

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICKY A. FULLER and
THERESA A. FULLER,

Plaintiffs,

v.

ORDER
07-CV-330A

SUMMIT TREESTANDS, LLC,

Defendant.

This case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1), on May 30, 2007. On February 27, 2009, defendant filed two summary judgment motions: a motion for summary judgment as to plaintiffs' claims for failure to warn, manufacturing defects, and breach of express and implied warranties (Docket No. 70); and a motion for summary judgment as to proximate cause (Docket No. 71). On May 11, 2009, Magistrate Judge McCarthy filed a Report, Recommendation and Order, recommending that defendant's summary judgment motions be granted in part and denied in part.¹

¹In his Report, Recommendation, and Order, Magistrate Judge McCarthy also issued orders as to plaintiffs' pending motion to compel (Docket No. 59) and defendant's two motions in limine (Docket Nos. 72, 75). The Court need not address these orders, as the motions are non-dispositive and the parties did not appeal the orders to this Court.

On May 26, 2009, defendant filed objections to those portions of the Report, Recommendation and Order that addressed plaintiffs' failure to warn claim. Plaintiffs filed a response to defendant's objections on June 9, 2009 that requested adoption of the Report, Recommendation and Order. Oral argument on the objections was held on June 17, 2009.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* review of those portions of the Report, Recommendation, and Order that addressed defendant's summary judgment motions and to which defendant objected. Upon a *de novo* review of those portions of the Report, Recommendation and Order, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report, Recommendation, and Order as to plaintiffs' failure to warn claim. The Court also adopts those portions of the Report, Recommendation, and Order to which no objections were made.

Accordingly, for the reasons set forth in Magistrate Judge McCarthy's Report, Recommendation, and Order:

(1) Defendant's motion for summary judgment (Docket No. 70) is granted to the extent of dismissing plaintiffs' manufacturing defect and express warranty claims, but otherwise denied; and

(2) Defendant's motion for summary judgment (Docket No. 71) dismissing the complaint for lack of proximate cause is denied.

The parties are directed to appear before the Court on **Friday, July 10, 2009 at 9:00 a.m.** for a status conference to set a trial date.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: June 30, 2009