

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
Type of Case: Personal Injury

Jeffrey A. Vanderlinde,
Plaintiff,

vs.

SUMMONS

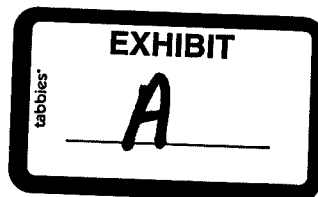
ACE Hardware Corp., and
Bernzomatic, Division of
Irwin Industrial Tools,

Defendants.

THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANTS:


YOU ARE HEREBY SUMMONED and required to serve upon the Plaintiff's attorney an answer to the complaint which is herewith served upon you within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, Judgment by Default will be taken against you for the relief demanded in the Complaint.

PLEASE TAKE NOTICE pursuant to Minn. Stat. §543.22 that the alternative dispute resolution process may be available and apply to this proceeding to facilitate possible resolution of the claims set forth herein, through arbitration, mediation, neutral fact finding, settlement conferences and other procedures more fully described in Rule 114 of the Minnesota General Rules of



Practice for the District Courts.

Dated: November 6, 2007



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STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Jeffrey A. Vanderlinde,
Plaintiff,

vs.

COMPLAINT

ACE Hardware Corp., and
Bernzomatic, Division of
Irwin Industrial Tools,

Defendants.

Plaintiff, Jeffrey A. Vanderlinde, as and for his cause of action against Defendants, Ace Hardware Corp. and Bernzomatic, Division of Irwin Industrial Tools, alleges and avers as follows:

I.

That Plaintiff, Jeffrey A. Vanderlinde, a resident of Waconia, Minnesota, sustained serious burn personal injuries on August 16, 2006.

II.

That Defendant, Ace Hardware Corp., is a corporation with its principal place of business in Oakbrook, Illinois, which sold a propane torch identified as ACE 26002.

III.

That Bernzomatic Division of Irwin Industrial Tools, is a corporation with its principal place of business in Huntersville, North Carolina, which was the designer and manufacturer of the ACE 26002 propane torch.

IV.

That on August 16, 2006, Plaintiff, Jeffrey A. Vanderlinde, was acting in the course and scope of his employment with his employer, Metro Air, Inc., and was in the process of replacing the air conditioning system in the residence of Todd and Bonnie Kubinski at 4152 Dakota Drive, Rosemount, Minnesota.

V.

That Plaintiff, Jeffrey A. Vanderlinde, was provided by his employer, Metro Air, Inc., an ACE 26002 propane torch which was attached to a MAPP gas cylinder manufactured by Turbo-Torch.

VI.

From prior use of the propane torch and MAPP gas cylinder, the contents of the MAPP gas was nearly expended at the time the Plaintiff performed his work on August 16, 2006.

VII.

That in the performance of this work on August 16, 2006 at 4152 Dakota Drive, Rosemount, Minnesota, the ACE 26002 propane torch and the TurboTorch MAPP gas cylinder fell onto a cement floor resulting in the rupture and separation of the neck on the TurboTorch MAPP gas cylinder.

VIII.

That the TurboTorch MAPP gas cylinder rapidly expelled MAPP gas into the utility area where Plaintiff was working, which ignited, most likely from the hot water heater, resulting in an explosive, flammable mixture emanating from the separation in the neck of TurboTorch MAPP gas cylinder.

IX.

That the ACE 26002 propane torch manufactured by Bernzomatic and sold by ACE Hardware Corp. was defective in its design and manufacture at the time it left the control of the defendants. The defective nature of the propane torch included, but was not limited to the following: (1) the weight and length of the propane torch was so significant that when it was attached to a MAPP gas cylinder, the combined unit became very unstable and top-heavy, subject to being easily tipped over or dropped making it unreasonably dangerous to the user; (2) a built-in safety feature, identified as a safety fracture groove, which was specifically designed into the propane torch if the torch was "dropped or misused", did not function as intended when the unstable propane torch and MAPP gas cylinder was dropped on the floor making it unreasonably dangerous to the user; (3) with knowledge of the unstable nature of the propane torch when attached to a MAPP gas cylinder, especially when the cylinder is close to empty, the defendants failed to supply to torch users some appropriate device to add stability to the propane torch and MAPP gas cylinder, making it unreasonably dangerous to the user.

X.

That the ACE 26002 propane torch failed to have appropriate warnings as to the adverse consequences to a user of the instability created when the propane torch was attached to a MAPP gas cylinder, especially when close to empty, and the extreme hazard to the torch user if the unit was dropped or misused and the safety fracture groove did not function as claimed by the defendants.

XI.


That for the reasons stated above the defendants were negligent in their design, manufacture, testing, and warnings of the safe use of the ACE 26002 propane torch.

XII.

That as a direct and proximate result of the defective design, defective manufacture, defective warnings, and negligence in regards to the ACE 26002 propane torch, Plaintiff, Jeffrey A. Vanderlinde, sustained serious and permanent burn injuries, was caused to incur medical and hospital expenses, was caused to sustain a loss of wages, and suffer pain, suffering and disability, and will in the future, incur medical and hospital expenses, incur a loss of earning capacity and suffer permanent pain, suffering, disfigurement, and disability, all to his damage in a sum in excess of \$50,000.

WHEREFORE, Plaintiff, Jeffrey A. Vanderlinde, demands judgment against Defendants, ACE Hardware Corp. and Bernzomatic Division of Irwin Industrial Tools, for a sum in excess of \$50,000, together with pre-judgment interest, post-judgment interest, and his costs and disbursements herein.

Dated: November 5, 2007



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NOTICE AND ACKNOWLEDGMENT
OF SERVICE BY MAIL

TO: Irwin Industrial Tools

The enclosed Summons and Complaint are served pursuant to Rule 4.05 of the Minnesota Rules of Civil Procedure.

You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within twenty (20) days.

Signing this Acknowledgement of Receipt is only an admission that you have received the Summons and Complaint and does not waive any other defenses.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, or other entity (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive service, you must indicate under your signature your authority.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

I declare under penalties of perjury, that this Notice and Acknowledgement of Receipt of Summons and Complaint was mailed on November 6, 2007.


Signature