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Breaking Legal Developments in Fire Investigation

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EXECUTIVE SUMMARY: This weekly newsletter covers:

1. [New York Court of Appeals Holds that Jury may find Manufacturer of a Refridgerator/Freezer Liable for Breach of Implied Warranties Based on Evidence that Fire Originated in Refridgerator/Freezer, even where Jury does not Find Evidence of a Defect in the Refridgerator/Freezer](#)

(1) NEW YORK COURT OF APPEALS HOLDS THAT JURY MAY FIND MANUFACTURER OF A REFRIDGERATOR/FREEZER LIABLE FOR BREACH OF IMPLIED WARRANTIES BASED ON EVIDENCE THAT FIRE ORIGINATED IN REFRIDGERATOR/FREEZER, EVEN WHERE JURY DOES NOT FIND EVIDENCE OF A DEFECT IN THE REFRIDGERATOR/FREEZER

Brief Summary

In *Bradley v. Earl B. Feiden, Inc.*, 2007 N.Y. LEXIS 161, 2007 N.Y. Slip Op 1386, available at <http://www.nycourts.gov/courts/appeals/decisions/feb07/feb07.htm>, the New York Court of Appeals upheld a jury's finding for plaintiff in a breach of implied warranty of merchantability claim due to a fire originating from plaintiff's refrigerator/freezer, despite the fact that the jury found no defect in the product's defrost timer. In plaintiff's case-in-chief, two fire department investigators stated that burn patterns indicated the fire originated in the freezer and a retained expert stated that the fire was caused by a defect in the defrost timer. In rebuttal, two defense experts stated that the defrost timer operated properly and that based on the production and design phases that the timer went through a defect would have been detected a "hundred percent of the time." On the special verdict sheet, the jury answered "no" to the question on whether the defrost timer was defective, but answered "yes" to the questions on whether the fire started in the refrigerator/freezer and whether the manufacturer breached its warranty that the refrigerator/freezer was reasonably fit for its intended purpose. The Court of Appeals upheld this finding and held that a jury could find that the defrost timer was not defective but the manufacturer still breached its warranty because the fire started in the refrigerator/freezer.

Detailed Facts and Ruling

At issue in this appeal is whether legally sufficient evidence exists to support the jury's verdict in favor of plaintiff on a breach of warranty claim against the manufacturer and retailer of a refrigerator unit, in light of the jury also finding for the manufacturer on a related products liability claim.

In early October 2000, plaintiff, Joseph Bradley, purchased a new General Electric Hotpoint refrigerator

from defendant Earl B. Feiden, Inc. ("Feiden"), an appliance retailer. The refrigerator was manufactured by General Electric Co. ("GE") with a freezer on the top and a fresh food compartment on the bottom. Three weeks later, on the afternoon of October 27, 2000, a fire broke out in plaintiff's kitchen causing damage to his home. Approximately 15 firefighters responded to the scene and, once the fire was extinguished, a crew of investigators remained to probe its cause.

A preliminary Fire Investigation Report was prepared that day by the Fire Department's investigators. The report form lists "Kitchen Refrigerator/Freezer" as the "Origin of Fire." The "Investigator's Remarks" segment of the report states: "Origin of fire in area inside freezer unit of refrigerator. Fire extended to cabinet/overhead area which extended to kitchen area and attic. Heat and smoke damage throughout."

A Basic Fire Incident Report was filed the same day listing "refrigerator/freezer" as the source of the fire. Plaintiff subsequently commenced a property damage action against defendants, GE and Feiden, alleging three separate causes of action -- negligence, strict products liability and breach of implied warranty of merchantability under UCC 2-314 (2)(c). GE, in turn, filed a third-party action against North American Sankyo Corp. ("NAS Corp") and Mid-South Electronics, Inc. ("Mid-South"). The third-party complaint sought common law indemnification from NAS Corp, the manufacturer of the defrost timer, and contractual indemnification from Mid-South, producer and supplier of the bracket control assembly that incorporated the defrost timer.

At trial on the question of liability, plaintiff and three witnesses testified -- firefighter/investigator Wayne Hamilton, forensic consultant David Redsicker and engineer Robert Vasilow. Hamilton, a 15-year veteran of the Cohoes Fire Department, testified that, from his firsthand investigation he believed "the point of origin was in the interior of the freezer, in the refrigerator-freezer unit" based in part on the "extreme amount of burn" in and around the freezer compartment. Redsicker testified that he had examined and determined the origin of over 2,500 fires. Based on his investigation of the subject fire, which included an on-site visit to plaintiff's home, he opined that the point of origin of the fire was the "refrigerator-freezer." This was evident by the high concentration of "charring" and damage in and around the freezer unit. Redsicker further ruled out the can opener as the source of the fire, as proffered by the defense, as that appliance was located near many combustible objects that were not badly damaged by the fire.

Vasilow, a co-employee of Redsicker, examined the refrigerator/freezer as well as various other artifacts, including the can opener, in his laboratory. Based on his review of an x-ray of the refrigerator's defrost timer (which he believed showed a blown fuse and melted wire) as well as his examination of other related objects, he opined that the fire was caused by the defrost timer failing to perform as intended. Specifically, he stated that the defrost timer malfunctioned which resulted in excessive heating of the coils, the melting of the insulation and the ignition of the fire. On cross-examination, Vasilow conceded that he never dismantled the defrost timer or compared it to an exemplar.

At the conclusion of plaintiff's case-in-chief, GE moved for a directed verdict, arguing that the "proof was insufficient to meet [plaintiff's] burden." The court denied the motion and GE proceeded to call its two witnesses, Donald Hoffmann and James Allison. Hoffman, an engineer, testified that he obtained an exemplar defrost timer, took x-rays in a similar manner as did Vasilow, compared the two and found no difference. He further testified that he examined the actual defrost timer and believed it to be functional. He opined that the fire did not originate from the defrost timer, but rather, based on evidence of electrical arcing in the can opener, likely started after an unknown impetus caused the can opener's switch to close, allowing the motor to overheat. Allison, a former GE engineer, testified that the defrost timer is tested throughout the design and production phases and must pass both Underwriters Laboratories' safety requirements and a more comprehensive set of in-house tests; had there had been a defect in the defrost timer it would have been detected a "[h]undred percent of the time."

At the close of its case, GE renewed its motion for a directed verdict, arguing that "[t]he proof simply has not been presented by the Plaintiff and the testimony is now overwhelmingly in favor of a directed verdict on behalf of the defense." The court reserved judgment and the jury was given separate

charges on strict products liability and breach of warranty. The jury was also given a special verdict sheet with the following five questions:

"Did the fire that occurred on October 7, 2000 at 4 Carl Place, Cohoes, New York originate in the General Electric refrigerator/freezer?"

"Was the defrost timer installed in the General Electric refrigerator/freezer defective?"

"Was the defect in the defrost timer installed in the General Electric refrigerator/freezer a substantial contributing factor in causing the fire that occurred on October 7, 2000 at 4 Carl Place, Cohoes, New York?"

"Did General Electric breach its warranty in that the refrigerator/freezer was not reasonably fit for its intended purpose?"

"Was the breach of warranty by General Electric a substantial contributing factor in causing the fire that occurred on October 7, 2000 at 4 Carl Place, Cohoes, New York?"

GE did not object to the jury charge or the verdict sheet. During deliberations, the jury asked the court: "For us to find for the Plaintiff, do we have to agree that the defrost timer was at fault, or do we just have to say that the origin of the fire was the freezer?" The court responded by reading back the charges on strict products liability and breach of warranty. The court further instructed the jury that, even if it determined that the defrost timer was not defective or that the defect was not a substantial cause of the fire, it should proceed to consider plaintiff's claim for breach of warranty. In response, GE argued that a jury finding that there was no defect with the defrost timer but nevertheless a breach of implied warranty would be unsustainable based on speculation. The jury then reached a verdict in which it held in favor of GE on the products liability claim but found for plaintiff on the breach of warranty claim. The jury answered the first question on the special verdict sheet "yes" and the second question "no"; it left the third question unanswered as academic and answered the fourth and fifth questions "yes."

Only after the jurors were discharged did GE renew its motion for a directed verdict on sufficiency grounds and also seek to set aside the verdict as irreconcilable. Separately, GE also made a motion for summary judgment against Mid-South on the contractual indemnification claim. Mid-South responded with a cross-motion seeking summary judgment dismissing the indemnification claim. Supreme Court denied GE's motions for a directed verdict and to set aside the verdict but granted its motion for defense costs and attorney fees in an amount to be determined. Both GE and Mid-South appealed. The Appellate Division, with two Justices dissenting, reversed Supreme Court's denial of GE's post-trial motion and dismissed the complaint stating:

"inasmuch as it appears that there exists no valid line of reasoning or permissible inferences that could lead rational persons to conclude that the refrigerator was not defective, yet was nevertheless not fit to be used for its ordinary purposes on the date of the fire, we are constrained to conclude that Supreme Court erred in not granting defendants' posttrial motion seeking dismissal of the complaint" (30 AD3d at 714). The court then affirmed, also with two Justices dissenting, the trial court's grant of summary judgment to GE on the contractual indemnification claim. Plaintiff now appeals as of right under CPLR 5601 (a) and Mid-South appeals by permission of the Appellate Division under CPLR 5602 (b), a question having been certified to us by that court.

GE raised various objections to the sufficiency of plaintiff's proof throughout the proceeding but never objected to the jury instructions or the special verdict sheet. GE's sufficiency argument must therefore be examined in light of the language of the jury instructions and verdict sheet, which became the law of the case (see Barry, 55 NY2d at 805). Whether these instructions -- which clearly tied the products liability claim to the defrost timer, but not the breach of warranty claim -- were correct is not before us. Thus, under the law of the case, we are now called upon to determine if the Appellate Division erred in

holding that the trial court should have granted GE's motion for a directed verdict based on insufficient evidence. To set aside a jury verdict on this basis, we must of course "conclude that there is simply no valid line of reasoning and permissible inferences which could possibly lead rational [persons] to the conclusion reached by the jury on the basis of the evidence presented at trial" (Cohen v Hallmark Cards, Inc., 45 NY2d 493, 499 [1978]).

For a breach of warranty of merchantability claim, to support a verdict for plaintiff, the jury needed to find that the product was not "fit for the ordinary purposes for which such goods are used" (UCC 2-314 [2][c]; see also Denny v Ford Motor Co., 87 NY2d 248, 258-259 [1995]). Such a verdict may be sustainable solely on circumstantial evidence (cf. Speller v Sears, Roebuck & Co., 100 NY2d 38, 41 [2003] [product defects can be proved by circumstantial evidence "in the absence of evidence identifying a specific flaw"]).

The special verdict sheet given to the jury inquired as to whether the defrost timer in the refrigerator was defective as well as whether GE "breach[ed] its warranty in that the refrigerator/freezer was not reasonably fit for its intended purpose." The jury unanimously rejected the claim that the defrost timer was defective given the conflicting evidence at trial but found that the subject product was not fit for its intended purpose.

Although the proof adduced at trial primarily focused on an alleged defect in the defrost timer, there was also evidence that the fire originated in the refrigerator/freezer. Specifically, the Fire Department reports admitted into evidence identified the refrigerator/freezer as the origin of the fire. Fire Investigator Hamilton along with the forensic Consultant Redsicker, the only witnesses who did on-site investigations, both testified that the fire had its roots in the freezer part of the unit. Surely, a jury could rationally conclude that such an appliance was not fit for its intended purpose, regardless of whether the defrost timer was defective, and thus that GE breached the implied warranty of merchantability.

The verdict sheet, as well as the jury instructions, specifically tied the strict products liability claim -- but not the breach of warranty claim -- to the defrost timer. Thus, a rational jury could have found that the defrost timer claim should be rejected, while also placing the source of the fire in the freezer. Since the jury was not asked whether the refrigerator was free from defect -- only if the defrost timer was defective -- the Appellate Division's opinion that the jury could not rationally find that the refrigerator was not defective, yet was nevertheless not fit to be used for its ordinary purposes, cannot be sustained here. There was sufficient evidence presented to support the claim that the refrigerator was not fit for its ordinary purpose. Accordingly, the jury's verdict should be reinstated and the matter remitted to the Appellate Division for review of the facts (see CPLR 5612, 5613, 5712).

(The remaining portions of this opinion unrelated to the breach of warranty and product defect claims is omitted).

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