Turning to Dickie's final argument on appeal, he contends that Cannondale's statements fraudulently induced him to purchase the bicycle. Dickie argues that the statement that the bicycle was "Handmade in the USA" does not distinguish which parts were made in the U.S.A. and which were not. Dickie maintains that there is no indication that any parts were made outside of the USA and that this omission was deceptive and false on the part of Cannondale.

¶ 32 Cannondale responds that it never promised nor published any documents stating it manufactured each and every component of the bicycle. Cannondale claims that Dickie merely assumed that the pedals had been manufactured by Cannondale in the USA. Cannondale also maintains that Dickie has proffered no evidence that he relied on the identity of the manufacturer of the clipless pedals in purchasing the bicycle.

¶ 33 Dickie also contends that he relied on the negligent misrepresentation that the pedals "work like ski bindings" and was operating under the assumption that the clipless pedals would involuntarily release upon impact. Dickie argues that this statement contained in the owner's manual is false and that this false representation induced him to purchase the bicycle resulting in his injuries. Dickie further maintains that his expert witness testified that had the pedals worked like ski bindings with an involuntary release mechanism Dickie's injuries would have been different and much less severe.

¶ 34 Cannondale responds that nowhere is an automatic release mentioned in the brochures. Cannondale argues that the owner's manual describes how the rider engages his foot into the pedal. The manual makes no mention of disengaging from the clipless pedal. The service instructions, however, give specific instructions for disengaging, directing the rider to "remove by twisting your heel to the outside." Cannondale claims that Dickie testified that he recalled no conversation with anyone regarding automatic pedal release. Cannondale further claims that Dickie and Boi both testified to the fact that Dickie received clear instructions on the use of the pedals. Cannondale contends that there was no misrepresentation as to the manner in which the pedals worked and there was no reliance upon how the pedals worked at the time of purchase.

¶ 35 Cannondale further responds that Dickie failed to prove that his injuries would have been less severe had the pedals involuntarily released. Cannondale argues that Dickie's expert testified

only that Dickie's injuries may have been different if there was an automatic release, but the expert could not testify as to what injuries Dickie would have suffered, or whether they would have been greater or less than what Dickie did suffer.

¶ 36 Fraudulent inducement is a type of common law fraud, whose elements are the same as the elements of the tort of negligent misrepresentation. *Avon Hardware Co. v. Ace Hardware Corp.*, 2013 IL App (1st) 130750, ¶ 15. The elements for negligent misrepresentation which a successful plaintiff must plead and prove are quite similar to the elements of the tort of fraudulent misrepresentation. In *Soules v. General Motors Corp.*, 79 Ill. 2d 282, 286 (1980), the elements for fraudulent misrepresentation were formulated as: (1) a false statement of material fact, (2) knowledge or belief of the falsity by the party making it, (3) intention to induce the other party to act, (4) action by the other party in reliance on the truth of the statements, and (5) damage to the other party resulting from such reliance. Negligent misrepresentation has essentially the same elements, except the mental state is different. The defendant need not know that the statement is false. See *Bd. of Educ. of City of Chicago v. A, C & S, Inc.*, 131 Ill. 2d 428, 452 (1989). His own carelessness or negligence in ascertaining its truth will suffice. *Id.* (See M. Polelle & B. Ottley, Illinois Tort Law 265 (1985)). For negligent misrepresentation, a plaintiff must also prove that the defendant owes a duty to the plaintiff to communicate accurate information. See *Bd. of Educ. of City of Chicago*, 131 Ill. 2d at 452.

¶ 37 Failure to prove justifiable reliance is fatal to claims of fraudulent and negligent misrepresentation. *Neptuno Treuhand-Und Verwaltungsgesellschaft Mbh v. Arbor*, 295 Ill. App. 3d 567, 575 (1998). Whether Dickie's reliance is justifiable depends on the circumstances. “[A]ll of the facts that the plaintiff knew, as well as those facts the plaintiff could have learned through

the exercise of ordinary prudence, are taken into account.” *Simon v. Wilson*, 291 Ill. App. 3d 495, 505 (1997).

¶ 38 The circuit court, in its memorandum opinion and order, determined that nothing in Dickie's testimony evinced that he relied on any statement that the pedals were made by Cannondale or were made in the USA. The court explained that Dickie failed to show that he justifiably relied on any statements regarding the location of the manufacturer of the pedals or that he was injured as a result.

¶ 39 The court further found there was no evidence that anyone represented to Dickie that the pedals worked like ski bindings in that they would automatically disengage in an emergency situation. The court reasoned that the evidence showed that Dickie understood that he had to manually engage and disengage from the pedals. The court concluded that there was no evidence of misrepresentation or of justifiable reliance. The court also determined that Dickie's expert testimony on whether Dickie's injuries would have been less severe if the pedals had an automatic release mechanism was speculative, and in fact, he could not testify in that regard with certainty due to the many variables involved. The court concluded that summary judgment in favor of Cannondale was appropriate.

¶ 40 We agree and find no evidence of fraudulent inducement or negligent misrepresentation. As the circuit court stated, there is no evidence of justifiable reliance on the part of Dickie. Dickie was informed on how to disengage from the pedals and no one represented that the pedals would automatically disengage upon impact. Therefore, summary judgment was proper because Dickie could not establish a claim for fraudulent inducement or negligent misrepresentation.

¶ 41 In sum, we conclude that Dickie did not rely on Cannondale's statements in purchasing the bicycle; there is no question of material fact and the circuit court's order granting Cannondale summary judgment is proper.

¶ 42 CONCLUSION

¶ 43 For the foregoing reasons judgment of the circuit court is affirmed.

¶ 44 Affirmed.