

Bonus Section D

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

STEPHANIE M. BOREN and KIMBERLY
J. VANBIBBER

94 OCT 26 PM 12:42
PLAINTIFFS

BY
JACQUETTA ALEXANDER
PULASKI CO. CIRCUIT CLERK

vs.

No. 93-6701

WORTHEN NATIONAL BANK OF ARKANSAS,
INC.; WORTHEN BANKING CORPORATION,
individually and d/b/a EXPRESS BANK
NETWORK; DIEBOLD, INCORPORATED; and
DIEBOLD HOLDING COMPANY, INC.

DEFENDANTS

ORDER

Pending before the Court is the Motion for Summary Judgment filed pursuant to Rule 56 of the Arkansas Rules of Civil Procedure by Defendants Diebold, Incorporated and Diebold Holding Company, Inc. The Court has reviewed the respective parties' briefs submitted in conjunction herewith as well as the oral arguments of counsel and the pleadings and discovery taken in this matter.

This action arises from the gunshot wounds suffered by Plaintiffs Stephanie Boren and Kimberly VanBibber on or about July 21, 1993 after Ms. Boren had used an automated teller machine ("ATM") at the Worthen National Bank of Arkansas branch located on Baseline Road in Little Rock, Arkansas.

The Plaintiffs essentially allege two separate causes of action against these Defendants, one for products liability and one for negligence; the Plaintiffs allege that the ATM in question was inherently dangerous and therefore these Defendants are liable under strict liability pursuant to the Arkansas Product Liability Act. Additionally, the Plaintiffs argue that these Defendants were negligent and that, in fact, their acts constituted willful and wanton acts of misconduct.

With respect to the products liability count, the Court finds as a matter of law that this ATM was not a defective product within the meaning of A.C.A. §16-116-102 et seq., nor that the product was unreasonably dangerous.

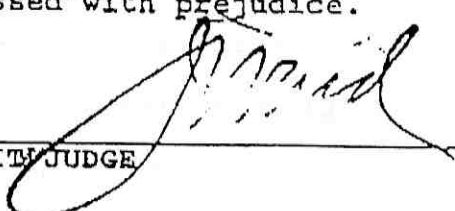
With respect to the negligence count, the Court finds as a matter of law that the Plaintiffs' case lacks the essential elements necessary to establish negligence on the part of these Defendants, i.e. a duty owed by the Defendants to the Plaintiffs, a breach of the duty, foreseeability that a breach of the duty would cause injury to the Plaintiffs, the breach of the duty being the proximate cause of the Plaintiffs' injury, and the lack of an intervening cause of injury. "The question of what duty is owed is always a question of law and never one for the jury." Keck v. American Employment Agency, Inc., 279 Ark. 294, 652 S.W.2d 2 (1983).

"The existence of a duty depends upon whether a relation exists between the parties that the community will impose a legal obligation upon one for the benefit of the other." Prosser and Keeton on Torts, 235 (5th Ed. 1983). Register v. Oaklawn Jockey Club, Inc., 306 Ark. 318, 811 S.W.2d 315 (1991). Courts have imposed a duty upon defendants when the danger to the plaintiff was reasonably foreseeable. Larson Machine, Inc. v. Wallace, 268 Ark. 192, 210, 600 S.W.2d 1, 10-11 (1980). Arkansas law bases liability for negligence on the part of a manufacturer or vendor on foreseeability rather than privity of contract. Green v. Equitable Powder Manufacturing Company, 95 F.Supp. 127 (1951).

The Court finds that the Defendants Diebold, Incorporated and Diebold Holding Company, Inc. owed no duty to Stephanie Boren or Kimberly VanBibber to protect them from the injuries they suffered. Although the Plaintiffs do contend that this product was defective, the Court has already stated that in its opinion there was no such defect, and the Plaintiffs can point to no federal or state statutes that were violated by these Defendants. There is no jurisdiction which has extended liability to the manufacturers of ATMs on the grounds asserted by these Plaintiffs, and the Court therefore concludes there is no genuine issue as to any material fact and that these Defendants are entitled to summary judgment as a matter of law.

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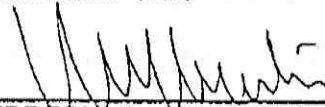
IT IS THEREFORE CONSIDERED, ORDERED, AND ADJUDGED that the Motion for Summary Judgment filed by Defendants Diebold, Incorporated and Diebold Holding Company, Inc. is hereby granted; summary judgment is hereby entered in favor of both Defendants, and the Complaint against them is dismissed with prejudice.



 CIRCUIT JUDGE

DATE 10-26-94

PREPARED BY:



 WILLIAM P. DOUGHERTY, #73028
 Hoover, Dougherty & Kooistra
 111 Center Street, Suite 1100
 Little Rock, AR 72201

IN THE CIRCUIT COURT FOR
JEFFERSON COUNTY, ALABAMA

SCOTT G. JOHNSON, etc.,)
)
) Plaintiff)
vs.)
)
)
DIEBOLD, INC., et al,)
)
) Defendants)

CIVIL ACTION NO.
CV-92-06253

ORDER

This matter has come on for oral argument of the motion for summary judgment by the defendant, Diebold, Incorporated. The defendant asserts in its motion and in its brief and supporting evidence that there is no genuine issue of law or fact and that Diebold, Incorporated is entitled to judgment as a matter of law.

This Court has reviewed all of the briefs and understands that this is a products liability action against Diebold, Incorporated wherein it is alleged that an Automated Teller Machine caused or contributed to cause the death of the plaintiff's decedent, Sharma Johnson. There is no evidence of any product malfunction or defect in the product itself in this case. Further, the defendant, Diebold, Incorporated did not engage in the installation, location or lighting associated with this Automated Teller Machine. There is no evidence that any act or omission by Diebold, Incorporated cause or contributed to cause the death of plaintiff's decedent.

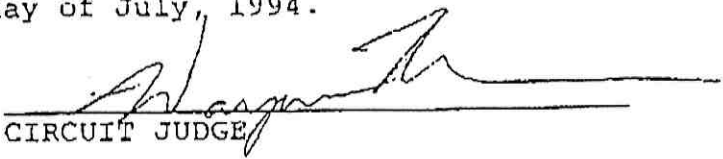
Therefore, based upon Diebold's answer, its motion, its memorandum of law and the evidence submitted in support of the motion, the Court does hereby

ORDER, ADJUDGE, and DECREE that the motion for summary judgment filed by the defendant, Diebold, Incorporated is due to be



and is herewith GRANTED, and the defendant is dismissed from this action. As this judgment is based on the law and facts of this case as it pertains to this particular defendant, the Court finds no just reason for delay in the entry of judgment and the Clerk is hereby directed to enter a final judgment pursuant to Rule 54(b) of the Alabama Rules of Civil Procedure.

DONE and ORDERED this ^{7th} ~~8th~~ day of July, 1994.


CIRCUIT JUDGE