

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

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CA 16-00835

PRESENT: SMITH, J.P., CARNI, NEMOYER, CURRAN, AND TROUTMAN, JJ.

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DAVID J. PACY, INDIVIDUALLY AND AS PARENT AND  
NATURAL GUARDIAN OF KIMBERLY M. PACY, AN INFANT,  
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

COWEN HOLDINGS, INC., ET AL., DEFENDANTS,  
RAYTHEON COMMERCIAL LAUNDRY LLC, INDIVIDUALLY AND  
DOING BUSINESS AS ALLIANCE LAUNDRY HOLDINGS LLC  
AND AS SUCCESSOR IN INTEREST TO RAYTHEON COMPANY,  
ALLIANCE LAUNDRY HOLDINGS LLC, FORMERLY KNOWN AS  
RAYTHEON COMMERCIAL LAUNDRY LLC, AND ALLIANCE  
LAUNDRY SYSTEMS LLC, DEFENDANTS-RESPONDENTS.

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LIPSITZ GREEN SCIME CAMBRIA LLP, BUFFALO (JOHN A. COLLINS OF COUNSEL),  
FOR PLAINTIFF-APPELLANT.

CHELUS, HERDZIK, SPEYER & MONTE, P.C., BUFFALO (THOMAS J. SPEYER OF  
COUNSEL), FOR DEFENDANTS-RESPONDENTS.

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Appeal from an order of the Supreme Court, Chautauqua County  
(Paul Wojtaszek, J.), entered February 2, 2016. The order granted the  
motion of defendants-respondents for summary judgment dismissing  
plaintiff's complaint and all cross claims against them.

It is hereby ORDERED that the order so appealed from is  
unanimously affirmed without costs.

Memorandum: On July 24, 2011, Kimberly M. Pacy, plaintiff's  
daughter, was working at Webb's Year-Round Resort as a summer part-  
time housekeeper. One of the duties of plaintiff's daughter involved  
laundering linens and towels for the resort. When attempting to take  
a load of towels out of the washer, plaintiff's daughter's right arm  
became entangled and twisted. As a result, plaintiff's daughter  
sustained multiple injuries.

On February 14, 2012, this personal injury action was commenced  
against defendants Raytheon Commercial Laundry, LLC, individually and  
doing business as Alliance Laundry Holdings LLC and as successor in  
interest to Raytheon Company, Alliance Laundry Holdings LLC, formerly  
known as Raytheon Commercial Laundry LLC, and Alliance Laundry Systems  
LLC (collectively, Alliance) as manufacturers of the washing machine.  
Following discovery, Alliance moved for summary judgment dismissing  
the complaint and any cross claims against it, contending that the

defects alleged by plaintiff were not the proximate cause of the accident and that the washing machine was not defectively designed. Supreme Court granted the motion, and we affirm.

On a motion for summary judgment, a defendant manufacturer meets its burden by establishing that its product was safe and complied with applicable industry standards (see *Ross v Alexander Mitchell & Son, Inc.*, 138 AD3d 1425, 1426; *Wesp v Carl Zeiss, Inc.*, 11 AD3d 965, 967; see generally *Romano v Stanley*, 90 NY2d 444, 452). Here, Alliance met its burden by establishing as a matter of law that the washing machine was a safe product because it was equipped with two devices, i.e., a door interlock and microswitch. Those devices automatically deactivate the spinning of the drum when the door is open, and the spinning concludes within a few seconds thereafter. Alliance also submitted proof establishing that the washing machine complied with industrial and safety standards and that it was reviewed and certified by several national safety organizations (see *Ross*, 138 AD3d at 1426; *Wesp*, 11 AD3d at 967; see generally *Romano*, 90 NY2d at 452). Plaintiff failed to meet his burden in opposition "by establishing that the product 'was not reasonably safe and that it was feasible to design the product in a safer manner' " (*Wesp*, 11 AD3d at 967; see *Voss v Black & Decker Mfg. Co.*, 59 NY2d 102, 108; see also *Hoover v New Holland N. Am., Inc.*, 23 NY3d 41, 53-54; see generally *Zuckerman v City of New York*, 49 NY2d 557, 562). Although plaintiff's expert averred that there should have been a braking mechanism present to "immediately slow and stop" the drum upon the door being opened, he failed to identify a suitable available modification that could have been made to stop the drum instantaneously, in contrast to the design at issue herein, which immediately slows the drum. Plaintiff's expert also failed to identify any regulations or industry standards requiring such a mechanism in a washing machine (see *Rabon-Willimack v Robert Mondavi Corp.*, 73 AD3d 1007, 1009), and he did not indicate whether any other manufacturers were using such modifications in their washing machines during the relevant time period (see *Reis v Volvo Cars of N. Am.*, 24 NY3d 35, 39; see also *Cwiklinski v Sears, Roebuck & Co., Inc.*, 70 AD3d 1477, 1480).

Further, although a manufacturer has a duty to warn against "latent dangers resulting from foreseeable uses of its product of which it knew or should have known" (*Liriano v Hobart Corp.*, 92 NY2d 232, 237), it is not required to warn against dangers that are "readily apparent as a matter of common sense" (*id.* at 242). Users who are aware of an inherent danger as a result of their experience also need not be warned of that danger (see *Lamb v Kysor Indus. Corp.*, 305 AD2d 1083, 1084; see also *Liriano*, 92 NY2d at 241-242). Here, Alliance established in its motion submissions that sufficient warnings were placed on the washing machine, and plaintiff failed to raise a triable issue of fact (see *Zuckerman*, 49 NY2d at 562). Moreover, the testimony of plaintiff's daughter established that the daughter was aware of the danger of the moving drum, inasmuch as she usually checked to see if the drum was moving before reaching into the washing machine. Thus, even assuming, arguendo, that the warning label was insufficient as opined by plaintiff's expert, plaintiff

presented no proof that had an additional label existed to warn of the danger of the moving drum, his daughter would have heeded it.

Entered: March 31, 2017

Frances E. Cafarell  
Clerk of the Court