TRAUB LIEBERMAN

NEWS & EVENTS

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Traub Lieberman Partner Stephen Straus Wins Spoliation Motion in Favor of Defendant

Related Attorneys: Stephen D. Straus

Traub Lieberman Partner Steve Straus represented a refrigeration installation and service company in a subrogation action filed by a property insurer after paying a claim related to extensive water damage at premises on Long Island, New York.

The premises owner purchased a refrigerator, which was sold without a hose to connect to the water source inside the premises. The defendant retailer retained Traub Lieberman's client to install the refrigerator. Rather than complete the installation using a new water line, the installer used the existing line from the refrigerator that was being replaced. Approximately one week after installation, the owner's son discovered water on the floor near the refrigerator, and significant water damage in the basement of the residence. The owner filed a claim with the insurer, which sent an investigator to the premises. The retailer also sent a technician to investigate and replace the water supply line. It was reportedly determined that the original line had failed, causing the water release. After the repair, the owner's son took possession of the old water line, which he kept for a couple of years and then discarded. The insurer initiated a subrogation action against the retailer and the installation company, alleging that the water release was caused by the defendants' failure to replace the water line when the new unit was installed. Plaintiff claimed that photographs of the old line established that it had been damaged or defective.

The record developed during the discovery established that the plaintiff reasonably could have taken steps to preserve the water line, but failed to do so. Instead, the allegedly faulty component was left at the premises. While the premises owner's son took possession of the water line, he later discarded it. This rendered expert analysis of the line impossible and materially prejudiced the defense of the case. The Traub Lieberman team thus filed a motion for a spoliation sanction, asking the court to preclude plaintiff from offering proof that negligent installation caused the water release on grounds that defendants could not rebut such claims without inspecting the line that allegedly failed. The court agreed and issued an order granting the motion, holding that plaintiff was precluded from offering evidence at trial as to the cause of the water release. This undercut the entirety of plaintiff's case. Suit was thereafter discontinued with no appeal taken from the trial court's order.

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