

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CHARLOTTE LYNN BOWLIN	§	
	§	
and	§	
	§	
RON BOWLIN,	§	
	§	
Plaintiffs,	§	CIVIL ACTION NO. 4:14-CV-00111
	§	JURY
v.	§	
	§	
WERNER CO.,	§	
	§	
Defendant.	§	

PLAINTIFFS' SECOND AMENDED COMPLAINT

COME NOW Plaintiffs Charlotte Lynn Bowlin and Ron Bowlin, complaining of Werner Co., Defendant, and would respectfully show the Court as follows:

**I.
Parties and Service**

1.1 Plaintiff Charlotte Lynn Bowlin is a resident of Denton County, Texas, and may be contacted through Plaintiffs' counsel.

1.2 Plaintiff Ron Bowlin (husband to Plaintiff Charlotte Lynn Bowlin) is a resident of Denton County, Texas, and may be contacted through Plaintiffs' counsel.

1.3 Defendant Werner Co. ("Werner") is a Delaware Corporation, whose principal office is located at 93 Werner Road, Greenville, Pennsylvania 16125. Werner has made an appearance in this case through its counsel of record Don Swaim, ROSE•WALKER, L.L.P., 3500 Maple Avenue, Suite 900, Dallas, Texas 75219.

II. Jurisdiction and Venue

2.1 This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332(a)(1) because this action, which has an amount in controversy in excess of \$75,000, is between citizens of different states. Plaintiffs are residents and citizens of the State of Texas, and Werner is a resident and citizen of Delaware, where it is incorporated, and Pennsylvania, where it maintains its principal place of business.

2.2 Defendant Werner is a foreign corporation and does not maintain a regular place of business or a designated agent for service of process in Texas. This Court has personal jurisdiction over Werner because it does business in Texas pursuant to TEX. CIV. PRAC. & REM. CODE § 17.042, and because it has sufficient contacts with the State of Texas, both generally and with regard to this specific action, so that the exercise of personal jurisdiction over it is proper.

2.3 Venue is proper in the Eastern District of Texas, Sherman Division, pursuant to 28 U.S.C. §1391(a)(2), because this is the District in which a substantial part of the events or omissions giving rise to the claim occurred. More specifically, the failure of the ladder and subsequent physical injuries to Plaintiff happened at her home in Flower Mound, Denton County, Texas.

III. Facts

3.1 The onset of the injuries at issue was June 19, 2012.

3.2 The physical injuries at issue were sustained by Plaintiff Charlotte Bowlin.

3.3 Plaintiff Charlotte Bowlin was using a Model 368 when it failed.

3.4 The failure of the Model 368 was a producing cause of Plaintiffs' injuries and damages.

3.5 The Plaintiffs were the owners of the ladder at issue.

3.6 The ladder at issue was designed, manufactured, and placed into the stream of commerce by Defendant Werner.

3.7 The model number of the ladder at issue is Werner 368 (Mk 21).

3.8 Defendant's Model 368 ladders were represented by Werner to have a load capacity of 250 pounds in March of 2012.

3.9 Defendant's Model 368 ladders were represented by Werner in March of 2012 to be "HEAVY DUTY."

3.10 Defendant's Model 368 ladders were being sold in Home Depot's Flower Mound, Texas, location in March of 2012.

3.11 The riveting process employed by Werner to manufacture the Model 368 ladder results in a wide variance of indentation and deformation of the ladder rails due to the riveting process.

3.12 As a result of the rivet-clinching process employed by Werner, the front left ladder rail of the subject ladder was indented and deformed at the location of the failure.

3.13 The manufacture of the Plaintiffs' ladder resulted in a rivet tail at the hinge-point at issue of less than .35 inches.

3.14 Defendant's Model 368 ladders are normally manufactured so that the rivet tail at this location is greater than .36 inches.

3.15 Defendant's own manufacturing standards require .250 diameter rivets at hinge point connections to maintain a minimum rivet upset diameter of at least .355 inches.

3.16 The indentation and deformation of the front left ladder rail of the subject ladder caused a failure of the joint connecting the spreader bar to the ladder rail when the ladder was subject to foreseeable loads associated with its normal, expected use.

3.17 The indentation and deformation of the front left ladder rail of the subject ladder rendered it unreasonably and dangerously defective.

3.18 Defendant's Model 368 ladders sold in March of 2012 were designed and manufactured without a washer at the rail-side of the rivet where the spreader and rail are joined.

3.19 Defendant Werner in March of 2012 designed and manufactured several other ladder models with a steel washer at the rail-side of the rivet where the spreader and rail are joined.

3.20 Design and manufacture of Defendant Werner's ladder models with steel washers at this hinge-point results in those models remaining safer from failure at that hinge-point as compared to Defendant's Model 368 in the event that the diameter of the rivet tail is decreased due to any manufacturing variances.

3.21 The use of a steel washer in conjunction with the rivet at the joint in question would have prevented, or significantly reduced, the risk of Plaintiff Charlotte Bowlin's injuries without substantially impairing the product's utility.

3.22 Documents provided to Defendant Werner pre-suit corroborate that the ladder's failure was at the subject hinge-point described above.

3.23 Documents provided to Defendant Werner pre-suit corroborate that Plaintiff Charlotte Bowlin weighed well under 250 pounds on June 19, 2012.

3.24 Documents provided to Defendant Werner pre-suit corroborate that Plaintiff Charlotte Bowlin sustained a comminuted humerus fracture to her left arm, which required surgery to repair.

3.25 Prior to March of 2012, Defendant Warner had been notified, via claims and litigation, of other injuries in which the injured persons asserted that a Werner ladder failed because of manufacturing defects with the rivet at the subject hinge-point in Werner products designed and manufactured without a washer at the spot.

IV. Products Liability

4.1 The Werner ladder in question was originally designed, manufactured and placed into the stream of commerce by Werner.

4.2 At the time the ladder in question was placed into the stream of commerce, Werner was in the business of designing, manufacturing and selling ladders such as the one in question.

4.3 At the time the ladder in question was designed, manufactured and placed into the stream of commerce by Werner, it had been defectively manufactured and was unreasonably dangerous as manufactured.

4.4 The defective and unreasonably dangerous condition of the Werner ladder was a producing cause of Plaintiff's injuries and damages.

4.5 The defects in the manufacture of the ladder include, but are not limited to, the fact that the rivet connecting the left spreader bar to the front left rail had been improperly installed, such that the ladder was unable to withstand normal, foreseeable use. This defect rendered the ladder unreasonably dangerous and defective, and was a producing cause of the incident and the Plaintiffs' injuries and damages.

4.6 Pleading in the alternative, at the time the ladder in question was designed, manufactured and placed into the stream of commerce by Werner, it was defective in design and unreasonably dangerous as designed. The defective design and unreasonably dangerous condition of the Werner ladder was a producing cause of Plaintiff's injuries and damages.

4.7 At the time the ladder entered the stream of commerce, there were economically and technologically feasible safer alternative designs available that would have prevented or significantly reduced the risk of injuries to Mrs. Bowlin without substantially impairing the products' utility.

4.8 Instead of relying upon a rivet alone to secure the spreader bar to the ladder rail, the manufacturer could have used a steel metal washer to spread the tension at the ladder joint over a larger surface area.

4.9 This alternative design would have safely withstood Plaintiff's use and would not have failed.

4.10 This alternative design would withstand foreseeable use within the product's specifications and labeling.

4.11 This alternative design was economically and technologically feasible at the time the product left the control of the manufacturer by the application of existing or reasonably achievable scientific knowledge.

4.12 This alternative design would not have substantially impaired the product's utility.

4.13 This alternative design would have been safer.

4.14 In contrast, the Defendant's design permitted the product to suddenly fail to function in a manner reasonably expected by an ordinary user of such ladders.

4.15 The Defendant's design was defective and unreasonably dangerous.

4.16 The Defendant's design was a producing cause of Plaintiffs' injuries and damages.

4.17 At the time of the incident, the ladder was in substantially the same condition as it was at the time it was placed into the stream of commerce. No material alterations were made to the ladder.

4.18 At the time of the subject incident, the ladder was in the same or substantially similar condition as when it left the control of Werner.

4.19 No mandatory safety standard or regulation adopted and promulgated by the federal government or an agency of the federal government was applicable to the Werner ladder at the time it was manufactured that governed any product risk that caused the incident and/or Plaintiffs' injuries.

4.20 To the extent Werner attempts, pursuant to §82.008 of the TEXAS CIVIL PRACTICE & REMEDIES CODE, to rely on any standards or regulations of the federal government, such standards or regulations were inadequate to protect against the risk of accident or injuries that occurred in this incident.

4.21 To the extent Werner attempts, pursuant to §82.008 of the TEXAS CIVIL PRACTICE & REMEDIES CODE, to rely on any standards or regulations of the federal government, Werner withheld or misrepresented information to the government regarding the adequacy of the safety standard at issue.

V.

Breach of the Implied Warranty of Merchantability

5.1 Defendant was, and is, a merchant of the defective ladder under TEX. BUS. & COMM. CODE ANN. § 2.104(a).

5.2 Defendant sold the defective ladder in question, which is a "good" under TEX. BUS. & COMM. CODE ANN. § 2.105(a).

5.3 Defendant's sale of the product created an implied warranty that the ladder was merchantable and fit for its ordinary intended purposes, pursuant to TEX. BUS. & COMM. CODE ANN. § 2.314.

5.3 The ladder was defectively manufactured, rendering it unmerchantable and unfit for the ordinary purposes for which such goods are used.

5.4 Lynn Bowlin suffered injury as a proximate result of the ladder's unfit and unmerchantable character.

5.5 Defendant's conduct in selling a product that was unmerchantable and unfit for its intended purposes renders Defendant liable to Plaintiffs under the doctrine of breach of implied warranty of merchantability, pursuant to TEX. BUS. & COMM. CODE ANN. §§ 2.314 and § 2.715(b)(2).

VI. Violation of the Texas Deceptive Trade Practices Act

6.1 Plaintiffs sought or acquired by purchase the ladder in question, which was a "good" as defined by TEX. BUS. & COMM. CODE ANN. § 17.45(i).

6.2 Plaintiffs were, therefore, "consumers" as that term is defined in TEX. BUS. & COMM. CODE ANN. § 17.45 (i), (4).

6.3 Defendant's breach of the implied warranty of merchantability described in Section V, *supra*, was a producing cause of Plaintiffs' injuries and resulting damages.

6.4 Plaintiffs are therefore entitled to relief under TEX. BUS. & COMM. CODE ANN. § 17.50(a)(2), and are authorized to recover damages under TEX. BUS. & COMM. CODE ANN. § 17.50(a) and (b).

VII. Damages

7.1 Plaintiffs seek actual damages from Defendant Werner to compensate them for the following elements of damages:

- (a) Reasonable and necessary medical care and expenses in the past;
- (b) Reasonable and necessary medical care and expenses that will, in reasonable probability, be incurred in the future;
- (c) Loss of earning capacity in the past;
- (d) Loss of earning capacity that will, in reasonable probability, be incurred in the future;
- (e) Plaintiff Charlotte Bowlin's physical pain and suffering in the past;
- (f) Plaintiff Charlotte Bowlin's physical pain and suffering that will, in reasonable probability, be suffered in the future;
- (g) Plaintiff Charlotte Bowlin's physical impairment in the past;
- (h) Plaintiff Charlotte Bowlin's physical impairment that will, in reasonable probability, be suffered in the future;
- (i) Plaintiff Charlotte Bowlin's mental anguish in the past;
- (j) Plaintiff Charlotte Bowlin's mental anguish that will, in reasonable probability, be suffered in the future;
- (k) Plaintiff Charlotte Bowlin's disfigurement in the past;
- (l) Plaintiff Charlotte Bowlin's disfigurement that will, in reasonable probability, be endured in the future;
- (m) Loss of consortium; and
- (n) Loss of household services.

7.2 Plaintiffs seek recovery of their reasonable and necessary attorneys' fees and costs under their breach of warranty and DTPA claims, pursuant to TEX. CIV. PRAC. & REM. CODE ANN. § 38, and TEX. BUS. & COMM. CODE ANN. § 17.50(c). Plaintiffs seek recovery of such fees through the trial of this case and through any appeals.

7.3 Plaintiffs seek recovery of pre-judgment interest and post-judgment interest as allowed by law.

VIII. Jury Demand

8.1 Plaintiffs request a trial by Jury.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendant Werner be cited to Appear and Answer herein; that this cause be set down for trial before a Jury; and that Plaintiffs recover Judgment of and from Defendant Werner for their damages in such amount as the evidence shows and the Jury determines to be proper, together with pre-judgment and post-judgment interest, costs of suit, and such other and further relief to which Plaintiffs may show themselves to be entitled, whether at law or in equity.

Certificate of Service

I hereby certify that on August 26, 2014 I electronically transmitted the foregoing document to the Electronic Filing System for the U.S. District Court, Eastern District of Texas. Pursuant to Local Rule CV-5, receipt by the filing party of a Notice of Electronic Filing from the court is proof of service of the document on all counsel who are deemed to have consented to electronic service.

/s/ P. Wes Black