

<b>Pride Tech. of N.Y., LLC v Next Tech., Inc.</b>
2020 NY Slip Op 30914(U)
April 1, 2020
Supreme Court, New York County
Docket Number: 650075/2019
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. DEBRA A. JAMES **PART** **IAS MOTION 59EFM**

*Justice*

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PRIDE TECHNOLOGIES OF NEW YORK, LLC,

Plaintiff,

- v -

NEXT TECHNOLOGIES, INC.,

Defendant.

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INDEX NO. 650075/2019

MOTION DATE 08/06/2019

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 10, 11, 13, 14, 15, 16

were read on this motion to/for DISMISS

ORDER

Upon the foregoing documents, it is

ORDERED that the defendant's motion to dismiss the complaint is GRANTED only as to the first, second, third and fourth causes of action, and is otherwise DENIED; and it is further

ORDERED that the first, second, third and fourth causes of action in the complaint are hereby dismissed; and it is further

ORDERED that the parties are hereby directed to attend a preliminary conference in IAS Part 59, Room 331, 60 Centre Street, New York, NY 10007, at 10:00 AM on June 23, 2020.

DECISION

The court shall grant defendant's motion to dismiss plaintiff's first, second and third causes of actions for negligence and strict products liability. As stated by the Court the "economic loss rule provides that tort recovery in strict products liability and negligence against a manufacturer is not available to a downstream purchaser where the claimed losses flow from damage to the property that is the subject of the contract and personal injury is not alleged or at issue. The rule is applicable to economic losses to the product itself as well as consequential damages resulting from the defect." Atlas Air, Inc. v Gen. Elec. Co., 16 AD3d 444, 445 (2d Dept 2005) citing Bocre Leasing Corp. v. General Motors Corp. (Allison Gas Turbine Div.), 84 N.Y.2d 68 (1995). Read generously, the complaint in this action only alleges property damage to the desks themselves and therefore these causes of action are barred by the economic loss rule.

The court shall also grant dismissal of fourth cause of action for negligent misrepresentation because "plaintiffs have not alleged that they had any particular contact with [defendant manufacturer] or that [defendant manufacturer] had any knowledge of [its] identit[y] so as to create a relationship that approaches contractual privity." McGill v Gen. Motors Corp., 231 AD2d 449, 450 (1<sup>st</sup> Dept 1996).

At this pleading stage, the court shall deny dismissal of plaintiff's GBL 349 claim. Under GBL 349, "a plaintiff must demonstrate that the defendant is engaging in consumer-oriented conduct, which is deceptive or misleading in a material way, and that the plaintiff has been injured because of it." St. Patrick's Home for Aged and Infirm v Laticrete Intern., Inc., 264 AD2d 652, 655 (1<sup>st</sup> Dept 1999). As the complaint alleges that plaintiff marketed the product for use in "homes and businesses," there is a minimum nexus of consumer-oriented conduct at this pleading stage and the allegations that the defendant knew the product would not perform as promised adequately set forth a sufficient alleged deceptive act.

The court shall sustain the breach of warranty causes of action. "[A] vendor may be found in breach of the implied warranties of merchantability and fitness for a particular purpose where the product produced by the vendor's machine is of unacceptable quality." Lindenthaler v Dairy Concepts Inc., 291 AD2d 776, 777 (3d Dept 2002). Plaintiff's allegations here satisfy this pleading standard. Similarly, plaintiff alleges that it purchased defendant's product based upon specific representations about the product's performance and that it suffered by the failure of the product to perform as represented thereby stating a claim for breach of express warranty. See Chenango County Indus. Dev. Agency v Lockwood Greene Engineers,

Inc., 114 AD2d 728, 730 [3d Dept 1985] (manufacturer made specific representations in advertising and sales literature upon which plaintiffs relied).

4/1/2020  
DATE

*Debra A. James*  
DEBRA A. JAMES, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE