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# Manufacturer's Design of Bakery Equipment Not Unreasonably Dangerous

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## New Jersey provides money to homeowners for repairs

New Jersey took an alternative approach to the FRT plywood controversy by helping to finance roof repairs for affected homeowners. In 1991, the New Jersey General Assembly responded to public complaints and created a $54 million New Home Warranty Security Fund by imposing fees on builders in the state. Builders are now required to insure all new homes for ten years by enrolling in warranty plans financed through the new fee. In addition to FRT plywood claims, the Home Warranty Security Fund will cover all repairs to newly constructed homes within the ten year time period.

# *Manufacturer's design of bakery equipment not unreasonably dangerous*

*by Joanne T. Hannaway*

In ***Ferguson v. F.R. Winkler GMBH & Co. KG*, 79 F.3d 1221 (D.C. Cir. 1996)**, the United States Court of Appeals for the District of Columbia Circuit reversed the United States District Court for the District of Columbia, holding that a corporate manufacturer is not strictly liable for injuries caused by its machinery where the machine was not sold in an unreasonably dangerous condition and included warnings alerting persons to the dangers of misuse.

## Bakery modifies machinery

In 1975, Ottenburg Bakery ("the bakery") purchased a string-line proofer ("proofer") from appellant Winkler GMBH & Co. KG ("Winkler"), a corporate manufacturer of bakery line equipment. A proofer transports dough through the bakery production line. This piece of equipment features a removable panel providing limited access for maintenance purposes. Because the proofer's moving parts create a risk of danger, Winkler provided warnings in both the instruction manual and on the machine itself, cautioning users to refrain from reaching inside the machinery while in motion.

The bakery discovered that, from time to time, dough became clogged in the machine. However, the bakery discouraged its employees from shutting down the production line. Subsequently, the bakery replaced one of the proofer's exterior panels with a hinged, plexiglass door. This hinged door allowed, and arguably, encouraged employees to reach into the machine to clear clogged dough while the machine remained in motion. Appellee Bernie Ferguson ("Ferguson") became permanently disabled while reaching into the proofer to remove dough. Ferguson brought suit against Winkler, alleging that the proofer was unreasonably dangerous because of a design defect and that Winkler failed to warn of such danger. The district court found for Ferguson, and Winkler appealed.

## Winkler's proofer not defective in design

In order to determine whether Winkler was strictly liable for Ferguson's injury, the court applied the test adopted in *Warner v. Fruehauf Trailer Co. v. Boston*, 654 A.2d 1272, 1276 (D.C. Cir. 1995) which held that a manufacturer is strictly liable for a design defect if the product is sold in a defective condition which is unreasonably dangerous to the user. *Id.* Thus, the court held that Winkler was not liable to Ferguson.

The court determined that the proofer did not create a foreseeable likelihood that employees would reach into the machine at the time the proofer left Winkler's control. Although the court opined that a safety device may have reduced the risk of injury to those who reach inside the proofer, it held that the proofer's design did not intend for operators to reach inside the machine. Hence, an unreasonable risk that workers engaged in standard operation would reach into the moving proofer did not exist. The court noted the presence of a warning reminding users to turn the machine off before cleaning, etc. In addition, the court found that Winkler could not have foreseen the misuse of the proofer of the nature

present in this case. Winkler had no reason to believe that the bakery would modify the proofer in such a dangerous manner and had no actual knowledge of other bakeries in the industry making smiliar alterations.

### Winkler's warnings adequate

The court held that both the instruction manual warning and the warning on the proofer itself were adequate. Thus, the court concluded that Winkler was entitled to rely on the bakery to pass along its warnings. The threshold question is whether the "warnings made the product safe at the time it left the manufacturer's control." *Ferguson,* at 1226-27. Winkler met the threshhold by including two warnings regarding reaching into the moving machine.

***Editor's Note:*** The Supreme Court of the United States denied writ of certiorari on October 21, 1996. ***Ferguson v. Winkler GMBH & Co. KG*, 117 S. Ct. 360 (U.S., Oct. 21, 1996) (No. 96-289).**

# *Acquisition of credit report did not violate Fair Credit Reporting Act (FCRA)*

*by Patrick McGovern*

In ***Korotki v. Attorney Services Corp., Inc.*, 931 F. Supp. 1269 (D. Md. 1996)**, the United States District Court for the District of Maryland held that the acquisition of a credit report to obtain an alternate address at which to serve legal papers did not violate the Fair Credit Reporting Act ("FCRA").

### Credit report provides address

The plaintiff, Abraham Korotki ("Korotki"), entered into a real estate development contract with Baltimore County. As part of the project, Baltimore County awarded a contract to Angelozzi Brothers, Inc. ("Angelozzi") to install roads and utility mains at the development site. While the construction was underway, Angelozzi submitted an invoice for $6,000 to Korotki for compaction services it had performed. Korotki refused to pay, claiming that Angelozzi's original contract with Baltimore County required Angelozzi to perform the services and that Angelozzi had failed to appropriately perform the work.

Angelozzi then hired a law firm, Thomas, Ronald & Cooper ("TRC"), to collect the disputed debt. An attorney at the firm, Schmitt, enlisted the aid of Attorney Services Corporation ("ASC") to post the development property with a notice of a mechanic's lien. Instead of posting the notice on the development property, however, ASC posted it at Korotki's personal residence. By the time anyone discovered the mistake, the 90-day notice period for establishing the mechanic's lien had expired.

Schmitt then instructed ASC to serve Korotki personally with the mechanic's lien papers. However, ASC was unable to serve Korotki at the addresses which ASC had available. At that point, ASC, without any specific authorization from Korotki or Schmitt, requested a credit report from Equifax seeking to obtain an alternate address for Korotki. ASC transmitted a copy of the report to Schmitt, who claimed that neither he nor his law firm used the report for any purpose.

### Violation of FCRA alleged

After learning that ASC had obtained his credit report, Korotki filed suit against ASC, Schmitt, and TRC, alleging willful and negligent violations of the FCRA, 15 U.S.C. § 1681, the Maryland Consumer Credit Reporting Agencies Act ("CCRAA") and invasion of privacy. Korotki did not allege that any of the defendants actually used the credit report for any purpose. The defendants, in turn, filed motions for summary judgment.

In deciding the defendants' motions for summary judgment, the district court addressed four issues: 1) whether the credit report ASC obtained was a "consumer report" to which the FCRA applies; 2) if the credit report was a consumer report, what did the FCRA require of the