

A FILED IN
COURT OF COMMON PLEAS
2007 APR -4 PM 12:00
GREGORY A. BRUSH
CLERK OF COURTS
MONTGOMERY CO. OHIO
15

THE COURT OF COMMON PLEAS, MONTGOMERY COUNTY OHIO
CIVIL DIVISION

SUMMONS

PLAINTIFF:
ROSS A PELZ et al
VS.

CASE NUMBER: 2007 CV 02726

DEFENDANT:
WORTHINGTON INDUSTRIES INC et al

ARTICLE NO: 7104223016901872200

TO THE FOLLOWING NAMED DEFENDANT:

NEWELL RUBBERMAID INC BERNZOMATIC DIVISION
C/O CORPORATION PROCESS COMPANY
180 CHEROKEE STREET NE
MARIETTA, GA 30060

YOU HAVE BEEN NAMED DEFENDANT IN A COMPLAINT FILED IN MONTGOMERY COUNTY COURT
OF COMMON PLEAS, DAYTON, OHIO, 45422

BY

PLAINTIFF:
ROSS A PELZ

A COPY OF THE COMPLAINT FILED IS ATTACHED HERETO:

PLAINTIFF'S ATTORNEY:
KENNETH J IGNOZZI

YOU ARE HEREBY SUMMONED AND REQUIRED TO SERVE UPON KENNETH J IGNOZZI, OR UPON
ROSS A PELZ, IF S/HE HAS NO ATTORNEY OF RECORD, A COPY OF AN ANSWER TO THE
COMPLAINT WITHIN TWENTY-EIGHT (28) DAYS AFTER SERVICE OF THIS SUMMONS ON YOU,
EXCLUSIVE OF THE DAY OF SERVICE. YOUR ANSWER MUST BE FILED WITH THE COURT WITHIN
THREE (3) DAYS AFTER THE SERVICE OF A COPY OF THE ANSWER ON KENNETH J IGNOZZI.

IF YOU FAIL TO APPEAR AND DEFEND, JUDGMENT BY DEFAULT WILL BE RENDERED AGAINST
YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

GREGORY A. BRUSH, CLERK
COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

Prepared By ZHEID, Deputy Clerk, on April 4, 2007.

FILED
MONTGOMERY COUNTY COMMON PLEAS

07 APR -3 AM 11:32

GREGORY A. BRUSH
CLERK OF COURTS
MONTGOMERY CO. OHIO
10

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

ROSS A. PELZ
21951 Philmont Court
Boca Raton, FL 33428

*

Case No. 07-2726

*

and

*

Judge _____

LUANN PELZ
21951 Philmont Court
Boca Raton, FL 33428

*

*

Plaintiffs

*

vs.

*

WORTHINGTON INDUSTRIES, INC.
c/o Dale T. Brinkman
200 Old Wilson Bridge Road
Columbus, OH 43085

*

COMPLAINT WITH JURY DEMAND
ENDORSED HEREON

*

and

*

NEWELL RUBBERMAID, INC.
Bernzomatic Division
c/o Corporation Process Company
180 Cherokee Street, NE
Marietta GA 30060

*

*

*

and

*

ACE HARDWARE CORPORATION
c/o Lexis Document Services, Inc.
50 West Broad Street, Suite 1800
Columbus, Ohio 43215

*

*

and

*

THE CENTERVILLE MILL, INC.
dba HANDYMAN ACE HARDWARE *
c/o Craig W. Saunders, Esq.
20 King Avenue *
Xenia, Ohio 45385 *

Defendants

Now come Plaintiffs, by and through counsel, and for his cause of action, alleges as follows:

FIRST CLAIM FOR RELIEF

1. Defendant, Worthington Industries, Inc. (hereinafter "Worthington") is a corporation doing business within the State of Ohio and is a manufacturer and/or distributor of Bernzomatic MAPP torch canisters.
2. Defendant, Newell Rubbermaid, Inc. (hereinafter "Newell") is a corporation doing business within the State of Ohio and is a manufacturer and/or distributor of Bernzomatic MAPP gas canisters and torches, by or through Bernzomatic which is a division of Defendant.
3. Defendant, Ace Hardware Corporation, (hereinafter "Ace Hardware") is a corporation doing business within the State of Ohio which, among other things, distributes and sales Bernzomatic MAPP gas canisters and torches to the general public.
4. Defendant, The Centerville Mill, Inc. dba Handyman Ace Hardware, (hereinafter "Handyman Ace Hardware") is a corporation doing business within the State of Ohio which, other things, distributes and sells Bernzomatic MAPP gas canisters and torches to the general public.
5. On or about May 29, 2005, Plaintiff, Ross A. Pelz, was using a Bernzomatic MAPP gas canister and torch at his home while working on his automobile. Said Bernzomatic MAPP gas canister and torch exploded causing a flash fire resulting in injury to Plaintiff.
6. On or about May 29, 2005, the Bernzomatic MAPP gas canister and/or torch used by Plaintiff were manufactured by Defendants, Worthington and/or Newell (and/or Bernzomatic), and sold and/or distributed by Defendants, Worthington and/or Newell and/or Ace Hardware and/or Handyman Ace Hardware, in Centerville, Ohio.
7. Defendants, Worthington and/or Newell and/or, Ace Hardware and/or Handyman Ace Hardware were negligent in the manufacturing, supplying, assembling, designing, and selling of the said Bernzomatic MAPP gas canister and/or torch.

8. As a direct and proximate result of Defendants, Worthington and/or Newell, and/or Ace Hardware and/or Handyman Ace Hardware's misconduct, the Plaintiff suffered damages as follows:
- a. Plaintiff, Ross A. Pelz, sustained severe and permanent injuries;
 - b. The injuries of Plaintiff, Ross A. Pelz have caused him great pain and suffering both physical and emotional, and loss of ability to perform usual functions and will cause his pain and suffering and loss of ability to perform usual functions in the future;
 - c. The injuries of Plaintiff, Ross A. Pelz have caused him to incur medical expenses in an amount in an excess amount of \$63,719.26 and he will incur further medial expenses in the future;
 - d. The injuries of Plaintiff, Ross A. Pelz have caused him to lose wages and earnings in an amount in an excess amount of \$8,882.30.

SECOND CLAIM FOR RELIEF

9. Plaintiff reincorporates the allegations set forth in Paragraphs 1 through 9 above.
10. The Defendants, Worthington and/or Newell (and/or Bernzomatic), as the manufacturers and Worthington and/or Newell (and/or Bernzomatic) and/or Ace Hardware and/or Handyman Ace Hardware as the distributors of the Bernzomatic MAPP gas canister and/or torch knew of the existence of a dangerous process, procedure, instrumentality or condition and failed to adequately guard, design a safe product or warn of inherent dangers created by design.
11. The Bernzomatic MAPP gas canister and/or torch was defective and unreasonably dangerous when placed into the stream of commerce by Defendants, Worthington and/or Newell and/or Ace Hardware and/or Handyman Ace Hardware, by reason of the following product defects:
- a. Manufacturing Defect

The canister and/or valve and/or torch was defective in manufacture and construction as defined in Ohio Revised Code 2307.74;
 - b. Design Defect

The Bernzomatic MAPP gas canister and/or torch, was defectively designed as it is defined in Ohio Revised Code Section 2307.76 in that:

c. Consumer Expectation Standard

The product failed to perform as safely as an ordinary consumer of the product would expect when used in an intended or reasonably foreseeable manner; and

d. Risk Benefit Standard

The risks of danger inherent in the design as a whole, if any, outweigh the benefit of the design;

e. Warning Defect

The product was defective due to inadequate warnings as they are defined in Ohio Revised Code 2307.76, in that Worthington and/or Newell, and/or Ace Hardware and/or Handyman Ace Hardware failed to provide adequate warning or instruction that a manufacturer or seller exercising reasonable care would have provided concerning the risk of injury and likely seriousness of harm for use of the product.

12. As a proximate result of how the defective nature of the Bernzomatic MAPP gas canister and/or torch was designed, manufactured and otherwise introduced into the stream of commerce by that Worthington and/or Newell, and/or Ace Hardware and/or Handyman Ace Hardware, Ross A. Pelz suffered serious and permanent injuries and is entitled to compensatory damages.
13. The conduct of Defendants, Worthington and/or Newell, in designing and manufacturing the Bernzomatic MAPP gas canister and/or torch, used by Ross A. Pelz on May 25, 2005, constitutes misconduct by the manufacturer or supplier that manifested a flagrant disregard for the safety of the persons who might be harmed by the product in question, such that an award of punitive damages against the Defendants, Worthington and/or Newell, and/or Ace Hardware and/or Handyman Ace Hardware pursuant to Chapter 23 of O.R.C. is proper in this case.

COUNT III - PUNITIVE DAMAGES

14. Plaintiff, Ross A. Pelz, realleges each and every allegation contained in Paragraphs 1 through 13 of his Complaint, as if fully rewritten.
15. At all times material hereto, the intentional conduct of the Defendants was malicious and in gross disregard for the personal health and safety of the Plaintiff, Ross A. Pelz.

WHEREFORE, the Plaintiff, Ross A. Pelz, demands judgment against the Defendants, Worthington Industries, Inc. and/or Newell Rubbermaid, Inc. and/or Bernzomatic, Division of Newell Rubbermaid, Inc., and/or Ace Hardware Corporation and/or The Centerville Mill, Inc.

dba Handyman Ace Hardware, jointly and severally, for compensatory damages in an amount in excess of \$25,000.00, plus court costs, prejudgment and postjudgment interests, attorneys' fees, and all other relief this Court deems to be just and proper. Plaintiff, Ross A. Pelz, demands judgment against the Defendants, Worthington Industries, Inc. and/or Newell Rubbermaid, Inc., and/or Bernzomatic, Division of Newell Rubbermaid, Inc., and/or Ace Hardware Corporation and/or The Centerville Mill, Inc. dba Handyman Ace Hardware, jointly and severally, for punitive damages in an amount in excess of \$25,000.00, plus court costs, prejudgment and postjudgment interests, attorneys' fees, and all other relief this Court deems to be just and proper.

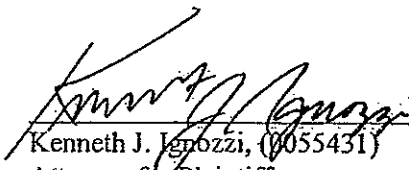
THIRD CLAIM FOR RELIEF

16. Plaintiffs incorporate each and every allegation contained in the First and Second Claims for Relief as though fully rewritten herein.
17. Plaintiffs, Ross A. Pelz and Luann Pelz, are husband and wife respectively.
18. As a proximate result of the occurrence as set forth in the First Claim for Relief, Plaintiff, Luann Pelz, has lost the services, companionship, love, affection, comforts, consortium and joys of her spouse, Ross A. Pelz.
19. The aforesaid negligence of Defendants, Worthington and/or Newell, and/or, Ace Hardware and/or Handyman Ace Hardware, was the direct and proximate cause of the injuries and damages to Plaintiff, Luann Pelz.

WHEREFORE, Plaintiff, Luann Pelz, demands judgment against the Defendants, Worthington Industries, Inc. and/or Newell Rubbermaid, Inc., and/or Bernzomatic, Division of Newell Rubbermaid, Inc., and/or Ace Hardware Corporation and/or The Centerville Mill, Inc. dba Handyman Ace Hardware, jointly and severally, in an amount in excess of \$25,000.00, plus interest and the costs of this action.

Respectfully submitted,

DYER, GAROFALO, MANN & SCHULTZ



Kenneth J. Ignozzi, (0055431)

Attorney for Plaintiffs

131 North Ludlow Street, Suite 1400

Dayton, Ohio 45402

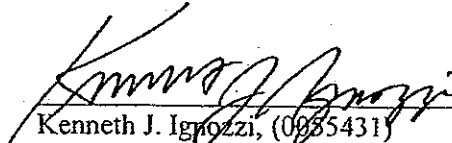
(937) 223-8888

Fax (937) 824-8630

kignozzi@dgmslaw.com

JURY DEMAND

Now come Plaintiffs, by and through counsel, and hereby demand a trial by jury on all issues of this matter.


Kenneth J. Ignozzi, (0035431)
Attorney for Plaintiff