

Adnan v Samsung Elecs. Am., Inc.
2022 NY Slip Op 32370(U)
July 5, 2022
Supreme Court, Kings County
Docket Number: Index No: 523120/2018
Judge: Ingrid Joseph
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 5th day of July 2022.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF KINGS

-----X

Index No: 523120/2018

ANNAM ADNAN and SALEM FOUZI,
Plaintiff(s)

-against-

DECISION

SAMSUNG ELECTRONICS AMERICA, INC. and KHAN
ELECTRONICS, INS.,

Defendant(s)

-----X

<u>The following e-filed papers considered herein:</u>	<u>NYSCEF E-filed docs</u>
Notice of Motion/Affirmation in Support/Memorandum of Law/Affidavit/Exhibits Annexed/Reply.....	21-27;34;84
Affirmation in Opposition/Exhibits Annexed.....	29

In this matter, Defendant Samsung Electronics America Inc. (“SEA”) moves (Motion Seq. 1) pursuant to CPLR § 3212 for summary judgment dismissing the Second Amended Complaint of (“Plaintiffs”) Annam Adnan and Salem Fouzi as to SEA. Plaintiffs initially commenced this action on November 15, 2018 against SEA. On February 15, 2019, Plaintiffs filed an Amended Complaint adding Khan Electronics, Inc. (“Khan”) as a defendant and on February 25, 2019, Plaintiffs filed a Second Amended Complaint, which is now the operative complaint. Plaintiffs’ assert causes of action for negligence, strict liability, failure to warn, and breach of warranty. Defendant alleges that its theories of dismissal are based upon claims that SEA was not involved in the design, manufacturing, sale, and/or distribution of the product at issue, nor was it a part of the distribution chain of the product at issue. The other theory at issue is the statute of limitations as to the breach of warranty claim. Plaintiffs have opposed this motion asserting that it is premature as there are issues of material facts present and that their breach of warranty claim is not time barred.

Plaintiff Adnan alleges that in December of 2013 she purchased a Samsung cell phone, model SM-G900H-UD, from co-defendant Khan. On August 19, 2018, Plaintiff claims that she was using the subject cell phone when it “exploded” causing her serious and permanent injuries.

Plaintiff Adnan seeks to recover for alleged injuries she suffered and her husband, Fouzi seeks to recover on a derivative loss of consortium claim in this action.

Defendant SEA contends that it is not liable for Plaintiffs' injuries since it was not involved in the manufacture, design, sale, or distribution of the subject product. SEA asserts that it is in the business of "distributing, selling, marketing, advertising, commercializing, warranting, and servicing" Samsung-branded products intended for sale and use within the United States and does not manufacture or design any mobile phones or components thereof. Furthermore, SEA contends that the subject cell phone was intended for sale in a foreign country outside of the United States and thus SEA was not part of the stream of commerce or distribution chain for the product. SEA also alleges that Khan is not a SEA authorized retailer for Samsung branded phones within the United States and is not one of SEA's customers. Therefore, SEA did not owe a duty of care to Plaintiffs. Moreover, SEA asserts that Plaintiffs cannot recover under a theory of breach of warranty because the subject cell phone was not warranted under SEA and that claim is time barred.

In support of its motion, SEA submits an affidavit and EBT testimony from Koon Sup "Roy" Kim, the Senior Manager Customer Satisfaction Division - Mobile Products of SEA. In his affidavit Kim reiterates that SEA never sold or distributed the subject cell phone nor had possession, custody, or control of the product. In his EBT, Kim testified that he first searched for the model number on the subject phone through his company database and found that SEA never sold or distributed that model number. (Kim Dep. 68 lines 2-9). During the course of discovery, Plaintiffs produced pictures of the subject cell phone and packaging it was sold in. Utilizing those images, Kim testified that he was able to use the International Mobile Equipment Identity (IMEI) number to further confirm that SEA did not have any involvement with the product. According to Kim, the IMEI number is unique to a specific device and allows manufacturers, distributors, and wireless carriers to track certain information on a device, such as the date of manufacture and intended marketplace (Kim Dep. 80 lines 11-24). Furthermore, Kim stated that the pictures of the subject cell phone and packaging provided to him by Plaintiffs proved that SEA did not distribute or sell the product because the labeling was not in English, and SEA only sells products in which the packaging labels are written in English. (Kim Dep. 48 lines 16-25). Through his inquiries, Kim ultimately confirmed that the subject cell phone was intended for the

Latin American marketplace and provided that information and his search results to Plaintiffs. (Kim Dep. 58 lines 6-17; Doc 81).

In opposition, Plaintiffs argue that SEA's motion is premature as discovery is still outstanding and that issues of fact exist warranting a trial. Plaintiffs also claim that their breach of warranty claim is not time barred. Plaintiffs contend that the subject cell phone was purchased within the United States, and thus there are questions as to how Khan came into possession and authority to sell the phone. Furthermore, Plaintiffs assert that it is reasonably foreseeable that a cell phone intended for foreign markets might end up in the United States and therefore SEA owed a duty of care to its U.S. customers.

It is well established that the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Ayotte v. Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324 [1986]; *Zapata v. Buitriago*, 107 AD3d 977 [2d Dept 2013]). Once a prima facie demonstration has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action. (*Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

Summary judgment is a drastic remedy which should not be granted where there is any doubt as to the existence of a triable issue or where the issue is even arguable (*Elzer v. Nassau County*, 111 A.D.2d 212, [2nd Dept. 1985]; *Steven v. Parker*, 99 AD2d 649, [2nd Dept. 1984]; *Galetta v. New York News, Inc.*, 95 AD2d 325, [1st Dept. 1983]). When deciding a summary judgment motion, the Court must construe facts in the light most favorable to the non-moving party (*Marine Midland Bank N.A. v. Dino & Artie's Automatic Transmission Co.*, 168 AD2d 610 [2d Dept. 1990]; *Rebecchi v. Whitmore*, 172 AD2d 600 [2d Dept. 1991]).

Before a defendant may be held liable for negligence, it must be shown that the defendant owes a duty of care to the plaintiff, a breach of that duty, and that the breach of such duty was the proximate cause of his or her injuries (*Pulka v. Edelman*, 40 N.Y.2d 781, 390 N.Y.S.2d 393, 394-95 [1976], citing *Palsgraf v. Long Is. R.R. Co.*, 248 N.Y. 339, 342 [1928]; *Engelhart v. County of Orange*, 16 AD3d 369 [2d Dept. 2005]). Absent a duty of care, there is no breach and no liability (*Engelhart* at 371). Foreseeability alone does not define a duty – it merely determines the scope of the duty once it is determined to exist (*see Pulka; Hamilton v. Beretta U.S.A. Corp.*,

96 NY2d 222 [2001]; *In re New York City Asbestos Litigation* 27 NY3d 765 [2016]). Moreover, the injured party must show that a defendant owed not merely a general duty to society but a specific duty to him or her, for “[w]ithout a duty running directly to the injured person there can be no liability in damages, however careless the conduct or foreseeable the harm” (*Hamilton* at 232; citing *Lauer v City of New York*, 95 NY2d 95 [2000]). In strict product liability cases, an entity that is not in the stream of commerce of a specific product owes no duty to a person allegedly harmed by that product (*Gebo v Black Clawson Co.*, 92 NY2d 387 [1998]; *Finerty v Abex Corp.*, 27 NY3d 236, 241 [2016]). In breach of warranty claims, liability cannot be imposed on an entity that is not involved in the manufacturing, distributing, or selling chain (*Spahholtz v Hampton C.F. Corp.*, 294 AD2d 424 [2002]; *Joseph v Yenkin Majestic Paint Corp.*, 261 AD2d 512 [1999]; *Quinones v Federated Dept. Stores, Inc.*, 92AD3d 931 [2012]).

The Court finds that the Plaintiffs have failed to raise any material questions of fact as to the issue of liability on behalf of Defendant SEA. Plaintiffs have only submitted the affirmation in opposition of their counsel, which is insufficient to rebut the Defendant’s arguments. As stated in *Zuckerman*, the bare affirmation of an attorney who demonstrated no personal knowledge of the manner in which the accident occurred, is without evidentiary value and is thus unavailing. (citing *Columbia Ribbon & Carbon Mfg. Co. v A-1-A Corp.*, 42 NY2d 496, 500; *Israelson v Rubin*, 20 AD2d 668, affd 14 NY2d 887; *Lambers v Long Is. R.R.*, 51 AD2d 730). The affirmation of an attorney, even if he or she has no personal knowledge of the facts, may serve as the vehicle for the submission of acceptable attachments which do provide ‘evidentiary proof in admissible form,’ e.g., documents [or] transcripts (*Zuckerman* at 563). Here, the Plaintiffs have failed to produce sufficient evidence to establish that SEA had anything to do with the subject cell phone. Additionally, Plaintiffs have failed to show that discovery of facts essential to justify opposition to the motion may exist but are within the exclusive knowledge of the Defendant, thus, the motion should be granted (*Passaretti v Aurora Pump Co.* 201AD2d 475 [1994]; citing *Smith v City of New York*, 133 AD2d 818 [1987]).

Plaintiffs also calculated the statute of limitations to commence a breach of warranty claim in a products liability suit on the holdings in *Aetna Live & Cas. Co v Nelson*, 67 NY2d 169 [1986] and *QK Healthcare, Inc. v Insource Inc.*, 108 AD3d 56 [2d Dept. 2013]. However, these cases address the method of computing periods of limitation generally, but not in a breach of

warranty claim. The appropriate statute that addresses statute of limitations for breach of warranty claims can be found in U.C.C. § 2-725 (1) and (2) which states:

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

Thus, a cause of action against a manufacturer or distributor accrues on the date the party charged tenders delivery of the product, not on the date that some third party sells it to plaintiff (*Doyle v Happy Tumbler Wash-O-Mat*, 90 A.D.2d 366; *Fazio v Ford Motor Corp.*, 69 A.D.2d 896 [2d Dept. 1979]; *Ito v. Marvin Lumber and Cedar Company*, 54 A.D.3d 1001 [2d Dept. 2008]; *Heller v. U.S. Suzuki Motor Corp.*, 64 N.Y.2d 407 [1985]). Plaintiffs allege they purchased the subject cell phone from Khan in December of 2013 and commenced this action in November of 2018, which is more than 4 years past the purchase date of the product. Thus, Plaintiff's breach of warranty claim is time-barred.

All other issues are either without merit or moot.

Accordingly, Defendant's motion for summary judgment dismissing Plaintiffs Second Amended Complaint as it pertains to SEA is granted.

This constitutes the order and decision of the Court.



J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice