Proposed TV Class Action Dismissed Again

December 7, 2011 by Sean Wajert

A California federal court has again dismissed a proposed class action brought against Sony Corp. of America regarding allegedly defective televisions. Marchante, et al. v. Sony Corp. of America Inc., et al., No. 3:10-cv-00795 (S.D. Calif.).

Plaintiffs alleged that overheating caused the chassis and internal parts of nine different Sony rear-projection televisions to melt or burn during normal use. Plaintiffs, on behalf of a proposed class of purchasers, claimed that Sony violated several consumer protection statutes (such as, typically the California Consumer Legal Remedies Act) and breached express and implied warranties by selling them the defective televisions. Earlier this year, the court dismissed without prejudice all of the claims, and plaintiffs filed an amended pleading. Defendants again moved to dismiss.

The court reviewed the *Twombly/Iqbal* standards, and ruled that the plaintiffs had not fixed the pleading problems. Plaintiffs again alleged that Sony engaged in unfair business acts or practices by selling, promoting, and recalling the television models at issue. The court had previously dismissed plaintiffs' unfair business act claim because plaintiffs failed to allege a substantial consumer injury; in the new complaint plaintiffs again failed to allege that the televisions exhibited any problems during the one-year limited warranty period. Every alleged problem surfaced several years after purchase. Any alleged failure to disclose thus related to a defect that arose years after the express warranty expired. And any failure to disclose therefore could not constitute substantial injury. Although plaintiffs did amend their complaint to include allegations that the televisions failed to *operate* properly from the outset, plaintiffs' amendments did not cure the deficiencies of the prior complaint. The fact remained that the *defects did not become apparent* to the plaintiff-consumers until after the warranty expired. Thus, the complaint still fell short of alleging that the defects caused the televisions to malfunction within the warranty period, as is required to allege a substantial consumer injury under California's consumer statutes.

As a general rule, manufacturers cannot be liable under the CLRA for failures to disclose a defect that manifests itself after the warranty period has expired. A possible exception exists, however, if the manufacturer fails to disclose information and the omission is contrary to a representation actually made by the defendant, or the omission pertains to a fact the defendant was otherwise obligated to disclose. Here, all of plaintiffs alleged CLRA violations pertained to Sony's alleged failures to disclose; the question therefore was whether Sony carried any obligation to disclose the alleged defect. The court noted that under the CLRA, a manufacturer's duty to disclose information related to a defect that manifests itself after the expiration of an express warranty is limited to issues related to product safety. Moreover, in order to have a duty to disclose, the manufacturer must be aware of the defect at the time that plaintiffs purchased, since a manufacturer has no duty to disclose facts of which it was unaware. In dismissing the prior complaint, the court held that plaintiffs failed to invoke the

safety exception because the complaint was devoid of allegations that anyone or any property —other than the television itself— was damaged by the allegedly defective televisions.

Even assuming plaintiffs' allegations that the televisions pose a safety risk were sufficient to invoke the safety exception (fire hazard?), plaintiffs failed to allege that Sony was aware of this safety hazard at the time plaintiffs purchased the televisions. First, plaintiffs alleged that Sony had known about it since 2008 and "possibly even earlier." Plaintiffs bought their televisions in 2004, 2005, and 2006. So under plaintiffs' own allegations, Sony may not have been aware of the alleged defect at the time plaintiffs made their purchases, or even within the respective one-year post-purchase warranty periods. Second, all of plaintiffs' allegations regarding Sony's knowledge of the alleged defect pertained to Sony's knowledge that the defect caused excess heat that resulted in the deterioration of the television display, not that the defect posed any safety hazard.

The court thus dismissed the CLRA claims without prejudice.

The court previously dismissed plaintiffs' claim for breach of the express (limited warranty) because the alleged defects did not manifest until after the one-year warranty period expired. The general rule is that an express warranty does not cover repairs made after the applicable warranty period—here, one year after purchase—has elapsed. None of the plaintiffs here sought repair or replacement of their televisions within the warranty period. None of the four named plaintiffs alleged that Sony either refused to repair any covered defects or refused to replace any televisions suffering from covered defects.

Plaintiffs' implied warranty claims again failed because they were untimely. Subject to a sixty-day minimum and one-year maximum, implied warranties are equal in duration to corresponding express warranties under California law, said the court. The implied warranty here was deemed to have a one-year duration to match that of the express warranty. And because Plaintiffs purchased the televisions in 2004, 2005, and 2006, the implied warranties would have expired by 2007, at the latest. But the amended complaint did not contain allegations that the televisions failed to function as warranted or that plaintiffs sought warranty coverage during the one-year period following their respective purchases. Thus, these claims were dismissed with prejudice.

Plaintiffs continue to try to shoe horn claims into the consumer fraud matrix, thinking they will have an easier road to class certification. That makes the court's scrutiny of the pleadings even more crucial.