

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

FRANCIS X. KITCHENER, JR., BRYAN
AND JANETTE ALDERSON and DAVID
AND PATRICIA CARMICHAEL, on
behalf of themselves and all others
similarly situated,

Plaintiffs,

Case No. 2:06-cv-553-FtM-29 SPC

v.

GENERAL ELECTRIC COMPANY,

Defendant.

ANSWER AND DEFENSES

Defendant, General Electric Company (“GE”), by and through undersigned counsel, hereby files its Answer and Defenses to the Amended Class Action Complaint and in response to the corresponding numbered paragraphs of the Amended Class Action Complaint says:

Nature of Action

1. Denied.
2. Denied.
3. Denied.
4. Denied.
5. GE admits that its warranties are for a specified period and denies the remaining allegations of paragraph 5.

6. GE admits that its responsibilities may be limited by the terms of its warranties; otherwise the allegations of paragraph 6 are denied.

Jurisdiction and Venue

7. Admitted for purposes of jurisdiction only.

8. Admitted.

The Parties

9. GE is without knowledge of the allegations of paragraph 9 and therefore denies same.

10. GE is without knowledge of the allegations of paragraph 10 and therefore denies same.

11. GE is without knowledge of the allegations of paragraph 11 and therefore denies same.

12. Admitted.

Class Action Allegations

13. GE denies that this is an appropriate class action pursuant to Rule 23 of the Federal Rules of Civil Procedure; otherwise GE is without knowledge of the allegations of paragraph 13 and therefore denies same.

14. GE admits that the putative class and subclasses as defined are composed of thousands of persons geographically dispersed throughout the United States and admits that membership in the putative class and subclasses as defined can, to some extent, be determined by reference to serial numbers. GE denies the remaining allegations of paragraph 14.

15. GE denies the allegations of paragraph 15, including all its subparts.

16. Denied.

17. GE is without knowledge of the allegations of paragraph 17 and therefore denies same.

18. Denied.

Common Factual Allegations

19. GE admits that hundreds of thousands of the side-by-side refrigerators which are the subject of this action were manufactured, marketed, advertised, warranted, and sold throughout the country; otherwise GE denies the allegations of paragraph 19.

20. Denied.

21. Any warranty given by GE is a written document which speaks for itself.

22. Denied.

23. Denied.

24. GE is without knowledge of payments made by members of the putative class and subclasses; GE denies the remaining allegations of paragraph 24.

25. Denied.

26. Denied.

27. Denied.

Estoppel From Pleading and Tolling of Applicable Statutes of Limitations

28. Denied.

29. Denied.

First Cause of Action
(Breach of Express Warranty)

30. GE hereby incorporates by reference its responses to the preceding allegations.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

Second Cause of Action
(Breach of Implied Warranty)

36. GE hereby incorporates by reference its responses to the preceding allegations.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

Third Cause of Action
(Negligence)

42. GE hereby incorporates by reference its responses to the preceding allegations.

43. Denied.

44. Denied.

45. Paragraph 45 sets forth legal conclusions to which no response is required; accordingly they are denied.

46. Denied.

47. Denied.

Fourth Cause of Action
(Unjust Enrichment/Restitution)

48. GE hereby incorporates by reference its responses to the preceding allegations.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. GE denies each and every allegation of the Amended Class Action Complaint not heretofore specifically admitted.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Amended Class Action Complaint, and each purported count thereof, fails to state a claim upon which relief may be granted.

Second Affirmative Defense

Each of Plaintiffs' purported claims in the Amended Class Action Complaint is barred by an applicable statute of limitations.

Third Affirmative Defense

GE was not in privity of contract with the Plaintiffs and, as such, their implied warranty claims are barred as a matter of law.

Fourth Affirmative Defense

GE's express warranty governs this claim. As such, all implied warranty claims are barred.

Fifth Affirmative Defense

GE's express warranty governs this claim. As such, any potential legal remedies of the Plaintiffs are governed by this contract and Plaintiffs' unjust enrichment claim fails as a matter of law.

Sixth Affirmative Defense

Plaintiffs' water filter malfunction claim is barred by the provisions of GE's express warranty.

Seventh Affirmative Defense

The Plaintiffs failed to exercise reasonable care which was the sole cause of, or contributed to, their damages, as alleged in the Amended Class Action Complaint. By reason thereof, the Plaintiffs are barred from recovering all or that portion of any damages attributable to their lack of reasonable care.

Eighth Affirmative Defense

If GE supplied any product alleged to have been defective or unmerchantable as alleged in the Amended Class Action Complaint, the Plaintiffs misused said products without the knowledge or consent of, and in a manner not reasonably foreseeable to, GE at a time prior to its notice of the circumstances described in the Amended Class Action Complaint. Such misuse was the sole cause of, or contributed to, the Plaintiffs' damages, if any. By reason thereof, Plaintiffs are barred from recovering all or that portion of any damages attributable to their misuse of such products.

Ninth Affirmative Defense

If GE supplied any product alleged to have been defective or unmerchantable as alleged in the Amended Class Action Complaint, the Plaintiffs failed to give GE notice of any alleged breach of warranty.

Tenth Affirmative Defense

GE is entitled to allocate its liability, if any, for Plaintiffs' damages, if any, among those other persons or entities whose acts or omissions may have legally caused or contributed to Plaintiffs' damages, if any.

Eleventh Affirmative Defense

Plaintiffs have unreasonably failed to mitigate their damages, if any.

Twelfth Affirmative Defense

If GE supplied any product alleged to have been defective or unmerchantable as alleged in the Amended Class Action Complaint, and without admitting that any such product was dangerous, defective, or unmerchantable, and without assuming the burden of proof on this point, GE provided such products with labels, instructions, or warnings as were adequate to warn individuals such as Plaintiffs from and against such hazards and dangers, if any, associated with the use of such products as were known by GE and the scientific community at the time GE provided such products.

Thirteenth Affirmative Defense

If GE supplied any product alleged to have been defective or unmerchantable as alleged in the Amended Class Action Complaint, the Plaintiffs modified or altered said products without the knowledge or consent of, and in a manner not reasonably foreseeable to, GE at a time prior to its notice of the circumstances described in the Amended Class Action Complaint. Such modification or alteration was the sole cause of, or contributed to, the Plaintiffs' damages, if any. By reason thereof, Plaintiffs are barred from recovering all or that portion of any damages attributable to their modification or alteration of such products.

Fourteenth Affirmative Defense

If Plaintiffs sustained damages or incurred expenses, such damages or expenses resulted from pre-existing or unrelated mechanical, physical, generic, or environmental conditions of Plaintiffs' property.

Fifteenth Affirmative Defense

The Plaintiffs may not recover any damages paid or payable by collateral sources, pursuant to the Florida Tort Reform Act.

Sixteenth Affirmative Defense

Any contributory negligence on behalf of the Plaintiffs causes the Plaintiffs' breach of warranty claims to fail or be mitigated accordingly.

Seventeenth Affirmative Defense

Plaintiffs assumed the risk of the use of the subject products. As such, the Plaintiffs' breach of warranty claims fail or should be mitigated accordingly.

Eighteenth Affirmative Defense

Plaintiffs' unjust enrichment claim is equitable in nature and is not an available remedy when an adequate legal remedy, i.e., a valid contract claim, is available. Any proof of an express agreement between the parties would defeat an action based upon implied contract (unjust enrichment). Further, if an adequate legal remedy is available, the pursuit of equitable remedies is precluded.

Nineteenth Affirmative Defense

The Plaintiffs' claims are barred by the doctrine of failure of consideration or partial failure of consideration.

Twentieth Affirmative Defense

No contract for the sale of goods was entered into between the Plaintiffs and GE and no mutual agreement exists between the parties. Hence, the Amended Class Action Complaint fails to state a valid claim for relief against GE, including any claim for breach of warranty.

Twenty-First Affirmative Defense

Plaintiffs' claims are barred by the economic loss rule.

Twenty-Second Affirmative Defense

The claims of Plaintiffs are barred by operation of the doctrine of waiver.

Twenty-Third Affirmative Defense

The claims of Plaintiffs are barred by operation of the doctrine of laches.

Twenty-Fourth Affirmative Defense

The claims of Plaintiffs are barred by operation of the doctrine of estoppel.

Twenty-Fifth Affirmative Defense

Venue is inappropriate here.

Twenty-Sixth Affirmative Defense

All claims of Plaintiffs may be barred or diminished because of the failure of the Plaintiffs to preserve evidence.

Twenty-Seventh Affirmative Defense

If the products referenced in the Amended Class Action Complaint were defective, which GE denies, any such defect was open, obvious, and equally known to the Plaintiffs. As such, Defendant's duty to warn, if any, is discharged.

Twenty-Eighth Affirmative Defense

The subject products were not more dangerous and/or defective than an ordinary consumer would expect when used in an intended or reasonably foreseeable manner.

Twenty-Ninth Affirmative Defense

GE reserves the right to amend these affirmative defenses as litigation continues and, particularly, if the putative class were to be certified in this case.

Defendant GE, having filed its answer and affirmative defenses to the Amended Class Action Complaint, moves the Court to dismiss the Amended Class Action Complaint, and each count thereof, with prejudice.

Respectfully submitted,

s/Edward M. Waller, Jr.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 2, 2007, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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