

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DANIEL AND DEBORAH EVANS and RONALD AND JUDITH PHELPS, Plaintiffs	:	NO. 07 - 02,185
	:	
	:	
vs.	:	CIVIL ACTION - LAW
	:	
	:	
ELECTROLUX HOME PRODUCTS d/b/a Frigidaire and BEITERS HOME CENTER, Defendants	:	Motion for Partial Summary Judgment

OPINION AND ORDER

Before the Court is a motion for partial summary judgment filed by Defendant Electrolux (hereinafter "Electrolux") on December 24, 2009. Argument on the motion was heard March 29, 2010.

The instant suit arises from a fire in the home of Plaintiffs, Daniel and Deborah Evans, which Plaintiffs allege was caused by a malfunction in their dishwasher, manufactured by Electrolux. Plaintiffs have filed claims of negligence, strict liability and breach of warranty, and it is the claim of strict liability which Electrolux seeks to dismiss in the instant motion.

In addressing the motion, the Court is guided by the federal district court's statement of the law in Lancene v. Vanderlans & Sons, Inc., 2007 U.S. Dist. LEXIS 37102, p. 4-6 (E.D. PA. May 21, 2007):

Under Pennsylvania law, "strict liability allows recovery when a defective product that is 'unreasonably dangerous' causes harm to a user or consumer." The determination of whether a product is "unreasonably dangerous" is a matter of law. In making this threshold determination, a trial judge must "engage in a risk-utility

analysis, weighing a product's harms against its social utility." The Third Circuit identified some of the factors relevant to this analysis: (1) The usefulness and desirability of the product -- its utility to the user and to the public as a whole; (2) The safety aspects of the product -- the likelihood that it will cause injury, and the probable seriousness of the injury; (3) The availability of a substitute product which would meet the same need and not be as unsafe; (4) The manufacturer's ability to eliminate the unsafe character of the product without impairing its usefulness or making it too expensive to maintain its utility; (5) The user's ability to avoid danger by the exercise of care in the use of the product; (6) The user's anticipated awareness of the dangers inherent in the product and their avoidability, because of general public knowledge of the obvious condition of the product, or of the existence of suitable warnings or instruction; and (7) The feasibility, on the part of the manufacturer, of spreading the loss of [sic] setting the price of the product or carrying liability insurance.

(citations omitted). The court will therefore address each of the factors with respect to the dishwasher at issue.¹

The usefulness and desirability of a dishwasher cannot seriously be questioned. The Court feels no need to address this factor further, other than to note that Plaintiffs indicated they had used the dishwasher every day. This factor thus weighs in favor of Electrolux.

The likelihood that a dishwasher will cause injury and the probable seriousness of the injury is extremely low. According to evidence offered by Electrolux, there were 79.1 million dishwashers in homes in the United States in 2007, and in 2003 through 2006, the National Fire Protection Association estimates that dishwashers were involved in 1200 home structure fires per year, resulting in a .00151 percent risk of a fire occurring in any particular dishwasher.

As these fires resulted in 30 injuries and 4 deaths per year, the risk of injury from a dishwasher fire is 1 in 2.6 million and the risk of death is 1 in 19.7 million. This risk is substantially less than that noted by the Court for riding lawnmowers in Monahan v. Toro Company, 856 F. Supp. 955 (E.D. Pa. 1994), which determined that the risk of injury from a riding mower was 1 in 400 and the risk of death was 1 in 102,000, but nevertheless found such risk low enough to find in favor of the manufacturer on the issue of safety. This factor thus also weighs in favor of Electrolux.

Plaintiffs have offered no suggestion as to a substitute product which would meet the same need and not be as unsafe, and the Court cannot think of any other automatic dish-washing product. This factor therefore also weighs in favor of Electrolux.

With respect to the manufacturer's ability to eliminate the unsafe character of the product without impairing its usefulness or making it too expensive to maintain its utility, again Plaintiffs have offered no suggestions on ways to eliminate the unsafe character of the dishwasher, nor have they offered evidence that some other design is more safe. This factor will thus also weigh in favor of Electrolux.

As for the user's ability to avoid danger by the exercise of care in the use of the product, while Electrolux contends that assuming the instant fire did originate in the dishwasher, such could have been avoided by the use of due care in operating the dishwasher, inasmuch as it is not explained what care was due, or how the fire could have been avoided by the user's due care, the Court cannot

¹ Although Plaintiffs argue that such analysis does not apply to manufacturing defect cases, the Court in Lancene has specifically held otherwise.

find in favor of Electrolux with respect to this factor.² The factor does not weigh in favor of Plaintiffs either, however, as they have failed to demonstrate to the Court that they could not avoid the danger by the use of due care.

With respect to the user's anticipated awareness of the dangers inherent in the product and their avoidability, because of general public knowledge of the obvious condition of the product, or of the existence of suitable warnings or instruction, the Court finds the warnings in the dishwasher's Owner's Guide suitable in the absence of any alternative suggestions from Plaintiffs.

Finally, with respect to the last factor, that of the feasibility of shifting the cost of the risk of loss to the consumer, as the Court otherwise finds that dishwashers are not unreasonably dangerous products, it need not examine this factor. *See Lancenese, supra*.

As nearly all factors weigh in favor of Electrolux, the Court finds dishwashers are not unreasonably dangerous products, and thus Plaintiffs' claim of strict liability must fail.

ORDER

AND NOW, this 20th day of April 2010, for the foregoing reasons, the motion for partial summary judgment filed by Electrolux is hereby GRANTED. Count III of the Second Amended Complaint is hereby DISMISSED.

BY THE COURT,

Dudley N. Anderson, Judge

² The Court recognizes that Electrolux would be hard put to explain how the fire could have been avoided when it contends the fire was not caused by the dishwasher in the first place.

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