IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE FARM FIRE & CASUALTY, COMPANY, as subrogee of Allen and MaryAnn Plant,	)	
Plaintiff,	)	
v.	)	C.A. No. 09C-02-187 PLA
GENERAL ELECTRIC COMPANY and PENTAIR, INC., a/k/a/ PENTAIR WATER GROUP, INC.	)	
Defendants.	)	

Submitted: November 3, 2009
Decided: December 1, 2009

UPON DEFENDANTS' MOTION TO DISMISS
GRANTED IN PART and
DENIED IN PART

Amanda L.H. Brinton, Esquire, Law Offices of Amanda L.H. Brinton, Wilmington, Delaware, Attorney for Plaintiff.

Mary F. Higgins, Esquire, McGivney & Kluger, P.C., Wilmington, Delaware, Attorney for Defendants.

ABLEMAN, JUDGE

I. Introduction

Plaintiff State Farm Fire & Casualty Company ("State Farm") filed this subrogation action to recover policy payments made to its insureds, Allen and MaryAnn Plant ("the Plants"), for damage related to a water leak in the Plants' home. State Farm alleges that a defective water filter manufactured and sold by Defendants General Electric Company and Pentair, Inc. (collectively, "Defendants") caused the leak. State Farm's Complaint seeks recovery for breach of warranty, strict liability, negligence, and various theories labeled as "equitable relief," including conversion, unjust enrichment, waste, trespass, and nuisance. Defendants have moved to dismiss, or in the alternative to strike, State Farm's Complaint.

The Court concludes that State Farm's claim for strict liability is preempted by the Uniform Commercial Code's (UCC) remedies for breach of warranty and must therefore be dismissed. State Farm cannot maintain an action for breach of the express warranty set forth in the filter's product manual, because any such claim would be barred by the warranty's valid one-year limitation period. In addition, because legal damages would provide an adequate remedy for State Farm's claims, it may not pursue equitable remedies.

The Court rejects Defendants' contentions that State Farm's negligence claim is preempted by the UCC or pleaded with such vagueness as to merit dismissal. Furthermore, the Court finds that State Farm was not required to plead the date of tender for delivery to state a claim for breach of implied warranty; therefore, the Court cannot determine whether the relevant four-year limitations period bars this claim until the record is further developed. Finally, the Court declines to apply the economic loss doctrine to this case given that State Farm claims that the allegedly defective filter damaged property other than the product itself.

Accordingly, for the reasons set forth herein, Defendants' Motion to Dismiss is **GRANTED in part** and **DENIED in part**.

II. Factual Background

On February 22, 2006, the Plants experienced a water leak that damaged portions of their Newark home. State Farm insured the property and paid over $12,000.00 on the Plants' claim. According to State Farm, their claim investigation traced the leak's source to the water filter component of a sink. The filter showed a crack on the bottom cap, which State Farm's expert attributed to defective design and manufacture of the

filter. State Farm's investigation identified the component as a GE Smartwater filter manufactured and sold by the Defendants.[1]

State Farm filed suit against Defendants on February 21, 2009. The Complaint includes claims for breach of express or implied warranties (Count I), strict liability (Count II), negligence (Count III), and various equitable remedies (Count IV).

III. Parties' Contentions

Defendants now move to dismiss, or in the alternative to strike, the Complaint.[2] First, Defendants contend that State Farm's express warranty claim is untimely because the filter was sold with a limited one-year warranty against defects in materials or workmanship, which stated that it was in lieu of any other warranty.[3] Defendants also attack the timeliness of State Farm's implied warranty claim. Because State Farm's Complaint does not state when the filter was purchased or installed, Defendants argue that

[1] Compl., ¶ 13.

[2] For the most part, the Court will treat Defendants' filing as a motion to dismiss. As will be discussed below, a motion to strike would be relevant only as to the potentially repetitious material contained in State Farm's Count III negligence claim. *See* Super. Ct. Civ. R. 12(f) ("[T]he Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.").

[3] Defs.' Mot. to Dismiss, Ex. A.

they are unable to determine whether State Farm's claim was filed within the UCC's four-year limitations period on breach of warranty actions.[4]

As to Count II, Defendants assert that under Delaware law strict liability for defective products has been preempted by the UCC. Relying upon *Cline v. Prowler Industries of Maryland, Inc.*,[5] Defendants also argue that State Farm's negligence claim is similarly precluded by the remedies available in the UCC. In addition, Defendants suggest that the negligence claim is subject to dismissal because its averments were not made with particularity, as required by Superior Court Civil Rule 9(b). Defendants argue that because the Complaint does not include any assertions about when the filter was manufactured, they are unable to respond to the negligence allegations. Moreover, Defendants contend that Count III of the Complaint—which alleges negligence in the assembly, cleaning, design, detailing, distribution, inspection, installation, maintenance, manufacturing, marketing, transporting, and warranting of the filter, among other failures—is fatally vague and conclusory.

Finally, Defendants challenge State Farm's requests for equitable relief and for incidental and consequential damages. Defendants argue that

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[4] *See* 6 *Del. C.* § 2-725.

[5] 418 A.2d 968 (Del. Super. 1980).

this Court lacks jurisdiction to hear State Farm's equitable claims and that State Farm is able to obtain a complete and adequate remedy at law for the claims stated in the Complaint. Furthermore, because this case involves a products liability claim for property damages, Defendants contend that only expectation or economic damages may be recovered.

In response to Defendants' Motion, State Farm urges that its Complaint was sufficient to put Defendants on notice of its claims. To the extent that the Complaint lacks certain details, such as the date when the filter was purchased or installed, State Farm contends that Defendants may be in a better position to identify such information and that the specific details Defendants seek should be developed through the discovery process. In the alternative, if its Complaint is insufficient, State Farm argues that the proper remedy is not dismissal, but rather amendment of its filing.[6]

State Farm counters Defendants' UCC preemption argument by suggesting that "[a]s a subrogated insurance carrier, rather than a natural person, State Farm's tort claims are not at all pre-empted by the UCC or any

[6] Defendants object to this portion of State Farm's Response as an attempt to transform the Response into a Motion to Amend the Complaint. Because the Court concludes that the failure to plead the date delivery was tendered in the Complaint is not fatal to State Farm's claim, it will not address this issue in any depth. It should suffice to say that if State Farm wishes to amend its Complaint to include this date or any other information that might shed light on the limitations period issue, this should be accomplished through a properly-presented motion under Superior Court Civil Rule 15, not via a response to the opposition's motion.

other overlapping remedy in contract."[7] Because Delaware's version of the UCC extends sellers' warranties only to "natural persons,"[8] State Farm contends that its status as an artificial entity that neither purchased nor consumed the product prevents preemption of its strict liability and negligence claims. Furthermore, State Farm argues that its claim falls within an exception to the economic loss doctrine, permitting it to recover damages to property other than the defective filter at issue in the case.

IV. Standard of Review

Upon a motion to dismiss, the Court subjects a statement of claim to a broad test of sufficiency.[9] Dismissal is appropriate only if it is reasonably certain "that the plaintiff could not prove any set of facts that would entitle him to relief."[10] A plaintiff's claim will not be dismissed unless it clearly lacks factual or legal merit.[11] When considering a motion to dismiss, the

[7] Pl.'s Resp. to Defs.' Mot. to Dismiss, ¶ 2.

[8] 6 *Del. C.* § 2-318.

[9] *C&J Paving, Inc. v. Hickory Commons, LLC*, 2006 WL 3898268 (Del. Super. Jan. 3, 2007).

[10] *Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998) (citing *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978)).

[11] *Diamond State Tel. Co. v. Univ. of Del.*, 269 A.2d 52, 58 (Del. 1970).

Court will accept all well-pleaded allegations as true.[12] In addition, every reasonable factual inference will be drawn in favor of the plaintiff.[13]

V. Analysis

Defendants have identified both present and potential future stumbling blocks to State Farm's suit. Nevertheless, State Farm has stated several viable claims, and dismissal of the Complaint as a whole would be inappropriate.

1. UCC Preemption

As a starting point, the Court must clarify the effect of the UCC and the principles of subrogation on State Farm's claims. Since *Cline v. Prowler Industries of Maryland, Inc.*, Delaware courts have recognized that the UCC's breach of warranty remedies preempt strict tort liability in sales cases.[14] It is clear that, under *Cline*'s preemption analysis, the Plants could not maintain a strict liability action against Defendants.

State Farm argues against preemption of its strict liability claim by suggesting that it will not be able to maintain the UCC warranty claims that

[12] *Spence v. Funk*, 396 A.2d at 968; *Wyoming Concrete Indus. Inc., v. Hickory Commons, LLC II*, 2007 WL 53805, at *1 (Del. Super. Jan. 8, 2007) (citing *Ramunno*, 705 A.2d at 1036).

[13] *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005).

[14] *Cline*, 418 A.2d at 980 ("Accordingly, we conclude that it is not within the power of this Court to adopt the doctrine of strict tort liability in sales cases due to the preeminence of the Uniform Commercial Code in the sales field of law.").

would be available to the Plants. State Farm points to Delaware's version of Article 2, § 318 of the UCC, which states that, "A seller's warranty whether express or implied extends to any *natural person* who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty."[15] State Farm construes this language to imply that "[t]he UCC . . . does not preempt claims by a subrogated insurance carrier who had no privity of contract with the sale. In the absence of a statutory remedy such as 2-318, the equitable common law principles of subrogation operate to protect the innocent third party."[16]

In essence, State Farm constructs an argument against itself, which Defendants never raised, and then proceeds to lose the illusory dispute. As subrogee to the Plants' claims, State Farm steps into the shoes of its insureds.[17] State Farm takes the rights of its insureds, and therefore may proceed with the same claims that the Plants would have been able to assert.

[15] 6 *Del. C.* § 2-318 (emphasis added).

[16] Pl.'s Resp. to Defs.' Mot. to Dismiss, ¶ 2.

[17] *Great Am. Assurance Co. v. Fisher Controls Int'l, Inc.*, 2003 WL 21901094, at *4 (Del. Super. Aug. 4, 2003); 44A AM. JUR. 2D *Insurance* § 1775 (2009).

As a subrogee, however, State Farm may not enjoy greater rights than those of its subrogors.[18]

Setting aside the pleading and timing issues raised by Defendants' Motion, State Farm is entitled to raise any UCC claims the Plants would have possessed, including breach of warranty claims under 6 *Del. C.* § 2-318. Defendants do not appear to challenge this premise. It is immaterial that State Farm is not a "natural person" under § 2-318 because it is subrogated to the rights of the Plants, who fit the description.[19] Having succeeded to the Plants' rights by subrogation, State Farm cannot support its strict liability claim on the basis that its status as an artificial entity bars it from proceeding with UCC warranty claims. This line of reasoning removes State Farm from the Plants' metaphorical "shoes," and in so doing, arguably places it in a superior position to its subrogors. Thus, Count II of the Complaint must be dismissed because State Farm's strict liability claim is preempted.

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[18] *Great Am. Assurance Co.*, 2003 WL 21901094, at *4; 44A AM. JUR. 2D *Insurance* § 1775 ("An insurer can take nothing by subrogation but the rights of the insured, and is subrogated to only the rights the insured possesses at the time the insurer pays the insured. In other words, the rights of the insurer against the wrongdoer cannot rise higher than the rights of the insured against the wrongdoer, because the insurer, as subrogee, stands in the place of the insured and succeeds to whatever rights he or she may have in the matter.").

[19] *See, e.g.*, *Nationwide Mut. Fire Ins. Co. v. Boscov's, Inc.*, 2006 WL 2615118 (Del. Com. Pl. Aug. 30, 2006) (finding that insurer prevailed on subrogation claim for UCC Article 2 breach of implied warranty of merchantability).

Defendants incorrectly contend that UCC preemption also applies to State Farm's negligence claim. *Cline*'s analysis of UCC preemption addressed strict liability claims only, not actions for negligence. A claim for breach of warranty under the UCC, which focuses solely on the product, is "conceptually distinct" from a negligence claim, which "focuses on the manufacturer's conduct."[20] Indeed, the *Cline* Court observed that "the [UCC] was intended by the General Assembly to be the sole remedy *beyond negligence* in products liability cases involving sales transactions,"[21] indicating that negligence remained a viable basis upon which to raise a products liability claim. Consistent with this holding, Delaware courts have found that the UCC does not preempt negligence claims.[22] Therefore, Defendants are not entitled to dismissal of Count III on the basis of UCC preemption.

[20] *Hyatt v. Toys "R" US, Inc.*, 930 A.2d 928, 2007 WL 1970075, at *2 (Del. July 9, 2007) (TABLE) (quoting *Bell Sports, Inc.v. Yarusso*, 759 A.2d 582, 594 (Del. 2000)).

[21] *Cline*, 418 A.2d at 979 (emphasis added).

[22] *See, e.g.*, *Sayers v. Leon N. Weiner & Assocs., Inc.*, 442 A.2d 98, 100 (Del. Super. 1981) ("The UCC does not by its language touch upon, modify or regulate the traditional negligence standards.").

2. Warranty Limitations Periods

Actions for breach of warranty under the UCC are subject to a four-year limitations period unless that time period is modified by the parties.[23] Pursuant to 6 *Del. C.* § 2-725(1), "[b]y the original agreement the parties may reduce the period of limitations to not less than one year but may not extend it." The limitation period commences "when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach."[24] In the absence of an express warranty relating to future performance of the goods, "[a] breach of warranty occurs when tender of delivery is made."[25]

Defendants argue that State Farm's express warranty claim is barred by the one-year limitations period provided in the filter's express warranty. That warranty, contained in the filter manual, is labeled in bold as a "Limited One-Year Warranty" and includes the following information for the purchaser:

> *What does this warranty cover?*
> —Any defect in materials or workmanship in the manufactured product.

[23] *See* 6 *Del. C.* § 2-725(1) ("An action for breach of any contract for sale must be commenced within 4 years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitations to not less than one year but may not extend it.").

[24] *Id.* § 2-725(2).

[25] *Id.*

* * *

For how long after the original purchase [does the warranty apply]?
—One Year.[26]

State Farm offers no response to Defendants' position. The Court concludes that the express warranty clearly defines an alternative limitations period of one year, as permitted by § 2-725(1). Although, as will be discussed below, it is uncertain when tender of delivery occurred, State Farm's suit was not filed until almost three years after the water leak. Accordingly, State Farm is time-barred from proceeding against Defendants for breach of the manual's express warranty.

State Farm's claim for breach of implied warranties presents a less clear-cut issue. As Defendants note, the Complaint is devoid of any information regarding when the filter was delivered or, if this date is unknown to the plaintiff, how long the Plants have owned the sink that contains it. Because a breach of implied warranties under the UCC occurs at the tender of delivery, Defendants cannot calculate when the four-year limitations period commenced. State Farm indicates that it does not know when the filter was tendered for delivery. Furthermore, State Farm suggests that Defendants may be able to determine a delivery time-frame based upon

[26] Defs.' Mot. to Dismiss, Ex. A.

the model number and other information printed on the filter, which was detailed in the Complaint.

Although Defendants frame this lack of delivery date information as a fatal defect in State Farm's pleading, as a general rule, a plaintiff need not "plead in anticipation" of an affirmative defense based upon the statute of limitations.[27] This rule is particularly sensible when, as appears to be the situation in this case, the plaintiff is ignorant of facts related to the commencement of the limitations period and discovery may reveal the relevant information. On the record currently before the Court, dismissal is not merited for failure to plead a date of tender. If facts developed during discovery establish that the filter could not have been tendered for delivery within four years before State Farm's claim was filed, Defendants may file another motion seeking dismissal of State Farm's Count I claim for breach of implied warranties.

3. Sufficiency of Negligence Pleading

Defendants challenge Count III on the basis that State Farm's negligence claim is so vague and overbroad, "listing . . . every possible breach which could have occurred without reference to time, place or

[27] 54 C.J.S. *Limitations of Actions* § 340 (2009) ("Ordinarily, where the bar of the statute of limitations is not apparent from the face of the petition or declaration, it is not necessary for the plaintiff to anticipate the defense of limitations and plead facts in avoidance thereof.").

manner,"[28] that it fails to satisfy the requirement of Superior Court Civil Rule 9(b) that averments of negligence be stated with particularity.

Rule 9(b) requires that the defendant be apprised of "(1) what duty, if any, was breached; (2) who breached it; (3) what act or failure to act breached the duty; and (4) the party affected by the act or failure."[29] These requirements serve the underlying purpose of Rule 9(b), which is to ensure that the defendant is notified of those "acts or omissions by which it is alleged that a duty has been violated" in order to enable the preparation of a defense.[30] To satisfy this purpose, "it is usually necessary to allege only sufficient facts out of which a duty is implied and a general averment of failure to discharge that duty."[31]

State Farm adopted what in the context of this case must be deemed an "everything and the kitchen sink" approach to pleading. The Complaint alleges that Defendants were negligent in failing "to properly assemble, clean, design, detail, distribute, inspect, install, maintain, manufacture,

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[28] Defs.' Mot. to Dismiss, ¶ 8.

[29] *Simmons v. WSFS Bank*, 2008 WL 4419057, at *1 (Del. Super. Aug. 20, 2008) (quoting *Roberts v. Delmarva Power & Light Co.*, 2007 WL 2319762, at *1 (Del. Super. Aug. 6, 2007)).

[30] *Riggs Nat'l Bank v. Boyd*, 2000 WL 303308, at *3 (Del. Super. 2000).

[31] *Id.*

market, produce, repair, service, ship, sell, store, transport, and/or warrant the filter."[32]

Although excessive, this verbiage does not render State Farm's averment of negligence insufficiently particular. The Complaint places Defendants on notice of the crux of State Farm's negligence claim: that the Plants were harmed by breaches of the Defendants' duties as the manufacturers of the filter to exercise reasonable care in its design, manufacture, inspection, and pre-delivery handling. The Complaint describes a crack in the bottom cap of the filter as the source of the water leak, and further identifies three specific flaws to which it attributes the filter's alleged defects: selection of materials insufficient to withstand the forces to which such filters are typically subjected; "inappropriate molding conditions" in the manufacture of the filter; and insufficient quality control measures to identify flaws during the manufacture process.[33]

Rule 9(b) does not, as Defendants propose, mandate that a plaintiff alleging a product defect must plead the date the product was purchased. Here, State Farm's Complaint describes the model number, identification code, and data printed on the filter. State Farm points out that Defendants

[32] Pl.'s Compl., ¶ 26.

[33] *Id.*, ¶ 13.

may be in a superior position to use this information in determining a manufacturing time-frame.

State Farm's counsel is cautioned against pleading practices that involve throwing a plethora of theories against the opposition to see what sticks. Some of the bases for State Farm's Count III claim—such as negligent shipping—bear no immediately apparent relationship to the alleged product defects. Nonetheless, the Court is satisfied that State Farm's Complaint pleads negligence with sufficient particularity that Defendants are able to mount a defense. Although stylistically grating, the surfeit of synonyms in State Farm's Complaint is not so egregious that the Court needs to exercise its powers under Rule 12(f) to strike redundant material. To the extent that State Farm encounters difficulties generating evidentiary support for any of its particular allegations of negligence, such matters are more appropriately addressed upon a motion for summary judgment after discovery has progressed and the parties have exchanged expert opinions. At this stage, dismissal of Count III would be inappropriate.

4. Equitable Relief

Under Count IV of the Complaint, State Farm demands equitable relief, asserting theories of conversion, unjust enrichment, waste, trespass to real property, and nuisance. Defendants seek dismissal of Count IV on the

grounds that this Court lacks equitable jurisdiction and that State Farm can obtain an adequate and complete remedy for its claims at law. State Farm has not offered a response to this portion of Defendants' Motion.

The Court agrees with Defendants that State Farm cannot pursue equitable relief because an adequate remedy at law exists.[34] It is notable, however, that Count IV also requests monetary damages. Indeed, the Court is uncertain why State Farm framed certain of its Count IV theories as equitable claims. To the extent that this count of the Complaint may have been misleadingly labeled, the Court will not dismiss State Farm's Count IV claims for legal damages for conversion, unjust enrichment, waste, trespass, and nuisance.[35]

5. Economic Loss Doctrine

Finally, Defendants assert that because "[p]roperty damages in product liability cases are limited to expectation or economic damages,"[36] the Court should strike all other damages claims in the Complaint. Although

[34] *Metcap Sec. LLC v. Pearl Senior Care, Inc.*, 2009 Wl 513756, at *6 (Del. Ch. Feb. 27, 2009).

[35] The Court recognizes that Defendants may seek to challenge whether these theories of recovery would apply to the facts of this case, and they remain free to do so; however, the Court will not address these issues *sua sponte* when they have not been briefed by the parties.

[36] Defs.' Mot. to Dismiss, ¶ 9.

not directly described as such, Defendants' argument appears to be that State Farm's recoverable damages are limited by the economic loss doctrine.

The economic loss doctrine "prohibits recovery in tort where a product has damaged only itself (*i.e.*, has not caused personal injury or damage to *other* property) and[] the only losses suffered are economic in nature."[37] Economic losses in this context are defined as "'damages for inadequate value, costs of repair and replacement of the defective product, or consequent loss of profits,' as well as 'the diminution in value of the product because it is inferior in quality and does not work for the general purposes for which it is manufactured and sold.'"[38]

Here, the Complaint asserts that the Plants suffered damage to their realty as a result of the water leak. Because this case involves damage to property other than the allegedly defective product, the economic loss doctrine is inapplicable and will not bar State Farm from proceeding in tort.

VI. Conclusion

For the foregoing reasons, Defendants' Motion to Dismiss is **GRANTED in part** as to State Farm's claims for strict liability, breach of

[37] *Danforth v. Acorn Structures, Inc.*, 608 A.2d 1194, 1195 (Del. 1992).

[38] *Id.* at 1195 n.3 (quoting *Moorman Mfg. Co v. Nat'l Tank Co.*, 435 N.E.2d 443, 449 (1982)).

express warranty, and equitable relief, and **DENIED in part** as to State Farm's remaining claims.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary
cc: Amanda L.H. Brinton, Esq.
Mary F. Higgins, Esq.