SJC-13108

OFER NEMIROVSKY vs. DAIKIN NORTH AMERICA, LLC, & others.[1]

Suffolk. October 6, 2021. - December 16, 2021.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt, & Georges, JJ.

Contract, Warranty, Performance and breach, Misrepresentation. Negligence, Defective product. Intentional Conduct. Consumer Protection Act, Attorney's fees. Limitations, Statute of. Practice, Civil, Judgment notwithstanding verdict.

Civil action commenced in the Superior Court Department on June 27, 2016.

The case was tried before Jackie A. Cowin, J., and motions for judgment notwithstanding the verdict and for a new trial or remittitur were considered by her.

The Supreme Judicial Court granted an application for direct appellate review.

Mark C. Fleming (Felicia H. Ellsworth also present) for the defendants.

James L. Messenger (John W. Moran also present) for the plaintiff.

[1] Daikin Applied Americas Inc., formerly known as AAF-McQuay Inc.; DACA Delaware Dissolution Trust, as successor-in-interest to Daikin AC (Americas), Inc.; and Stebbins Duffy, Inc.

The following submitted briefs for amici curiae:

Jennifer B. Dickey, of the District of Columbia, & Patrick Strawbridge for Chamber of Commerce of the United States of America.

James M. Campbell & Christopher Howe for Product Liability Advisory Council, Inc.

Phil Goldberg & Cary Silverman, of the District of Columbia, & Brandon L. Arber for National Association of Manufacturers.

WENDLANDT, J. We have long held that the manufacturer of a nondefective component placed in an integrated product generally is not liable for damage caused by a defect in the integrated product.[2] This so-called "component parts doctrine" is grounded in the unremarkable proposition that the component manufacturer, unlike the integrated product manufacturer, usually is not well positioned to oversee the design or manufacture of the integrated product and thus should not be liable for damage caused by defects in the integrated product.

In the present case, a Superior Court judge declined to apply the doctrine to the nondefective component distributed by defendant Daikin North America, LLC (Daikin NA), because the component was not itself a "standalone" product and because the component was designed specifically for use in the integrated product, a heating, ventilation, and air conditioning (HVAC)

[2] The same is true for the distributor or seller of the component. Except as otherwise noted, we will use "manufacturer" to refer both to the manufacturer and the distributor or seller.

system, manufactured and sold by entities other than Daikin NA. Neither reason supplies an exception to the doctrine in view of the rationale that undergirds it.

Because the additional contention of the plaintiff, Ofer Nemirovsky, that the doctrine applies only to tort claims (as opposed to the warranty claims at issue here) is also unsupportable, we vacate the judgment entered against Daikin NA and remand for reconsideration of damages, if any, that stem from Nemirovsky's reasonable reliance on Daikin NA's intentional misrepresentations to him in connection with efforts to determine the causes of the HVAC system's failures. Further concluding that evidence at trial showed only economic injury to the HVAC system itself, we affirm the judge's directed verdict for the defendants on Nemirovsky's claims for breach of the implied warranty of merchantability against the original sellers of the HVAC system as time barred under G. L. c. 106, § 2-725.[3]

1. Background. We recite the evidence presented at trial in the light most favorable to the jury verdict, reserving some facts for discussion later in the opinion. O'Brien v. Pearson, 449 Mass. 377, 383 (2007).

[3] We acknowledge the amicus briefs submitted by the Chamber of Commerce of the United States of America, the Product Liability Advisory Council, Inc., and the National Association of Manufacturers.

In 2008, as part of a remodel of his 22,000 square foot single family home in Boston, Nemirovsky purchased an HVAC system designed and manufactured by Daikin Industries, Ltd. (Daikin Industries), a Japanese corporation. The system included "fan coil units," which comprised a fan, an evaporator coil, and a Styrofoam drain pan. In operation, the coil is filled with a refrigerant and the fan blows air across the coil, cooling the air, before the air is blown into a room. The Styrofoam drain pan sits below the coil, collecting and removing water that condenses and drips from the coil.

Nemirovsky's HVAC contractor, Climate Engineering, LLC, purchased the HVAC system from defendant Stebbins Duffy, Inc. (Stebbins Duffy), a manufacturer's representative of Daikin Industries' products. Stebbins Duffy in turn acquired the system from its North American distributor at the time, Daikin AC (Americas), Inc.; the successor-in-interest to this entity is defendant DACA Delaware Dissolution Trust (DACA Trust).

In 2012, an evaporator coil within Nemirovsky's HVAC system began to leak, resulting in the loss of air conditioning. Properly installed, cleaned, and inspected evaporator coils were expected to last from ten to fifteen years before needing to be replaced. Nemirovsky had the first coil replaced, believing the failure to be a "hiccup."

In 2013, four additional coils in Nemirovsky's system failed. Nemirovsky began to believe that there was a systemic problem; he communicated his concerns to defendant Daikin Applied Americas Inc. (Daikin Applied), which serviced his system from 2013 to 2015. Meanwhile in 2013, the defendant Daikin NA was established, becoming the North American distributor for the evaporator coils used in the type of HVAC system Nemirovsky had purchased. In late 2014, Daikin Applied replaced Nemirovsky's four leaking coils with coils acquired from Daikin NA.

Evaporator coils in Nemirovsky's system continued to fail over the next few years; all told, seventeen of the twenty-eight coils in the house failed. Of the seventeen failed coils, three were supplied by Daikin NA as replacement parts; the remaining coils supplied by Daikin NA did not fail.

Nemirovsky commenced an action in 2016 against DACA Trust, Stebbins Duffy, Daikin Applied, and Daikin NA. As against each, he alleged breach of express warranty, breach of the implied warranty of merchantability, breach of the implied warranty of fitness for a particular purpose, intentional and negligent misrepresentation, and violations of G. L. c. 93A. The judge allowed summary judgment in favor of all defendants on the claims of breach of express warranty and breach of the implied warranty of fitness for a particular purpose, as well as summary

judgment in favor of Stebbins Duffy and Daikin Applied on the G. L. c. 93A claims.[4]

A jury trial was held on the remaining claims -- namely, breach of the implied warranty of merchantability and intentional and negligent misrepresentation as against all defendants, as well as the G. L. c. 93A claims against DACA Trust and Daikin NA. Following the close of the evidence, the judge directed a verdict in favor of DACA Trust and Stebbins Duffy, the sellers of the original system, on the implied warranty of merchantability claim, because the four-year statute of limitations had run on claims related to the 2008 sale of the original HVAC system to Nemirovsky. As to the various misrepresentation claims, the judge determined that only the negligent misrepresentation claims against DACA Trust and Stebbins Duffy could proceed to the jury based on those defendants' conduct leading to the sale of the original HVAC system, and that only the intentional misrepresentation claims could proceed against Daikin NA and Daikin Applied based on their conduct after the sale of the original system. The judge denied Daikin NA and Daikin Applied's motions for a directed verdict, allowing the jury to decide Nemirovsky's claims against those two defendants for breach of the implied warranty of

[4] The summary judgment decision is not part of this appeal.

merchantability and intentional misrepresentations. The judge also allowed the jury to provide an advisory opinion on whether Daikin NA and DACA Trust violated G. L. c. 93A.

The jury found Daikin Applied liable for a breach of the implied warranty of merchantability and awarded $8,934 in damages for the cost of the replacement coils, but they found that defendant not liable for intentional misrepresentation.[5] The jury found Daikin NA, which sold the replacement coils to Daikin Applied, liable for intentional misrepresentation and breach of the implied warranty of merchantability, awarding $3,387,473.73 in damages, along with an advisory verdict that Daikin NA had violated G. L. c. 93A, warranting doubled damages. The jury returned an advisory verdict that DACA Trust was not liable for any violation of G. L. c. 93A and found DACA Trust and Stebbins Duffy not liable for negligent misrepresentation with respect to the original sale.[6] The judge adopted the jury's G. L. c. 93A advisory verdict against Daikin NA, added prejudgment interest and attorney's fees, and awarded a total of $10,644,720.25 in damages.

Daikin NA filed a motion for judgment notwithstanding the verdict, contending that the component parts doctrine precluded

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[5] Daikin Applied did not appeal.

[6] Nemirovsky does not appeal from the jury verdicts as to DACA Trust and Stebbins Duffy.

liability because there was no evidence that the coils themselves were defective, and that there was no evidence of reasonable reliance on Daikin NA's alleged misrepresentations. Daikin NA also filed a motion for a new trial or remittitur, arguing, among other things, that the verdict was against the weight of the evidence, that the award of damages was contrary to law, and that the verdict form's failure to ask specifically about reasonable reliance required a new trial on the intentional misrepresentation claim. Both motions were denied. Daikin NA timely appealed. Nemirovsky filed a cross appeal, contending that the judge improperly allowed the directed verdict motion of DACA Trust and Stebbins Duffy on Nemirovsky's breach of implied warranty of merchantability claims. We granted Daikin NA's application for direct appellate review.

2. Discussion. When reviewing the denial of a motion for judgment notwithstanding the verdict, we "construe the evidence in the light most favorable to the nonmoving party" to determine "whether the evidence, construed against the moving party, justif[ies] a verdict against him" (quotation and citations omitted). O'Brien, 449 Mass. at 383. The verdict will stand if "anywhere in the evidence . . . any combination of circumstances could be found from which a reasonable inference could be made in favor of the [nonmovant]" (citation omitted). Id.

a. Component parts doctrine.[7] It is a well-settled principle of products liability law that, as a general matter, a commercial manufacturer of a defective product is liable for harm to persons or property caused by the defect.[8] Restatement (Third) of Torts: Products Liability § 1 (1998). See Evans v. Lorillard Tobacco Co., 465 Mass. 411, 424 (2013); Back v. Wickes Corp., 375 Mass. 633, 640-641 (1978). This long-standing concept of products liability draws on both warranty law and

[7] Nemirovsky's contention that Daikin NA waived the component parts doctrine argument is unavailing. In its motion for a directed verdict, Daikin NA argued that the "[p]laintiff presented no evidence that the replacement coils are themselves defective. Rather, his expert testified that the design defect at issue was the design of the drain pan in the [integrated] system, not of the coils themselves." Cf. Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 115 (2000) ("Where the defendants first raised this defense in their motion for judgment n.o.v. and not in their motion for directed verdict, we agree with the trial judge that the defense is now waived"); Bonofiglio v. Commercial Union Ins. Co., 411 Mass. 31, 34 (1991) (reiterating that "no grounds for the motion for judgment notwithstanding the verdict may be raised which were not asserted in the directed verdict motion"). Daikin NA reiterated the same argument at the hearing on the directed verdict motion, asserting that "there is no evidence of defect with the replacement coils themselves. . . . The pans are not part of the replacement coils." Indeed, the judge expressly ruled on the argument. See Fidelity Co-op. Bank v. Nova Cas. Co., 726 F.3d 31, 39 (1st Cir. 2013) ("Since the district court addressed and passed on the issue directly, [appellant] is free to address the issue so raised in this appeal").

[8] Of course, liability standards differ depending on whether the defect is a manufacturing defect, a design defect, or a defect based on inadequate instructions or warnings. See Restatement (Third) of Torts: Product Liability § 1 reporters' note to comment a (discussing "abundant authority" recognizing this division of liability depending on product defect type).

tort law. Restatement (Third) of Torts: Products Liability § 1 comment a ("The liability established in this Section draws on both warranty law and tort law"). See Prosser, The Assault Upon the Citadel (Strict Liability to the Consumer), 69 Yale L. Rev. 1099, 1126 (1960) (describing interrelated nature of products liability, warranty, and tort law); Titus, Restatement (Second) of Torts Section 402A and the Uniform Commercial Code, 22 Stan. L. Rev. 713, 781-782 (1970) (summarizing various States' approaches to products liability, some through warranty and others through tort liability).

Products liability is grounded in the judgment that, as between the commercial manufacturer of a defective product and the consumer, the cost of injury should be borne by the former, which can treat the expense as a cost of production, can obtain insurance for the liability, and can more readily pass along the costs to the consuming public in the form of higher prices of its goods. Restatement (Third) of Torts: Products Liability § 2 comment a (1998) ("An often-cited rationale for holding wholesalers and retailers strictly liable for harm caused by manufacturing defects is that, as between them and innocent victims who suffer harm because of defective products, the product sellers as business entities are in a better position than are individual users and consumers to insure against such losses").

Many commercial products, however, comprise multiple components made by different entities not involved in the design of the integrated product. In such circumstances, a component manufacturer may be liable if the component itself was defective and the component's defect caused the harm. See Cipollone v. Yale Indus. Prods. Inc., 202 F.3d 376, 379 (1st Cir. 2000); Restatement (Third) of Torts: Products Liability § 5 & comment b (1998). Additionally, a component manufacturer may be liable, even if the component itself is not defective, if the component manufacturer is "substantially involved" in the integration of the component into the design of the integrated product, the integration of the component causes the integrated product to be defective, and the defect in the integrated product causes the harm. Restatement (Third) of Torts: Products Liability § 5 & comment e (1998). See Freitas v. Emhart Corp., 715 F. Supp. 1149, 1152 (D. Mass. 1989). Otherwise, the manufacturer of a nondefective component is not liable for harms caused by the integrated product. See Mitchell v. Sky Climber, Inc., 396 Mass. 629, 631 (1986); Restatement (Third) of Torts: Products Liability § 5 comment a ("As a general rule, component sellers should not be liable when the component itself is not defective . . .").

The rationale for the component parts doctrine is that "[i]f the component is not itself defective, it would be unjust

and inefficient to impose liability solely on the ground that the manufacturer of the integrated product utilizes the component in a manner that renders the integrated product defective." Restatement (Third) of Torts: Products Liability § 5 comment a (1998). Imposing liability on the nondefective component seller "would require the component seller to scrutinize another's product which the component seller has no role in developing. This would require the component seller to develop sufficient sophistication to review the decisions of the business entity that is already charged with responsibility for the integrated product." Id. See Crossfield v. Quality Control Equip. Co., 1 F.3d 701, 704 (8th Cir. 1993) ("To impose responsibility on the supplier of the [component] in the context of the larger defectively designed machine system would simply extend liability too far. This would mean that suppliers would be required to . . . scrutinize machine systems that the supplier had no role in developing"). Indeed, as the highest court in one of our sister jurisdictions observed, "every court presented with the issue has adopted the component parts doctrine." Davis v. Komatsu Am. Indus. Corp., 42 S.W.3d 34, 38-39 (Tenn. 2001) (collecting cases).

i. Standalone components. The judge rejected Daikin NA's argument that it, as a distributor of defect-free evaporator coils, was not liable under the component parts doctrine,

reasoning that the doctrine applied only to "standalone" components -- by which the judge apparently referred to components that function separate and apart from the system into which they are integrated.[9] However, as discussed supra, the doctrine is not based on the component's functionality as a standalone product, but rather on the assessment that liability generally should not flow to one engaged in providing a defect-free component that is integrated into another product that itself is defective. See Restatement (Third) of Torts: Products § 5 comment a (1998) (explaining that for purpose of doctrine, components include those that "have no functional capabilities unless integrated into other products"). Indeed, Nemirovsky cites to no case law, and we are aware of none, that would limit the doctrine in such a manner. To the contrary, the doctrine has been applied to nonstandalone products. See Pantazis v. Mack Trucks, Inc., 92 Mass. App. Ct. 477, 483 (2017) (applying doctrine to "power take-off" part of system used to tilt body of dump truck, which was not standalone); Childress v.

[9] In so concluding, the judge apparently relied on language from the Federal court's decision in Cipollone, 202 F.3d at 379, which applied the doctrine to preclude extending liability to a manufacturer of a dock lift that "function[ed] on [its] own" when it was integrated into a defective scaffolding structure. The language reflected the court's conclusion that the lift itself did not have a defect, id.; the court did not create an additional element -- namely, that the component must be a standalone product -- for applicability of the doctrine.

Gresen Mfg. Co., 888 F.2d 45, 47 (6th Cir. 1989) (applying doctrine to nonstandalone hydraulic valve within log splitter).

ii. Specialized component parts. The judge alternatively concluded that the component parts doctrine was unavailable to Daikin NA because the coils were produced "specifically for the [HVAC] system and distributed exclusively for use in that system." The doctrine applies equally, however, to specialized components designed only for use in an integrated product. See Restatement (Third) of Torts: Products Liability § 5 comment e ("A component seller who simply designs a component to its buyer's specifications, and does not substantially participate in the integration of the component into the design of the product, is not liable" for defects in integrated product). See, e.g., Cipollone, 202 F.3d at 379 (seller of dock lift "designed to [the integrator's] specifications" and "later integrated into a larger . . . system" was not liable for defects in integrated system under component parts doctrine because there was "no evidence" that lift itself was defective upon delivery to integrator); Childress, 888 F.2d at 48-49 (holding manufacturers of component specifically designed for a given purpose liable when part is "misapplied [by the integrator] rather than defectively designed" "would be contrary to public policy, as it would encourage ignorance on the part of component part manufacturers or alternatively require them to

retain an expert in the client's field of business to determine whether the client intends to develop a safe product" [quotation and citation omitted]); Davis, 42 S.W.3d at 40 ("no public policy can be served by imposing a civil penalty on a manufacturer of specialized parts of the highly technical machine according to the specifications supplied by one who is expert at assembling these technical machines, who does so without questioning the plans or warning of the ultimate user" [citation omitted]).[10] Compare DeSantis v. Parker Feeders, Inc., 547 F.2d 357, 361-362 (7th Cir. 1976) (holding seller of parts for cattle feeder liable because "every part" that was purchased to construct feeder was manufactured by seller and "was dependent on every other part to accomplish any useful purpose," and thus it was reasonable for jury to find seller liable for design defect in whole unit).

[10] The cases cited by Nemirovsky in support of the judge's reasoning involve components that were themselves defective. See Fleck v. KDI Sylvan Pools, Inc., 981 F.2d 107, 118 (3d Cir. 1992), cert. denied sub nom. Doughboy Recreational, Inc. v. Fleck, 507 U.S. 1005 (1993) (finding manufacturer of replacement pool liners, which had "but one purpose," liable for failure to warn, because liners' lack of depth markers made them defective when integrated into pool); Maake v. Ross Operating Valve Co., 149 Ariz. 244, 247 (1985) (suggesting that liability for failure to warn would depend on whether component valves were defective, despite that they were made for integrated product); Heco vs. Midstate Dodge LLC, Vt. Sup. Ct., No. S0869-2010 (Mar. 14, 2013) (suggesting liability would turn on whether component seat, designed specifically for particular car, was defective).

iii. Tort and contract claims. Nemirovsky contends that the doctrine is inapplicable to his breach of implied warranty of merchantability claim against Daikin NA, maintaining that the doctrine applies only to tort claims. See, e.g., Rafferty v. Merck & Co., 479 Mass. 141, 148 (2018) (applying component part doctrine to negligent failure to warn); Barbosa v. Hopper Feeds, Inc., 404 Mass. 610, 616 (1989), S.C., 411 Mass. 273 (1991) (applying component part doctrine to personal injury); Pantazis, 92 Mass. App. Ct. at 482 (applying component part doctrine to wrongful death). But the doctrine arises in the context of products liability, which, as discussed supra, involves the intersection of warranty law and tort law. Restatement (Third) of Torts: Product Liability §§ 2 comment n, 5 (1998). Moreover, with the 1971 elimination of the requirement of privity to bring a claim for breach of warranty of merchantability, see Swartz v. General Motors Corp., 375 Mass. 628, 630 (1978), those contract-based claims became "congruent in nearly all respects" with traditional tort-based liability claims, Commonwealth v. Johnson Insulation, 425 Mass. 650, 653-654 (1997), quoting Back, 375 Mass. at 640. See One Beacon Ins. Co. v. Electrolux, 436 F. Supp. 2d 291, 296 (D. Mass. 2006), quoting Hayes v. Douglas Dynamics, Inc., 8 F.3d 88, 89 n.1 (1st Cir. 1993), cert. denied, 511 U.S. 1126 (1994) (breach of

warranty of merchantability claim "is basically the same as" liability in tort).

Indeed, Federal courts and courts in other States have applied the doctrine to breach of warranty claims. See Cipollone, 202 F.3d at 379 (breach of warranty of merchantability claim against dock lift manufacturer barred by component parts doctrine); Hininger v. Case Corp., 23 F.3d 124, 129 (5th Cir. 1994), cert. denied, 513 U.S. 1079 (1995) (component manufacturer not liable for breach of warranty where injuries were caused by combine into which wheel had been integrated); In re Gen. Motors Corp. Anti-Lock Brake Prods. Liab. Litig., 966 F. Supp. 1525, 1533-1534 (E.D. Mo. 1997) (anti-lock brake system manufacturer not liable for loss of value in car because "implied warranty liability does not extend to remote manufacturers of component parts"); Goldberg v. Kollsman Instrument Corp., 12 N.Y.2d 432, 437 (1963) (altimeter manufacturer not liable after airplane crash because "[a]dequate protection is provided" by availability of suing integrator airplane manufacturer).

iv. Defect-free coil distributor not liable. Thus, under the component parts doctrine, unless the evidence marshalled[11] in

[11] The burden is on the plaintiff to prove a defect to support a breach of warranty claim. Enrich v. Windmere Corp., 416 Mass. 83, 89 (1993); Fernandes v. Union Bookbinding Co., 400 Mass. 27, 37 (1987).

this case provided a basis to find that the replacement coils supplied by Daikin NA were defective themselves, Daikin NA is not liable for harm caused by the HVAC system.[12] See Evans, 465 Mass. at 422, quoting G. L. c. 106, § 2-314 (2) (c) ("defect" in context of warranty of merchantability claim involves being unfit "for the ordinary purposes for which such goods are used"). Viewed in the light most favorable to the jury verdict, the evidence supported the finding that the coils corroded prematurely not because they were themselves defective, but because the drain pan in the HVAC system was made from Styrofoam rather than metal. Nemirovsky's expert explained that when the two metals that form the coils interact with water, an electric

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[12] Nemirovsky does not contend that Daikin NA was "substantially involved" in the design of the integrated product as would be necessary to exempt it from the component parts doctrine. See Freitas, 715 F. Supp. at 1152; Restatement (Third) of Torts: Products Liability § 5 & comment e (1998). It is undisputed that Daikin NA, which was not established until 2013, had no involvement in the design of the HVAC system Nemirovsky purchased in 2008.

Moreover, it makes no difference that the various "Daikin" entities apparently are related. Nemirovsky argues on appeal that the integrator here was not a "third party," because only coils distributed by Daikin NA could be used in a Daikin Industries HVAC system. However, Daikin NA (as distributor of the component part) is a distinct corporate entity from Daikin Industries (as manufacturer/designer of the integrated HVAC system), and Nemirovsky does not argue that he has shown the elements required to pierce the corporate veil. See Kraft Power Corp. v. Merrill, 464 Mass. 145, 148-149 (2013). Indeed, the judge rejected this argument at summary judgment, and Nemirovsky has waived it explicitly.

current is generated; the current must be "grounded" to escape the system. In the absence of a different path to "ground," Nemirovsky's expert explained, the resulting electric current used the coils as the path to ground, causing these coils to undergo galvanic corrosion and to leak. The expert opined that "the cause of the failure was the [Styrofoam] drain pan [which] didn't provide an exit path for the galvanic electric current." Using Styrofoam rather than metal in the design of the drain pan, the expert explained, meant "[y]ou can't drain virtually any of [the galvanic electric current] through [it]." Instead, the current has "got to find a way out . . . up through the fan coil." By contrast, the expert testified, with a metallic drain pain, which he was able to test, "you don't get the stray current corrosion." The corrosion of the coils was "accelerated by the inability of the electrons to get out through the ground on the bottom" because the pan was made of nonconductive Styrofoam rather than of a conductive material.

There was no evidence that the coils themselves, their design, or their manufacture were other than as specified by the integrated part manufacturer. To the contrary, Nemirovsky's expert testified that the coils comprised an industry standard bimetal composition,[13] and would not have prematurely corroded in

[13] The evidence was that the coils at issue in the case were substantially similar, in both material and design, to other

a properly designed system that allowed electrons to escape through the drain pan.[14]

Given the absence of evidence of any defect in the coils themselves, the component parts doctrine precludes extending liability to Daikin NA.[15] See Cipollone, 202 F.3d at 379 (component parts doctrine precluded liability where component was designed in accordance with integrator's specifications); In re Temporomandibular Joint Implants (TMJ) Prods. Liab. Litig., 97 F.3d 1050, 1056 (8th Cir. 1996) (where failure is because part was "unsuited for the particular use that the finished product manufacturer chose to make of it," integrator, not component part manufacturer, is liable). Daikin NA's motion for

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major companies' coils: over 150 million coils have been made since 1972 with a copper coil, aluminum fins, and zinc-coated endplates.

[14] The expert opined that the electric current did not always use the coils as a path to ground. In some configurations, he explained, other metallic pieces or the water in the system itself provided a path to ground to avoid discharge of the electrons through the coils. In fact, the evidence was that only three of the seventeen replacement coils supplied by Daikin NA failed.

[15] While not dispositive, this conclusion is bolstered by the fact that, in parallel cases brought in Federal court by different plaintiffs alleging substantially similar claims and facts against Daikin NA, the court found that because the problem was the Styrofoam drain pan and "not the coils themselves," Daikin NA could not be liable for breach of the implied warranty of merchantability. See Evans vs. Daikin N. Am., LLC, U.S. Dist. Ct., No. 17-CV-10108 (D. Mass. Feb. 4, 2019); Egan vs. Daikin N. Am., LLC, U.S. Dist. Ct., No. 17-CV-11630 (D. Mass. Feb. 4, 2019).

judgment notwithstanding the verdict as to the breach of implied warranty of merchantability claim should have been allowed;[16] accordingly, we vacate the judgment insofar as it regards that claim.

b. Misrepresentation claim. The jury also found Daikin NA liable for intentional misrepresentation. To prevail on a claim for misrepresentation, Nemirovsky must show that (1) Daikin NA made a "false representation of a material fact with knowledge of its falsity for the purpose of inducing the plaintiff to act thereon," and that (2) he reasonably relied on Daikin NA's misrepresentation as true and acted upon it to his detriment. Masingill v. EMC Corp., 449 Mass. 532, 540 (2007); Kilroy v. Barron, 326 Mass. 464, 465 (1950).[17] We recite the relevant

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[16] Because we conclude that the component parts doctrine applies, we do not reach Daikin NA's appeal from the denial of the motion for remittitur.

[17] Contrary to Daikin NA's argument, the judge's denial of its request for a specific question regarding reasonable reliance was not error. The verdict form asked whether Daikin NA had made any intentional misrepresentation, as well as whether the misrepresentation caused Nemirovsky harm. Combined with the explanation that the judge provided in the jury instructions, there was no error here. The instruction stated, "[T]he plaintiff must prove his reliance on the defendant's statement was reasonable and justifiable under the circumstances. . . . [T]he plaintiff is not entitled to rely on a misrepresentation that he knows to be false or if its falsity is obvious to him." "We presume that the jury followed [] instructions in rendering their verdict." Reckis v. Johnson & Johnson, 471 Mass. 272, 304 n.49 (2015), cert. denied, 577 U.S. 1113 (2016).

facts in the light most favorable to the jury verdict. O'Brien, 449 Mass. at 383.[18]

In May or June 2014, after Nemirovsky complained to Daikin NA when four coils had failed, representatives of Daikin NA and Daikin Applied told Nemirovsky that "off-gassing" within his home was causing the coil corrosion, even though Daikin NA had not yet conducted any testing or specific investigation as to the cause. The jury could have found that the posited cause of the coil failures was an intentional misrepresentation, not only because the statement was made without any apparent foundation, but also because it must be read in the context of Daikin NA's knowledge by January 2014 that Ken Vona, a contractor in the area, had been experiencing the same problems in multiple other homes. See Restatement (Third) of Torts: Liability for Economic Harm § 10 (2020) ("A misrepresentation may result in liability only if . . . [b] the maker of it knowingly states or implies a false level of confidence in its accuracy; or [c] the maker of it knowingly states or implies a basis for the representation that does not exist"); Briggs v. Carol Cars, Inc., 407 Mass. 391, 396 (1990) (finding representation was

[18] There is no evidence that Daikin NA's misrepresentations delayed Nemirovsky's decision to file suit. The earliest evidence of Daikin NA's misrepresentation was in 2014, at which time the statute of limitations on the claims against the DACA Trust and Stebbins Duffy had already run. See infra.

recklessly made because truth was "readily ascertainable by the defendant"). Relying on Daikin NA's representation as to the cause of the coil failures, Nemirovsky hired environmental engineering consultants and paid approximately $22,000 to conduct testing in his home.

Daikin NA continued to blame environmental factors for the premature leaking. In January 2015, one of Daikin NA's employees surveyed Nemirovsky's home and reported that there were "no environmental issues that could have led to the coil failures," directly contradicting what Daikin NA would continue to say to Nemirovsky. Similarly, in March 2015, an internal e-mail message between Daikin NA and Daikin Applied indicated that the Daikin NA knew the coil failures did "not appear to be related to adverse field conditions." Yet, Daikin NA did not correct its previous statements about the asserted cause of the corrosion, nor did it share these reports with Nemirovsky. Meanwhile, Daikin NA had sent corroded coils collected from Nemirovsky's house to Matrix Analytical Laboratories, Inc. (Matrix), to conduct additional testing in February 2015. In March 2015, Matrix produced reports finding that the coils evinced "Formicary-type Corrosion" due to certain compounds in the "indoor air" in the coils' environment. The jury could have

found that the Matrix reports were also misrepresentations.[19] Finally, in May 2015, another Daikin NA employee sent a letter restating that Nemirovsky's HVAC system had been "impacted negatively" by "environmental factors."

On appeal, Nemirovsky contends that he incurred over $200,000 in expenses for coil testing, system repairs, and replacement coils over the years. While the testimony and exhibits support these expenses, it is not clear from the record on appeal whether Nemirovsky relied on Daikin NA's continued misrepresentations in choosing to incur these expenses.

For example, Nemirovsky testified that "if [he] had known that this was a common thing that happens to people who have Daikin systems," he might not have spent money to get ball valves installed (to isolate each coil so that when one failed the entire system would not) but might instead have looked for a "longer-term solution." However, the decision to install ball valves was made in January 2016, well after he had become aware, in June 2015, of Ken Vona's similar experiences with coils failures. Thus, the cost of installing the ball valves was not incurred in reliance upon Daikin NA's misrepresentations. As

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[19] The evidence at trial suggested that Matrix was not an "independent" laboratory, because it had a favorable deal on rent through its association with Daikin NA. The evidence also showed that Matrix revised its reports, first stating it could not conduct analysis of corrosive ions but then conducting that analysis.

another example, Nemirovsky explicitly testified that he did not do anything in response to the May 2015 letter asserting that the cause of the coil failures was "environmental." He rejected Daikin NA's offer in that letter to replace the remaining twenty-two coils for free, hoping instead for less of a "Band-Aid solution." Indeed, it appears that many of the replacement coils were purchased by Nemirovsky after he commenced the present action, presumably at a time when he was no longer reasonably relying on Daikin NA's misrepresentations. Because the record on appeal is unclear, we must remand for a determination of the reliance damages flowing from Daikin NA's intentional misrepresentations.

c. Chapter 93A claim. The jury provided an advisory opinion, which the judge adopted, that Daikin NA violated G. L. c. 93A based on the breach of warranty and intentional misrepresentation claims. Our review is for clear error. Anthony's Pier Four, Inc. v. HBC Assocs., 411 Mass. 451, 476 (1991). Because the breach of warranty claim fails under the component parts doctrine, that claim cannot support a G. L. c. 93A violation. However, intentional misrepresentations can constitute a violation of G. L. c. 93A. McEvoy Travel Bur., Inc. v. Norton Co., 408 Mass. 704, 714 (1990); VMark Software, Inc. v. EMC Corp., 37 Mass. App. Ct. 610, 620-621 (1994);

Grossman v. Waltham Chem. Co., 14 Mass. App. Ct. 932, 933 (1982).

In this case, the judge found that Daikin NA's misrepresentations were "willful and knowing," warranting doubled damages under G. L. c. 93A. The judge also awarded attorney's fees pursuant to G. L. c. 93A, § 9 (4). On remand, the judge should determine whether the G. L. c. 93A damages based on the amount of reliance damages for Daikin NA's intentional misrepresentations, see supra, should be enhanced, and whether, and to what extent, to award attorney's fees. See Klairmont v. Gainsboro Restaurant, Inc., 465 Mass. 165, 185-186 (2013) ("substantial reduction in the amount of damages the plaintiffs may recover on remand" may warrant reconsideration of attorney's fees awarded under c. 93A).

d. Statute of limitations under G. L. c. 106, § 2-725. As set forth supra, following the close of the evidence at trial, the judge directed a verdict in favor of DACA Trust and Stebbins Duffy, the sellers of the original HVAC system, on the implied warranty of merchantability claim, because by 2014 the statute of limitations had run on claims related to the 2008 sale of the original system. The judge relied on the four-year statute of limitations in G. L. c. 106, § 2-725, part of the Massachusetts Uniform Commercial Code (UCC), which provides:

> "(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. . . .
>
> "(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.
>
> ". . .
>
> "(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this chapter becomes effective."

G. L. c. 106, § 2-725.

Nemirovsky maintains that the judge improperly directed a verdict, because the jury should have been allowed to decide whether the statute of limitations had been tolled pursuant to the "discovery rule."[20] However, § 2-725 provides that "[a] breach of warranty occurs when tender of delivery is made" and that the "cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the

[20] The discovery rule provides that "a cause of action accrues when the plaintiff discovers or with reasonable diligence should have discovered that (1) he [or she] has suffered harm; (2) his [or her] harm was caused by the conduct of another; and (3) the defendant is the person who caused that harm." Harrington v. Costello, 467 Mass. 720, 727 (2014).

breach." G. L. c. 106, § 2-725 (2) (emphasis added).[21] Allowing the discovery rule to apply would "circumvent the very purpose of § 2-725, which . . . is to provide a finite period in time when the seller knows that he [or she] is relieved from liability for a possible breach of contract for sale or breach of warranty." New England Power Co. v. Riley Stoker Corp., 20 Mass. App. Ct. 25, 29 (1985), quoting Ontario Hydro v. Zallea Sys., Inc., 569 F. Supp. 1261, 1267 (D. Del. 1983).[22] Accord Cambridge Plating Co. v. Napco, Inc., 991 F.2d 21, 25 (1st Cir. 1993), citing G. L. c. 106, § 2-725 (2) ("Not all contractual causes of action in Massachusetts are governed by the judicially crafted accrual rules. Claims alleging breach of a contract for the sale of goods instead are subject to the detailed provisions of the UCC").

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[21] General Laws c. 106, § 2-725 (4), states that the section "does not alter the law on tolling of the statute of limitations"; however, none of the statutory grounds for tolling the statute of limitations applies here. See G. L. c. 260, §§ 7-12.

[22] Other jurisdictions have similarly declined to extend the discovery rule to breach of implied warranty claims. See, e.g., Sudenga Indus., Inc. v. Fulton Performance Prods., Inc., 894 F. Supp. 1235, 1238 (N.D. Iowa 1995); Armour v. Alaska Power Auth., 765 P.2d 1372, 1375 (Alaska 1988); Baker v. DEC Int'l, 458 Mich. 247, 255 n.17 (1998) ("We agree that the plain language of the statute renders a buyer's actual knowledge [or lack thereof] of defects totally irrelevant for the purposes of the accrual of the cause of action").

In the alternative, Nemirovsky argues that the correct statute of limitations for his claims is set forth in G. L. c. 106, § 2-318,[23] because the HVAC system was purchased as a consumer good rather than as part of a commercial transaction.[24] However, G. L. c. 106, § 2-318, applies to consumer transactions where there was harm to persons or property. Bay State-Spray & Provincetown S.S., Inc. v. Caterpillar Tractor Co., 404 Mass. 103, 104 (1989) (Bay State). By contrast, G. L. c. 106, § 2-725, applies when (as here) only economic loss is incurred. Bay State, supra at 109, quoting East River S.S. Corp. v. Transamerica Delaval, 476 U.S. 858, 871 (1986) ("When a product injures only itself the reasons for imposing a tort duty are

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[23] General Laws c. 106, § 2-318, provides, in relevant part:

> "Lack of privity between plaintiff and defendant shall be no defense in any action brought against the . . . seller, . . . of goods to recover damages for breach of warranty, express or implied, or for negligence, although the plaintiff did not purchase the goods from the defendant if the plaintiff was a person whom the . . . seller . . . might reasonably have expected to use, consume or be affected by the goods. The . . . seller . . . may not exclude or limit the operation of this section. Failure to give notice shall not bar recovery under this section unless the defendant proves that he [or she] was prejudiced thereby. All actions under this section shall be commenced within three years next after the date the injury and damage occurs."

[24] Nemirovsky did not waive this argument, as Daikin NA suggests, because he argued for and referred to the "tort-based" statute of limitations in his opposition to the motion for directed verdict.

weak and those for leaving the party to its contractual remedies are strong"). See Jacobs v. Yamaha Motor Corp., U.S.A., 420 Mass. 323, 330 n.5 (1995) (reaffirming this "appropriate distinction" between G. L. c. 106, § 2-318, being used for personal or property injury and G. L. c. 106, § 2-725, for economic harms). Therefore, the judge applied the correct four-year limitations period under G. L. c. 106, § 2-725.

The statute thus began to run on the date that the HVAC system was purchased in 2008. The complaint against DACA Trust and Stebbins Duffy was not filed until 2016, well after the four-year statute of limitations in G. L. c. 106, § 2-725, had expired. Thus, the claims against Stebbins Duffy and DACA Trust were properly dismissed.

3. Conclusion. The judgment on the directed verdict in favor of DACA Trust and Stebbins Duffy on Nemirovsky's claims for breach of the implied warranty of merchantability is affirmed. The judgment entered against Daikin NA is vacated, and we remand for reconsideration of damages, if any, that stem from Nemirovsky's reasonable reliance on Daikin NA's intentional misrepresentations to him in connection with efforts to determine the causes of the HVAC system's failures. On remand, the judge should also determine whether the G. L. c. 93A damages based on the amount of reliance damages for Daikin NA's

intentional misrepresentations should be enhanced, and whether, and to what extent, to award attorney's fees.

So ordered.