

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

KEVIN & CYNTHIA BEATTY,

Plaintiffs

v.

IDEAL-WERK KRUG & PRIESTER GMBH  
& CO., *et al.*,

Defendants

Civil No. 97-18-P-C

GENE CARTER, District Judge

**MEMORANDUM OF DECISION AND ORDER**

Plaintiffs Kevin and Cynthia Beatty have sued Defendants Ideal-Werk Krug & Priester GMBH & Co. ("Ideal-Werk") and Michael Business Machines Corporation ("MBMC") for damages allegedly stemming from an injury Kevin Beatty suffered while using a paper shredder manufactured by Ideal-Werk and sold to his employer by MBMC. The Complaint (Docket No. 1) sets forth the following claims against both Defendants: strict liability (Counts I and II), failure to warn (Counts III and IV), breach of implied warranty of merchantability (Counts V and VI), breach of implied warranty of fitness for a particular purpose (Counts VII and VIII), negligence (Counts IX and X), intentional infliction of emotional distress (Counts XI and XII), negligent infliction of emotional distress (Counts XIII and XIV), and loss of consortium (Count XV). Now before the Court is Defendants' Motion to Dismiss Plaintiffs' claim for unfair trade practices (Docket No. 10).<sup>1</sup> For the reasons stated below, the Court will grant Defendants'

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<sup>1</sup> As will be explained *infra*, Plaintiffs' Complaint does not explicitly set forth a claim for  
(continued...)

Motion to Dismiss.

## I. BACKGROUND

The facts as alleged in the Complaint are as follows. On April 12, 1993, Kevin Beatty, an employee of Casco Northern Bank in South Portland, Maine, was operating a paper shredder manufactured by Ideal-Werk and sold and distributed by MBMC. Complaint ¶ 5. While he was operating the machine, "smoke and paper shreds began to spew from the access panel located on top of the machine." *Id.* ¶ 6. Upon removing the top access panel, Kevin Beatty found that the machine was jamming but had not shut down. *Id.* ¶ 7. To shut off the machine, he reached across the top of the machine with his left hand toward the paper shredder's only stop button, and, as he was doing so, his right hand was caught in the shredding blades exposed by the open access panel of the machine. *Id.* ¶ 8. By the time Kevin Beatty's supervisor was able to turn off the machine, Kevin's hand was stuck in the blades of the paper shredder. *Id.* ¶ 10. Rescue workers, fire fighters, and co-workers were unable to free Kevin Beatty's hand from the paper shredder, and, with the assistance of a service technician, Kevin's hand was eventually freed two hours later. *Id.* ¶¶ 12, 13, and 16. Kevin's injuries have required extensive medical treatment as well as counseling for both Kevin and his wife, Cynthia Beatty. *Id.* ¶¶ 17-27.

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<sup>1</sup>(...continued)

unfair trade practices. However, Defendants indicate that Plaintiffs have represented that they will contend that Defendants violated the Maine Unfair Trade Practices Act (the "MUTPA"), 5 M.R.S.A. § 205-A *et seq.* Defendant's Motion to Dismiss with Incorporated Memorandum of Law at 1-2. Plaintiffs acknowledge that they plan to pursue a claim under the MUTPA. Plaintiffs' Opposition to Motion to Dismiss with Incorporated Memorandum of Law at 2.

## II. STANDARD FOR DISMISSAL

In entertaining a motion to dismiss pursuant to Federal Rule 12(b)(6), the Court accepts all the factual assertions set forth in the complaint as true and draws all reasonable inferences in favor of the plaintiffs. *Aybar v. Crispin-Reyes*, 118 F.3d 10, 13 (1st Cir. 1997), *cert. denied*, \_\_\_ S. Ct. \_\_\_, 1998 WL 15503 (U.S., Jan. 20, 1998). "Further, the Complaint should not be dismissed unless it appears beyond doubt that Plaintiffs can prove no set of facts which would entitle them to relief." *Wyman v. Prime Discount Sec.*, 819 F. Supp. 79, 81 (D. Me. 1993).

## III. DISCUSSION

Initially, Defendants urge the Court to dismiss Plaintiffs' claim under the Maine Unfair Trade Practices Act (the "MUTPA"), 5 M.R.S.A. § 205-A *et seq.*, on the ground that it was not pled in the Complaint. Defendants' Motion to Dismiss with Incorporated Memorandum of Law ("Defendants' Motion") at 1-2. Plaintiffs respond that because they have alleged violations of implied warranties pursuant to the Uniform Commercial Code (the "UCC"), 11 M.R.S.A. § 1-101 *et seq.*, their Complaint can be read to allege a violation of the MUTPA. Plaintiffs' Opposition to Motion to Dismiss with Incorporated Memorandum of Law ("Plaintiffs' Opposition") (Docket No. 13) at 2.

Counts V and VI of the Complaint allege violations of section 2-314 of the UCC, which provides for an implied warranty of merchantability for goods sold by a seller who is a merchant with respect to goods of that kind. 11 M.R.S.A. § 2-314(1). Counts VII and VIII allege violations of section 2-315 of the UCC, which sets forth the circumstances in which an implied warranty for fitness for a particular purpose arises. 11 M.R.S.A. § 2-315. Plaintiffs argue that these counts should have alerted Defendants that Plaintiffs would seek relief for violations of the

MUTPA. Plaintiffs' Opposition at 2. Plaintiffs base their argument on section 2-316(5)(a) of the UCC, which provides that "[a] violation of section 2-314, 2-315 or 2-316 arising from the retail sale of consumer goods and services constitutes a violation of Title 5, chapter 10, Unfair Trade Practices Act." 11 M.R.S.A. § 2-316(5)(a) (Supp. 1997). Consumer goods are defined as "those new or used goods . . . that are used or bought primarily for personal, family or household purposes." 11 M.R.S.A. § 2-316(5) (Supp. 1997). Plaintiffs, however, do not allege the involvement of consumer goods. Instead, Plaintiffs' allegations involve the use of a good located in Kevin Beatty's place of employment and used in the course of his employment. Complaint ¶ 5. Thus, even presuming that Plaintiffs could rely on the claim of one statutory violation to alert Defendants to their claim of a different statutory violation,<sup>2</sup> the allegations of breach of implied warranties contained in this Complaint were not indicators of Plaintiffs' intention to present a claim for unfair trade practices under the MUTPA.

Further, as Defendants correctly state, the MUTPA does not provide a private right of action for Plaintiffs based on the allegations contained in their Complaint. Section 213 of the MUTPA provides:

*Any person who purchases or leases goods, services or property, real or personal, primarily for personal, family or household purposes and thereby suffers any loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 207 or by any rule or regulation issued under section 207, subsection 2 may*

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<sup>2</sup> Rule 8 of the Federal Rules of Civil Procedure requires a pleading to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "Although the liberal pleading policy embodied in Rule 8 does not require a party to specify its legal theory of recovery, the pleadings must at least implicate the relevant legal issues." *Schott Motorcycle Supply, Inc. v. American Honda Motor Co.*, 976 F.2d 58, 62 (1st Cir. 1992) (citations omitted).

bring an action either in the Superior Court or District Court for actual damages, restitution and for such other equitable relief, including an injunction, as the court determines to be necessary and proper.

5 M.R.S.A. § 213(1) (Supp. 1997) (emphasis added). The statutory language clearly precludes Plaintiffs from bringing a private action under the MUTPA based on the allegations contained in their Complaint. Plaintiffs do not allege that they purchased or leased the paper shredder in question, nor do the Complaint's allegations indicate that the paper shredder was purchased for personal, family, or household purposes. Rather, the Complaint alleges that the paper shredder was purchased by Kevin Beatty's employer, located at his place of employment, and used for business purposes. Complaint ¶¶ 4-5. The Court concludes, therefore, that Plaintiffs do not allege facts that can be construed to support a private right of action under section 213 of the MUTPA. *See C-B Kenworth, Inc. v. General Motors Corp.*, 706 F. Supp. 952, 957 (D. Me. 1988).

#### IV. CONCLUSION

Accordingly, it is **ORDERED** that Defendants' Motion to Dismiss be, and it is hereby, **GRANTED**. It is further **ORDERED** that Plaintiffs' claim for unfair trade practices under the MUTPA be, and it is hereby, **DISMISSED**.

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GENE CARTER  
District Judge

Dated at Portland, Maine this 2d day of February, 1998.