

**Finger Lakes Fire & Cas. Co. v Frigidaire &
Electrolux, NA**

2018 NY Slip Op 30526(U)

March 29, 2018

Supreme Court, Tompkins County

Docket Number: 2013-0215

Judge: Eugene D. Faughnan

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At a Special Term of the Supreme Court of the State
of New York held in and for the Sixth Judicial
District at the Tompkins County Courthouse, Ithaca,
New York, on the 3rd day of March, 2018.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : TOMPKINS COUNTY

FINGER LAKES FIRE & CASUALTY COMPANY
(as subrogee of LINDA MAJOR) and
PROGRESSIVE DIRECT INSURANCE COMPANY
(as subrogee of LINDA MAJOR)

Plaintiffs,

-vs-

DECISION AND ORDER

Index No. 2013-0215

RJI No.: 2016-0579-M

FRIGIDAIRE and ELECTROLUX, NA

Defendants.

APPEARANCES:

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EUGENE D. FAUGHNAN, J.S.C.

This matter comes before the Court upon a motion filed November 22, 2017 by Frigidaire and Electrolux, NA (“Defendants”) seeking summary judgment pursuant to CPLR §3212. Fingerlakes Fire & Casualty Company and Progressive Insurance Company as Subrogees of Linda Major (“Plaintiffs”) oppose a summary finding.

This matter arises out of a fire occurring on March 28, 2011 at a home owned by Linda and Wayne Major located in Canton, New York. On this date, Wayne Major was awakened by a smoke alarm and saw smoke in his kitchen area and left his home. Firefighters responded to the scene and extinguished a fire which had apparently begun in the attached garage area of the home. Significant damage was done to the home and a vehicle parked in the garage.

A St. Lawrence County Fire Investigator, Olgierd Weiss, Jr., (“Weiss”) arrived at the scene shortly after the fire was extinguished and conducted an investigation as to the origin and cause of the fire. Weiss concluded that the fire started at the north end of the garage as the result of an electrical fire caused by a chest freezer (model FFC0923DW). It was later determined that the freezer was manufactured by Defendants. Weiss later testified at a deposition that he concluded that the freezer was the cause of the fire based upon the location of the point of origin in relation to the freezer as well as the burn patterns on the freezer and on a nearby doorway.

Plaintiffs commenced this action by the filing of a verified complaint on March 1, 2013 seeking damages sounding in products liability. The issue was joined by the service of a verified answer dated April 24, 2013.

“On a motion for summary judgment, the movant must establish its prima facie entitlement to judgment as a matter of law by presenting competent evidence that demonstrates the absence of any material issue of fact.” *Lacasse v. Sorbello*, 121 AD3d 1241, 1241 (3rd Dept. 2014) [*citing*

Alvarez v. Prospect Hosp., 68 NY2d 320, 324 (1986); *Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985); *Walton v. Albany Community Dev. Agency*, 279 AD2d 93, 94-95 (3rd Dept. 2001)]. If the movant fails to make this showing, the motion must be denied. *Alvarez, supra*. Once the movant meets its burden, then the opposing party must produce evidentiary proof in admissible form sufficient to raise a triable issue of material fact. *Zuckerman v. City of New York*, 49 NY2d 557, 562 (1980); CPLR 3212(b). In deciding the motion, the court must draw all reasonable inferences in favor of the nonmoving party and deny summary judgment if there is any doubt as to the existence of a material issue of fact. *Branham v. Loews Orpheum Cinemas, Inc.*, 8 NY3d 931, 932 (2007).

“A product may be defective because of a mistake in the manufacturing process resulting in a manufacturing flaw, because of an improper, defective design, or because the manufacturer failed to provide adequate warnings regarding the use of the product.” *Rabon-Willimack v. Robert Mondavi Corp.*, 73 AD3d 1007, 1008 (3rd Dept. 2010) (citations omitted). In a products liability case, “if a defendant comes forward with any evidence that the accident was not necessarily attributable to a defect, the plaintiff must then produce direct evidence of a defect” (*Schneidman v. Whitaker Co.*, 304 AD2d 642, 643 [3rd Dept. 2003]) or “in the absence of evidence identifying a specific flaw, ... prove that the product did not perform as intended and exclude all other causes for the product's failure that are not attributable to defendants.” *Speller v. Sears, Roebuck & Co.*, 100 NY2d 38, 41 (2003).

In support of their application for summary judgment, Defendants submitted an affidavit from Chad Strickland (“Strickland”), an employee of Defendant Electrolux in its Product Safety and Compliance Department. Strickland has a bachelors degree in Fire Science/Fire Protection from the University of Memphis, a masters degree in Fire Science/Fire Protection from Oklahoma State University and a doctorate in Fire Protection Engineering from Oklahoma State University. Strickland is a certified fire investigator and a member of associated professional organizations. Strickland has worked in the Product Safety and Compliance Department of Electrolux since

1998. He has held several different positions in the department; most recently as the Director of Product Safety and Compliance.

Strickland states that he is familiar with the design, manufacture and quality control testing of the Frigidaire Model Number FFC0923DW freezer. This model was in production from April of 2004 to August of 2014. He states that this model was designed and manufactured consistent with Underwriters Laboratory and industry standards. Strickland asserts that a thorough search of Electrolux records revealed no record of any claims, complaints or lawsuits in which it is alleged that this model posed a fire hazard or caused a fire prior to this incident.

Defendants also submitted an affidavit and report of John P. Gashinski, (“Gashinski”), a Licensed Professional Engineer. Gashinski obtained a Bachelor of Science degree in Material Science and Engineering from Lehigh University and a Master of Science in Material Science Engineering from and the New Jersey Institute of Technology. He also has specialized training in the investigation, analysis and evaluation of physical evidence from fires and explosions and is a certified Fire and Explosives Investigator. Gashinski is employed by Affiliated Engineering Laboratories, Inc.

Gashinski examined the power cord to the freezer and found evidence of electrical arcing approximately 5 inches from the plug. The wires in this area showed evidence of external heating. He concluded that the arcing which occurred at this location was the result of charring from an external heat source which resulted in arcing activity.

Of significance to Gashinski was the examination of the remains of the duplex receptacle box and the remains of the plug of the freezer and of a plug of an unidentified electrical device or appliance. With regard to the remains of the receptacle box, Gashinski found significant evidence of an internal arc fault. Specifically, he noted a significant notch formed near the ground plug of one of the two outlets and copper spatter from electrical arcing activities on the surface of the ground strap. These represented evidence of an electrical arc fault within the

receptacle box. He rules out the direct application of heat as the cause of these abnormalities since the internal areas of the receptacle were protected from direct contact with the fire.

The plug blades connected to the cord of the freezer were largely intact with the outer coating melted away. One plug blade for the unidentified device/appliance was recovered and showed that it was “arc severed” or cut by arcing activity. Metallurgical analysis confirmed that the plug blade experienced resistive heating that resulted in an arc fault.

The combination of the evidence of an arc fault in the receptacle box with the arc severed plug blade led Gashinski to conclude that the severed plug blade was plugged into the same receptacle that showed evidence of an electrical arc fault. The plug blades for the freezer did not exhibit the evidence of arcing like the unknown plug blade. He concludes that the unidentified plug blade was plugged into a receptacle box that was different from the one the freezer was plugged into and was the location of the arc fault.

Defendants also submitted an affidavit and report from James E. Crabtree (“Crabtree”), a Licensed Professional Engineer with a Bachelor of Science in Electrical Engineering from Rensselaer Polytechnic Institute. Crabtree has specialized training and experience investigating and analyzing fires and explosions and is a certified fire and explosion and vehicle fire investigator. Crabtree is employed by Affiliated Engineering Laboratories, Inc. where he tests and evaluates electronic equipment and design and construction of electrical distribution systems for industrial, commercial and residential applications.

Crabtree notes that fire patterns observed at the fire scene, although establishing the origin of the fire, are insufficient to determine the cause. This is at least in part due to the fact that three of the four walls were entirely destroyed by the fire and the contents of the garage were moved during fire suppression. Additionally, Crabtree asserts that the foam insulation in the freezer is a significant fuel source for the fire and resulting damage, regardless of the actual cause.

Crabtree examined the freezer and its power cord and found no evidence of overheating that could have served as a source of the fire. He found no evidence of failure within the freezer that could have caused the fire. Rather, the damage to the freezer was consistent with a freezer that was in a room which burned. Similarly, the damage to the power cord and plug was consistent with “charring” or the application of fire or heat to the cord. In this respect, Crabtree relies, in part, on the analysis of Gashinski as outlined above. He concludes that the single plug blade with evidence of arc severing must be considered as a source of ignition for the subject fire. He further opines that the damage to the freezer and its components was consistent with the external application of fire and heat and not from an internal failure of a component. He notes that the internal components are largely intact and fail to reveal any evidence of failure.

The Defendants have submitted proof in admissible form of an alternative theory of causation for the fire in question. Strickland confirms that the freezer was designed and manufactured within industry standards and that there is no record of any claims, complaints or lawsuits in which it is alleged that this model posed a fire hazard or caused a fire prior to this incident. Gashinski, a Licensed Professional Engineer, notes that the metal on the plug blades from the freezer fail to reveal evidence of arcing while the plug blade and other receptacle show evidence that arcing occurred within this receptacle box rather than the one the freezer was plugged into. Crabtree, a Licensed Professional Engineer with degrees in electrical engineering denies the presence of any evidence of failure within the freezer that could have caused the fire. He further notes that the fire damage to the interior components is consistent with the external application of heat and fire rather than an internal failure with a component. He concludes that the arc severing of the single plug blade not associated with the freezer must be considered a source of the subject fire.

The Court concludes that Defendants have sustained their burden to set forth a *prima facie* showing for summary judgment. The Defendants have submitted proof in admissible form to support an alternative explanation for the subject fire. Therefore, the burden shifts to the Plaintiffs to show the existence of triable questions of fact by either offering proof of a specific defect (*See Schneidman, supra*), or eliminating all other causes for the subject fire (*See, Speller,*

supra).

Plaintiffs offer the report and testimony of St. Lawrence County Fire Investigator Weiss. Weiss is a 1961 graduate of Sienna College. He is currently a semi-retired electrical contractor who taught electrical construction at Seaway Technology Center for 24 years. He is New York State Certified to teach electrical construction. Weiss is also a New York State Certified Level 2 Fire Arson Investigator and has been so certified for 10-12 years. He investigates 10-20 fires per year in his role as a fire investigator. His role as an investigator is to determine the cause and origin of fires. He has also been a volunteer firefighter since 1965.

Weiss arrived at the fire scene shortly after the fire was extinguished and reviewed the scene. He examined the subject freezer and “noted heavy damage, arcing and destruction of the interior of the chest and area of the compressor and associated wiring and controls”. It is his opinion that there was an electrical fault in the compressor and electrical arcing ignited shelves containing old Christmas decorations. When testifying, he was unable to identify specific evidence of arcing or compressor area failure. His opinion that the freezer was the cause of the fire was its location in the garage in relation to the point of origin of the fire.

Plaintiffs also offer an affidavit and report from Gary S. Hauf (“Hauf”), a Forensic Electrical Engineer employed by Forensic Failure Analysis, Inc. Hauf has a Bachelor of Science in Electrical Engineering Technology and a Master of Science in Advanced Technology from SUNY College of Technology at Utica/Rome. Hauf has experience with investigations involving air conditioners and refrigeration systems.

Hauf examined the fire scene and attended testing of various electrical components salvaged from the garage and freezer. At the fire scene, he observed the burn and heat patterns that he opined were consistent with the fire beginning in the compressor area of the subject freezer noting low, localized burning on the wall in the area of the freezer.

Upon testing of components, he concluded that there was evidence of arcing at two points of the electrical cord for the freezer and evidence of electrical activity on the male terminal connectors for the compressor. He also found localized heating of the overload/start control for the compressor. He notes that the ground strap for an outlet showed evidence of electrical activity and concludes that this was the outlet into which the freezer was plugged. He also noted the single plug blade which he concludes was “melted”. Testing also revealed that there was evidence of arcing found on the freezer power cord both near the plug and in the compressor compartment.

Hauf concludes that there was a failure in the compressor control compartment which ignited combustibles in the compressor compartment and spread to the rest of the garage. He concedes that the exact failure at the compressor control is not known. However, he opines that the evidence of electrical activity in the compressor area, and the opinion that start capacitors are known to be ignition sources leads him to believe that this was the cause of the fire. Additionally, the fact that the start capacitor could not be located is further evidence of its involvement. He further notes that activity farthest from the power source is where the fire point of origin is normally found. Based upon the foregoing, Hauf opines, with a reasonable degree of engineering certainty, that the freezer compressor area was the source and origin of the fire.

Plaintiffs’ experts do not identify a particular defect in concluding that the freezer was the source and origin of the fire. Thus, Plaintiffs are relying upon circumstantial evidence to establish that the freezer caused the fire. Therefore, the Plaintiffs must offer evidence eliminating other potential causes for the fire. *See Speller, supra.*

Plaintiffs’ expert, Weiss, primarily determined the source and origin of the fire due to burn patterns in the garage and on the freezer. Although this is certainly evidence as to the source and cause of the fire, it does not contradict the Defendants theory that the fire began in another plug receptacle in which another electrical device/appliance was plugged.

Similarly, Hauf offers a plausible theory that the source and origin of the fire was in the freezer compressor area likely caused by the start capacitor. He further opines that the freezer was plugged into the receptacle that evidenced arcing and related melting. However, he does not account for Defendants' theory regarding the existence of a second receptacle nor does he explain the existence of the lone plug blade not associated with the freezer with evidence of arc severing. In short, Hauf does not address Defendants' theory of causation.

The Court concludes that the Plaintiffs have failed to rebut Defendants' *prima facie* showing for summary judgment. Therefore, the Defendants' motion for summary judgment is **GRANTED**.

IT IS SO ORDERED.

This constitutes the **DECISION AND ORDER** of the Court. The transmittal of copies of this Decision and Order by the Court shall not constitute notice of entry (see CPLR 5513).

Dated: March 29, 2018
Ithaca, New York



HON. EUGENE D. FAUGHNAN
Supreme Court Justice