

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

STEPHEN E. BILENKY,
Administrator of the Estate of
Frank S. Wright, deceased,

Plaintiff,

vs.

RYOBI LTD.,
SERVE:
Corporate Headquarters, 762, Mesaki-Cho
Fuchu, Hiroshima 726-8628
Japan

and

RYOBI NORTH AMERICA, INC.

and

TECHTRONIC INDUSTRIES CO., LTD.
SERVE:
Corporate headquarters,
24/F CDW Building, 388 Castle Peak Road
Tsuen Wan, N.T.

and

TECHTRONIC INDUSTRIES
NORTH AMERICA, INC.
SERVE:
Robert A. Bugos
1428 Pearman Dairy Road
Anderson, SC 29625

and

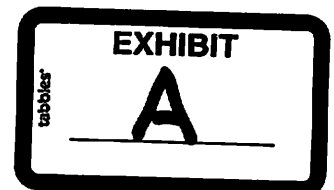
RYOBI TECHNOLOGIES, INC.
SERVE:
Robert A. Bugos
1428 Pearman Dairy Road
Anderson, SC 29625

and

COMPLAINT

Case No: CJ2-8807
JURY TRIAL DEMANDED

FILED
2012 DEC 20 PM 3:34
NORFOLK
CIRCUIT COURT CLERK
RYOBI LTD.



ONE WORLD TECHNOLOGIES, INC.
SERVE:
Lynn T. Rowe
109 Woodland Place
Osprey, FL 34229

and

HOME DEPOT USA, INC.,
SERVE:
CSC of Cobb County, Inc.
136 N. Fairground St. N.E.
Marietta, GA 30060

and

THE HOME DEPOT, INC.
SERVE:
CSC of Cobb County, Inc.
136 N. Fairground St. N.E.
Marietta, GA 30060

Defendants.

COMPLAINT

COMES NOW Stephen E. Bilenky, Administrator of the Estate of Frank S. Wright, deceased, by and through his undersigned counsel, and respectfully moves this Court for judgment, jointly and severally, against Defendants, Ryobi, Ltd., Ryobi North America, Inc., Techtronic Industries Co., Ltd., Techtronic Industries North America, Inc., Ryobi Technologies, Inc., One World Technologies, Inc., Home Depot USA, Inc. and The Home Depot, Inc., on the grounds and in the amounts hereinafter set forth:

PARTIES, JURISDICTION, AND VENUE

1. This is an action for the wrongful death of Frank S. Wright, pursuant to Va. Code Ann. § 8.01-50, et seq., seeking both survival and wrongful death damages. Stephen E. Bilenky

was appointed Administrator of the Estate of Frank Wright in the Office of the Clerk, Circuit Court for the City of Chesapeake, in the Commonwealth of Virginia, on December 18, 2012 (*see* Certification, attached hereto).

2. Plaintiff, Stephen E. Bilenky, Administrator of the Estate of Frank S. Wright (hereinafter "Plaintiff"), is and at all times mentioned in this Complaint has been a resident of Virginia Beach, Virginia.

3. Plaintiff's Father-In-Law, Frank S. Wright (hereinafter "decedent"), died on or about December 23, 2010, after suffering fatal burns when the lawnmower he was operating caught fire.

4. Defendant Ryobi, Ltd., is a Japanese corporation organized and existing under the laws of Japan and can be served at the address listed in the caption.

5. Defendant Ryobi North America, Inc. is a Delaware corporation organized and existing under the laws of Delaware and can be served at the address listed in the caption.

6. Defendant Techtronic Industries, Co., Ltd., is a Chinese corporation organized and existing under the laws of China and can be served at the address listed in the caption.

7. Defendant Techtronic Industries, North America, Inc., is a South Carolina corporation organized and existing under the laws of South Carolina and can be served at the address listed in the caption.

8. Defendant Ryobi Technologies, Inc., is a South Carolina corporation organized and existing under the laws of South Carolina and can be served at the address listed in the caption.

9. Defendant One World Technologies, Inc., is a Florida corporation organized and

existing under the laws of Florida and can be served at the address listed in the caption.

10. Defendants Home Depot USA, Inc. and The Home Depot, Inc. (hereinafter collectively referred to as "Home Depot"), are Georgia corporations organized and existing under the laws of Georgia and can be served at the address listed in the caption.

11. The Defendants are subject to the jurisdiction of Virginia courts and venue is proper in this Court because the Defendants conduct substantial business activity in and around the City of Norfolk, Virginia. The Home Depot Defendants also own a retail store (the "store") located at 4615 Military Circle, 1261 North Military Highway, Norfolk, Virginia 23502. It was at this store that the allegedly defective subject mower was purchased. Defendants are subject to the *in personam* jurisdiction of this Court pursuant to Va. Code § 8.01-328.1, in that Defendants transacted substantial business in the State of Virginia. Through these actions, Defendants have purposefully availed themselves of the privilege of conducting activities in the State of Virginia. Thus, there exists a sufficient nexus between the Defendants' forum contacts and the Plaintiff's cause of action to justify assertion of jurisdiction in Virginia.

FACTS COMMON TO ALL CAUSES OF ACTION

12. On September 15, 2005, decedent purchased a Ryobi riding lawn mower, model HDK19H42 (hereinafter "subject mower"), from the aforementioned 4615 Military Circle Home Depot store, located in Norfolk, Virginia.

13. On or about December 23, 2010, without warning, the subject mower manufactured, distributed, and put into the stream of commerce by Defendant Ryobi and marketed, retailed, sold, and put into the stream of commerce by the Home Depot Defendants suddenly and unexpectedly caught fire while being used in a reasonable and ordinary manner by decedent, who was

undertaking lawn care in his backyard.

14. As a result of the December 23, 2010 explosion of the subject mower, the mower caught fire and decedent was severely and fatally burned and injured as a result, said injuries ultimately resulting in decedent's death.

15. No act or omission of Plaintiff caused the subject mower to explode or the death of decedent.

16. No act or omission of Plaintiff contributed to cause the subject mower to explode or the death of decedent.

17. At the time the subject mower exploded and caught fire, there were no signs or warnings of any potential defects with the mower when used in a reasonably foreseeable and ordinary manner.

18. The independent acts and/or omissions of the Defendants combined to result in decedent's death.

19. Pursuant to Va. Code Ann. § 8.01-53, the statutory beneficiaries of the estate of decedent are his surviving spouse, Audrey Wright, and his surviving children. As a proximate result of decedent's injuries and death, said beneficiaries have been caused to suffer and incur the following:

- (a) Sorrow, grief, mental anguish and suffering, and the loss of solace, including society, companionship, comfort, guidance, kindly offices, and advice of decedent;
- (b) Loss of income of decedent, and services, protection, care and assistance of decedent; and,
- (c) Expenses for the funeral services of decedent, and other expenses incident to his injuries and death (collectively, the "compensatory damages").

FIRST CAUSE OF ACTION

(Negligence – All Defendants)

20. The allegations contained in the foregoing paragraphs are incorporated herein by reference.

21. At all relevant times, Defendants had and continue to have a duty to exercise reasonable care to properly, design, research, develop, manufacture, inspect, label, market, promote and sell their lawn mowers and law care equipment that they introduced into the stream of commerce, including a duty to ensure such equipment does not cause users to suffer from unreasonably dangerous defects and malfunctions in the same when used in an ordinary and foreseeable manner.

22. At all relevant times, Defendants owed and continue to owe a duty to properly warn consumers of the risks, dangers and possible malfunctions of their lawn care equipment.

23. Defendants breached these duties by failing to exercise ordinary care in the design, research, development, manufacturing, inspection, labeling, marketing, promotion and selling of their lawn care equipment, which they introduced into the stream of commerce, because Defendants knew or should have known that the subject mower created a foreseeably high risk of unreasonable, dangerous injury and/or death due to explosions and/or machinery fires.

24. Defendants knew, or in the exercise of reasonable care, should have known that the subject mower was of such a nature that, if not properly designed, researched, developed, manufactured, inspected, labeled, marketed, promoted and sold, they were likely to cause injury and/or death to those who used their product.

25. Defendants negligently provided inadequate and inaccurate warnings and information to consumers and the public at large, including decedent, by making false representations about the safety of their products. Defendants downplayed, understated and disregarded their knowledge – and their negligent lack of knowledge – of the serious and permanent injuries and/or death associated with the use of their subject mower even though they knew or should have known that the same was likely to cause serious and sometimes fatal injuries to users.

26. Defendants were negligent in the design, research, development, manufacturing, inspection, labeling, marketing, promotion, and selling of their subject mower, in that Defendants:

- a. Failed to use due care in the researching of the subject mower to prevent risks to individuals when the mower was used in an ordinary and reasonably foreseeable manner.
- b. Failed to use due care in the design of the subject mower to prevent risks to individuals when the subject mower was used in an ordinary and reasonably foreseeable manner.
- c. Failed to conduct adequate pre-market testing and research to determine the safety of the subject mower.
- d. Failed to conduct adequate post-marketing surveillance to determine the safety of the subject mower.
- e. Failed to accompany the subject mower with proper warnings regarding the risks associated with the use of the product.

- f. Failed to use due care in the development of the subject mower to prevent the risks to individuals when the subject mower was used in an ordinary and reasonably foreseeable manner.
- g. Failed to use due care in the manufacture of the subject mower to prevent risks to individuals when the subject mower was used in an ordinary and reasonably foreseeable manner.
- h. Failed to use due care in the inspection of the subject mower to prevent risks to individuals when the subject mower was used in an ordinary and reasonably foreseeable manner.
- i. Failed to use due care in the labeling of the subject mower to prevent risks to individuals using the subject mower in an ordinary and reasonably foreseeable manner.
- j. Failed to use due care in the marketing of the subject mower to prevent risks to individuals when used in an ordinary and reasonably foreseeable manner.
- k. Failed to use due care in the promotion of the subject mower to prevent risks to individuals when used in an ordinary and reasonably foreseeable manner.
- l. Failed to use due care in the selling of the subject mower to prevent risks to individuals when used in an ordinary and reasonably foreseeable manner.
- m. Failed to warn decedent, prior to, during and after actively encouraging and promoting the sale of the subject mower, either directly or

indirectly, orally or in writing, about the risk of explosion and/or fire occurring when mower was being used in an ordinary and reasonably foreseeable manner.

- n. Failed otherwise to act as a reasonably prudent manufacturer, distributor, and retailer would.

27. Despite the fact that Defendants knew or should have known that their subject mower caused unreasonable, dangerous and potentially fatal risks that many users would be unable to avoid by any means, Defendants continued to promote and market these products to consumers, including decedent.

28. Defendants knew or should have known that consumers such as decedent would foreseeably suffer injury and/or death as a result of their failure to exercise ordinary care as described herein.

29. Defendants knew or should have known that the subject mower caused serious injury and/or death. Nevertheless, Defendants continued to market such products by providing false and misleading information with regard to the safety and efficacy of the product, acting intentionally or with malice, given Defendants' knowledge of the dangers associated with the subject mower.

30. As a direct and proximate result of the negligent conduct of Defendants, Plaintiff has experienced general and special damages specified herein. The acts and omissions of Defendants, in the manner described above, were the direct and proximate cause of Plaintiff's damages. Therefore, Plaintiff has a cause of action in negligence against Defendants. All of the Defendants are liable to the Plaintiff jointly and severally for all general, special and equitable

relief to which Plaintiff is entitled by law.

31. Defendants' actions, described above, were performed willfully, intentionally, with malice and/or with reckless disregard for the rights of decedent and Plaintiff, as well as other consumers who purchased and used the subject mower. At a minimum, Defendants' acts and omissions, when viewed objectively from the standpoint of Defendants at the time of their occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendants had actual and subjective awareness of the risk involved but, nevertheless, proceeded with conscious indifference to the rights, safety or welfare of others, including decedent and Plaintiff.

SECOND CAUSE OF ACTION

(Breach of Express Warranty – All Defendants)

32. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth herein at length and further alleges:

33. Defendants, through description, affirmation of fact and promise expressly warranted to consumers, the general public, and decedent, that their subject mower was both efficacious and safe for the intended, ordinary, and reasonably foreseeable use. These warranties came in the form of:

- a. Publicly-made written and verbal assurances of the safety and efficacy of the subject mower;
- b. Promotional information, the sole purpose of which was to create an increased demand for the subject mower;
- c. False and misleading written information, supplied by Defendants, upon

which consumers relied in purchasing the subject mower including, but not limited to, information relating to the recommended use of the subject mower;

- d. Promotional pamphlets and brochures published and distributed by Defendants and directed to consumers; and
- e. Advertisements.

The documents referred to in this paragraph were created by and at the direction of Defendants.

34. At the time of these express warranties, Defendants knew of the intended uses of the subject mower and, for these uses, warranted it to be in all aspects safe, effective and proper. Defendants' subject mower did not conform to these express representations in that they were neither safe nor effective and use of such subject mower resulted in unreasonable risk of serious injury and/or death.

35. Thus, Defendants' product (a) failed to conform to the promises, descriptions or affirmations of fact made about the subject mower and (b) were not adequately contained, packaged, labeled or fit for the ordinary purposes for which such goods are used.

36. Defendants breached their express warranties to decedent by:

- a. Manufacturing, marketing, packaging, labeling and selling the subject mower to decedent and other users in such a way that misstated and/or downplayed the risks of injury and death, without warning or disclosing such risks by package or label to decedent, or without so modifying or excluding such express warranties; and
- b. Manufacturing, marketing, packaging, labeling and selling subject

mower to decedent and other users, thereby causing decedent's serious physical injury and death, as well as resulting in Plaintiff's damages.

37. In utilizing the aforementioned product, decedent relied on the skill, judgment, representations, and foregoing express warranties of Defendants. Said warranties and representations were false in that the aforementioned product was not safe and was unfit for the uses for which they were intended.

38. As a direct and proximate result of Defendants' conduct, decedent experienced injuries and death, and Plaintiff has suffered damages specified herein. All of the Defendants are liable to the Plaintiff jointly and severally for all general, special and equitable relief to which Plaintiff is entitled by law.

39. Defendants' actions, described above, were performed willfully, intentionally, with malice and/or with reckless disregard for the rights of decedent and Plaintiff, as well as other consumers who purchased and use the subject mower. At a minimum, Defendants' acts and omissions, when viewed objectively from the standpoint of Defendants at the time of their occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendants had actual and subjective awareness of the risk involved but, nevertheless, proceeded with conscious indifference to the rights, safety or welfare of others, including decedent and Plaintiff.

THIRD CAUSE OF ACTION

(Breach of Implied Warranty – All Defendants)

40. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth herein at length and further alleges:

41. At the time Defendants marketed, sold and distributed the subject mower for use by decedent, Defendants knew of the uses for which the subject mower was intended and impliedly warranted the product to be of merchantable quality and safe and fit for its intended uses. Contrary to such implied warranty, the subject mower was not of merchantable quality or safe or fit for its intended uses, because the product was and is unreasonably dangerous and unfit for the ordinary and reasonably foreseeable purposes for which it was and is used, as described above.

42. Decedent was unskilled in the research, design and manufacture of the aforementioned product and reasonably relied entirely on the skill, judgment, and implied warranty of Defendants, in that the subject mower had dangerous propensities when put to its intended uses and would cause severe injuries or death to the user.

43. Decedent purchased or made the decision to use the subject mower when decedent purchased it as researched, developed, designed, tested, manufactured, inspected, labeled, distributed, marketed, promoted, sold and/or otherwise released into the stream of commerce by Defendants.

44. The aforementioned product was neither safe for its intended uses nor of merchantable quality, as warranted by Defendants, in that it had dangerous propensities when put to its intended uses and would cause severe injuries or death to the user.

45. As the proximate, producing cause and legal result of the Defendants' breach of implied warranties, decedent experienced injury and death and Plaintiff has suffered damages specified herein. All of the Defendants are liable to the Plaintiff jointly and severally for all general, special and equitable relief to which Plaintiff is entitled by law.

46. Defendants' actions, described above, were performed willfully, intentionally, with malice and/or with reckless disregard for the rights of decedent and Plaintiff, as well as other consumers who purchased and use the subject mower. At a minimum, Defendants' acts and omissions, when viewed objectively from the standpoint of Defendants at the time of their occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendants had actual and subjective awareness of the risk involved but, nevertheless, proceeded with conscious indifference to the rights, safety or welfare of others, including decedent and Plaintiff.

FOURTH CAUSE OF ACTION

(Gross Negligence/Malice – All Defendants)

47. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges the following:

48. The wrongs done by Defendants were with reckless disregard for the rights of decedent:

- a. when viewed objectively from Defendants' standpoint at the time of the conduct, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and Defendants were actually, subjectively aware of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of decedent and other end consumers of the subject mower; or
- b. included a material representation that was false, with Defendants knowing that it was false or with reckless disregard as to its truth and as

a positive assertion, with the intent that the representation be acted on by decedent. Decedent relied on the representation and suffered injury as a proximate result of this reliance.

49. Plaintiff also alleges that the acts and omissions of named Defendants, whether taken singularly or in combination with others, constitutes gross negligence, which proximately caused the injuries to decedent. Defendants' actions, described above, were performed willfully, intentionally, with malice and/or with reckless disregard for the rights of decedent and Plaintiff, as well as other consumers who purchased and use the subject mower. At a minimum, Defendants' acts and omissions, when viewed objectively from the standpoint of Defendants at the time of their occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendants had actual and subjective awareness of the risk involved but, nevertheless, proceeded with conscious indifference to the rights, safety or welfare of others, including decedent and Plaintiff.

(Damages – All Defendants)

50. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth herein at length and further alleges:

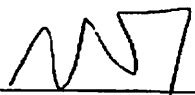
51. As a direct and proximate result of Defendants' conduct and/or the defective nature of the product as outlined above, which caused decedent to suffer severe injuries and death, including but not limited to physical and emotional pain, physical and emotional suffering, mental anguish (including but not limited to reasonable fear of additional injury and death), physical injury and impairment, disfigurement, extreme embarrassment, loss of capacity of the enjoyment of life, and expenses, as well as all elements of those damages permitted by Va. Code

§ 8.01-50, *et seq.*

52. Defendants' wrongful conduct has proximately caused Plaintiff to suffer damages.

WHEREFORE, Plaintiff hereby demands a **TRIAL BY JURY** and that judgment be entered in favor of Plaintiff and against the Defendants, jointly and severally, for compensatory damages in the amount of Three Million Dollars (\$3,000,000.00), plus pre- and post-judgment interest, together with Plaintiff's costs in this matter.

Respectfully submitted,



Richard N. Shapiro (VA Bar #24324)
Shapiro, Lewis & Appleton, P.C.
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AND

SULLIVAN, MORGAN & CHRONIC
Robert C. Sullivan (MO Bar #52408)
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE/LETTER OF QUALIFICATION

COMMONWEALTH OF VIRGINIA

VA. CODE §§ 6.2-893, 6.2-1171, 6.2-1365, 6.2-1367, 6.2-2011, 6.2-506, 6.2-607

Court File No. 120000612

Chesapeake Circuit Court

I, the duly qualified clerk/deputy clerk of this Court, **CERTIFY** that on **December 18, 2012**

DATE

S E Bilenky

NAME(S) OF PERSON(S) QUALIFYING

duly qualified in this court, under applicable provisions of law, as Administrator under Va. Code § 8.01-50 and 64.2-454 of the estate of

Frank S. Wright

☒ DECEASED ☐ MINOR ☐ INCAPACITATED

The powers of the fiduciary(ies) named above continue in full force and effect.

\$1,000.00 bond has been posted.

Given under my hand and the seal of this Court on

December 18, 2012

DATE

Faye W. Mitchell, Clerk

by , Deputy Clerk

