

**Metropolitan Prop. & Cas. Ins. Co. v Pentair
Residential Filtration, LLC**

2024 NY Slip Op 32002(U)

May 31, 2024

Supreme Court, New York County

Docket Number: Index No. 153189/2018

Judge: Richard G. Latin

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. RICHARD G. LATIN PART 46M

Justice

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METROPOLITAN PROPERTY AND CASUALTY
INSURANCE COMPANY A/S/O ALEX KOGAN,

Plaintiff,

INDEX NO. 153189/2018

MOTION DATE 03/08/2023

MOTION SEQ. NO. 006

- v -

PENTAIR RESIDENTIAL FILTRATION, LLC, ARISTA AIR
CONDITIONING CORP.

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing cited papers, defendant Pentair Residential Filtration, LLC's (Pentair) motion for summary judgment, dismissing the complaint is determined as follows:

This is a subrogation action brought by Alex Kogan's insurance carrier. The complaint alleges the following: Kogan purchased a water filter unit (filter), Model No. WC 34-PR, from Pentair for his house located at 15 Central Park West, New York, New York (premises). Pentair is the designer, manufacturer and seller of the filter. On January 29, 2016, there was severe water damage to the premises. An investigation conducted found that the filter caused the damage. Plaintiff paid Kogan over \$1,000,000 for the damage, subrogated his claim and seeks reimbursement from Pentair on the ground that Pentair designed, manufactured and sold Kogan a defective filter which caused the water damage. The complaint contains two causes of action: strict products liability pursuant to section 2.120 of the New York Products Liability Act and section 402 (a) of the Restatement of Torts, 2d; and common law negligence.

Pentair moves for dismissal through summary judgment, arguing that there is no evidence that the filter was defective. It argues that the filter purchased by Kogan was properly designed and manufactured when it left the factory. Pentair contends that the filter was installed and used in an improper or reasonably unforeseeable manner. Pentair argues that the filter was improperly installed in a humidifier system. The filter, according to Pentair, was a drinking water mechanism, and the pressure of heat in a humidifier would undermine the process. Pentair contends that it has never advised its purchasers to install its filters in such a system. Pentair further contends that the filter was improperly installed and maintained, for which it had no responsibility. Pentair also contends that there is no clear assertion of an alternative filter model that would have been less defective under the circumstances. Pentair argues that the assertions of plaintiff's experts are conclusory and speculative. Finally, Pentair contends that its experts provide harder evidence and reach stronger conclusions in making their case for summary judgment.

Pentair relies on the deposition testimony of Thomas Clarke, Pentair's Engineering Manager, the affidavits from Pentair's expert witnesses, Todd Menna and David Eby, and a photograph of the filter as installed at the premises.

At his deposition, Clarke discussed the process of manufacturing filters such as the subject filter and mentioned how defective filters were handled. He asserted that the filters were subject to certain specifications and constant testing. Pentair contends that plaintiff cannot prove that the subject filter was defective when it left the factory.

The Menna affidavit contends that the filter was not defective in design or in how it was manufactured and was reasonably safe for its intended use as a residential drinking water filter. He further contends that the damages on the bottommost threads of the filter were consistent with overtightening when it was installed, causing it to crack, and it was not given proper maintenance.

He contends that there was a failure to replace the filter cartridge in a timely manner based on the schedule provided by the manufacturer. This failure resulted in water deposits and surface debris within the cartridge causing pressure and indicated that the filter was no longer functioning to filter water. The photograph reveals the accumulation of deposits.

Both Menna and Eby conclude that the filter was not defective when manufactured and was subject to Pentair's specifications. Eby also refers to the filter's installation, where plumber's putty rather than Teflon tape, as specified in the filter's manual, was used. He concludes that such an improper use may have increased the chances of the filter cracking which occurred.

Plaintiff opposes the motion, arguing that issues of fact exist. Plaintiff relies on its experts, Dr. Andre Rios and Peter Delano, as well as deposition testimony from two claims adjusters, Mark Hagen, who works for plaintiff, and Kenneth Bourque, the property claims adjuster who examined the premises at the time of the loss; a copy of the filter manual; a copy of the manual for the Norte RH 2 Humidifier, alleged to be the one used by Kogan; a photograph of the SFM2 Omnifilter; and affidavits from Rios and Delano. The report provided by Rios states that there was a crack in the filter upon examination. Rios claims that there was no indication of excessive tightening or over threading during the installation of the item. He concludes that there was no freezing or external abuse. He contends that there was a design defect in the filter and that an alternative filter was possible which would have averted the damage.

The report from Delano indicates excessive water pressure prior to the damage and he posits that the use of the filter in a humidifier had a similar "duty cycle" as would have been found servicing a home sink and that the use in a humidifier system was reasonable and foreseeable use. He concludes that there was a manufacturing defect in the filter.

Plaintiff states that on May 7, 2017, a joint examination of the filter was held at LGI

Forensics Engineering, PC Laboratory in White Plains, New York, which Rios and Menna attended. A joint examination of the filter was held on June 27, 2017 at Menna's facility in New Berlin, Wisconsin. On March 14, 2022, Eby and a J. Christopher Venning conducted a site inspection of the premises.

Plaintiff refers to the Clarke deposition, stating that he presented a list of "insurance claims" related to the model filter manufactured by Pentair from 2011 to 2019. The claims related to defects in the filter. Plaintiff contends that the model on which the subject filter is based has had a history of failures.

Plaintiff questions Pentair's assertion that installing the filter in a humidifier system was unforeseeable. First, the filter manual fails to mention that such an installation would be improper. Second, Delano, in his affidavit, argues that the humidifier did not cause any stress to the filter, causing the crack.

Plaintiff argues that there was an alternative model filter also designed and manufactured by Pentair which was safer and more durable, model SFM2 Omnifilter, with a rounded thread geometry, which Rios contends was less likely to crack than the WC 34-PR model. Plaintiff submits a photograph of this model.

Rios also argues that the subject filter was designed with a shoulder to prevent overtightening and there was no proof that the filter was subject to overtightening.

Delano disputes the argument that poor maintenance was the cause of the water damage. According to him, the pressure in the filter came from the water main, and was not the result of built-up deposits. Delano also argues that the deposits were never subject to a chemical analysis. He contends that the use of plumber's putty, as described by Menna (Eby described it as pipe dope, a different substance) was not relevant in the subsequent water damage.

Plaintiff argues that Pentair failed to warn purchasers of the possibility of defects, and to offer methods to avert such a problem, specifically advising the use of a leak detection system.

In reply, Pentair argues that the affidavits from plaintiff's experts are untimely, present new opinions not previously presented prior to the service of its motion, and are highly prejudicial. Pentair also objects to plaintiff raising the claim of failure to warn, which is not alleged in the complaint. Pentair argues that plaintiff's experts failed to provide foundational facts or industry data that demonstrate that a filter designed for a drinking water system, when installed in a humidifier, does not cause stress and is a reasonably foreseeable use of the filter. Pentair states that the manual submitted by plaintiff is not related to the WC 34-PR filter and has no bearing in this case.

Pentair argues that plaintiff's expert's claim that the SEM2 Omnifilter is an alternative and superior filter has not been substantiated and should not be regarded by the court. Pentair also argues that plaintiff lacks sufficient evidence to contradict its argument that improper installation and maintenance caused the water damage.

“It is axiomatic that summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of factual issues” (*Birnbaum v Hyman*, 43 AD3d 374, 375 [1st Dept 2007]). “The substantive law governing a case dictates what facts are material, and ‘[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment [citation omitted]’” (*People v Grasso*, 50 AD3d 535, 545 [1st Dept 2008]). “To prevail on a summary judgment motion, the moving party must provide evidentiary proof in admissible form sufficient to warrant the direction of summary judgment in his or her favor [citation omitted]” (*Kershaw v Hospital for Special Services*, 114 AD3d 75, 81 [1st Dept 2013]). “Once this burden is met, the burden shifts to the opposing party

to submit proof in admissible form sufficient to create a question of fact requiring a trial (*Id.* at 82).

Section 402 (a) of the Restatement of Torts 2d., which provides the standards for strict liability in tort, generally imposes liability upon the supplier of a defective product for injury caused thereby without requiring proof of negligence and notwithstanding a lack of reliance on warranty. Liability attaches with respect to any injury caused by any product in a defective condition unreasonably dangerous to the user or consumer or to his property.

As Pentair argues, in order to adequately plead a claim for strict liability, plaintiff must show that the product was defective and that the defective product was the actual and proximate cause of the injury (*see Voss v Black & Decker Mfg. Co.*, 59 NY2d 102, 107-109 [1983]). Under New York law, there are three types of defects: (1) design defects; (2) manufacturing defects; and (3) defective and inadequate warnings (*id.* at 106).

To determine whether a product is not reasonably safe, the court must assess whether a reasonable person would conclude that the utility of the product did not outweigh the risk inherent in manufacturing a product designed in that manner (*see Denny v Ford Motor Co.*, 87 NY2d 248, 258 [1995]).

The opinions of the parties' experts constitute the most substantial evidence here. Both Rios and Menna attended a joint evidence examination of the subject filter and came to different conclusions as to the cause of the failure of the filter.

Pentair contends that plaintiff has introduced a new cause of action, failure to warn, which is not alleged in the complaint, and should not be considered by the court. The court need not reach the issue of failure to warn, or the issue of whether an alternative filter existed which would have been less likely to fail, however, because of the disputes of fact among the experts regarding the

design, installation and maintenance of the filter. It is also noted that the parties have not addressed the second cause of action for negligence, in their papers, however, it appears that although both Pentair and Arista are named in the heading, the substantive allegations in the negligence cause of action only relate to actions of Arista, who has been discontinued against without prejudice, and not Pentair.

Pentair also contends that the affidavits from plaintiff's experts contain newly asserted opinions that are untimely and prejudicial. The statements in the affidavits are meant to respond to Pentair's arguments in its motion, with respect to the condition of the subject filter and the cause of the resultant damage.

The main issues in dispute are the design of the subject filter, the installation of the filter and the maintenance of the filter. Plaintiff's experts contend that the subject filter was defective. Rios concluded that the filter's thread design was prone to stress, resulting in its cracking. He dismissed any evidence of overtightening.

With respect to the installation of the filter, Pentair's experts claim that overtightening of the filter during the installation caused the crack and therefore it was improperly installed and that it should not have been used in a humidifier, which was an improper and reasonably unforeseeable use of the product. Plaintiff's expert Delano argued that there is no evidence that such an installation was unreasonable or unforeseeable, and despite that, the manner of installation was not relevant, since it was not a factor in the damage.

The Court finds that there are conflicts of fact among the experts as to whether the filter was over tightened, and therefore improperly installed. The experts disagree over the condition of the filter right before the water leak and resulting damage-occurred. Plaintiff's experts dispute whether the presence of deposits had any direct effect on the filter and contend that the deposits

were never subjected to a chemical analysis of their content, whereas Pentair’s expert Eby contends that the failure to replace the filter’s cartridge led to stress and contributed to the cracking and failure of the cartridge.

Finally, the parties’ experts have conflicting views on whether using the filter in a humidifier rather than a drinking water system would have put extra stress on the filter, causing it to fail, and therefore would have been an improper and unforeseeable use.

Because of these many disputes of fact which might affect the outcome of the case, summary judgment must be denied.

Accordingly, it is

ORDERED that defendant Pentair Residential Filtration, LLC’s motion for summary judgment is denied.

5/31/2024
DATE


RICHARD G. LATIN, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: