
**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

HERCULES INDUSTRIES, INC.,

Plaintiff,

v.

YOGAPIPE, INC.,

Defendant.

UMC, INC.

Intervenor Plaintiff,

v.

**HERCULES INDUSTRIES, INC, AND
YOGAPIPE, INC.,**

Intervenor Defendants.

**MEMORANDUM DECISION
AND ORDER**

Case No. 2:22-cv-27-DAK-JCB

Judge Dale A. Kimball

Magistrate Judge Jared C. Bennett

This matter is before the court on Plaintiff Hercules Industries, Inc.'s Motion for Summary Judgment [ECF No. 40] and Intervenor UMC, Inc.'s Motion for Summary Judgment [ECF No. 51]. On August 24, 2023, the court held a hearing on the motions. At the hearing, James F. Scherer and Meghan A. Sheridan represented Plaintiff, William J. Akins represented Defendant, and David S. Bridge represented Intervenor UMC. The court took the motion under advisement. After carefully considering the memoranda filed by the parties and the law and facts relevant to the pending motions, the court issues the following Memorandum Decision and Order.

BACKGROUND

In approximately 2016, YogaPipe began distributing piping material that was sourced from a German manufacturer, WRW Westfaehliche Rohrweke GmbH (“WRW”). In early 2017, YogaPipe began receiving quality-related warranty claims from its customers who purchased WRW-manufactured piping. Most complaints involved burst piping material that resulted from a longitudinal rupture in the piping material along the weld line.

In 2018 and 2019, YogaPipe began communicating with WRW about the repeated reports of piping failures. YogaPipe asked WRW to fix the issues with the piping material, including the welding process, and to provide compensation for the bursts and other claims. WRW’s insurance carrier compensated YogaPipe for some of the ruptured and defective piping claims.

Hercules claims that despite YogaPipe’s knowledge of the defective piping, in September 2019, YogaPipe sold Hercules piping it purchased from WRW. YogaPipe claims, however, that WRW informed it that any problem with the piping was resolved. That same month, Hercules sold the WRW piping from YogaPipe to Utah Mechanical Contractors, Inc. (“UMC”). UMC used the piping material in an HVAC system it installed in a new apartment complex in Salt Lake City, Utah, known as the “Paxton Avenue Project.” Hercules provided YogaPipe’s specific training regarding the product to UMC’s installers. YogaPipe, however, states that UMC tested the piping for 48 hours at 500lbs of pressure to make sure it passed that testing and inspection, but YogaPipe’s installation instructions told UMC to test the piping at 600lbs. Hercules states it had no knowledge of any issues with this piping before purchasing the piping from YogaPipe and reselling it to UMC. Hercules believed the piping was fit for the ordinary purpose for which the products were sold.

YogaPipe’s Chief Financial Officer and 30(b)(6) corporate representative, Larry Biricz,

testified that all the product YogaPipe sold to Hercules in September 2019, and Hercules resold to UMC, was from WRW. YogaPipe now disputes that testimony, claiming that Hercules has photographs of removed piping from the Paxton Avenue Project made by another German manufacturer, Hewing, that YogaPipe was also selling at that time. But Biricz previously testified that YogaPipe did not get its first Hewing shipment until later in the year, approximately December 2019. YogaPipe also testified that it could check its database to confirm this and, to date, YogaPipe has not provided information contradicting Biricz's testimony. YogaPipe could provide hard evidence to controvert its own witness, but it has not. Moreover, Hercules clarified that the piping photograph that Biricz identified as being from Hewing was a photograph of exemplar piping that Hercules originally forwarded to Fristche, not the piping from the Paxton Avenue Project.

Hercules claims that shortly after completion of the apartment building complex, the YogaPipe which UMC installed in the complex failed, causing extensive damage to the complex. YogaPipe disputes this statement, arguing that there is no cited evidence to support it. UMC expended substantial sums remediating the damage to the complex caused by the defective piping. YogaPipe, however, takes issue with UMC's alleged damages because it not only repaired damaged piping but also removed and replaced undamaged piping. UMC testified that the pipes failed because of bursting in multiple places. YogaPipe, however, points out that not all piping failed—the piping had a 20% failure rate. However, UMC decided to remove and replace all the piping because the piping was in use in occupied units in the building and there was a known potential for future bursts.

UMC submitted a warranty claim to YogaPipe on October 1, 2020, claiming piping failures in multiple units. UMC asserted claims against Hercules and YogaPipe for approximately

\$570,000, which it claims were its expenses incurred in remediating the damage to the Paxton Avenue Project. Hercules paid UMC \$318,849.68 toward settling UMC's claim for the defective YogaPipe piping. YogaPipe told UMC that it needed more information to substantiate the claims. YogaPipe asked for backup information with pictures to substantiate the invoices and information UMC submitted. UMC again demanded payment on October 29, 2020. Hercules and UMC both demanded payment in November 2020. YogaPipe states that at this same time, UMC was discarding all piping removed from the building. Hercules was unable to find any burst piping. YogaPipe contends that UMC has no documentation showing that the undamaged piping was defective and would have burst. UMC did not test any of the piping that it removed from the building. YogaPipe claims that Hercules has no knowledge, other than what UMC told it, that the piping actually burst. Hercules did not investigate the appropriateness of UMC's claimed damages. According to YogaPipe, Hercules paid UMC a portion of UMC's invoices without investigating the charges because UMC is a significant customer of Hercules and Hercules wanted to take care of them, regardless of what YogaPipe was providing, to protect their relationship with them.

YogaPipe no longer purchases piping from WRW. In late 2019, YogaPipe started marketing and selling Hewing piping from a different German manufacturer. Biricz testified that the reason for the transition was that WRW piping was experiencing too many problems.

In 2020, WRW filed for bankruptcy protection in German courts, and it remains pending. YogaPipe and a related Canadian entity, ES Gallagher Sales Limited, are pursuing warranty and insurance claims against WRW for the defective piping, against WRW's insurer in Germany, and against YogaPipe's insurer in the United States. Andrew Gallagher holds a majority interest in YogaPipe and ES Gallagher, and the claims ES Gallagher are pursuing in ES Gallagher's name are

for both entities. ES Gallagher and YogaPipe have an agreement where ES Gallagher assigns all proceeds related to defective YogaPipe that are obtained from WRW through the German proceedings to YogaPipe.

ES Gallagher, on behalf of YogaPipe, filed a Petition in Independent Evidentiary Proceedings in a German court requesting that the German court retain an independent expert to examine the YogaPipe piping material and answer a series of technical questions regarding the piping. In that Petition, ES Gallagher is claiming damages from WRW for providing defective pipes in the current amount of EUR 1,833,799.98, which is an estimate of claims brought by injured parties against ES Gallagher and YogaPipe. The Petition further states that all pipes from the production years 2017, 2018, and 2019 were defective on account of manufacturing errors. Specifically, the welding seams on the aluminum layers of the pipes were not manufactured properly and that led to pipes bursting in operation. Biricz testified on behalf of YogaPipe that YogaPipe's position was the same as ES Gallagher's at the time of the 30(b)(6) deposition.

In the WRW insolvency proceeding, YogaPipe submitted UMC's reimbursement requests for defective YogaPipe and remediations in the Paxton Avenue Project, in the amount of \$17,100.18. Biricz testified that YogaPipe submitted this claim on behalf of Hercules and UMC in this amount as a placeholder and it expects to supplement the claim with additional UMC reimbursement requests. YogaPipe asserts that E.S. Gallagher's inclusion of UMC's reimbursement request in the German proceeding was done as a "placeholder" before it claimed in this litigation that some of the piping was Hewing and before it knew that UMC had destroyed the subject piping after making a claim against YogaPipe.

By submitting the Paxton Avenue claim in the WRW insolvency proceeding, Hercules contends that YogaPipe is claiming the Paxton Avenue claim involves WRW's defective piping.

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