IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

PAMELA CHELCHER, Individually and on behalf of her minor son, ANDY CHELCHER,

Plaintiff,

v.

COCA-COLA BOTTLING CO. OF PUERTO RICO, INC., FLORIDA COCA-COLA BOTTLING CO., and UNITED CORP., d/b/a PLAZA EXTRA,

Defendant.

CIVIL NO: 1277/1986

ACTION FOR DAMAGES

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PETERSEN, Judge

MEMORANDUM OPINION
August 20, 1987

FACTS

On or about October 26, 1986, plaintiffs Pamela Chelcher and her minor son Andy Chelcher purchased a can of the beverage Coca-Cola from defendant manufacturer Coca-Cola Bottling Company of Puerto Rico and sold by defendant Florida Coca-Cola Bottling Company. Defendant Florida Coca-Cola Bottling Company is a dealer of beverages. (See Para. 5 of Plaintiff's Complaint and Para. 5 of Defendant's Answer.) Alleging that the beverage was "not fit and wholesome for human consumption," plaintiffs filed an action for damages resulting from their injuries.

DISCUSSION

Federal Rules of Civil Procedure 56(b) permits any party to a civil action to move for a summary judgment when he believes there is no genuine issue of material fact and that he is thus entitled to prevail as a matter of law. Anderson v. Liberty Lobby, Inc., 471 U.S. 1134 (1986), Scott v. Plante, 532 F.2d 939 (3d Cir. 1976), Carino v. Golden, 19 V.I. 371 (Terr. Ct., St. Croix 1983), Walker v. Skyclimber Inc., 20 V.I. 293 (D.V.I. 1983).

Defendant Florida Coca-Cola Bottling Company, a dealer, alleges that it can not be held liable for plaintiff's injuries and thus is entitled to judgment as a matter of law. In support of this claim, defendant Florida Coca-Cola Bottling Company notes that it (1) did not manufacture the product and (2) it has no ownership interests, similarity of officers or directors with fellow defendant Coca-Cola Bottling Company of Puerto Rico. In essence, defendant Florida Coca-Cola Bottling Company is arguing that only manufacturers and their corporate affiliates can be held liable in the present case. But, defendant Florida Coca-Cola Bottling Company's argument has no basis in current product liability law. Under the principle of strict liability, both manufacturers and sellers are liable for products that they have placed in the stream of commerce. Thus sellers are liable, if among others things, the seller is engaged in the business of selling such products. 2 Restatement Torts 2nd Section 402A Conti v. Ford Motor Co., 743 F.2d 193 (3rd Cir. 1984) Dougherty v. Hoovier Chemical Corp., 340 F.2d 174 (3rd Cir. 1976).

To escape the tight grasp of product liability law, defendant Florida Coca-Cola Bottling Company must prove that it is only an occasional seller of the product and thus unable to effectively spread the cost of the defective product through an increase in prices or insurance. See 2 Restatement Torts, Supra, Comment F., McKenna v. Art Pearl Worvis, Inc. 310 A.2d 677 (PA Super, 1973), Balido v. Improved Machinery Inc., 105 Cal. Rptr. 890 (Ct. App. 1972). As defendant has not presented any evidence casting itself in this category, the court can not grant this protective shield.

This Court has not been made aware of any product liability law that would effectively exclude defendant Florida Coco-Cola Bottling Company from the present action for damages.

The defendant's motion for summary judgment attempts to distinguish itself as a non-manufacturing entity separate and distinct from fellow defendant Coca-Cola Bottling Company of Puerto Rico. However, as manufacturers and dealers are both liable for injuries, defendant Florida Coca-Cola Bottling Company's distinctions are irrelevant ones. Accordingly, the motion for summary judgment is denied.

EILEEN R. PETERSEN
JUDGE