

State Farm Fire & Cas. Co. v Weil-Mclain
2019 NY Slip Op 34023(U)
August 20, 2019
Supreme Court, Dutchess County
Docket Number: 50956/16
Judge: Maria G. Rosa
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

STATE FARM FIRE AND CASUALTY COMPANY
A/S/O MARK D. KROL and MARK D. KROL,

Plaintiffs,

DECISION AND ORDER

Index No. 50956/16

-against-

WEIL-MCLAIN, THE MARLEY-WYLAIN COMPANY,
HONEYWELL INTERNATIONAL, INC., HONEYWELL
ENVIRONMENTAL AND COMBUSTION CONTROLS,
HONEYWELL RESIDENTIAL AND BUSINESS CONTROL,
APPOLO HEATING, INC., WATTS WATER TECHNOLOGIES,
INC., WATTS REGULATOR CO. AND WATTS
DISTRIBUTION COMPANY, INC.

Defendants.

The following papers were read on Defendants' motions for summary judgment:

NOTICE OF MOTION
AFFIRMATION IN SUPPORT
EXHIBITS A - L

AFFIRMATION IN OPPOSITION
EXHIBITS 1 -17

REPLY AFFIRMATION

NOTICE MOTION
AFFIRMATION IN SUPPORT
EXHIBITS A -O

AFFIRMATION IN OPPOSITION
EXHIBITS 1 -17

REPLY AFFIRMATION

NOTICE OF MOTION
AFFIRMATION IN SUPPORT
EXHIBITS A - Z; AA - GG
MEMORANDUM OF LAW IN SUPPORT
AFFIDAVIT IN SUPPORT

EXHIBITS A - B

AFFIRMATION IN OPPOSITION
EXHIBITS 1 - 17

REPLY AFFIRMATION

This action arises out of an explosion of a boiler in Plaintiff Mark Krol's ("Plaintiff") basement on June 26, 2015. Appolo Heating, Inc. ("Appolo") serviced the heating system after its installation in 2001 through the date of the boiler explosion. Weil-McLain and the Marley-Wylain Company manufactured the boiler. Plaintiff previously discontinued its claim against these Defendants. Defendants Honeywell International, Inc., Honeywell Environmental and Combustion Controls and Honeywell Residential and Business Control (collectively "Honeywell") manufactured the aquastat on the boiler. Defendants Watts Water Technologies, Inc., Watts Regulator Co. and Watts Distribution Company, Inc. (collectively "Watts") manufactured the pressure relief valve on the boiler. Plaintiff raises claims in products liability and negligence alleging that the explosion was caused by a failed aquastat, by the pressure release valve and due to Appolo's failure to properly service the boiler. All Defendants move for summary judgment.

The proponent of a motion for summary judgment carries the initial burden of tendering sufficient admissible evidence to demonstrate the absence of a material issue of fact as a matter of law. Alvarez v. Prospect Hospital, 68 NY2d 320, 324 (1986). If a movant has met this threshold burden, to defeat the motion the opposing party must present the existence of triable issues of fact. See Zuckerman v. New York, 49 NY2d 557, 562 (1980). In deciding a motion for summary judgment, the court is required to view the evidence presented "in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof submitted by the parties in favor of the opponent to the motion." Yelder v. Walters, 64 AD3d 762, 767 (2nd Dept 2009).

In moving for summary judgment Defendants have each submitted copies of the pleadings, deposition testimony and expert reports. Many of the facts asserted therein are not disputed. Plaintiff purchased the residence in 2001. Based on his belief that Appolo installed the heating and air conditioning systems he had them service the boiler. In 2011 he entered into a service contract with Appolo that included one annual maintenance inspection and discounts on repairs. The house was equipped with a forced hot water heating system. The hot water was supplied by a cast iron oil-fired boiler which was designed to heat the water in it and send it to heat emitters via a circulating pump. The boiler was equipped with a Honeywell aquastat, a device that monitors the water temperature in the boiler and shuts the oil burner off when the water reaches a preset temperature. The Honeywell aquastat on the boiler at the time of the explosion was not original. Appolo installed it in December 2009 more than five years prior to the explosion. The boiler also had a pressure release valve designed by Watts with a discharge pressure range of 27 lbs/PSI to 33 lbs/PSI. The normal operating pressure of the forced hot water heating system was approximately 12 to 15 lbs/PSI. The function of the pressure release valve was to open and discharge water to relieve water pressure if the water supply pressure to the boiler exceeded 30 lbs/PSI. The pressure release valve

on the boiler at the time of the explosion was not original. An Appolo technician had replaced the original valve during an annual preventative maintenance service call in November of 2008. Plaintiff alleges that the "high limit" feature of the aquastat failed to shut the oil burner off when the water exceeded its preset temperature and the pressure release valve failed to open discharging the excess pressure from the boiler.

In a strict products liability action a plaintiff must prove that the defendant manufactured for sale or sold a product that was defective, that the plaintiff was injured and that the defect was a substantial factor in causing the injury. 15 N.Y. Prac. NY Law of Torts §16:18. A product may be defective by reason of a manufacturing flaw, improper design or failure to warn. Sukljian v. Ross & Son Co., Inc., 69 NY2d 89 (1986). Plaintiff's claims against Honeywell and Watts are premised upon an alleged defective design and/or manufacturing defect.

A defectively designed product is one of which, at the time it leaves the seller's hands, is in a condition not reasonably contemplated by the ultimate consumer and is unreasonably dangerous for its intended use. Voss v. Black & Decker Mfg. Co., 59 NY2d 102, 107 (1983). The determination of a design defect requires a risk/utility analysis that involves consideration of whether the alleged defect was known at the time of manufacture, or "a reasonable person would conclude that the utility of the product did not outweigh the risk inherent in marketing a product designed in that manner." Denny v. Ford Motor Co., 87 NY2d 248 (1995). Where there is no evidence of a specific product defect, a plaintiff may still rely on circumstantial evidence that the product did not function as intended to prove a defect. See Schneitman v. Whitaker Co., 304 AD2d 642 (2nd Dept 2003). Under such circumstances, however, if a defendant presents evidence that the accident was not necessarily attributable to a defect, the plaintiff must then produce direct evidence of a defect. Id.

To establish a *prima facie* case of strict products liability based on a manufacturing defect, a plaintiff must establish that the product did not perform as it intended and that it was defective when it left the manufacturer's control. Wesp v. Carl Zeiss, Inc., 11 AD3d 965, 968 (4th Dept 2004). Such a claim requires a plaintiff to establish the product was not built to specifications or that it, as constructed, deviated from any such specifications or design. McArdle v. Maristar Int'l Corp., 293 AD2d 931, 932 (3rd Dept 2002). On a motion for summary judgment, a defendant seeking dismissal of a strict product liability claim based on manufacturing defect must submit admissible proof showing that the product was not defective. If a defendant presents such proof, the burden shifts to the plaintiff to demonstrate an issue of fact as to whether there was a defect. To do so, a plaintiff may not rely solely upon the occurrence of the accident, but must submit some direct evidence that a defect existed. Id.

Honeywell's expert opines that a miswiring by Appolo of a relay to the wrong terminal in the aquastat's high-limit switch circuit was the cause of the aquastat not shutting down the power to the burner heating the boiler. He claims the replacement aquastat Appolo installed in 2009, which was a different model than the original aquastat, was not exactly compatible with the boiler's wiring diagram and was not wired properly. His conclusion is based upon an examination of the

aquastat relay recovered from the scene. He further asserts that a defective expansion tank caused chronic leaking through the pressure release valve which caused it to malfunction. He concludes that there was nothing defective in the design of the aquastat on the boiler at the time of the explosion and that it was fit for its intended purpose. He further states that Appolo failed to properly maintain the boiler by not addressing why the pressure release valve was continuously leaking. Such evidence is sufficient to shift the burden to the plaintiff to present competent proof that the aquastat failed due to a defective design or manufacturing defect. See Voss v. Black & Decker Mfg. Co., 59 NY2d at 108.

Neither of Plaintiff's expert reports establishes an issue of fact as to whether the Honeywell aquastat on the boiler at the time of the explosion suffered from a manufacturing or design defect. The report of Plaintiff's expert, Edward Carey states that the aquastat worked properly from the time of its installation in December 2009 through the June 2015 explosion. He does assert that if the aquastat's sensing bulb, capillary or diaphragm cap components of the high-limit circuit were to leak, it would not create pressure on the diaphragm cap required to activate the high-limit switch, and that under such circumstances the aquastat would fail to control heating of the water in the boiler above its high-limit temperature setting. However, he does not reach any specific conclusion about the specific aquastat on the subject boiler. The expert report of Plaintiff's two engineering consultants from Atlantic Professional Engineering concludes that the aquastat was likely out of calibration or failing in a mode that increased the setpoint temperature. They base this conclusion on evidence that the aquastat was set to 140°, lower than the typical temperature setting of 160° to 180°. That would have been done by Appolo, not Honeywell. Therefore, these opinions that the aquastat failed at some point after its installation do not create an issue of fact as to whether there was a design or manufacturing defect. The reports contain no evidence that the product was defective when it left the manufacturer's control and thus fail to allege an essential element in establishing a strict products liability claim premised on a manufacturing defect. Nor do any of the experts offer an opinion that the aquastat was defectively designed. Their reports are silent as to the aquastat's design. They fail to allege that the aquastat was not reasonably safe because there was a substantial likelihood of harm based on its design nor that it was feasible to design it in a safer manner. In sum, the mere opinion that the aquastat failed or that it must have failed in order for the explosion to have occurred provides insufficient grounds as a matter of law to establish a strict products liability claim for a design or manufacturing defect. As Honeywell presented competent evidence that there was no design or manufacturing defect and Plaintiff has failed to submit direct or competent evidence refuting same, it is

ORDERED that Honeywell's motion for summary judgment dismissing Plaintiff's strict product liability claims against it is granted. It is further

ORDERED that Honeywell's motion to dismiss Plaintiff's negligence claims against it are granted. Plaintiff fails to articulate any theory of negligence other than a claim that the aquastat was defectively designed or malfunctioned. The mere allegation that the aquastat failed to function over five years after its installation is insufficient to establish a negligence cause of action. Plaintiff fails to identify a specific duty Honeywell breached and has produced no evidence as to the expected life

span of the subject aquastat or that its alleged failure was due to Honeywell's failure to perform some obligation it owed Plaintiff. It is further

ORDERED that Honeywell's motion to dismiss Plaintiff's cause of action for breach of implied warranties is granted. Defendant met its initial burden of establishing that the aquastat was fit and reasonably safe for the ordinary purposes for which it was to be used. See UCC 2-314(2)(c). As set forth above, Honeywell presented evidence that the aquastat was not defective as manufactured. Plaintiff fails to submit any competent evidence that it was not minimally safe for its expected purpose. A mere allegation that it failed over five years after it was installed is insufficient to create an issue of fact on this issue. It is further

ORDERED that Honeywell's motion for summary judgment dismissing all cross-claims for contribution and common law indemnification are granted. As there is no evidence it was negligent or otherwise culpable for the explosion, it cannot be held liable under such theories.

In support of its motion for summary for summary judgment Watts has submitted an affidavit of a professional engineer concluding that the Watts' pressure release valve on the boiler at the time of the explosion was not defectively designed or manufactured. He asserts that the valve was designed to allow the flow of water through the valve body when pressure on the valve inlet reached 30 pounds per square inch. His affidavit and the record as a whole demonstrates that the pressure release valve had operated as designed as evidenced by the corrosion on the valve and a discharge pipe. All experts are in agreement that the valve had been discharging water for some period of time. The pressure release valve was designed to discharge water when there was excessive pressure in the boiler. The evidence in the record that the new valve installed in 2008 leaked within one year does not demonstrate that the valve was defective. It merely demonstrates that there may have been pressure in excess of 30 pounds per square inch inside the boiler causing the valve to discharge. As Watts has met its burden of establishing there was no design or manufacturing defect, the burden shifts to Plaintiff to create a material issue of fact.

Plaintiff's expert from E.A. Carey Heating & Air Conditioning and deposition testimony assert that Plaintiff advised Appolo in November 2009 that the pressure release valve it replaced in November 2008 dripped on occasion. The expert asserts that Appolo should have investigated the condition because it could be a sign of an ongoing and/or significant problem with the boiler or heating system or that the pressure release valve itself was defective. The expert concludes that the significant mineral deposits on the valve and discharge pipe are consistent with it having intermittently released water over an extended period of time. With respect to the valve, Plaintiff's experts from Atlantic Professional Engineering merely assert that Appolo should have investigated the leaking valve in 2009. The foregoing is insufficient to create a material issue of fact as to a design or manufacturing defect. All experts are in agreement that the pressure release valve is designed to discharge water when the boiler reaches a pressure above its designed temperature setting. Under such circumstances, any theory that the valve was defective because it and the discharge pipe evidenced that it had water come through it over an extended period of time fails as a matter of law to create an issue of fact as to a design or manufacturing defect. To the contrary, this

evidence shows that the valve was working as intended. Any conclusion that the valve was defective because it discharged water at pressures below the range of 27 to 30 pounds per square inch is entirely speculative. There is no competent evidence in the record to support this theory. Based on the foregoing, Plaintiff has failed to raise a material issue of fact on its strict products liability, negligence and implied warranty claims against Watts. Wherefore, it is

ORDERED that Watts' motion for summary judgment dismissing Plaintiff's claims against it and all cross-claims is granted. It is further

ORDERED, that Appolo's motion for summary judgment is denied. Plaintiff's negligence claim against Appolo is based upon allegations that its service technicians failed to properly service the boiler. While a service technician testified that it was his practice to inspect the aquastat and pressure release valve at every service call, he had no specific recollection about servicing Plaintiff's boiler, and there were no service records or other proof to support this claim. The evidence in the record establishes that there was significant corrosion on the pressure release valve and discharge pipe. Appolo records indicate that it replaced the original discharge valve in 2008 but that one year later Plaintiff complained that the new valve dripped occasionally. This in conjunction with expert opinions that the pressure release valve may have failed to open due to excessive corrosion is sufficient to create an issue of fact as to whether Appolo was negligent in failing to inspect and/or replace the pressure release valve during its annual maintenance visits between 2009 and the date of the explosion. There are further issues of fact pertaining to whether Appolo failed to investigate potential causes of the discharge. According every possible inference in favor of Plaintiff as the court must on a motion for summary judgment, an issue of fact exists as to whether Appolo failed to follow the applicable standard of care by not removing and disassembling the pressure release valve for inspection every three years per the manufacturer's recommendation. It is further a question for the jury to decide whether Appolo was qualified to perform the three year disassembly based on it having installed and serviced the pressure release valve.

The caption of this action is hereby amend to remove Weil-Mclain, the Marley-Wylain Company, Honeywell International, Inc., Honeywell Environmental and Combustion Controls, Honeywell Residential and Business Control, Watts Water Technologies, Inc., Watts Regulator Co. and Watts Distribution Company, Inc. as defendants. The action will proceed to trial on Plaintiff's negligence claim against Appolo Heating Inc. as scheduled on September 16, 2019. A pre-trial conference of the action will be held on **September 4, 2019 at 9:15 a.m.**

The foregoing constitutes the decision and order of the Court.

Dated: August **20**, 2019
Poughkeepsie, New York

ENTER:



MARIA G. ROSA, J.S.C.

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Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

VB Kushnir LLP
5 Neshaminy Interplex, Suite 205
Trevose, PA 19053

Pillinger Miller Tarallo, LLP
1140 Franklin Avenue, Suite 214
Garden City, NY 11530

Kaufman Borgeest & Ryan, LLP
200 Summit Lake Drive
Valhalla, NY 10595

Hinman, Howard & Kattell, LLP
80 Exchange Street
PO Box 5250
Binghamton, NY 13902