

Admiral Indemnity Co. v Chernoff

2012 NY Slip Op 32994(U)

December 12, 2012

Supreme Court, New York County

Docket Number: 111713/2010

Judge: Louis B. York

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SCANNED ON 12/19/2012

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

LOUIS B. YORK
J.S.C.

PRESENT: _____
Justice

PART 2

Index Number : 111713/2010
ADMIRAL INDEMNITY COMPANY
VS.
CHERNOFF, MARC
SEQUENCE NUMBER : 004
SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____

Answering Affidavits — Exhibits _____ No(s). _____

Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is

FILED

DEC 18 2012

NEW YORK
COUNTY CLERK'S OFFICE

MOTION IS DENIED
WITH ACCOMPANYING MEMORANDUM DECISION

RECEIVED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM DECISION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 12/12/12

Luy, J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

LOUIS B. YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 2

Index No. 111713/10

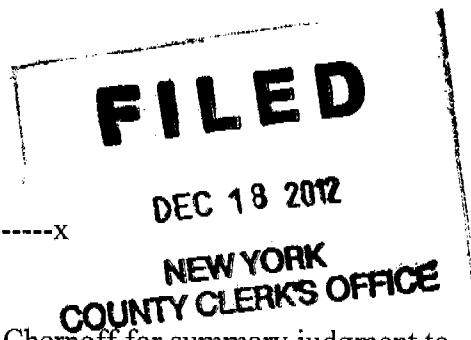
-----x
ADMIRAL INDEMNITY COMPANY A/S/O
WOODBROOKE ESTATES CONDIMINIUM
SECTION IIA,

Plaintiff,

-against-

MARC CHERNOFF AND LAURA CHERNOFF,
ELECTROLUX HOME PRODUCTS, INC D/B/A
KENMORE and QUALITY AIR, LLC,

Defendants.



-----x
Louis, B. York, J:

This is a motion by defendants Marc and Laura Chernoff for summary judgment to dismiss the complaint and all cross-claims against them.

Facts

The plaintiff in this case, Admiral Indemnity Company (hereinafter "Admiral Indemnity?"), seeks to recover damages resulting from a dryer fire that occurred in a condominium unit operated by Woodbrooke Estates Condominium Section IIA (hereinafter "Woodbrooke Estates"). Pursuant to their insurance policy, Admiral Indemnity covered Woodbrooke Estates for all of its claimed damages, minus a \$5000 deductible. Admiral Indemnity filed its complaint as the subrogee of Woodbrooke Estates and seeks \$69,217, with interest, as compensation for the property damage incurred as a result of the dryer fire. The complaint names three defendants: Marc and Laura Chernoff (hereinafter "the Chernoffs"), who reside in the condominium where the fire took place, Electrolux Home Products, Inc. (hereinafter "Electrolux"), which manufactured the dryer, and Quality Air, LLC (hereinafter "Quality Air"), which serviced and cleaned the dryer prior to the fire. The Chernoffs have filed a

motion for summary judgment and co-defendant Electrolux has filed an affirmation in opposition seeking summary judgment as well. This opinion will address both requests.

In July of 2008, the Chernoffs moved into their condominium unit and received a manual for their Kenmore gas dryer. The following warning is found on page 3 of the dryer manual, under a section labeled "Important Safety Instructions:"

WARNING: Clean the lint screen before or after each load. The interior of the dryer, lint screen housing and exhaust duct should be cleaned approximately every 18 months by qualified service personnel. An excessive amount of lint build-up in these areas could result in inefficient drying and possible fire. See **Care and Cleaning**, page 7.

The "Care and Cleaning" section on page 7 similarly warns:

Every 18 months an authorized servicer should clean the dryer cabinet interior and exhaust duct. These areas can collect lint and dust over time. An excessive amount of lint build-up could result in inefficient drying and possible fire hazard.
(Affirmation in Opposition, Exhibit A).

Due to a dryer fire that had occurred in 2007, Admiral Indemnity informed Woodbrooke Estates that it would discontinue its coverage unless all of the unit owners were required to clean their dryers every year. In January of 2009, the Chernoffs received a letter from Woodbrooke Estates which stated:

Just a Reminder per your By-laws you must evidence by April 15, 2009 that you had your dryer vent cleaned annually...If you have not done so as of yet, we have gathered some companies to help, we do not support or recommend these companies. Call them for an estimate or you can use another certified company.

Advertised Duct Services, Inc.
Air Duct
Bob Mima
Cool Air General Cleanings, Inc.
Creative
Quality Air, LLC
Sears Air Duct & Ventilation Services
*Phone numbers for each company have been omitted

(Notice of Motion for Summary Judgment, Exhibit C). Upon receipt of this letter the Chernoffs contacted one of the listed companies, Quality Air, in order to have their dryer vents cleaned.

Quality Air cleaned the dryer in April of 2009 and the fire occurred less than one year later, on January 26, 2010. Admiral Indemnity's expert witness concluded that the fire was the result of two deficiencies: the dryer's design, which prevents the typical consumer from cleaning his own machine, and Quality Air's inadequate cleaning.

Admiral Indemnity reimbursed Woodbrooke Estates for the damage and subsequently filed this lawsuit. Admiral Indemnity's complaint contains four causes of action. Three causes of action are for the alleged negligence of the Chernoffs, Electrolux, and Quality Air with respect to the maintenance, manufacture, and inspection of the dryer. There is also one cause of action against Electrolux which alleges a products liability claim under a design defect theory. The Court will address the Chernoffs' summary judgment motion and Electrolux's request that the Court grant it summary judgment pursuant to CPLR 3212(b), which states that "[i]f it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion." Summary judgment is appropriate when there are no material issues of fact to be resolved. In assessing both requests, the court must draw every inference in favor of the non-moving party, Admiral Indemnity. See Ostrov v. Rozbruch, 91 A.D.3d 147, 152, 936 N.Y.S.2d 31, 34-35 (1st Dept. 2012).

In light of the parties' arguments, the Court denies the Chernoffs' motion for summary judgment and grants summary judgment in favor of Electrolux.

Admiral Indemnity's Claim against the Chernoffs

First, this court addresses the Chernoffs' summary judgment motion. Admiral Indemnity claims that the fire was caused by the carelessness, recklessness, and negligence of the Chernoffs in the operation, management, and control of the unit and the dryer. To support these claims, Admiral Indemnity references the "Important Safety Instructions" and the "Care and Cleaning"

sections of the dryer's manual, which both state that the interior of the dryer and the exhaust duct should be cleaned every 18 months because excessive lint buildup in these areas could result in a fire hazard. The Chernoffs received a copy of this manual when they moved into the unit.

Admiral Indemnity claims that the manual, with its detailed cleaning and safety instructions, gave the Chernoffs constructive notice of the fire hazard.

In their motion for summary judgment, the Chernoffs deny any and all negligence on their part. The Chernoffs point out that Admiral Indemnity's expert witness did not place any fault with them when he described what led to the fire (he instead concluded that the fire was the result of the dryer's design, which prevents the typical consumer from cleaning his own machine, and Quality Air's inadequate cleaning). The Chernoffs also cite the letter that Woodbrooke Estates sent to its condominium owners, which required residents to have their dryers cleaned annually, but only instructed them to have their dryer *vents* cleaned (as opposed to requiring that the interiors of the dryers be cleaned as well, in accordance with the safety precautions specified by Electrolux in the dryer's manual). Because the Chernoffs chose a service provider from the list included in the letter and instructed him to clean the dryer vent, in accordance with the letter's instructions, they argue that they did everything that could reasonably be expected of them, were not negligent, and are entitled to summary judgment in their favor.

As the Chernoffs argue, the owner of a premises cannot be held liable for damage caused by a defective condition unless the plaintiff establishes that the premises owner either created or had actual or constructive notice of the condition. Early v. Hilton Hotels Corp., 73 A.D.3d 559, 560-61, 904 N.Y.S.2d 367, 368-69 (1st Dept. 2010). In order to charge a property owner with constructive notice, a plaintiff must demonstrate that a defective "condition is visible, apparent,

and exists for a sufficient length of time prior to the occurrence of an accident to permit the defendant to discover and remedy the condition.” *Id.* at 561, 369. The Chernoffs argue that they did not have actual or constructive notice of any hazardous conditions or defects associated with their dryer and therefore were not negligent. Admiral Indemnity counters by arguing that the warnings contained in the dryer’s manual gave the Chernoffs constructive notice of the fire hazard. The Court has not yet had the opportunity to decide whether the dryer was defectively designed and therefore the Chernoffs’ constructive notice, or lack thereof, cannot be determined at this stage.

The Court finds that it is improper to grant the Chernoffs’ motion for summary judgment because there is a material issue of fact regarding the level of knowledge that the Chernoffs could reasonably have been expected to possess regarding the cleaning procedures required for their dryer. Though the Chernoffs received the dryer’s manual when they moved into the unit, reasonable minds could differ as to whether a reasonably prudent person, after receiving a letter with specific instructions about cleaning requirements, would then refer back to the dryer manual and read its safety requirements. Whether the Chernoffs should have known to ask Quality Air to perform a more thorough cleaning of the dryer, as suggested by the dryer’s manual, or whether it was sufficient that they followed the instructions sent by the housing association, is an issue of fact that is inappropriate for resolution on a motion for summary judgment. *See Ostrov*, 91 A.D.3d at 152, 936 N.Y.S.2d at 34-35.

Admiral Indemnity’s Claims against Electrolux

Electrolux asks for summary judgment of Admiral Indemnity’s negligence claims against it, which state that the fire was caused by the carelessness, recklessness, and negligence in the design, manufacture, distribution, and sale of the dryer by Electrolux. Admiral Indemnity also

claims that Electrolux should have known that the design and manufacture were unreasonably dangerous or defective and did not provide adequate warning to its susceptibility to malfunction. Electrolux has only moved for summary judgment regarding the negligence claims filed against it, and has not argued that it is entitled to similar relief for Admiral Indemnity's design defect cause of action. Electrolux's affirmation states:

As plead in plaintiff's opposition papers in paragraph 6, EHP [Electrolux] properly warned the Chernoffs, the owners of the subject dryer to have the dryer cleaned every 18 months by a qualified service personnel which they failed to do. Therefore, EHP was not negligent and is entitled to summary judgment. Based on plaintiff's own allegations and assertions plead in paragraph 6 in its opposition papers, as to EHP's proper safety warning of the cleaning requirements of the subject dryer, there can be no negligence on the part of EHP. (Affirmation, ¶ 7-8).

Electrolux cites Admiral Indemnity's opposition papers, which fault the Chernoffs for failing to abide by Electrolux's product safety instructions, to argue that it properly warned its customers of fire hazards and that it was not negligent. (Affirmation, ¶3). Electrolux also argues that because the letter sent to the condominium owners by Woodbrooke Estates only instructed them to clean their dryer vents, and because Admiral Indemnity admits that cleaning the vents alone was insufficient, the letter does not adequately warn homeowners to clean the interior of the dryers. Finally, Electrolux relies on the fact that before the Chernoffs' fire, there had been at least six prior dryer fires among the condominium units to support its claim that Woodbrooke Estates and Admiral Indemnity failed to appropriately instruct condominium owners to have their dryers cleaned.

Summary judgment is appropriate when the movant can demonstrate that there are no issues of material fact in dispute and that the law clearly favors resolution of the issues in its favor. Ostrov, 91 A.D.3d at 152, 936 N.Y.S.2d at 35. Electrolux has shown that Admiral Indemnity knew of six dryer fires that occurred prior to the one in the instant action, and that

despite this knowledge, it mandated that only the dryer vents be cleaned in its letter to the condominium owners. Additionally, Admiral Indemnity itself cites the dryer's instruction manual in order to demonstrate that the Chernoffs were negligent for not cleaning their dryer in accordance with the safety precautions that Electrolux supplied. Accordingly, the Court finds that Electrolux was not negligent and grants its motion for summary judgment vis-à-vis Admiral Indemnity's second cause of action.

Electrolux does not argue that is entitled to summary judgment for the design defect cause of action that Admiral Indemnity has also charged. The Court will therefore not address that cause of action.

Based on the foregoing, it is

ORDERED that the Chernoffs' motion for summary judgment is denied; and it is further **ORDERED** that Electrolux is awarded summary judgment severing and dismissing the complaint as against it with respect to the negligence cause of action.

Dated: ~~November 9, 2012~~ December 18, 2012

FILED
DEC 18 2012
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