

2012 WL 13005600

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United States District Court, S.D.
Georgia, Waycross Division.

Dianne MIZELL, Plaintiff,

v.

PILGRIM'S PRIDE CORPORATION

and Zurich American Insurance

Company, Intervenor,

v.

Rytec Corporation, Fairborn Equipment
Company, Inc., and Fairborn Equipment
Company of Florida, Inc., Defendants.

CV 509-064

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Signed 03/14/2012

Attorneys and Law Firms

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ORDER

LISA GODBEY WOOD, CHIEF JUDGE

*1 Presently before the Court is Defendant Rytec Corporation's Motion for Summary Judgment. *See* Dkt. No. 57. Upon due consideration, Defendant Rytec Corporation's motion is **GRANTED in part** and **DENIED in part**. The motion is granted as to Plaintiff Dianne Mizell's manufacturing defect claim and her breach of the implied warranty of fitness for a particular purpose claim. The motion is denied as to the Plaintiff Dianne Mizell's design defect claim and her failure to warn claim.

BACKGROUND

This action stems from injuries sustained by Plaintiff Dianne Mizell ("Mizell") when she was allegedly struck by an automatic door manufactured by Defendant Rytec Corporation ("Rytec") while working at Pilgrim's Pride in Douglas, Georgia on November 11, 2008. Dkt. No. 1 ¶ 8. The door that allegedly struck Mizell has been identified as the Clean-Roll door manufactured by Rytec. Mizell originally brought suit against Rytec on September 10, 2009 in the Superior Court of Coffee County, Georgia seeking relief under the theories of strict liability, negligence, failure to warn, and breach of the implied warranty of fitness for a particular purpose. *See* Dkt. No. 1. On November 10, 2009, Rytec removed the case to this Court on the basis of diversity jurisdiction pursuant to [28 U.S.C. § 1332\(a\)](#).

Since removal, Mizell has filed an Amended Complaint, adding Fairborn Equipment Company, Inc. ("Fairborn") and Fairborn Equipment Company of Florida, Inc. ("Fairborn Florida") as defendants.¹ Dkt. No. 27. Mizell avers that Fairborn and Fairborn Florida were negligent in installing, inspecting, repairing, and/or servicing the Rytec door and that they also failed to provide adequate warnings. *Id.* Mizell's employer, Pilgrim's Pride, and Zurich American Insurance Company, its insurer, have intervened in the case to protect an alleged lien against Mizell's recovery arising under the Georgia Workers' Compensation Act. Dkt. No. 32.

The Clean-Roll door at issue separated an ice pack cooler from the main processing area of the Pilgrim's Pride facility. Dkt. No. 81 at 2. Employees traveling from the cooler side of the door would operate the door by pulling a cord hanging down from the ceiling, causing the door to open. *Id.* The door would then remain open for a specified period of time, before automatically closing.² *Id.* On the day of the incident, Mizell attempted to walk from the ice pack cooler area through the Clean-Roll door to the main processing area. Dkt. No. 81 at 3. As she approached the door she pulled the cord and the door opened. *Id.* Mizell avers that she did not stop after pulling the cord and proceeded at her normal pace towards the door. The next thing that Mizell remembers, she was on the floor asking others around her what had happened. Dkt. No. 57, Ex. A, Mizell Dep. 128-129. Mizell cannot say for certain what happened as she walked through the door, however, her theory is that the door struck her as she attempted to walk through.³

*2 The Clean-Roll door at issue was installed by Fairborn Florida on August 2, 2008. Dkt. No. 57-2 at 5. Among the

safety features of the Clean–Roll door were two sets of photo eyes. One set of photo eyes monitors the back side of the door, and the other set of photo eyes monitors the front side of the door. Dkt. No. 57, Ex. E. The set of eyes that monitors the back side of the door was installed at the factory within the frame of the door, and the other set of photo eyes was to be field installed. Dkt. No. 57, Ex. E, Wendt Aff. ¶ 5. According to the Owner's Manual, “[t]he purpose of the photo eyes is to hold the door open or, if the door is closing, reverse the direction of the door if a person or object crosses the beam of light between either set of photo eyes.” Dkt. No. 57, Ex. 3 of Ex. E, Owner's Manual at 2.

In this case, it is unclear whether the front photo eyes were ever installed. Rytec offers evidence showing that there were no front photo eyes mounted on the ice pack cooler side of the door when the door was inspected in March 2010. Dkt. No. 57, Ex. F, Brown Dep. 38:84–85. Further, Rytec offers testimony from other Pilgrim's Pride employees who claim that the front bracket-mounted photo eyes were never present on the ice pack cooler side of the door at any point. Dkt. No. 57–2 at 6 (citing the depositions of Michael Carver, Marco Arceo, Pedro Guzman, Billy Kelly, Jim Carl Smith, Joey Webster, and Alonzo Tucker).

Both Mizell and Rytec have produced experts which support their respective positions. Mizell's expert, Gene Litwin (“Mr. Litwin”), provided an expert report concluding that the Clean–Roll door has the “unfortunate limitation ... that even with two such beams (one on the inside of the doorway, one on the outside) it is relatively easy for a person to have a portion of their body in the path of the descending door without blocking the light beam.”⁴ Dkt. No. 81, Ex. C at 2. From this observation, Mr. Litwin concluded that the Clean–Roll door as designed was “unreasonably dangerous” in that “[a] pair of photo eye sets each sending only a single light beam across the doorway is too unreliable since it is so easy for someone to be in the path of the rapidly descending door without blocking the beam.” *Id.* at 3. As an alternative, Mr. Litwin, argues that a “light curtain” would be more safe.⁵ *Id.* In Mr. Litwin's opinion, “[w]ith a light curtain it is exceedingly unlikely that anyone can be in the path of the descending door and not break one or another of the beams.” *Id.* at 2.

Rytec contends that the light curtain safety feature is not available on this specific door, but acknowledges that it is an option on other models of doors.⁶ Dkt. No. 57, Ex. E. Additionally, Rytec's expert, Mr. David G. Brown, P.E. (“Mr. Brown”), inspected the door in March 2010, and is of the

opinion that if the Clean–Roll door indeed struck Mizell, the front bracket-mounted photo eyes were either not there or were not operational. Dkt. No. 57, Ex. F, Brown Dep. 89:22–23. Mr. Brown also concluded that if both photo eyes were present and operational, Mizell would not have been struck by the door. *Id.*, Brown Dep. 90:9–10.

LEGAL STANDARD

The Federal Rules of Civil Procedure provide that a party may move for summary judgment through identifying each claim or defense on which summary judgment is sought. [Fed. R. Civ. P. 56\(a\)](#). Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Id.* A fact is “material” if it “might affect the outcome of the suit under the governing law.” [FindWhat Investor Grp. v. FindWhat.com](#), 658 F.3d 1282, 1307 (11th Cir. 2011) (quoting [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 248 (1986)). A dispute over such a fact is “genuine” if the “evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* In making this determination, the court is to view all of the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. [Johnson v. Booker T. Washington Broad. Serv., Inc.](#), 234 F.3d 501, 507 (11th Cir. 2000).

***3** The party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact. [Celotex Corp. v. Catrett](#), 477 U.S. 317, 323 (1986). To satisfy this burden, the movant must show the court there is an absence of evidence to support the non-moving party's case. *Id.* at 325. If the moving party discharges this burden, then the burden shifts to the nonmovant to go beyond the pleadings and present affirmative evidence to show that a genuine issue of fact does exist. [Anderson](#), 477 U.S. at 257.

DISCUSSION

1. Strict Liability

Mizell's first stated cause of action against Rytec comes under the theory of strict liability. In order to establish a claim based on strict liability under Georgia law, a plaintiff is required to demonstrate that, when sold, defendant's product was “not merchantable and reasonably suited to the use intended and its condition when sold [was] the proximate cause of the injury sustained.” [O.C.G.A. § 51–1–11\(b\)\(1\)](#). A plaintiff can set forth a claim based on strict liability by showing that the

product at issue was not merchantable due to one of three types of product defects: (1) design defects, (2) manufacturing defects, and (3) marketing/packaging defects. See [Jones v. Amazing Prods., Inc.](#), 231 F. Supp. 2d 1228, 1236 (N.D. Ga. 2002) (citing [Banks v. ICI Americas, Inc.](#), 264 Ga. 732, 733, 450 S.E.2d 671, 673 (1994)). Each theory is addressed below.

A. Design Defect

In design defect cases, unlike manufacturing defects cases, “it is not possible to ascertain whether a product is defective by simply comparing [the product] to a properly manufactured item from the same product line.” [Kersey v. Dolencorp LLC](#), 2011 WL 1670886, at *3 (N.D. Ga. May 3, 2011) (internal citations omitted). Rather, design defect cases are predicated on the theory that the entire product line from which the product was manufactured contains a defect in design.

The Georgia Supreme Court in [Banks v. ICI Americas, Inc.](#), 264 Ga. 732, 734, 450 S.E.2d 671, 673 (1994), surveyed the legal landscape of products liability and found that there was a “general consensus regarding the utilization in design defect cases of a balancing test whereby the risks inherent in a product design are weighed against the utility or benefit derived from the product.”⁷ In expressly adopting the “risk-utility” approach, the [Banks](#) court noted that among the numerous factors to be considered by the trier of fact in balancing the risk of the product against the utility or benefit derived, “[o]ne factor consistently recognized as integral to the assessment of the utility of a design is the availability of alternative designs, in that the existence and feasibility of a safer and equally efficacious design diminishes the justification for using a challenged design.” 264 Ga. at 735, 450 S.E.2d at 674. Further, the [Banks](#) court set forth the following non-exhaustive list of general factors to consider in this analysis:

the usefulness of the product; the gravity and severity of the danger posed by the design; the likelihood of that danger; the avoidability of the danger, i.e., the user's knowledge of the product, publicity surrounding the danger, or the efficacy of warnings, as well as common knowledge and the expectation of danger; the user's ability to avoid danger; the state of the art at the time the product is manufactured; the ability to eliminate danger without impairing the usefulness of the product or making it too expensive; and the feasibility of spreading the loss in the setting of the product's price or by purchasing insurance. We note

that a manufacturer's proof of compliance with industry-wide practices, state of the art, or federal regulations does not eliminate conclusively its liability for its design of allegedly defective products. 264 Ga. at 736 n.6, 450 S.E.2d at 675 n.6.

*4 Here, contrary to Rytec's contention, Mizell has provided sufficient evidence to present a genuine issue of material fact as to whether the Clean-Roll door was defectively designed. Rytec spends much of its briefing arguing that Mizell's expert testimony, provided by Mr. Litwin, is inadmissible. However, the Magistrate Court denied Rytec's Motion in Limine seeking to exclude Mr. Litwin's testimony on October 27, 2011. Dkt. No. 95. As a result, the Court will consider the evidence provided by Mr. Litwin at this juncture.

Notably, Mr. Litwin's expert report concludes that the current safety device used by the Clean Roll door (the two photo-eye system) has the “unfortunate limitation ... that even with two such beams (one on the inside of the doorway, one on the outside) it is relatively easy for a person to have a portion of their body in the path of the descending door without blocking the light beam.” Dkt. No. 81, Ex. C at 2. Further, Mr. Litwin concludes that more protection is needed, and one alternative would be a light curtain. *Id.* at 3. According to Mr. Litwin, “a light curtain is essentially a series of photo eyes at different heights such that if any of the beams is blocked, the operator will reverse.” *Id.* at 2. Mr. Litwin also concludes that “[w]ith a light curtain it is exceedingly unlikely that anyone can be in the path of the descending door and not break one or another of the beams.” *Id.* In this regard, Mr. Litwin has provided both an alternative design and testimony of the product's inherent risks.

As Rytec points out, “[i]t is axiomatic that expert testimony is generally required to demonstrate that alternative safer designs exist.” Dkt. No. 57–2 at 15 (citing [Cochran v. Brinkmann Corp.](#), 2009 WL 4823854, at *5 (N.D. Ga. Dec. 9, 2009)). Here, Mizell has offered admissible expert testimony that an alternative design exists. Rytec has pointed out potential flaws in that testimony and offers competing expert testimony of its own. Nevertheless, Mizell has presented sufficient evidence to create a genuine issue of material fact as to whether the Clean-Roll door has a design defect.

B. Manufacturing Defect

In contrast to a design defect claim where it is alleged that there is a problem with the entire product line, “a manufacturing defect is a defect that is measureable against a built-in objective standard or norm of proper manufacture.” In re Mentor Corp. ObTape Transobturator Sling Prods. Liability Litig., 711 F. Supp. 2d 1348, 1365 (M.D. Ga. 2010) (internal citations omitted). Stated differently, a manufacturing defect is a “deviation from some objective standard or a departure from the manufacturer's specifications established for the creation of the product.” Graff v. Baja Marine Corp., 310 Fed.Appx. 298, 305 (11th Cir. 2009) (citing Jones v. Amazing Prods., Inc., 231 F. Supp. 2d 1228, 1236 (N.D. Ga. 2002)). Consequently, in a manufacturing defect case, the “product's defectiveness is determined by measuring the product in question against the benchmark of the manufacturer's designs.” ACE Fire Underwriters Ins. Co. v. ALC Controls, Inc., 2008 WL 2229121, at *2 (N.D. Ga. May 28, 2008).

In this case there is not sufficient evidence of a manufacturing defect to establish a genuine issue for trial. Mizell's Complaint does not rely on the theory that the Rytec door deviated from the product's intended design. Moreover, Mizell has offered no evidence that the specific door at issue was somehow a deviation or a departure from the Rytec's specifications established for the creation of the product. Graff, 310 Fed.Appx. at 305. Nor does Mizell respond to Rytec's arguments for summary judgment on the issue. Accordingly, there is not sufficient evidence to create a genuine issue of material fact as to this theory.⁸

C. Marketing/Packaging Defects (Failure to Warn)

*5 Rytec has also moved for summary judgment based upon Mizell's alleged failure to present evidence on her failure to warn claim. To maintain a claim for breach of a duty to warn, a plaintiff must show that (1) the defendant knew, or had reason to know, that the product is likely to be dangerous for the intended use; (2) the defendant had no reason to believe that the person affected would realize the danger; and (3) the defendant failed to exercise reasonable care in informing the user about the danger. Kersey, 2011 WL 1670886, at *6 (citing Carmical v. Bell Helicopter Textron, Inc., 117 F.3d 490, 495–96 (11th Cir. 1997)). In determining whether such a duty exists, the court should consider the foreseeability of the use in question, the type of danger involved, and the foreseeability of the user's knowledge of the danger. Ziegler v. CloWhite Co., 234 Ga. App. 627, 629 507 S.E.2d 182,

184 (1998). “Such matters generally are not susceptible of summary adjudication and should be resolved by a trial in the ordinary manner.” Kersey, 2011 WL 1670886, at *6 (quoting Exxon Corp. v. Jones, 209 Ga. App. 373, 433 S.E.2d 350, 352 (1993)).

Here, Rytec's primary challenges to Mizell's claim come in three forms (1) that Mizell has presented no evidence of an inadequate warning, (2) Mizell never reviewed the written material or received any instructions on how to use the door, and thus, is barred from recovery, and (3) her failure to warn claim must ultimately fail as it was not the proximate cause of Mizell's injuries. See Dkt. Nos. 57–2, 86. None of Rytec's arguments on this point entitles Rytec to summary judgment.

First, contrary to Rytec's assertion, Mizell has offered evidence that there was an inadequate warning. Specifically, she has submitted a picture of the Clean–Roll door at issue and has noted that the door itself does not include a warning related to the product's use. Dkt. No. 81, Ex. E. This piece of evidence calls into question the adequacy of Rytec's efforts to communicate the product's warning.

Second, Mizell is not barred from recovery simply because she did not read the written materials included with the Clean–Roll door. This is because where a duty to warn arises, “this duty may be breached by (1) failing to adequately communicate the warning to the ultimate user or (2) failing to provide an adequate warning of the product's potential risks.” Wilson Foods Corp. v. Turner, 218 Ga. App. 74, 75, 460 S.E.2d 532, 534 (1995) (internal citations omitted). Here, although Mizell's argument on this point is minimal, construing all reasonable inferences in her favor, it appears that she challenges Rytec's failure to adequately communicate the warning by failing to place the warning on the actual door itself. As a result, whether Mizell read the warnings included in the manual is not dispositive. See id. (“failure to read a warning does not bar recovery when the plaintiff is challenging the adequacy of the efforts of the manufacturer or seller to communicate the dangers of the product to the buyer or user.”) (internal citations and punctuation omitted).

Rather, the issue is whether a reasonable jury could conclude from the evidence that Rytec's efforts to communicate the warning about the Clean–Roll door amount to a negligent failure to warn. Folsom v. Kawasaki Motors Corp. U.S.A., 509 F. Supp. 2d 1364, 1379 (M.D. Ga. 2007). In this case, Mizell argues that the failure to include a warning on the door amounts to a negligent failure to warn. Under Georgia law,

determining whether the defendant failed to communicate an adequate warning certainly includes such considerations as the “location and presentation of the warning.” *Id.* (citing [Camden Oil Co., LLC v. Jackson](#), 270 Ga. App. 837, 841, 609 S.E.2d 356, 359 (2004)). Further, whether the placement of Rytec's warning amounted to negligence is a matter best-suited for the jury. [Camden Oil Co., LLC v. Jackson](#), 270 Ga. App. 837, 841, 609 S.E.2d 356, 359 (2004) (“It is a jury question whether or not the manufacturer was negligent in failing to place a warning in such position, color and size print or to use symbols which would call the user's attention to the warning or cause the user to be more likely to read the label and warning than not.”) (internal citations omitted). As a result, by challenging Rytec's failure to place a warning on the Clean-Roll door itself, Mizell presents a genuine issue of material fact as to whether Rytec adequately communicated its warning to users.

*6 Finally, as discussed in the next section, there is a genuine question of fact as to whether the injury was a result of negligent installation. As a result, Rytec is not due summary judgment on the basis that the danger resulted from misuse or neglect, as is asserted in its motion. Dkt. No. 57–2 at 21. Accordingly, the Court declines to grant Rytec's motion for summary judgment as to Mizell's failure to warn claim, as a genuine issue of material fact exists as to whether Rytec adequately communicated its warning to the ultimate user.

2. Causation

Rytec contends that Mizell's negligence and product defect claims ultimately fail because she is unable to establish causation, an essential element under both causes of action. Dkt. No. 57–2 at 8. Rytec is correct in noting that causation is an essential element in both strict liability⁹ and negligence¹⁰ cases involving product defects. [Walker v. Blitz U.S.A., Inc.](#), 663 F. Supp. 2d 1344, 1363 (N.D. Ga. 2009). However, Mizell has provided sufficient evidence to create a genuine issue of material fact as to causation.

As the plaintiff, Mizell has the burden to prove causation, and as a general rule “issues of causation are for the jury to resolve and should not be determined by a trial court as a matter of law except in plain and undisputed cases.” *Id.* (quoting [Ogletree v. Navistar Int'l Transp., Corp.](#), 245 Ga. App. 1, 3, 535 S.E.2d 545, 548 (2000)). Rytec offers two arguments as to why Mizell is unable to sustain her burden with regard to this element.

First, Rytec contends that the evidence “does not establish more than that the Plaintiff's incident occurred as she was walking through the doorway” and that Mizell “repeatedly testified that she did not know what happened as she walked through the doorway.” Dkt. No. 57–2 at 8–9. Further, Rytec argues that “even if Plaintiff did feel something strike her in the neck and shoulder area, it has never been established it was the door which did so.” *Id.* at 9. Rytec's argument seems to be that it is due summary judgment on proximate cause because Mizell cannot say for certain what happened during the time between when she began walking toward the door and she ended up on the ground asking others around her what had happened.

This argument is without merit as it could certainly be reasonably inferred that the Clean-Roll door struck Mizell based on her testimony. See [Chapman v. Amn. Cynamid Co.](#), 861 F.2d 1515, 1519 (11th Cir. 1988) (noting that under Georgia law a plaintiff may establish proximate cause by direct or circumstantial evidence). This is especially true given that at the summary judgment stage the court is to “view all facts and reasonable inferences in the light most favorable to the nonmoving party,” [Gentry v. Harborage Cottages–Stuart, LLLP](#), 654 F. 3d 1247, 1255 (11th Cir. 2011), and given that deciding the issue of proximate cause on summary judgment is reserved for only the plain and undisputed cases, [Walker](#), 663 F. Supp. 2d at 1363.

The crux of Rytec's second argument is the assertion that had the two photo-eye system been properly installed the injury would not have occurred. This contention is based on the legal principle that “[a]fter the sale of the product, if any injuries occur after an alteration or replacement of the product by a third party, then those injuries cannot be the proximate cause of the manufacturer's original design.” [Reid v. BMW of North America](#), 430 F. Supp. 2d 1365, 1371 (N.D. Ga. 2006) (citing [Carmical v. Bell Helicopter Textron, Inc.](#), 117 F.3d 490, 494 (11th Cir. 1997)). This principle is based on the rule that the “injury must be the proximate result of a defect in the product which existed at the time sold.” [Talley v. City Tank Corp.](#), 158 Ga. App. 130, 134, 279 S.E.2d 264, 270 (1981).

*7 In support of this argument, Rytec's expert Mr. Brown, opined that if the photo eyes were present and operational, Mizell would not have been struck by the door. Dkt. No. 86 at 8. Further, Rytec asserts that there is “no evidence under the facts of this case that the lack of a curtain (or additional sets of photo eyes) versus a properly installed and existing two

photo-eye system was the proximate cause of the Plaintiff's alleged incident." *Id.* at 10.

Mizell, however, contends that Mr. Brown's expert testimony is in conflict with her expert, Mr. Litwin. While Mr. Litwin's opinion on this matter was less than absolute during his deposition,¹¹ his expert report certainly conflicts with the opinion of Mr. Brown. In fact, Mr. Litwin's expert report noted that even with two photo-eye devices "it is relatively easy for a person to have a portion of their body in the path of the descending door without blocking the light beam." Dkt. No. 81, Ex. C at 2. In consideration of this expert report, a genuine issue of material fact exists as to whether Mizell would have been struck by the Clean-Roll door even if both photo-eye devices had been installed. Accordingly, this case is simply not one of the "plain and undisputed cases" where summary judgment is due upon the issue of causation. *Walker*, 663 F. Supp. 2d at 1363.

3. Implied Warranty

Under Georgia law, a plaintiff may only raise a claim for breach of warranty where he is in privity with the seller of the allegedly faulty product. See O.C.G.A. § 11-2-318 ("A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the

warranty."). The Georgia courts have held that privity does not extend to employees of the purchaser. See *Morgan v. Mar-Bel, Inc.*, 614 F. Supp. 438, 441 (D.C. Ga. 1985) (citing numerous cases for the proposition that the "Georgia courts have repeatedly held that privity does not extend to employees of the purchaser"). Here, even if Mizell's employer, Pilgrim's Pride, shared privity of contract with Rytec, Mizell as an employee of Pilgrim's Pride would not be in privity with Rytec and therefore could not raise a breach of implied warranty claim in Georgia. *Weaver v. Ralston Motor Hotel*, 135 Ga. App. 536, 539-40, 218 S.E.2d 260, 262-63 (1975). Accordingly, Rytec is entitled to summary judgment on Mizell's implied warranty claim.

CONCLUSION

For the reasons stated, Rytec's Motion for Summary Judgment is **GRANTED in part, DENIED in part**. The motion is granted as to Mizell's manufacturing defect and breach of the implied warranty of fitness for a particular purpose claims. The motion is denied as to Mizell's design defect and failure to warn claims.

SO ORDERED, this 14th day of March, 2012.

All Citations

Not Reported in Fed. Supp., 2012 WL 13005600

Footnotes

- 1 Fairborn Florida has filed a response opposing Rytec's Motion for Summary Judgment. Dkt. No. 74.
- 2 This length of time was subsequently measured as seven seconds. Dkt. No. 57, Ex. F, Brown Dep. 42:14-20.
- 3 Rytec argues that if Mizell were walking at a normal pace she should have reached the door in about four seconds, which means she would have had no trouble passing through the door without incident. Dkt. No. 57-2 at 10.
- 4 Rytec moved in Limine to exclude Mr. Litwin's testimony. Dkt. No. 60. However, the Magistrate Judge denied that motion in its October 27, 2011 Order. Dkt. No. 95. No review was sought. Consequently, the Court will consider Mr. Litwin's testimony.
- 5 According to Mr. Litwin, a light curtain is "essentially a series of photo eyes at different heights such that if any of the beams is blocked, the operator will reverse." Dkt. No. 81, Ex. C at 2.
- 6 Without much in the way of explanation, Rytec asserts that the light curtain is not appropriate for the Clean-Roll door. Dkt. No. 57, Ex. E.

- 7 “This risk-utility analysis incorporates the concept of ‘reasonableness,’ i.e., whether the manufacturer acted reasonably in choosing a particular product design, given the probability and seriousness of the risk posed by the design, the usefulness of the product in that condition, and the burden on the manufacturer to take the necessary steps to eliminate the risk.” *Id.*
- 8 As mentioned previously, co-defendant Fairborn Florida has filed a response opposing Rytec’s motion for summary judgment. Dkt. No. 74. As a preliminary matter, it is doubtful that Fairborn Florida has standing to oppose Rytec’s motion. See [Jarrett v. Green](#), 320 F. Supp. 1132, 1134 (D.C. Ga. 1970) (noting that the court “entertain[ed] some doubt [as to] whether one co-defendant has standing to object to a motion for summary judgment filed by another co-defendant”); see also [Thurman v. Wood Grp. Prod. Servs. Inc.](#), 2010 WL 5207587, at *1 (E.D. La. Dec. 14, 2010) (concluding that a co-defendant did not have standing to oppose another defendant’s motion for summary judgment); [Eckert v. City of Sacramento](#), 2009 WL 3211278, at *3 (E.D. Cal. Sept. 30, 2009) (“since there is no crossclaim between the Defendants, Union Pacific and the City are not adverse parties and the City therefore does not have standing to oppose Union Pacific’s motion for summary judgment”); [Fraioli v. Lemcke](#), 328 F. Supp. 2d 250, 263 n.4 (D.R.I. 2004) (“[S]ince none of the defendants in this case have filed cross claims against each other, the defendants are not adverse parties who are entitled to object to each others’ motions for summary judgment.”). However, even assuming *arguendo* that Fairborn Florida has standing to oppose Rytec’s motion, Fairborn Florida’s arguments concerning a manufacturing defect are without merit. The record is simply devoid of any evidence indicating that the specific door at issue was somehow a deviation or a departure from the Rytec’s specifications established for the creation of the product.
- 9 O.C.G.A. § 51–1–11(b)(1) requires among other things that the product’s “condition when sold [was] the proximate cause of the injury sustained.”
- 10 “To recover damages in a tort action, a plaintiff must prove that the defendant’s negligence was both the ‘cause in fact’ and the ‘proximate cause’ of [the] injury.” [Ogletree v. Navistar Int’l Transp., Corp.](#), 245 Ga. App. 1, 3, 535 S.E.2d 545, 548 (2000) (internal citations omitted).
- 11 When asked during his deposition whether the incident would have occurred had the front eyes been properly installed?, Litwin responded that it still “may well have occurred.” Dkt. No. 81, Ex. D, Litwin Dep. 127:12.

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