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United States District Court,
S.D. Indiana,
Evansville Division.
Larry NICKENS, Plaintiff,
v.
TYCO INTEGRATED SECURITY, LLC doing business as ADT Security Services, Inc., and ADT Security Services, Inc., Defendants.

No. 3:14–cv–00011–RLY–WGH.
Signed Nov. 25, 2014.

ENTRY ON ADT SECURITY SERVICES, INC.'S MOTION FOR RECONSIDERATION

RICHARD L. YOUNG, Chief Judge.

***1** ADT LLC, f/k/a ADT Security Services, Inc. ("ADT"), moves the court to reconsider its ruling on ADT's Motion to Dismiss Plaintiff's Amended Complaint. For the reasons set forth below, that motion is **GRANTED.**

I. Background

Plaintiff, Larry Nickens, purchased a burglar alarm system from ADT for use in his home. He alleges that, in October 2011, the alarm activated for no apparent reason and emitted a sound so loud that, by the time he was able to disarm the system, he had sustained permanent damage to his hearing. Plaintiff's Amended Complaint consists of four causes of action. Count I asserts a claim of common law negligence, and Counts II–IV assert claims under the Indiana Products Liability Act ("IPLA"). In particular, Count I alleges that ADT negligently advised Plaintiff to expose himself to the sound of the alarm, causing him personal injury. Count II alleges, *inter alia*, that ADT failed to warn the public and the Plaintiff of the health risks arising from exposure to the alarm sound, and failed to provide proper training concerning the safe and effective use of the alarm. Count III alleges that the burglar alarm is defective in its design, rendering it unreasonably dangerous to the average consumer, and Count IV alleges a breach of the implied warranty of merchantability under the IPLA—*i.e.*, the burglar alarm is not reasonably fit for the ordinary purposes for which such goods are used, nor minimally safe for its intended purpose.

On April 22, 2014, ADT filed a motion to dismiss Plaintiff's Amended Complaint, arguing Plaintiff's claims were barred because: (1) he did not bring his claims within one year of the incident, as required by paragraph 10 of the Contract; (2) ADT did not owe Plaintiff a common law duty; and (3) Plaintiff disclaimed all implied warranties related to the services and products provided by ADT, pursuant to paragraph 16 of the Contract. In its Entry denying the motion, the court found: (1) the one-year limitations period did not apply; (2) that ADT did not owe Plaintiff a common law duty because Count I sounded in contract rather than tort; and (3) Plaintiff did not disclaim all implied warranties. Arguing the court's ruling contains manifest errors of law, ADT asks the court to reconsider its ruling with respect to findings 1 and 3 above. Plaintiff opposes the motion because, he argues, his remaining claims all arise under the IPLA.

II. Discussion

The limitations period is set forth in paragraph 10 of the Contract, and reads:

> YOU AGREE TO FILE ANY LAWSUIT ... YOU MAY HAVE AGAINST U.S. ... WITHIN ONE (1) YEAR FROM THE DATE OF THE EVENT THAT RESULTED IN THE LOSS, INJURY, DAMAGE OR LIABILITY OR THE SHORTEST DURATION PERMITTED UNDER APPLICABLE LAW IF SUCH PERIOD IS GREATER THAN ONE (1) YEAR.

The court interpreted paragraph 10 as providing for a limitations period that is either one year from the date of the event that resulted in a loss, or the shortest period which is permitted under Indiana

law—in this case, two years (for negligence or products liability claims). Because Plaintiff filed his Complaint within two years of the date of his injury, the court found his claims were not barred by the statute of limitations.

***2** ADT argues the court's interpretation is incorrect because, importing a longer statute of limitations renders the one-year limitations period superfluous. ADT's interpretation is supported by the Indiana Court of Appeals' decision in *United Tech. Auto. Sys., Inc. v. Affiliated FM Ins. Co.*, 725 N.E.2d 871, 875 n. 5 (Ind.Ct.App.2000). In that case, the Court was called upon to interpret the following provision:

> Suit Against the Company: No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless the Insured shall have fully complied with all the requirements of this policy, nor unless commenced within twelve (12) months next after the happening of the loss, unless a longer period of time is provided by applicable statute.

The Court enforced the one-year contractual limitation of action provision, noting that "[p]rovisions limiting actions on an insurance policy to twelve months have been upheld as valid and enforceable; consequently, actions on a policy that are brought after the expiration of such limitation periods will be barred." *Id.* at 874. The Court reasoned that the phrase "unless a longer period of time is provided by applicable statute" "cannot be read to incorporate a general statute of limitations for breach of contract actions because it would render the one-year provision a nullity." *Id.* at n. 5 (internal citations omitted) (citing cases).

In *Wabash Power Equip. Co. v. Int'l Ins. Co.*, the Illinois Court of Appeals interpreted the following provision: "No suit on this policy shall be valid unless the insured has complied with all policy requirements and the suit is commenced within one (1) year (unless a longer period is provided by applicable statute)." 540 N .E.2d 960, 962 (Ill.App.Ct.1989). Unlike *United Technologies*, section 143.1 [FN1] of the Illinois Insurance Code specifically covered the limitation provision contained in the insured's contract of insurance. Although the insured argued that the general statute of limitations for contract actions should apply, the trial court rejected that argument, and held that section 143.1 was the "applicable statute" referred to in the policy. *Id.* at 964. The Court of Appeals affirmed, reasoning that to import a general statute of limitations for contract actions, rather than the specific statute directed at limitation clauses of insurance contracts, would render the contractual one-year limitation period meaningless. *Id.*

> FN1. The statute provides: "Whenever any policy or contract for insurance ... contains a provision limiting the period within which the insured may bring suit, the running of such period is tolled from the date proof of loss is filed, in whatever form is required by the policy, until the date the claim is denied in whole or in part."

In the present case, Plaintiff argues only that his case is not a breach of contract action; rather, it is a products liability action. Plaintiff would have a stronger argument were it not for the fact that the limitations provision encompasses *"any lawsuit or other action"* he may have against ADT for "loss, *injury*, damage, or liability...." The plain language of the limitations provision applies, therefore, to any action, including a negligence or products liability action. Plaintiff signed the contract and is bound by that provision.

***3** The tougher issue is whether Indiana has a specific, as opposed to a general, "applicable law" that would extend the limitations provision beyond one year for the type of contract at issue in this case. Plaintiff fails to point the court to a "specific" Indiana statute directed at limitations provisions in residential services contracts. Nor does Plaintiff point the court to any legal authority holding that the limitations provision in his ADT contract is against public policy. *New Welton Homes v. Eck-*

man, 830 N.E.2d 32, 35 (2005) ("Our courts have regularly held that unless a contractual provision contravenes a statute or public policy, "actions on a policy that are brought after the expiration of the limitation period provision will be barred."). In the absence of any controlling legal authority that Indiana has a specific statute on point, the court finds Plaintiff's claims are barred by the one-year statute of limitations contained within his ADT contract.

III. Conclusion

Plaintiff is bound by the one year limitations provision contained in paragraph 10 of the ADT Agreement. ADT's Motion for Reconsideration (Filing No. 38) is therefore **GRANTED.** Tyco Integrated Security, LLC, did not join in this motion. Accordingly, Tyco remains as a defendant.

SO ORDERED.

S.D.Ind.,2014.
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