

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

March 15, 2007

No. 06-31061

Charles R. Fulbruge III
Clerk

SUZANNE ATKINSON; ROBERT ATKINSON,

PLAINTIFFS-APPELLANTS,

VERSUS

DOLGENCORP INC., doing business as Dollar General
Corp.,

DEFENDANT-APPELLEE.

Appeal from the United States District Court for the
Western District of Louisiana

(5:05-CV-966)

Before DeMOSS, STEWART, and PRADO, Circuit Judges.

PER CURIAM:*

Plaintiffs-Appellants Suzanne and Robert Atkinson (“Appellants”) challenge the district court’s grant of summary judgment in favor of Defendant-Appellee Dolgencorp Inc. (“Appellee”) dismissing Appellants’ strict liability claim.

Suzanne Atkinson (“Atkinson”) walked in to Appellee’s general store intending to buy a chair. She saw and inquired about a plastic chair that she was considering purchasing. Appellants allege that when Atkinson sat in the chair, it collapsed, injuring her.

Appellants filed suit alleging strict liability pursuant to LA. CIV. CODE. ANN. ART. 2317 (1996). Appellee moved

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

for summary judgment, and the district court granted the motion. This timely appeal followed.

Appellants concede that, under LA. CIV. CODE. ANN. ART. 2317.1, Appellee is liable only for damage caused by a defect that it knew or should have known existed. Appellants' only attempt to satisfy their burden is the doctrine of *res ipsa loquitur*.

The district court, applying Louisiana precedent, found the doctrine inapplicable. After reviewing the issue *de novo*, we agree with the district court that, for the reasons stated in its written memorandum, *res ipsa loquitur* does not apply. Louisiana courts have not extended the doctrine to new chairs that break in a retail stores, and sitting as an *Erie* court, we see no reason to extend Louisiana law.

AFFIRMED.