**[Cite as *Wegrzyn v. Am. Family Ins. Co.*, 2013-Ohio-3471.]**

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Rebecca L. Wegrzyn, et al.

Appellant

v.

American Family Insurance Company, et al.

Appellee

Court of Appeals No. L-12-1193

Trial Court No. CI0200402807

**DECISION AND JUDGMENT**

Decided: August 9, 2013

* * * * *

Michael S. Wegrzyn, pro se.

Robert B. Holt, Jr. and Drew W. Broaddus, for appellee L.D.R. Industries, Inc.

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**OSOWIK, J.**

**{¶ 1}** This is an appeal from a judgment of the Lucas County Court of Common Pleas, which granted appellee's, LDR Industries, Inc., motion for summary judgment. For the reasons set forth below, this court affirms the decision of the trial court.

**{¶ 2}** Appellant, Michael Wegrzyn, sets forth the following two assignments of error:

1. The court below erred to the prejudice of Appellants by granting the motion for summary judgment of Appellees AFIC and James Murphy.

2. The court below erred to the prejudice of Appellants by granting the motion for summary judgment of Appellee L.D.R. Industries, Inc.

**{¶ 3}** The following undisputed facts are relevant to the issues raised on appeal. In August 2003, appellant's wife installed a new faucet fixture in the upstairs bathroom of the couple's Oregon, Ohio residence. Appellant's wife also installed a new waterline to the faucet fixture. The record reflects that there were no defects or flaws with the existing faucet or waterline. Both replacement plumbing fixtures were purchased at an area Sears store. On August 30, 2003, the newly installed bathroom waterline ruptured in an extremely unusual way that caused substantial water flow from the line into the home resulting in extensive damage.

**{¶ 4}** Following this occurrence, appellant and his wife filed a claim with their insurance provider, American Family Insurance Company (AFIC), regarding the water damage. Appellant has steadfastly maintained throughout the course of this matter that the ruptured waterline had been watertight for three days prior to rupturing after the family left for a weekend trip to Catawba Island. Interestingly, appellant not only had the original house rebuilt after the flood, but also added a 2,000 square foot addition and in-ground pool.

**{¶ 5}** On August 23, 2004, following an investigation and assessment of appellant's insurance claim seeking payment for the reconstruction of his now vastly expanded and upgraded home, AFIC rejected the suspect insurance claim. AFIC noted that appellant, who had prior felony fraud convictions, had improperly failed to disclose his past fraud convictions on his insurance application. Additionally, AFIC's investigation determined that the nature of the rupturing of the waterline and the subsequent massive water damage could only have resulted from several highly unusual modifications made to the waterline between the time of purchase and installation causing the altered waterline to be prone to immediate, severe failure. On August 24, 2004, appellant filed suit against AFIC for the rejected claim.

**{¶ 6}** On August 29, 2004, appellant amended the lawsuit against AFIC to include claims against appellee, LDR Industries, the distributer of the waterline, and Sears, the seller of the waterline. Appellant claimed that the waterline ruptured as a result of a manufacturing defect by appellee, a Chicago-based plumbing supply company. However, all waterlines distributed by appellee are purchased from a Taiwanese manufacturer. The waterlines are then distributed to retailers, such as Sears, to be offered for sale to the public.

**{¶ 7}** During the early stages of this litigation, AFIC explored filing subrogation claims against appellee in anticipation of liability attributable to appellee. However, in the course of investigating the subrogation claim, AFIC had appellant's waterline tested by engineers at SEA, Ltd. (SEA); AFIC determined that no such subrogation issue

existed. The tests clearly demonstrated that, contrary to appellant's claim, the subject waterline leaked in an immediate, obvious and audible fashion when tested with a normal amount of water pressure. Consistent with this, the experts noted that the subject waterline was 1-1/8" shorter than the type distributed by LDR and sold by Sears.

**{¶ 8}** This discrepancy in length was so significant that the waterline would not have even been able to fit in appellee's product packaging had it been defectively manufactured and already in the condition claimed to be present at the time of sale by appellant. In conjunction with, the subject waterline also utilized hardware divergent from that which is included with the product at the time of sale.

**{¶ 9}** Given these facts and circumstances, the experts ultimately concluded that the waterline was altered. Notably, the modifications facilitated a quick, substantial failure of the product so as to cause massive flooding and damage. There was absolutely no evidence whatsoever that the product was defectively manufactured or altered to the condition it was in at the time of installation prior to its sale to appellant. The record of evidence reflects that the waterline was materially altered between the time of sale and the time of installation. AFIC concluded that subrogation claims were not warranted.

**{¶ 10}** Appellant subsequently had the waterline independently tested by Diversified Product Investigations, Inc. (Diversified). Notably, Diversified's test results were consistent with the earlier findings of SEA. Experts at Diversified consistently found that the subject waterline leaked immediately at a rate of one quart per minute upon even low-level water pressure being introduced to the line. The waterline was also

tested by Packer Engineering (Packer). The results of the third round of testing were identical to the two previous expert tests. The experts at Packer likewise determined that large quantities of audible water leakage would have occurred immediately upon the flow of water into the line.

**{¶ 11}** Significantly, the consistent conclusions of all experts directly and fundamentally contradict appellant's suspect assertion that the waterline worked properly for three days prior to its failure. The experts found that to be not only implausible, but not possible. The record reflects that the product was materially modified after being purchased in a fashion that facilitated its failure.

**{¶ 12}** On December 14, 2009, the trial court granted summary judgment for AFIC. The court found that appellant's insurance policy with AFIC was void due to his fraudulent failure to disclose his past fraud convictions. The trial court also granted summary judgment for LDR and Sears. Based upon multiple definitive expert waterline test results wholly contradicting appellant's version of events and the corresponding expert testimony, the trial court determined that appellant did not provide any relevant evidence in support of his contention that the subject waterline possessed the defects when sold. On the contrary, all evidence showed the defects occurred between being purchased at Sears by appellant and being later installed by appellant's wife.

**{¶ 13}** The court found that contrary to self-serving affidavits submitted by appellant denying any tampering to the waterline, a wealth of evidence established that the subject waterline in that condition at the time of sale would have immediately leaked

in an observable and audible fashion upon installation. This wholly contradicts claims by appellant and his wife that it worked properly with no detectable issues for three days prior to its failure. Alternatively, the court found that even if, assuming arguendo, that the waterline had somehow been watertight upon installation contrary to all of the experts, the leakage which occurred still could only have been caused by interim, post-manufacture alterations. Therefore, the court found no genuine issue of material fact which could conceivably support appellant's claims of liability against appellee.

**{¶ 14}** On June 19, 2010, subsequent to this adverse ruling, appellant and AFIC executed a "Mutual Release of Claims." The release stipulated that the parties would mutually release one another from all competing legal claims which had been filed. On June 26, 2012, appellant and AFIC consented to an order of the trial court that stipulated that appellant would actually pay AFIC $100,000 to settle claims against appellant stemming from the summary judgment ruling. Notably, the consent order stated that appellant would not appeal any judgments of the trial court related to AFIC. On July 23, 2012, appellant nevertheless filed a notice of appeal encompassing AFIC in this court.

**{¶ 15}** The appeal asserted that the trial court erred in granting summary judgment to AFIC and LDR. AFIC filed a motion with this court to dismiss the appeal as it related to that company and its representatives. The company noted that pursuant to the express terms of the parties' mutual release agreement and prior consent judgment entry, the appeal against AFIC was explicitly barred. On April 17, 2013, we found that motion well-taken. Accordingly, the appeal before us pertains only to LDR.

**{¶ 16}** In the first assignment of error, appellant asserts that the trial court erred in granting summary judgment to AFIC and its representatives. The assignment of error is not properly before this court. Pursuant to our judgment of April 17, 2013, appellant's appeal against AFIC was dismissed. The mutual release agreement between AFIC and appellant, as well as the consent judgment entry executed by the parties, explicitly prohibits the AFIC appeal. Accordingly, appellant's first assignment is found to be moot and not well-taken.

**{¶ 17}** In the second assignment of error, appellant maintains that the trial court erred in granting summary judgment to LDR. In support of this assertion, appellant contends that signed affidavits by appellant and testimony from an expert witness, regarding the installation and functioning of the waterline, establish a genuine issue of material fact about the defective nature of the waterline. After careful review of the record, we do not agree.

**{¶ 18}** Appellate review of summary judgment determinations is conducted on a de novo basis, applying the same standard utilized by the trial court. *Lorain Natl. Bank v. Saratoga Apts.*, 61 Ohio App.3d 127, 572 N.E.2d 198 (9th Dist.1989); *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Summary judgment shall be granted when there remains no genuine issue of material fact and, when considering the evidence most strongly in favor of the non-moving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C).

**{¶ 19}** The record reflects that all tests conducted on appellant's waterline indicate that the line leaked immediately, profusely, and audibly upon the introduction of water pressure. The tests also indicated that the subject waterline was in a materially altered condition in comparison to the relevant waterlines distributed by LDR. The subject waterline utilized different hardware and was more than an inch shorter. As a result, if it had been in that condition at the time of manufacture, distribution and sale, it would not have fit in appellee's product packaging.

**{¶ 20}** In light of the overwhelming evidence, we find no genuine issue of material fact remains in this matter. The record contains no evidence that the subject waterline was manufactured or sold in the condition in which it was installed. On the contrary, the record conveys that it was altered between the time of sale and the time of installation. Reasonable minds can only conclude that LDR is entitled to summary judgment as a matter of law. Wherefore, appellant's second assignment of error is found not well-taken.

**{¶ 21}** The judgment of the Lucas County Court of Common Pleas is hereby affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE