

**Simmons v Gateway I TP4 Hous. Dev. Fund Co., Inc.**

2025 NY Slip Op 33376(U)

September 10, 2025

Supreme Court, New York County

Docket Number: Index No. 151541/2019

Judge: Sabrina Kraus

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

**PRESENT: HON. SABRINA KRAUS PART 57M**

*Justice*

-----X

SHANIQUA SIMMONS,

Plaintiff,

- v -

GATEWAY I TP4 HOUSING DEVELOPMENT FUND  
COMPANY, INC., GATEWAY I TP4 LLC, MANHATTAN  
NORTH MANAGEMENT COMPANY, INC., PEERLESS  
PREMIER APPLIANCE CO., TAHL - PROPP EQUITIES  
LLC, ROBERTSHAW CONTROLS COMPANY

Defendants.

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**INDEX NO.** 151541/2019

**MOTION DATE** 08/19/2024,  
08/19/2024

**MOTION SEQ. NO.** 007 008

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 171, 173, 174, 175, 176, 177, 178, 179, 180, 181, 191, 193, 195, 197, 199, 203, 205, 206, 207

were read on this motion to/for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 172, 182, 183, 184, 185, 186, 187, 188, 189, 190, 192, 194, 196, 198, 200, 201, 202, 204

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

**BACKGROUND**

Original Plaintiff Evelyn Simmons (“Evelyn”) commenced this personal injury/product liability action seeking damages for injuries she suffered on August 11, 2018, when the stove at her apartment, located at 45 Lenox Avenue, apartment 4D in Manhattan (the “premises”) allegedly emitted a burst of flame upon ignition. Defendant Peerless Premier Appliance Co. (“Peerless”) manufactured the stove. Defendant Gateway I TP4 LLC (“Gateway”) owned the premises, and defendant Manhattan North Management Company, Inc. (“Manhattan”) managed

the premises. Plaintiff asserts causes of action for negligence against all defendants, and for strict product liability and breach of express and implied warranties against Peerless.

By decision and order dated May 21, 2024, the Court granted plaintiff's motion to discontinue as to defendant Robertshaw Controls Company ("Robertshaw"), a supplier of parts for the stove.

On August 24, 2024, shortly after the within motions were filed Evelyn passed away, staying the case. By decision and order dated March 19, 2019, plaintiff, as administrator of Evelyn's estate, was substituted as plaintiff in this action, and the stay was lifted.

### **PENDING MOTIONS**

On August 19, 2024, defendant Peerless Premier Appliance Co. ("Peerless") moved for an order pursuant to CPLR § 3212 granting it summary judgment dismissing the complaint and all cross-claims asserted against it. (mot. seq. 7)

On August 19, 2024, defendants Gateway I TP4 Housing Development Fund Company, Inc., Gateway I TP4 LLC, Manhattan North Management Company, Inc. and Tahl-Propp Equities, LLC (collectively, "Gateway Defendants") moved for an order pursuant to CPLR § 3212 granting it summary judgment dismissing the complaint against them. (mot. seq. 8)

The motions are consolidated herein and determined as set forth below.

### **ALLEGED FACTS**

#### *Undisputed Facts*

Based on the parties' respective statements of material fact, the following facts are undisputed.

The oven at issue is a Peerless Premier Gas Range/Oven (the "range") Model #SFK290OP01, Serial # R506779/102. It was manufactured in accordance with the American

National Standard Institute (“ANSI”) standard Z21.1, which is the standard for household cooking gas appliances. The range passed its quality control testing and received a Certificate of Compliance from CSA Group, a third-party testing agency, affirming that it met and/or exceeded applicable industry standards in its design, manufacture and warnings.

Gateway defendants purchased the range from a third-party vendor it was installed in Plaintiff’s apartment by the building superintendent on or about December on or about December 19, 2017. The building superintendent, Demetrio Brito, testified that a Use and Care Manual, which contained instructions regarding the installation, use and care of the range, as well as safety precautions and warnings, was left on top of the range, though Evelyn testified that she did not receive any paperwork.

Shortly after installation, Evelyn complained to the superintendent about the operation of the stove, specifically that it made a ticking noise before igniting. On December 26, 2017, a work order was prepared in response to plaintiff’s complaint, and in January of 2018, non-party Fulton Refrigerator replaced the stove ignitor and serviced the four burners on the stove. In July of 2018, Evelyn made another complaint about the range to the superintendent, specifically that she had to turn the stove knob twice before it would ignite. Plaintiff testified that the superintendent told her that someone would check it out, but that no one did.

Evelyn testified that on that morning of August 11, 2018, she went to light the left front burner of her stove, and as she typically did with the stove, it clicked for five seconds or so, after which she would turn it off for approximately two seconds and then back on, with the stove usually lighting after another five to six seconds of ticking. In this instance, after the second clicking to turn the burner on, approximately five to six seconds, fire suddenly blew up on her, rising to the level of her chest/neck catching her clothes and injuring her neck. Plaintiff filled up

the pot in the sink and doused herself with the water to put out the fire. Prior to the incident, when the burner lighted it would, when it came on, come up to from five to ten inches above the burner. There were no windows in the kitchen, and plaintiff testified that there were no windows open in the apartment at the time of the accident.

On September 21, 2018, the superintendent tested the stove, and determined it was functioning properly, making a video recording. Evelyn continued to complain that the range was not functioning properly, resulting in him removing it to be stored in the basement of the building and having a new one installed.

Peerless's Vice President Gary Siburt testified pursuant to ANSI regulations and his intended design of the stove, the burner should ordinarily light within four seconds, and that gas flow in excess of that can cause a greater than normal intensity of ignition.

#### Expert Reports

On October 14, 2021, the parties and their respective experts attended a post-fire inspection and testing of the range at the F.E.R.A.S.C.O. facility in Lebanon, New Jersey, on which the parties' experts based their respective reports. Prior to that point, it had been kept in storage in the basement of the building.

Peerless' expert Donald Hoffman, an engineer and scientist specializing in fire, explosion, chemical and safety engineering analysis, noted that he observed that the range lacked any apparent signs of damage, or signs of frequent use (i.e. grease build up). He claims that,

During the inspection and testing, the range's burner ignited in normal fashion and operated normally. There was no delayed ignition, no accumulation of gas, and no unintended operation. Gas leak testing revealed no evidence of a gas leak in the subject range. Moreover, attempts to recreate the incident as described by plaintiff were unsuccessful.

He opines that the range operated as designed, in accordance with industry standards, and lacked any malfunction or defect.

Gateway Defendants' expert Leonard Parkin, an engineer who conducts forensic engineering investigations of product/equipment designs relating to mechanical engineering and safety engineering, also observed no physical damage to the range and that it appeared to be in good condition. He states that during the test, which was mutually agreed upon by all participants and recorded, the burner ignited after three to four seconds of clicking, with a maximum flame height of one inch above the range surface. When the burner knob was turned to allow for approximately 14 seconds of clicking, the maximum flame height still did not exceed one inch. He thus opines that this contradicts plaintiff's account of the accident.

Plaintiff's expert John Tobias, an engineer and fire and explosion investigator, also observed no physical damage to the range, and no physical changes compared to photos that were taken shortly after the accident. He states that on manipulation of the control knob, there was a small "sweet spot" near the lite position that allowed gas flow without ignition for a period of up to 30 seconds, and that the condition was consistently reproduceable, particularly on the front left-hand burner but also on the front right-hand burner. He claims that the laboratory testing conditions, which included a flame hood designed to rapidly extract gas for safety, prevented gas buildup and preventing the flame from reaching a height greater than one inch, and that plaintiff's unventilated kitchen would have allowed for such buildup. He opines that this creates an obvious safety hazard and proposes several alternative designs which he claims would have prevented the issue at little additional cost. He notes that there are no warnings or labels in the manual or on the stove warning users that delayed ignition can create dangerous flame bursts.

## DISCUSSION

### Summary Judgment Standard

Summary judgment is a drastic remedy reserved for those cases where there is no doubt as to the existence of material and triable issues of fact. *Sillman v Twentieth Century–Fox Film Corp.*, 3 NY2d 395, 404 (1957).

To prevail on a motion for summary judgment, the movant must establish, *prima facie*, its entitlement to judgment as a matter of law, providing sufficient evidence demonstrating the absence of any triable issues of fact. CPLR 3212(b); *Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25-26 (2019). If this burden is met, the opponent must offer evidence in admissible form demonstrating the existence of factual issues requiring a trial; “conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient.” *Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 (2016), quoting *Gilbert Frank Corp. v Fed. Ins. Co.*, 70 NY2d 966, 967 (1988).

In deciding the motion, the evidence must be viewed in the “light most favorable to the opponent of the motion and [the court] must give that party the benefit of every favorable inference.” *O’Brien v Port Auth. of New York and New Jersey*, 29 NY3d 27, 37 (2017).

### Claims against Peerless

#### *Contentions*

Peerless seeks dismissal of the complaint against it, contending that there is no evidence of design or manufacturing defects in the stove. It notes that subsequent testing of the stove showed that it was in proper working order designed to industry standards. It argues that Evelyn’s failure to read the user manual bars her failure to warn claim, and that there is no evidence that she was aware of, or relied upon, any warranty, express or implied. It contends that

even if there was a defect, as the stove was serviced by a third-party following installation, that plaintiff cannot establish that the stove was defective when it left the manufacturer's possession and control.

In opposition, plaintiff contends that multiple experts who inspected the oven noted a delayed ignition, which it argues at a minimum raises an issue of fact as to whether the stove was inherently dangerous and cites her expert's report. She argues that, while the user manual warns against keeping the burners on or unlit for more than five seconds, that it does not adequately warn of the consequences of doing so. She argues that she has a valid claim for breach of the implied warranty of merchantability as Evelyn had a reasonable right to expect that the range was minimally safe for its intended purpose.

In reply, Peerless argues that absent the ability to recreate the condition that caused the accident, plaintiff's expert report is speculation, and annexes the reply affidavit of its own expert who claims that an accumulation of gas sufficient to form a fireball would be scientifically impossible.

#### *Product Liability*

“A party injured as a result of a defective product may seek relief against the product manufacturer ... if the defect was a substantial factor in causing the injury” (*Speller v. Sears, Roebuck & Co.*, 100 N.Y.2d 38, 41, 760 N.Y.S.2d 79, 790 N.E.2d 252 [2003]; see *Voss v. Black & Decker Mfg. Co.*, 59 N.Y.2d 102, 110, 463 N.Y.S.2d 398, 450 N.E.2d 204 [1983] ). “A strict products liability cause of action may be premised on a defect in the manufacturing process, a defect in the design or a failure by the manufacturer to provide adequate warning or instructions” (*Perazone v. Sears, Roebuck & Co.*, 128 A.D.2d 15, 17–18, 515 N.Y.S.2d 908 [1987], citing *Voss v. Black & Decker Mfg. Co.*, 59 N.Y.2d at 102, 106–107, 463 N.Y.S.2d 398, 450 N.E.2d 204).

*Fitzpatrick v Currie*, 52 AD3d 1089 (3d Dept 2008). “The duty of a manufacturer... extends to the design and manufacture of a finished product which is safe at the time of sale.” *Robinson v Reed-Prentice Division of Package Machinery Co.*, 49 NY2d 471 (1980). “Material alterations at

the hands of a third party which work a substantial change in the condition in which the product was sold by destroying the functional utility of a key safety feature, however foreseeable that modification may have been, are not within the ambit of a manufacturer's responsibility." *Id*; see *Landrine v Mego Corp.*, 95 AD2d 759 (1st Dept 1983).

*Design or Manufacturing Defect*

"[A] defectively designed product is one 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" and "whose utility does not outweigh the danger inherent in its introduction into the stream of commerce" *Fasolas v Bobcat of New York, Inc*, 33 NY3d 421, 429-30 (2019); quoting *Voss v Black & Decker Mfg. Co.*, 59 NY2d 102, 107 (1983). In a design defect case, the question for the jury "is whether after weighing the evidence and balancing the product's risks against its utility and cost ... the product as designed is not reasonably safe" *Id*. A claim based upon a manufacturing defect requires a showing that "the product did not perform as intended and that it was defective at the time it left the hands of the manufacturer" *Lydall v Justin Boot Co.*, 194 AD3d 1237, 1238 (3d Dept 2021), quoting *Fitzpatrick v Currie*, 52 AD3d 1089, 1090 (3d Dept 2008).

Here, it is uncontroverted that, pursuant to the product design and relevant standards, an accumulation of unignited gas for a greater period than four seconds should not have been possible. However, plaintiff testified that her burner would regularly take longer than four seconds to light, and plaintiff's expert was able to reproduce this in testing albeit in a limited "sweet spot." While the inability to recreate an increased flame height in testing is a factor in Peerless's favor, Dr. Tobias asserts that this condition was due to laboratory conditions.

Additionally, Dr. Tobias sets forth several potential alternative designs that he claims would prevent such buildup of gas at minimal cost. “Where ... a qualified expert opines that a particular product is defective or dangerous, describes why it is dangerous, explains how it can be made safer, and concludes that it is feasible to do so, it is usually for the jury to make the required risk-utility analysis” whether the product was reasonably safe. *Richards v Ford Motor Co.*, 198 AD3d 467, 468 (1st Dept 2021) (internal citations omitted).

Thus, there remain issues of fact as to whether the range was defectively designed or manufactured, and whether that was a substantial factor in causing plaintiff’s injuries.

#### *Failure to warn*

“To succeed on their failure-to-warn claim, plaintiffs [are] required to prove that the product did not contain adequate warnings and that the inadequacy of those warnings was the proximate cause of the injuries.” *Mulhall v Hannafin*, 45 AD3d 55, 58 (1st Dept 2007), citing *Glucksman v Halsey Drug Co.*, 160 AD2d 305, 307 (1st Dept 1990). A plaintiff asserting a failure to warn claim must adduce proof “that the user of the product would have read and heeded a warning had one been given” *Reis v Volvo Cars of North America, Inc.*, 73 AD3d 420, 423 (1st Dept 2010), quoting *Sosna v American Home Prods*, 298 AD2d 158 (1st Dept 2002).

Here, there is no proof in the record that plaintiff would have read or heeded a warning about the risk of allowing too much gas to accumulate, as she testified that she had never been provided with any paperwork, including the use and care manual, for the range. Thus, her claim for failure to warn cannot lie, and is dismissed.

#### *Breach of Warranty*

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” (Denny v. Ford Motor Co., 87 N.Y.2d 248, 258–259, 639 N.Y.S.2d 250, 662 N.E.2d 730 [1995] ).

*Wojcik v Empire Forklift, Inc.*, 14 AD3d 63, 66 (3d Dept 2004); *see* UCC 2–314(2)(c).

Here, as set forth above, plaintiff has established triable issues of fact as to whether a design or manufacturing defect in the range rendered it unsafe. Thus, there are triable issues of fact as to whether Peerless breached an implied warranty of merchantability.

As plaintiff does not dispute Peerless’s contention that Evelyn did not rely on any express warranty, that claim is deemed abandoned.

#### *Substantial Modification Defense*

“A defendant moving for summary judgment based on substantial modification must establish entitlement to that defense ‘sufficiently to warrant the court as a matter of law in directing judgment’” in its favor. *Hoover v New Holland North America, Inc.*, 23 NY3d 41, 56, (2014), quoting CPLR 3212(b). “If the defendant establishes prima facie entitlement to summary judgment based on substantial modification, the burden shifts to the plaintiff.” *Id.* The substantial modification defense may be overcome by demonstrating that the post-sale modification did not render a “safe product defective” because the product incorporated a defectively designed safety feature at the time of sale. *Id.*

Here, it is uncontroverted that, subsequent to the range leaving Peerless’s custody and control, and prior to plaintiff’s accident, the ignitor was replaced, and the burners were serviced by a third party. However, Peerless does not argue or present evidence that such modification substantially altered the range or diminished any safety features. Indeed, it is Peerless’s position after inspecting the range that it was not defective at all and remained in good condition after the accident. Thus, the substantial modification defense is inapplicable.

Claims against Gateway Defendants

*Contentions*

Gateway defendants seek summary judgment dismissing the complaint against it, contending that evidence of proper operation of the stove, well after the incident in question, and with the stove not having been used in the interim, is sufficient to establish that the stove was not defective, warranting dismissal of plaintiff's claims against them.

In opposition, plaintiff argues that Tobias's expert affidavit is sufficient to at minimum raise an issue of fact as to whether the stove was defective. Additionally, she argues that Gateway defendants had notice that the stove was a dangerous or defective condition from Evelyn's complaints, which they failed to properly and timely address.

*Analysis*

A landlord has a duty to maintain its premises "in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury, and the burden of avoiding the risk" *Kellman v 45 Tiemann Assoc.*, 87 NY2d 871, 872 (1995). However, be held liable for a dangerous or defective premises condition, they must have either created the condition or had actual or constructive notice of it. *Rooney v George Hardy St. Francis Apartments, LLC*, 181 AD3d 493 (1st Dept 2020).

Here, it is uncontroverted that Gateway defendants did not create the condition that caused the accident. However, plaintiff testified that she complained to the building superintendent multiple times about ignition issues with the range, including one a month prior to the accident which was unresolved. As the court has found there are issues of fact as to whether there was a design or manufacturing defect with the stove, there remain triable issues of

fact as to whether Gateway defendants had actual or constructive notice that the condition was dangerous or defective.

Gateway defendants' reliance on *Weng v Weng* is inapposite. In *Weng*, a case in which the plaintiff similarly suffered an alleged burn from a stove fire, the Second Department found that the property owner defendants "established, *prima facie*, that they maintained the stove in a reasonably safe condition" by submitting a fire incident report specifying the cause of the fire as "cooking carelessness," as well as the separate affidavits of a professional engineer and a certified fire investigator who inspected the stove and found no indicia of any defect or that an explosion or gas leak occurred, and that no subsequent alterations or repairs had been made. 227 AD3d 832 (2d Dept 2024). The court found that this was sufficient to rebut the plaintiff's deposition testimony as to the cause of the fire, and that in opposition plaintiff failed to raise a triable issue of fact, warranting dismissal. *Id.*

Here, unlike in *Weng*, there is no similar indicia of unreliability in plaintiff's testimony, as the only evidence relied on by Gateway defendant's is the results of the post-accident inspection, and its expert report which, unlike in *Weng*, is controverted by plaintiff's own expert. *See Friedman v BHL Realty Corp.*, 83 AD3d 510 (1st Dept 2011). Thus, Gateway defendant's motion for summary judgment is denied.

### **CONCLUSION**

Accordingly, it is hereby:

ORDERED, that Peerless's motion for summary judgment (mot. seq. 7) is granted, to the extent that plaintiff's claims for failure to warn and breach of express warranty claims are dismissed, and is otherwise denied; and it is further

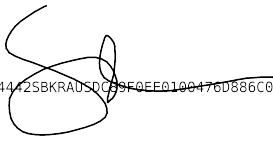
ORDERED, that Gateway defendants' motion for summary judgment (mot seq. 8) is denied; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that plaintiff file a new note of issue within ten days of the date of this order.

This constitutes the decision and order of this Court.

  
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<u>9/10/2025</u> DATE			<u>SABRINA KRAUS, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE