

Lasala v SodaStream USA

2017 NY Slip Op 30109(U)

January 18, 2017

Supreme Court, New York County

Docket Number: 155813/2013

Judge: Carol R. Edmead

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 35

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CARMEL LASALA,

Plaintiffs,

Index No. 155813/2013

-against-

DECISION/ORDER

SODASTREAM USA, SODASTREAM
INTERNATIONAL, LTD., and BED BATH AND
BEYOND, INC.,

Motion Seq. 002

Defendants.
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HON. CAROL R. EDMEAD, J.S.C.:

MEMORANDUM DECISION

In this personal injury action, plaintiff Carmel Lasala ("Plaintiff"), alleges that on approximately January 16, 2012, she injured her right hand while operating a defective SodaStream Genesis G100 water-carbonating machine.

Defendants, SodaStream USA, Inc., SodaStream International, Ltd. ("SST"), and Bed Bath and Beyond, Inc. (collectively "Defendants"), now move for an order granting partial summary judgment in favor of Defendants pursuant to CPLR 3212, dismissing Plaintiff's claims for: (1) negligence in her First Cause of Action for manufacturing defect only; (2) strict liability in her Third Cause of Action for manufacturing defect only; and (3) breach of implied and/or express warranty in her Second Cause of Action.

Plaintiff opposes the motion and cross-moves for summary judgment based on "strict liability regarding a manufacturing defect and for breach of implied and/or express warranties."

BACKGROUND

The SodaStream Genesis G100 is a water-carbonating machine composed of a drinksmaker machine ("Genesis") and plastic bottle ("Bottle") (Def. Ex. I, User Manual for

SodaStream Genesis G100 machine, at p. 22). To carbonate water with the Genesis, the user first fills the Bottle with drinking water absent flavorings or additives, and screws it into the Genesis. Next, the user must press the carbonating button in short phases until the user hears a buzzing noise; three presses produce a standard fizz, while additional presses produce a stronger fizz. To remove Bottle, the user must pull it forward and unscrew it in a counterclockwise motion (*Id.* at 2).

Plaintiff testified at her deposition that she received the Genesis from her son in law as a mother's day gift in May 2011 (Pla. Dep., at 14:10-13). Plaintiff used the Genesis up to two times per week in the first two to three months after receiving it, but stopped using the machine in the summer of 2011, and began using the Genesis in October 2011 up to two times per week until the incident (*Id.* at 25:25-26:6; 26:25-27:8). Plaintiff used the Genesis free from issue up until the date of the incident (*Id.*). Plaintiff testified that on or about January 16, 2012, she pressed the carbonating button five times (*Id.* at 66:16-20). She acknowledges that she did not hear the buzzing noise prior attempting to unscrew the Bottle (*Id.*) As Plaintiff attempted to unscrew the Bottle, she was suddenly unable to hear (*Id.* at 74:25), and noticed a large gash wherein her tendon and bone were visible (*Id.* at 89:25-89:7).

The Complaint alleges the following causes of action: (1) negligent manufacturing, design, assembly, inspection, testing, marketing, selling, failure to properly warn; failure to correct; (2) breach of express and/or implied warranties; and (3) strict liability for manufacturing, design, assembly, inspection, testing, marketing, selling, and failure to properly warn.

Defendants' Motion

In support of their motion for summary judgment to dismiss Plaintiff's claims for

negligence in manufacturing defect, strict liability in manufacturing defect and breach of implied warranty, Defendants argue that Plaintiff's injury was caused by her misuse of the Genesis, and not a manufacturing defect on behalf of Defendants. They argue that Defendants manufactured a safe product, and that Plaintiff did not follow instructions. Specifically, that Plaintiff failed to follow the warning within the user manual that prohibited carbonating drinking water with additives, and failed to follow the accurate method of removing the Bottle from the Genesis by unscrewing the Bottle without first tilting it forward.

Defendants rely on the affidavit of Allan Ring ("Mr. Ring"), the New Product Development and Engineer for SST, and Project Manager for the design and development of the Genesis (Ring Affidavit, Filed June 15, 2016, at ¶ 1). Mr. Ring indicated the subject Genesis was manufactured and assembled in SST's manufacturing plant on or about November 3, 2010, and was inspected and examined prior to shipment to ensure that the Genesis was manufactured to meet design specifications and that there were no defects in the manufacturing and assembly process (*Id.* at ¶ 5). Mr. Ring went on to affirm that the Bottle was also tested to ensure its conformity to SST's specifications (*Id.* at ¶ 6). On November 14, 2013, Mr. Ring inspected the subject Genesis and Bottle at Plaintiff attorney's office and determined that "[a]s manufactured and distributed[, the subject Genesis and Bottle,] were reasonably safe, and if used properly and in accordance with SodaStream's instructions Plaintiff's accident would not have occurred" (*Id.* at ¶ 7). Mr. Ring also concluded that there were "[n]o defects in material or workmanship of the Genesis or bottle, and that the manufacture of the Genesis and bottle did not depart from the state-of-the-art manufacturing process and procedure" (*Id.* at ¶ 8). Mr. Ring confirmed that "[t]he Genesis and bottle, as manufactured and distributed, conformed to its design

specifications," and that neither "[w]as physically flawed, damaged or incorrectly manufactured or assembled when it left SodaStream's control" (*Id.* at ¶ 9, 10).

Finally, Mr. Ring concluded that the cause of the product failure was Plaintiff's misuse of the Genesis. Specifically, he states that "[t]he Genesis machine that was inspected showed evidence of carbonation of water and syrup which lead the pressure valves to seize close, causing over pressurization of the bottle . . . [t]he over pressurized bottle was removed from the machine without tilting the bottle forward. This improper maneuver caused excess torsional stress. The combination of the over pressurized bottle and the excess torsional stress resulted in bottle failure" (*Id.* at ¶ 11).

With regard to Plaintiff's claim for breach of an express warranty, Defendants argue that Plaintiff failed to allege that Defendants breached a specific warranty.

Plaintiff's Opposition and Cross-Motion

In support of her cross-motion for summary judgment, Plaintiff submits the affidavit of her expert engineer, Eric Heiberg, who opines that the manufacturing defect of the Genesis was the safety valve (Heiberg Aff. at, pp. 1, 8, 9).¹ Mr. Heiberg states that the exhaust valve of the subject Genesis was seized and did not open, as it should have, at the time of Plaintiff's incident (*Id.* at 7). According to the engineering drawing provided by Plaintiff, the safety valve was "intended to open and relieve pressure . . . between 10 and 11 bars," or between 145 and 159.5 pressure per square inch ("PSI") (*Id.* at 8). Mr. Heiberg determined that the safety valve on the subject Genesis relieved pressure at a force of 16.2 bars, or 235 PSI, almost 50% higher than intended by the design and close to the bursting pressure of the Bottle, 17 bars (*Id.* at 9).

¹ Mr. Heiberg's Affidavit omits page numbers.

Mr. Heiberg next posits that it is "highly likely" that a manufacturing defect exists in the subject Genesis given that a manufacturing defect exists in an exemplar Genesis. First, the date stamps on the individual parts composing the exemplar and Genesis show that the exemplar and Genesis were manufactured around the same time (*Id.* at 9-10). Next he tested the exemplar and determined that force required to open the safety valve in that machine is 16.5 bars, which fails to meet the design specifications of the Genesis provided by Defendants (*Id.* at 9). He concludes that since both were manufactured around the same time, the subject Genesis has the same defect as the exemplar.

As to the Bottle, Plaintiff asserts that Defendants failed to furnish her with copies of "[e]ither the engineering drawings or the material specifications for the plastic bottle during discovery," and therefore, Mr. Heiberg was unable to perform a comparison (Pl. Opp. and Cross-Motion for Summary Judgment, at p. 16). Mr. Heiberg observed that the thickness of the Bottle varied at different locations without comparing the measurements to the engineering drawing (*Id.* at 10).

Finally, as to Defendants' motion to dismiss Plaintiff's claims for breach of implied and/or express warranty, Plaintiff simply argues that Defendants' motion must fail because the safety valve within the subject Genesis was defective and "it cannot be denied that the bottle exploded causing serious injury" (*Id.* at ¶27). Additionally, Plaintiff, in a conclusory manner, refutes Defendants' claims that the Genesis and Bottle had no defects in material or workmanship and conformed to its design specifications.

Defendants' Reply and Opposition to Cross-Motion

Defendants' opposition argues that Plaintiff failed to present a factual issue requiring

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trial. Specifically, Mr. Heiberg fails to identify a defect in the manufacturing process of the Genesis.

Plaintiff also argues that Mr. Heiberg made several mistakes in his analysis of the Genesis. Mr. Heiberg measured the force required to open the valve using "hypothetical calculations" and without actually dissecting the incident valve; second, Heiberg's measurement of the force released by the valve was incorrect; and third, Mr. Heiberg's conclusion that the exemplar machine was manufactured around the same time as the Genesis fails to yield the conclusion that the Genesis was defective.²

Further, Defendants argue that Mr. Heiberg's conclusion that the subject Genesis is defective as a result of the exemplar machine's defect is incorrect because "[i]t is possible that two machines can be assembled months apart yet bear similar part dates (Pla. Aff., at 4; Ring Aff., at ¶ 8).

Defendants also argue that Mr. Heiberg's analysis of the Bottle failed to demonstrate an issue of triable fact. Specifically, Mr. Heiberg failed to accurately analyze the Bottle by comparing its structure to the engineering drawings and material specifications provided by Defendants. Further, Mr. Heiberg's analysis of the Bottle was conclusory, because he simply recites the plastic thickness of the Bottle without comparing it to the design drawing.

Defendants affirm that they produced the Bottle's engineering drawings and material specifications in their April 18, 2016 Supplemental Response to Plaintiff's Demand dated April 18, 2016 (Plaintiff Memorandum of Law in Reply, at p. 5).

² Defendants state that they were not provided the exemplar.

DISCUSSION

Manufacturing Defect

On a motion for summary judgment, the movant must establish its claim or defense "sufficiently to warrant the court as a matter of law in directing judgment in [its] favor" (CPLR 3212[b]). "[I]n strict products liability cases involving manufacturing defects, the harm arises from the product's failure to perform in the intended manner due to some flaw in the fabrication process" (*Denny v. Ford Motor Co.*, 87 N.Y.2d 248, 257 n. 3, 639 N.Y.S.2d 250, 662 N.E.2d 730 [1995]; see *McArdle v. Navistar Intl. Corp.*, 293 A.D.2d 931, 932, 742 N.Y.S.2d 146 [2002]).

A defendant seeking the dismissal of a strict products liability claim based on a manufacturing defect must submit admissible proof establishing, as a matter of law, that the product was not defective" (*McArdle*, 293 AD2d at 932).

Once the defendant presents proof that the product was not defective when it left the manufacturer, the burden shifts to plaintiff to either submit direct evidence that a defect existed when the product left the manufacturer (*Id.*; *Van Deusen v. Norton Co.*, 204 A.D.2d 867, 869, 612 N.Y.S.2d 464 [1994]) or, "in the absence of evidence identifying a specific flaw, . . . prove that the product did not perform as intended *and* exclude all other causes for the product's failure that are not attributable to defendant[]" (*Speller ex rel. Miller v. Sears, Roebuck & Co.*, 100 N.Y.2d 38, 41, 790 N.E.2d 252 [2003]; see also, *Preston v. Peter Luger Enterprises, Inc.*, 51 A.D.3d 1322, 1324, 858 N.Y.S.2d 828 [4th Dept 2008] (emphasis added)).

At the outset, Mr. Ring's Affidavit demonstrates that the Genesis and Bottle departed the manufacturer without a manufacturing defect. Notably, his Affidavit states that each Genesis and Bottle was manufactured in its state-of-the-art manufacturing plant and inspected and examined

to ensure compliance with design specifications and to ensure there are no defects in the manufacturing and assembly process. Mr. Ring's Affidavit attributes the product's failure not to a manufacture defect, but rather product misuse by Plaintiff.

In response, Plaintiff sufficiently raises an issue of fact as to the existence of a manufacturing defect in the Genesis. Mr. Heiberg's analysis reveals that the safety valve did not open at 11 bars as indicated in the design specifications, but instead opened at 16.2 bars, representing direct evidence of defect in the product and a departure from the design specifications.

Defendants' arguments that Mr. Heiberg's analysis should be disregarded are unavailing. First, their argument that Mr. Heiberg's omission of an analysis of the manufacturing process is fatal to Plaintiff's claim is incorrect (*see Rabon-Willimack v. Robert Mondavi Corp.*, 73 A.D.3d 1007, 1008, 905 N.Y.S.2d 190, 192 [2d Dept 2010]; *Preston*, 51 A.D.3d at 1324 [citation omitted]). Next, Defendants' argument that Mr. Heiberg incorrectly measured the force of the subject Genesis is unsupported, as they failed to sufficiently argue that Mr. Heiberg's analysis "[w]as not supported by foundational facts, such as the results from actually testing of the [subject Genesis], deviation from industry standards, statistics showing frequency of injury resulting from the design of the [subject Genesis], or consumer complaints" (*Rabon-Willimack*, 73 A.D.3d at 1009-10 [citation omitted]). Therefore, Plaintiff raises an issue of triable fact (*McArdle*, 293 AD2d at 932 [citation omitted]). Similarly, Defendants' argument, that Mr. Heiberg's use of the exemplar was incorrect, raises an issue of triable fact (*See id.*). Thus, summary dismissal of plaintiff's [strict liability] claims for manufacturing defect (third cause of action) as they relate to the Genesis is unwarranted.

With regard to the Bottle, however, plaintiff failed to meet her burden to demonstrate a manufacturing defect in the Bottle. Plaintiff's argument that her expert Mr. Heiberg was unable to perform an analysis because Defendants failed to furnish her with a copy of the engineering drawings or material specifications during discovery is without merit. Defendants' Reply confirms that the engineering drawings and material specifications for the Bottle were sent as a component of Defendants' Supplemental Response to Plaintiff's Demand for Discovery and Inspection dated November 15, 2015, delivered to Plaintiff on April 18, 2016. Accordingly, Plaintiff failed to demonstrate a triable issue of fact with regard to the Bottle. Thus, summary dismissal of Plaintiff's [strict liability] claims for manufacturing defect (third cause of action) as they relate to the Bottle is warranted.

Consequently, Plaintiff's cross-motion for summary judgment is denied. While Plaintiff met her initial burden by establishing that the subject Genesis was defective, Mr. Ring's affidavit establishes that the subject Genesis was not defective when it left the manufacturer. And, Plaintiff's claim that the Bottle was defective lacks merit.

Finally, in light of the Court's findings, and inasmuch as there is almost no difference between a *prima facie* case in negligence and one in strict liability (*see Denny*, 87 N.Y.2d 257-258; *Blandin v. Marathon Equip. Co.*, 9 A.D.3d at 576, 780 N.Y.S.2d 190 ("in design defect cases very little difference exists between *prima facie* cases in negligence and in strict liability, and a finding of questions of fact with regard to one "inevitably raises material questions of fact" as to the other"); *Di Marco v. Westinghouse Elec. Corp.*, 170 A.D.2d 760, 762, 565 N.Y.S.2d 320 [1991]; *see also Gebo v. Black Clawson Co.*, 92 N.Y.2d 387, 393-394, 681 N.Y.S.2d 221,

703 N.E.2d 1234 [1998]), Plaintiff's proof similarly raises an issue of fact as to her claims for negligent manufacturing (first cause of action).

UCC Express Warranty

The Uniform Commercial Code ("UCC"), as adopted in New York, provides that "[a]ny affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise" (UCC 2-313[1][a]). On a claim for breach of express warranty, the plaintiff must show that there was an "affirmation of fact or promise by the seller, the natural tendency of which [was] to induce the buyer to purchase, and that the warranty was relied upon" (*Schimmenti v. Ply Gem Indus.*, 156 A.D.2d 658, 659 [2d Dept 1989], quoting *Friedman v. Medtronic, Inc.*, 42 A.D.2d 185, 190 [2d Dept 1973]; see also *Schneidman v. Whitaker Co.*, 304 A.D.2d 642, 643 [2d Dept 2003]).

Defendants' motion for summary judgment dismissing Plaintiff's express warranty claim is granted. As noted by Defendants, Plaintiff failed to allege or assert any affirmation of fact or promise made by Defendants (see *Mangano v. Town of Babylon*, 111 A.D.3d 801, 802, 975 N.Y.S.2d 130 [2d Dept 2013]; *Wojcik v. Empire Forklift, Inc.*, 14 A.D.3d 63, 65, 783 N.Y.S.2d 698, 700 [4d Dept 2004]). Therefore, Plaintiff's claim for breach of express warranty in her second cause of action is dismissed for legal insufficiency (see *Valley Cadillac Corp. v. Dick*, 238 A.D.2d 894 [4th Dept 1997]).

Accordingly, Plaintiff's cross-motion for summary judgment on her express warranty claim is denied.

UCC Implied Warranty

UCC § 2-314 provides that a warranty of merchantability is implied in a contract for the sale of goods if the seller is a merchant with respect to goods of that kind. To be merchantable, the goods must be, among other things, "fit for the ordinary purposes for which [such] goods are used" (UCC § 2-314 [2][c]). "To establish that a product is defective for purposes of a breach of implied warranty of merchantability claim, a plaintiff must show that the product was not reasonably fit for its intended purpose, an inquiry that focuses on the expectations for the performance of the product when used in the customary, usual and reasonably foreseeable manners," and that the defect was a proximate cause of the plaintiff's injury (*Wojcik*, 14 AD3d at 66 [internal quotation marks and citation omitted]). "As a practical matter, the distinction between the defect concepts in tort law and in implied warranty theory may have little or no effect in most cases" (*Denny*, 87 N.Y.2d 248, 262 [citation omitted]).

Here, Defendants meet their initial burden of showing that the subject Genesis was reasonably fit for its intended purpose by demonstrating that the subject Genesis and Bottle left the manufacturer without defect and was manufactured according to its design specifications. However, as indicated above, Plaintiff's expert demonstrated that the subject Genesis was not fit for the ordinary purpose for which it is used by demonstrating that the subject Genesis required more force to release the exhaust valve than what the engineering drawings indicated. Therefore, Defendant's motion to dismiss plaintiff's claim for breach of implied warranty in her second cause of action is denied. In addition, Plaintiff's cross-motion for summary judgment on her implied warranty claim in the second cause of action is denied.

CONCLUSION

Based on the forgoing, it is hereby:

ORDERED that the branch of Defendants' motion for summary judgment dismissing Plaintiff's claims for negligence in her First Cause of Action for manufacturing defect only, is granted, as to the Bottle only. It is further

ORDERED that the branch of Defendants' motion for summary judgment dismissing Plaintiff's claims for strict liability in her Third Cause of Action for manufacturing defect only, is granted, as to the Bottle only. It is further

ORDERED that the branch of Defendants' motion for summary judgment dismissing Plaintiff's claims for breach of implied and/or express warrant in her Second Cause of Action, is granted, as to the claim for breach of express warranty only. It is further

ORDERED that Plaintiff's cross-motion for summary judgment on her claims for strict liability regarding a manufacturing defect in her Third Cause of Action, is denied. It is further

ORDERED that Plaintiff's cross-motion for summary judgment on her claims for breach of implied and/or express warrant in her Second Cause of Action, is denied. It is further

ORDERED that that Defendants shall serve a copy of this order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: January 18, 2017



Hon. Robinson Edmead, J.S.C.