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No. 16-116307-A

THE COURT OF APPEALS
OF THE STATE OF KANSAS

CORVIAS MILITARY LIVING, LLC, and
CORVIAS MILITARY CONSTRUCTION, LLC
Plaintiffs-Appellants

vs.

VENTAMATIC, LTD.; JAKEL, INC. n/k/a JAKEL MOTORS INCORPORATED;
UNITED HEATING & COOLING, INC.; KORNIS ELECTRIC SUPPLY, INC.;
FAHNESTOCK HEATING AND AIR CONDITIONING, INC. d/b/a FAHNESTOCK
PLUMBING, HVAC & ELECTRIC; and CONSOLIDATED ELECTRIC
DISTRIBUTORS, INC., d/b/a AMERICAN ELECTRIC
Defendants-Appellees

BRIEF OF APPELLANTS

Appeal from the District Court of Geary County, Kansas
Honorable Benjamin J. Sexton, Judge
District Court Case No. 2014 CV 138

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Oral Argument: 15 minutes

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NATURE OF THE CASE

This product liability action, brought under K.S.A. 60-3301, *et. seq.*, pits a military housing developer against the manufacturers of a bathroom ceiling fan and its electric motor. The product at issue caused two house fires at the family housing neighborhood at Fort Riley, Kansas. The Appellants Corvias Military Living, LLC, and Corvias Military Construction, LLC (referred to collectively as "Corvias"), filed their initial Petition against Appellee Ventamatic Ltd., the manufacturer of the defective bathroom fans ("Ventamatic"), Appellee Jakel, Inc., the manufacturer of the defective fan motors ("Jakel"), and various other parties in the chain of distribution. (R. Vol. 1, 39). Jakel and Ventamatic each moved separately for summary judgment as to all claims. (R. Vol. 1, 286; R. Vol. 2, 302). The trial court granted each motion in favor of the movant. (R. Vol. 3, 5 and 63).

JURISDICTION

Corvias appeals from the following rulings, which granted summary judgment for all claims against Ventamatic and Jakel:

1) District Court's Journal of Entry Judgment 5/24/16 on Ventamatic's Motion for Summary Judgment (R. Vol. 3, 63); and

2) District Court's Journal of Entry Judgment 1/26/16 on Jakel's Motion for Summary Judgment. (R. Vol. 3, 5).

Corvias' notice of appeal was filed on July 15, 2016. (R. Vol. 3, 73). This Court has jurisdiction under K.S.A. 60-2101.

STATEMENT OF FACTS

Fort Riley Family Housing

Corvias developed, built and now manages the Fort Riley Privatized Family Housing Project (the "Project"). (R. Vol. 2, 52). As part of the Project, Corvias, through its subcontractors, purchased and installed approximately 3,735 NuVent bathroom ceiling fans, Model NXMS70LB, into 1,251 housing units for the families of military personnel stationed at Fort Riley. (R. Vol. 2, 52-53). The fans are designed for residential use in bathroom ceilings to vent moisture from the bathroom. (R. Vol. 2, 64). Ventamatic manufactured the NuVent fans, which contained electrical motors manufactured by Jakel. (R. Vol. 2, 53). After installation, Corvias experienced widespread malfunctions with the NuVent fans. (R. Vol. 2, 64). Prior to the fires, Corvias experienced in excess of 100 failures. (R. Vol. 2, 64). The failures were so widespread that Corvias discontinued its use of Ventamatic fans in all future construction. (R. Vol. 2, 64).

The Fires

On June 12, 2012, at approximately 10:00 p.m., a fire occurred in the first floor bathroom at 22107-2 Pommel Street, Fort Riley, Kansas. (R. Vol. 2, 57). The fire inspector for the Fort Riley & Emergency Services investigated the fire and concluded that "the first material ignited was the plastic fan inside the light housing in the first floor bathroom. It appears that the motor in the fan may have malfunctioned and caused the fire. The fire then ignited the plastic vent hose which then ignited a plastic water line. The plastic water line then melted and released water that then extinguished the fire." (R. Vol. 2, 64). The Plaintiffs' damages proximately caused by the June 12, 2012, fire are $656.26. (R. Vol. 2, 76).

On February 5, 2013, a second fire broke out at 21314-1 Pommel Place, causing extensive damage to the walls, ceiling, rafters, artwork and personal property of occupant of the townhome. (R. Vol. 2, 57-58). The fire also caused damage to 21214-2 Pommel Place, the adjoining townhome. Fortunately, no one was physically injured. The fire investigator for the Fort Riley Fire & Emergency Services investigated the February 5th fire and concluded as follows:

> The origin of the fire was in the roof truss area, in the immediate area of the upstairs bathroom exhaust fan. There is a high possibility that this fire could be electrical or mechanical in nature. There is also a report made to the CSPC (U.S. Consumer Product Safety Commission) Case #213-0206-57657-13-03119 to look into there being a malfunction with the NuVent exhaust fans used in the Forsyth Housing Area. On 12 June, 2012 (Case #CY-12-08-2172) we had another incident involving the same type of fan with another fire.

(R. Vol. 2, 25-50). The February 5, 2013, fire caused significant damage to the townhome as well as damage to the tenant's personal property, in the form of smoke damage, scattered debris, and heat damage, all of which damaged the tenant's clothing, bathroom items, wall hangings, and other personal belongings. (R. Vol. 2, 66). Damages associated with the February 5, 2013 fire totaled $88,994 of which the Plaintiffs seek to recover $50,000 (the amount of their insurance deductible). (R. Vol. 2, 76).

Immediately following the February 5, 2013, fire, Corvias disconnected all the NuVent fans and immediately notified Ventamatic that the NuVent fans were causing fires in the military housing facilities and that immediate action needed to be taken to mitigate the significant danger posed to the people and property in the family housing at Fort Riley. (R. Vol. 2, 65-66). Corvias provided Ventamatic with an opportunity to inspect the malfunctioning fans as well as to all other NuVent fans installed at Fort Riley. (R. Vol. 2, 66). In response, Ventamatic refused to cooperate and denied that

Ventamatic's fans were installed at Fort Riley. (R. Vol. 2, 66). Corvias ultimately decided that removal and replacement of the defective Ventamatic fans was the safest way to mitigate its damages caused by the defective fans. (R. Vol. 2, 66).

After the fires, extensive testing was conducted on the NuVent fans associated with the June 12, 2012, and February 5, 2013, fires at the laboratories of Travelers Insurance Company in Hartford, Connecticut. (R. Vol. 2, 67). Representatives of Ventamatic and Jakel and their insurance carriers participated in the testing. *Id.* During the testing, it was determined that the coil inside the motor of the NuVent fan that had caused the June 12, 2012, fire showed evidence of electrical arcing and was determined to be the cause and origin of the fire. *Id.* At the time of testing, evidence of arcing could not be observed as to the NuVent fan that caused the February 5, 2013, fire because the plastic casing of the fan motor had melted so that the exterior of the coil could not be observed. *Id.* Thereafter, the NuVent fan that caused the February 5, 2013, fire was subjected to CAT scan testing to determine whether the coil in the fan motor showed evidence of electrical arcing. *Id.* The CAT scan testing of the fan motor confirmed that the coil showed evidence of electrical arcing evidencing a malfunction that caused the February 5, 2013, fire. *Id.* The testing revealed that both Ventamatic Nu Vent fans suffered from the same failure, each of which in turn resulted in fire to the housing unit and proximately caused property damage due to the fires. *Id.*

Corvias retained an expert, Ron Kilgore, who inspected the NuVent fans from the fires as well as fans that were removed from the other townhomes. Kilgore made the following findings:

> The Jakel motor is defective because it is susceptible to ignition from a failed coil. A motor coil failure is a foreseeable event. Such failures can result in arcing that produces local temperatures well above the ignition temperature of common combustibles. The coil has a wrap constructed from material that can ignite and continue to burn. Because the fan motor is within the air stream of the product, ignition of the coil wrap can then ignite lint and dust that accumulated on the coil surface during use. This provides a continuity of fuels that can lead to ignition of combustibles away from the motor.
>
> The Ventamatic fan is defective in design. The fan incorporates a motor with its coil directly exposed to the ventilation air stream. This allows airborne dust to accumulate on the motor coil where it can be exposed to arcing from failing coil. Such arcing is a competent ignition source for accumulated dust.

(R. Vol. 2, 67-68). Kilgore determined that the Jakel motors contain a design defect that was the cause of the fires and as manufactured were unreasonably dangerous. *Id.* Kilgore also confirmed that "this is a design defect and would be present in all of the NUVENT fans using the Jakel motors." *Id.* The cost to Corvias in removing and replacing the defective NuVent fans was $459,0278.26. (R. Vol. 2, 68).

ISSUES PRESENTED FOR REVIEW

1. Whether the trial court erred when it held that the bathroom exhaust fans were "integrated" into the townhomes for purpose of determining whether the fires caused damage to property other than the "product" itself.

2. Whether application of the integrated systems theory in conjunction with the economic loss doctrine presents an issue of law for the court or mixed questions of fact and law for a judge and jury to decide.

3. Whether the trial court erred when it held that the fans were not inherently dangerous.

STANDARD OF REVIEW

This Court's standard for reviewing a district court's grant of summary judgment is well-known:

> Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *The trial court is required to resolve all facts and inferences which may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought.* When opposing a motion for summary judgment, an adverse party must come forward with evidence to establish a dispute as to a material fact. In order to preclude summary judgment, the facts subject to the dispute must be material to the conclusive issues in the case. On appeal, we apply the same rules and *where we find that reasonable minds could differ as to the conclusions drawn from the evidence, summary judgment must be denied.* (Emphasis in original.)

Osterhaus v. Toth, 291 Kan. 759, 768, 239 P.3d 888 (2011), *quoting*, *Warner v. Stover,* 283 Kan. 453, 455–56, 153 P.3d 1245 (2007).

Corvias contends that for purposes of applying the integrated systems theory with the economic loss doctrine, a household electrical consumer appliance, be it a coffee maker, dishwasher, dryer or, in this case, bathroom ceiling fan, cannot be a part of the home in which it is placed such that the household consumer appliance and the home are considered one product. In addition, the trial court failed to follow the proper analysis in the leading Kansas case authorities that apply the integrated systems theory – *Koss Construction v. Caterpillar, Inc.*, 25 Kan. App. 2d 200, 960 P.2d 255 (1998) and *Northwest Arkansas Masonry, Inc. v. Summit Specialty Products, Inc.*, 29 Kan. App. 2d 735, 81 P.3d 982 (2001).

Corvias further submits that at a minimum, reasonable minds could differ as to whether the bathroom ceiling fans were component parts of the townhomes in which they were installed in light of the evidence that was before the District Court on summary judgment.

Trial court concluded that whether the economic loss doctrine barred recovery under K.S.A. 60-3301, *et. seq.*, is a question of law for the trial judge to decide. Corvias submits that the integrated systems theory and the economic loss doctrine present issues of both fact and law that necessitate a trial on the merits.

Finally, the trial court found that the product at issue, a bathroom ceiling fan, was not inherently dangerous as a matter of law. However, the trial court erred because it failed to consider the issue of the hazardous nature of the product "if defectively manufactured."

ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT HELD THAT CORVIAS SUFFERED ONLY ECONOMIC LOSS.

The trial court applied the "integrated systems theory" in conjunction with the "economic loss doctrine" and held that Corvias cannot maintain a claim under the Kansas Product Liability Act because there has been no "harm" as required by K.S.A. 60-3302(d). (R. Vol. 5, 58). The trial court reasoned that the bathroom ceiling fans had been "integrated" into the townhomes such that the "relevant product" was the townhome in its entirety. *Id.* The trial court's application of the integrated systems theory to the facts in this case was misplaced. In addition, the existing Kansas case authorities on the integrated systems theory call for denial of Ventamatic's and Jakel's motions for summary judgment.

A. The Line Between Contract Remedies And Tort Is Safety.

In adopting the "economic loss" rule this Court relied heavily on *East River*, in which the Supreme Court opined that:

> products liability grew out of a public policy judgment that people need more protection from dangerous products than what is afforded by the law of warranty. [Citation omitted] It is clear, however, that if this development were allowed to progress too far, contract law would drown in a sea of tort. [Citation omitted] We must determine whether a commercial product injuring itself is the kind of harm against which public policy requires manufacturers to protect, independent of any contractual obligation.

Koss Construction, 25 Kan. App. 2d at 204 *(citing East River Steamship Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 866, 106 S.Ct. 2295, 2300 (1986)). In *East River*, the Supreme Court went on to discuss in great detail the line between tort and contract law. Specifically,

> a manufacturer in a commercial relationship has no duty under either a negligence or strict products-liability theory to prevent a product from injuring itself. The distinction that the law has drawn between tort recovery for physical injuries and warranty recovery for economic loss is not arbitrary and does not rest on the 'luck' of one plaintiff in having an accident causing physical injury. The distinction rests, rather, on an understanding of the nature of the responsibility a manufacturer must undertake in distributing his products. [Citations omitted] When a product injures only itself the reasons for imposing a tort duty are weak and those for leaving the party to contractual remedies are strong. **The tort concern with safety is reduced when an injury is only to the product itself.** … Damage to a product itself is most naturally understood as a warranty claim. Such damage means simply that the product has not met the customers' expectations, or, in other words, that the customer has received "insufficient product value." (*emphasis added*).

East River, 476 U.S. at 871. Later, in *Saratoga Fishing Co. v. J.M. Martinac & Co.,* the Supreme Court stated unequivocally: "When a manufacturer places an item in the stream of commerce… that item is the 'product itself' under *East River*…." 520 U.S. 875, 879, 117 S.Ct. 1783 (1997). Other courts applying the economic loss rule have generally

deemed the product to be "the finished product bargained for by the buyer" rather than its individual components. *Shipco 2295, Inc. v. Avondale Shipyards, Inc.*, 825 F.2d 925, 929-30 (5th Cir. 1987); *see also N.Y. State Elect & Gas Corp. v. Westinghouse Elec. Corp.*, 387 Pa.Super. 537, 564 A.2d 919 (1989) (where various components of a product are provided by same supplier as part of a complete and integrated package, even if one component damages another, there is no damage to other property).

In the case currently before the Court, the product placed in the stream of commerce by Ventamatic and purchased by Corvias was a bathroom ceiling fan. Corvias does not complain that the products did not work according to specifications, or that they failed to live up to their expectations, which they decidedly did not. Corvias had previously decided to stop purchasing and installing NuVent fans because of disappointing performance. (R. Vol. 2, 64). However, when the fans started to cause fires in townhomes, the issue changed from a performance problem to a safety problem. Corvias has presented evidence that the fans were defectively designed such that they **catch fire**, and have, on two occasions, caused homes to catch fire as well. Luckily no one was injured, but the concern for safety of the residents of the townhomes was and is paramount.

Corvias purchased an electrical consumer product, no different from a coffeemaker, a dishwasher, a microwave, a television, or a refrigerator. The record shows the bathroom ceiling fans are "plug-n-play" and took no more expertise to install or replace than many other appliances that are typically installed in a home. (R. Vol. 3, 41). To bar claims, as a matter of law, when a common household appliance turns out to be defective and causes fire in a home or building would be a radical expansion of the

economic loss doctrine. *See e.g.* the application of the economic loss doctrine to mechanical appliances in other jurisdictions: *Elward v. Electrolux Home Prod., Inc.,* No. 15 C 9882, 2016 WL 5792391, at *1 (N.D. Ill. Oct. 4, 2016) (claims brought under strict liability seeking recovery for property damage to homes caused by dishwashers that started fires *not barred* by economic loss doctrine.) (*emphasis added*); *Diatom, Inc. v. Pennwalt Corp.*, 741 F.2d 1569, 1581-82 (10th Cir. 1984) (claims brought under strict liability for commercial dryers that malfunctioned were barred by the economic loss doctrine *because the surrounding property had NOT been harmed*— rather the alleged harm was "qualitative defects that rendered [the dryers] unsuitable for their intended purpose and not of 'fair and average quality.' ") (*emphasis added*). Indeed, Ventamatic, Jakel and the trial court cannot cite to a single case where a common electrical appliance, once installed in a home, becomes part of the home such that property damage caused by its bursting into flames and burning the home is not recoverable in tort. Such safety concerns are exactly the type of injuries tort law is intended to address. Thus, the trial court should be reversed with respect to its finding that Corvias has not suffered "harm" in the form of damage to property as defined under K.S.A. 60-3302(d)(1).

B. The "Relevant Product" Is The Product That Was Manufactured By Ventamatic And Purchased By Corvias *i.e.* The Fans.

The trial court relied on *Koss Construction* to determine that the bathroom ceiling fan and the townhome were an "integrated system," such that the bathroom ceiling fan was indistinguishable from the townhome into which it was installed. (R. Vol. 5, 53-54). However, when the reasoning employed in *Koss Construction* is applied to the facts of this case, it is clear that the product at issue is the ceiling fans, not the townhome.

In *Koss Construction*, the commercial plaintiff purchased a hydraulic roller used for road construction. Due to an internal malfunction of a hydraulic hose, the roller caught fire and was destroyed. There was no property damage other than to the roller itself. The trial and appellate courts concluded that the product at issue for purposes of the economic loss doctrine was the roller, not the hydraulic hose. *Koss Construction*, 25 Kan. App. 2d at 207. In so ruling, the court noted that the roller and the hydraulic hose that malfunctioned were not purchased separately. *Id.* Rather it was the roller that Koss Construction had purchased, with all of its various component parts.

Here, the products that Corvias purchased were ceiling fans, not townhomes. A component part of those ceiling fans, Jakel's motors, was defective, caught fire and caused damage to the products themselves, *i.e.*, the ceiling fans, as well as other property consisting of the town homes and personality therein. Thus, when the analysis employed in *Koss Construction* is applied to the facts of this case, the "products" at issue for purposes of determining whether Corvias had suffered "harm" under K.S.A. 60-3302(d) were the fans Corvias purchased, and not the townhomes.

C. A Bathroom Ceiling Fan Is Not A "Component Material" Of A Townhome.

The trial court also relied on *Northwest Arkansas Masonry*, 29 Kan. App. 2d at 736, to support its finding that the bathroom ceiling fans were integrated into the townhouses such that damage to the townhouse, and neighboring townhouse, was economic loss. In *Northwest Arkansas Masonry,* this Court looked to a series of cases from across the country, each involving construction/building defect cases and each involving a "material" that was used as part of an integrated whole. *Id.* at 743-744. For instance, one case involved untreated plywood, shingles and other components of a

builder's roof system. In another case, paving blocks were determined to be an integrated system with defective cement. The *Northwest Arkansas Masonry* Court summarized these decisions as follows:

> The cases stand for the proposition that when component materials become indistinguishable parts of a final product, and there is harm resulting from a defective component of the product, the product itself caused the harm.

Id. at 744.

At issue in *Northwest Arkansas Masonry* was allegedly defective cement that plaintiff subcontractor used to build a wall at a Home Depot. The allegedly defective product—the cement—was a premixed powder product containing cement and lime. The cement powder was mixed at the construction site with sand and water to make the bonding mortar. The wall was made by layering concrete blocks, inserting rebar in the blocks' cells at various intervals, and then filling the cells with the mortar. *Id.* at 736. Several days into the project the contractor discovered that the mortar was not adhering properly. Testing confirmed that the mortar was not meeting specified strengths. Following a jury trial and verdict in favor of the masonry subcontractor, the trial judge entered a directed verdict in favor of the defendants after finding that the masonry subcontractor's claim was barred by the economic loss doctrine because the defective product, the cement, was indistinguishable from the masonry wall, such that removal and replacement of the wall, which did not otherwise damage any other property, constituted purely economic loss. *Id.* at 737. The court reasoned that "essentially, the damages sought were a result of the cement product failing to meet [the purchaser's] expectations when used in the mortar to construct the masonry wall." *Id.* at 743. Thus, the alleged

damages resulting from the failure of the product to perform to the level expected by the buyer is economic loss and should be left to contract law.

Here, the case does not arise from a construction defect scenario. A bathroom ceiling fan is not a "component material" of a townhome. Rather, it is a consumer appliance placed in the home after the home is fully constructed. Indeed, a townhome is easily distinguishable from the ceiling fan installed in a bathroom—take the fan away and you still have a townhome. Further, damages sought are not related to the failing to meet the Corvias' commercial expectations—rather the "harm" came from the product, due to defective design, catching on fire, the fire spreading and damaging the roof, rafters, walls, cabinets, clothing, artwork, carpeting, and the contiguous neighboring townhome. This is precisely the type of injury tort is meant to address. When the analysis in *Northwest Arkansas Masonry* is applied to the facts of this case, it is clear that the product at issue was the bathroom ceiling fan and property damage to the townhome was "harm" under K.S.A. 60-3302(d)(1).

II. MATERIAL FACTS ARE IN DISPUTE MAKING SUMMARY JUDGMENT INAPPROPRIATE.

Assuming *arguendo* that the question of whether a bathroom ceiling fan can be an integrated component of a townhome, the trial court should not have determined the issue on summary judgment where reasonable minds could differ as to the conclusions drawn from the admissible evidence.

The evidence before the trial court was disputed and inconclusive to hold that the defective products were so integrated into the townhomes that the "product" was at issue was the townhome and not the bathroom ceiling fan. Specifically, the evidence showed that the fans were purchased separately. (R. Vol. 2, 63). The fan motor, like a light bulb,

is a stand-alone component, referred to as a "plug and play" component, which allows the homeowner to install, clean or remove the motor without special knowledge or skill. (R. Vol. 3, 32). The process of removing a single fan took approximately twenty minutes. (R. Vol. 2, 66). Because this was a ruling on summary judgment, all facts and inferences which may reasonably be drawn from the evidence should have been resolved in favor of Corvias. Indeed, it was only after a jury trial on the merits that the trial judge in *Northwest Arkansas Masonry* could rule on the "integrated systems approach."

Accordingly, this Court should reverse the award of summary judgment and remand for a trial on the merits.

III. THE TRIAL COURT ERRED WHEN IT HELD THAT THE BATHROOM CEILING FANS ARE NOT "INHERENTLY DANGEROUS."

Claims for breach of warranties require contractual privity to the extent that the claims for breach of warranty are limited to purely economic losses. But when defective product causes damage to other property, as was the case here, then the claim for breach of warranty does not require contractual privity and is merged into a claim pursuant to K.S.A. 60-3302(c).

In addition, the requirements of both damage to other property and contractual privity are not required where the product is inherently dangerous if defectively manufactured:

> [I]mplied warranties are imposed by operation of law in Kansas on public policy grounds and without regard to whether the parties to the implied warranty are in "privity" or whether the loss suffered is purely economic **when the product is such that it would be inherently dangerous if defectively manufactured.** *Fullerton*, 842 F.2d at 721 (4th Cir.) (applying Kansas law) (*citing Professional Lens*, 234 Kan. 742, 755, 675 P.2d 887, 898–99 (1984)); *see Boehm v. Fox*, 473 F.2d 445, 449 (10th Cir.1973) ("An implied warranty will be imposed by operation of law on the basis of public policy and privity of contract is not essential.") *(citing Evangelist v.*

> *Bellern Research Corp.*, 199 Kan. 638, 433 P.2d 380 (1967)). (Emphasis added).

Sithon Maritime Co. v. Holiday Mansion, 983 F.Supp. 977, 988 (D. Kan. 1997).

Originally, the "inherently dangerous if defectively manufactured" exception to the contractual privity requirement applied to foods and drugs. Later courts expanded the doctrine to cars and tires. Currently, the exception is applied on a case by case basis.

The trial court concluded that the bathroom ceiling exhaust fans were not "inherently dangerous," and thus Corvias could not recover for breach of implied warranties. Relying on *Professional Lens Plan, Inc. v. Polaris Leasing Corporation*, 234 Kan. 742, 675 P.2d 887 (1984), the trial court held that bathroom ceiling fans were much more like a computer and its component hard drive than an airplane or automobile tire. The trial court's comparison misses and overlooks the "if defectively manufactured" portions of the analysis.

In *Professional Lens*, damages were sought solely for damage to the computer and its component part, the hard disc. No personal injury or property damage was involved and the court found that no public policy dictated extending implied warranties of fitness and merchantability to the nonprivity manufacturer. *Id.* at 755.

Here, the bathroom exhaust fans were defectively designed, such that the fans cause electrical arcing and catch fire. Corvias' expert has opined that the fans are inherently and unreasonably dangerous as manufactured. (R. Vol. 2, 68). Because of an obvious design flaw, wrapping the electrical coil in a cellulite (paper) that burns until consumed, the product at issue has the unreasonable potential to burn homes down and injure or kill Fort Riley families. (R. Vol. 2, 67-68). The defect rendered the fans inherently dangerous when used for their intended purpose. Thus, the trial court should

be reversed with respect to its ruling on summary judgment that the products were not inherently dangerous as defectively manufactured.

CONCLUSION

For the reasons set forth herein, Plaintiffs/Appellants Corvias Military Living, LLC and Corvias Military Construction, LLC respectfully request that this Court: (1) reverse the District Court's May 24, 2016 Journal of Entry Judgment on Ventamatic's Motion for Summary Judgment; (2) reverse the District Court's June 20, 2016, Journal of Entry Judgment on Jakel's Motion for Summary Judgment; and (3) grant Corvias any other relief this Court deems necessary and proper.

Dated: December 2, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, William J. Bahr, do hereby certify that on the 2nd day of December, 2016, I filed the above by electronic filing with the Clerk of the Court of Appeals of the State of Kansas. I further certify that I mailed two (2) copies of the above and foregoing document, **Brief of Appellants**, to each of the following:

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