

1
—
UNITED STATES DISTRICT COURT

~~DISTRICT OF MASSACHUSETTS~~

Middlesex, MA Superior Court

ANNE BRENSLEY)
Plaintiff)
v.)
ELECTROLUX HOME PRODUCTS, INC)
Defendant)
_____)

Civil Action No.:

18-3194

Demand for jury Trial

FILED
IN THE OFFICE OF THE
CLERK OF COURT
FOR THE COUNTY

NOV 06 2018

[Signature]
CLERK

COMPLAINT

Plaintiff, Anne Brensley (hereinafter referred to as "Plaintiff") submits this Complaint pro se as the consumer of the Defendant's, Electrolux Home Products Inc (herein referred to as "Defendant"), front loading EFLW317TIW1 automatic washing machine product ("Washing Machine").

Specifically Plaintiff brings three claims against the Defendant in connection with damages she incurred when the Defendant's defective Washing Machine would not drain properly. Because the Defendant refused to properly fix or replace the Washing Machine in a timely manner, the Plaintiff incurred significant and unnecessary damages from the mold and mildew that both leaked out of the Machine and caused a significant odor in her home. These damages include, removal and replacement of her upstairs carpets, costs to remove the Washing Machine when the Defendant refused to do so, costs from the purchase of the Washing Machine, and costs for mold remediation in her upstairs office.

Plaintiff is also seeking punitive damages from the Defendant for purposely withholding a draining defect in their product from consumers, profiting from the sales of the defective

products, and knowingly and wantonly exposing consumers to health risks by refusing to fix the defect in a timely manner.

II. JURISDICTION AND VENUE

1. Venue and jurisdiction are proper within this Court as the matters in dispute are in excess of the requisite jurisdictional amount, and Electrolux engages in substantial business within this district, including the sale and distribution of the Washing Machine from distribution centers located in the district where the Plaintiff lives.

III. THE PARTIES

2. Anne Brensley ("Plaintiff") is a resident and citizen of the State of Massachusetts. She resides at 28 Barney Hill Rd. in Wayland, MA in Middlesex County.
3. Electrolux Home Products, Inc ("Defendant") is a Delaware corporation with its principal place of business at 10200 David Taylor Dr. Charlotte, North Carolina 28262. Electrolux designs, manufactures, and distributes washing machines throughout the State of Massachusetts and within Middlesex County.

IV. FACTS

4. On February 17th of 2018, the Plaintiff purchased the Washing Machine manufactured by the Defendant from one of its dealers, Home Depot, located in Natick, MA. Because Electrolux sells itself as a top of the line manufacturer, the Plaintiff paid a higher than average fee for the Washing Machine and believed she would receive a better than average product.
5. On page 36 of the manual, there was warranty information that specifically stated the following (Exhibit A):

- a. "Electrolux will repair or replace any parts of this appliance that prove to be defective in materials or workmanship when such appliance is installed, used and maintained in accordance with the provided instructions."
 - b. "All parts — One year including labor. In addition, your appliance is covered by a one year, parts only, limited warranty. During the 2nd year from your original date of purchase, Electrolux will pay for parts needed for this appliance that have proven to be defective in materials or workmanship when your appliance is installed, used, and maintained in accordance with the provided instructions."
6. The warranty did not require the buyer to do anything in order to trigger the warranty and did not state only specific repair groups were allowed to service the Machine.
7. Within two weeks of utilizing her brand new Electrolux washing machine, the Plaintiff noticed her clothes smelled funny. She thought the smell was because the Machine was so new.
8. Having used the Machine for less than a month, the Plaintiff noticed her clothes were very wet and the water was not completely draining from her machine.
9. The Plaintiff attempted to call the customer service line several times and was put on long hold lines.
10. Eventually in early June of 2018, less than two months after she started using the machine, she reached out the Hudson Appliances in Hudson, MA because the Plaintiff was concerned that water was just sitting in her machine and could cause mold issues. She had attempted to remove the water herself, but upon opening the washing machine door, water flooded out and seeped into her carpet. Plaintiff stopped all use of the

Machine from that point. Home Appliances stated they needed to know who the warranty group was in order to service the washing machine.

11. On June 12, 2018, she tried Electrolux's customer service line once again and was put on a long hold. She then reached out to customer service through email (Exhibit B) and finally received a response from the warranty group on June 15, 2018.
12. The customer service and warranty group requested the Plaintiff "make sure the pump is starting." And needed her to "verify that the drain hose is seated properly..." along with several other troubleshooting items. Customer service also requested the "complete date of purchase and dealer information" (Exhibit C).
13. On June 16, 2018 Plaintiff confirmed that none of that had remedied the problem and provided 04/18 as date of purchase and location of the dealer. That was not satisfactory to customer service as she needed the exact date before Customer Service would supply repair help.
14. Plaintiff had to hunt down the exact date as outlined in an invoice that had been discarded and finally after extensive coordination with the washing machine's dealer, Home Depot, she got back to customer service on July, 26, 2018.
15. On July 31, 2018 the Plaintiff was informed Mr. Appliance, a Massachusetts company, would be coordinating an appointment and she could not use Hudson Appliances.
16. On Aug 2, 2018 a dispatcher came out from Mr. Appliance, but there was no removal of the water from the machine (Exhibit D).
17. On Aug 3, 2018 the Plaintiff began smelling a very foul odor in the area by the washing machines. She also noticed that the washing machine had started leaking and so she

reached out to customer service again and stated, "I believe mold might be collecting."

(Exhibit E)

18. On Aug 7, 2018 Plaintiff received a response that stated, "Our appliances are covered under a one-year warranty from date of purchase. We will need to proceed with repairs"

(Exhibit F).

19. On August 23, 2018 another dispatcher from Mr. Appliance came out and replaced some components of the washing machine, but it still did not fix the draining issues (Exhibit G). Plaintiff noticed the Machine was still leaking onto the carpet.

20. On Sept 14, 2018, Plaintiff sent an email to Megan Miller, legal counsel for Electrolux explaining the concern of both mold and its health risks and the fact that most likely the washing machine was ruined since the water still had not been drained (Exhibit H). She asked Mrs. Miller for help and proposed replacing the machine as a remedy. She also attached a picture of the water in the washing machine and her dryer that now sat in her office area (Exhibit I). She stated she would be filing a claim under Mass G.L.A. 93(A) if the issue remained unresolved. She never received a response from that email from Mrs. Miller.

21. For the third time, a Mr. Appliance technician came to the Plaintiff's home to replace more parts (Exhibit J). The technician stated that the replacement did not work and that there was nothing more he could imagine doing to the machine. There was still water in the machine. The Plaintiff had stopped the leaking by taping the bottom of the machine and replacing the tape every few days.

22. In early Oct, the Plaintiff realized she had a cold that wasn't going away and that for some reason seemed to be worse when she was in her room (located right next to the washing machine).
23. On Oct. 11, 2018 the Plaintiff again reached out to Mrs. Miller along with a list of other Electrolux attorneys and paralegals (Exhibit K). Because the Plaintiff has an 11-year old daughter that sleeps on the same floor as the washing machine and because there still seemed to be an odd odor on that floor, she became very very concerned about the removal of the washing machine. The day she sent the email, Plaintiff received a call from a risk manager from Electrolux. Because the Plaintiff was so irate about the situation and was shocked that the response was not to fix the issue or work to try to get the machine out, but was rather to act like there was no major problem, the Plaintiff became very upset and yelled at the risk manager. She greatly apologizes to that risk manager. The risk manager concluded the call by recommending the Plaintiff reach out to warranty services which was the group the Plaintiff had already been working with for months.
24. On Oct 18, 2018, the CEO of Electrolux's personal assistant called the Plaintiff. The Plaintiff explained the situation and the fact that there was a leaking moldy and mildew ridden Washing Machine still in her home and the smell in the laundry area was forcing her to keep windows open even when temperatures were low, and even after explaining that she had a cough that wasn't going away and that her dryer was sitting in her office, and even after mentioning Mr. Appliance had come out 3 times, the personal assistant recommended she read the warranty manual and explained only warranty services could help. The assistant emailed the Plaintiff the warranty guide and directed her where to

find information on the warranty. The Plaintiff responded by reiterating issues that had been discussed in the call (Exhibit L).

25. On Oct 20, 2018, the Plaintiff paid a moving company to throw out the Washing Machine. She also sent Mrs. Miller one last email explaining that she was going to throw out the Machine herself since no one at Electrolux was helping to remedy the problem and she was concerned about health risks. She also attached 3 pictures along with one that clearly showed how the mold had spread to the inner rim of the Washing Machine. (Exhibit M)
26. The Plaintiff started to do research on Electrolux washing machines and uncovered they have a very long history of having draining issues and mold and mildew are almost common with these machines. There were multiple reports on websites and product reviews describing the smell that some of the machines were emitting and the frustration consumers were feeling with machines that don't drain.
27. In addition, after speaking with an appliance technician the Plaintiff learned that even though the Machines have draining issues and are front loading, the design of the Machine makes it impossible to get the water out without opening the front door and exposing the consumer to mold ridden and mildew water. So when the machines have draining issues consumers must expose themselves to inhaling mold and mildew.
28. As of Oct 20th, the appliance service company still had not followed up with the Plaintiff.
29. On Oct 31st of 2018, the Plaintiff went to see her doctor and had a chest x-ray done because of mold ingestion concerns and because again, Plaintiff is still coughing. There is no evidence at the moment that mold ingestion was a concern, but either way Plaintiff having a heightened concern is due to the Defendant's actions and lack of action.

V. COUNT I: MASS G.L.A 93 (A)

30. Plaintiff realleges paragraphs 1-29, inclusive.
31. Section 2 of the Massachusetts Consumer Protection Act, Mass. Gen. Laws ch. 93A§ 2, declares unfair or deceptive acts and practices in the conduct of any trade or commerce to be unlawful.
32. The Defendant has received extensive warnings from consumers their front loading Washing Machines have draining issues and they know a build up of water in their machines can cause mold and mildew to grow and cause health risks to consumers. However, even at the CEO level, the response to the Plaintiff who had this issue was to send them the user guide and warranty clause. At no time was the Plaintiff advised on how to deal with the water issue or how to protect herself from ingesting mold that could be growing in her machine. Nor did the Defendant have protocols in place to make sure any draining issue would be dealt with expeditiously to reduce the health risk to consumers. Instead the Defendant continues to take a premium purchase price for the defectively designed product and then pawns consumers like the Plaintiff off to a third-party warranty company, and tells them that is their only recourse. For the Plaintiff that process allowed for 3 months of mold growth with no end in sight.

VI. COUNT II: BREACH OF EXPRESS WARRANTY

33. Plaintiff realleges paragraphs 1-29, inclusive.
34. Under Massachusetts State Law, a failure to perform promises arising under a warranty is a per se violation of Mass. Gen. Laws ch. 93A. Specifically, 940 Mass. Code Regs. 3.08(2) states, "It shall be an unfair and deceptive act or practice to fail to perform or fulfill any promises or obligations arising under a warranty."

35. The Defendant's warranty is for one year from date of purchase. The Plaintiff's Washing Machine broke within that warranty window. There were 3 technician visits with no repair solutions over a 3-month period of time and no follow up from the servicing company or the Defendant. Moreover, the Plaintiff was restricted from using Hudson Appliance or any other appliance company besides the one the Defendant appointed making it impossible for the Plaintiff to receive the proper servicing. This was not outlined in the warranty provision. Because no technician had drained the water in the Washing Machine, even if a final repair was made the Washing Machine was ruined.

VI. COUNT III: BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

36. Plaintiff realleges paragraphs 1-29, inclusive.

37. Under Massachusetts law, "[a] seller breaches its warranty obligation when a product that is 'defective and unreasonably dangerous' . . . for the '[o]rdinary purposes' for which it is 'fit' causes injury." Haglund v. Philip Morris, Inc., 446 Mass. 741, 746, 847 N.E.2d 315 (2006) .

38. Breach of implied warrant of merchantability under Massachusetts law are the functional equivalent of strict liability in other jurisdictions. Rule v. Fort Dodge Animal Health, inc., 604 F. Supp. 2d 288.


39. The Washing Machine would not drain and could not be repaired to drain properly. The draining issue destroyed the Washing Machine, caused carpet damage, and mold issues. Clothes could not be washed in the machine which is its ordinary purpose.

40. **WHEREFORE**, the aforementioned reasons, Anne Brensley requests the following from the court:

- A. Award of all damages the plaintiff is entitled to including punitive damages;
- B. Award of reasonable fees for the hours put in by the plaintiff to represent herself in this claim;
- C. Injunctive relief requiring the defendant to issue a defect warning to all buyers regarding the draining design defect to prevent consumers from exposing themselves to health risks from mold and mildew;
- D. Injunction requiring the Defendant implement training protocols to guaranty that consumers with draining issues are prioritized to ensure expedited repairs;
- E. Grant any other relief the Court sees as appropriate.

PLAINTIFF EXERCISES HER RIGHT A TRIAL BY JURY

Respectfully submitted,
ANNE BRENSLEY PRO SE



Anne Brensley PRO SE
28 Barney Hill Rd
Wayland, MA 01778
anne.brensley@gmail.com
(p) 585-233-1367

Date: 10/12/2018

CERTIFICATE OF SERVICE

I hereby certify that this document will be served to all parties in accordance with Massachusetts law by October ^{Nov} 11, 2018.



Anne Brensley