

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Brenda Motts, as Personal
Representative of the Estate
of Deana G. Motts, deceased,

Plaintiff,

vs.

Mohasco Upholstered Furniture
Corporation, now Furniture
Comfort Corporation; Rhodes,
Inc.

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. NO.: ~~96~~⁹⁷-CP-42-1460

COMPLAINT
(Jury Trial Demanded)

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The Plaintiff, complaining of the Defendants above named, would respectfully show unto the Court as follows:

1. That Plaintiff is a citizen and resident of the County of Spartanburg, state of South Carolina and is the duly appointed personal representative of the Estate of Deana G. Motts as will appear by Order of the Honorable Raymond C. Eubanks, Jr., Probate Court Judge for Spartanburg County in file 96-ES-42-1423.

2. That this action is brought pursuant to Section 15-51-10 Et. Seq., Code of Laws of South Carolina, 1976, as amended (Wrongful Death) and Section 15-9-90 of the South Carolina Code of Laws, 1976, as amended (Survival Action). That the statutory beneficiaries of the decedent are her husband, David Motts, and her children Aaron David Motts (age 4) and Darian Gail Motts (age 3).

3. That the Defendant Mohasco Upholstered Furniture Corporation, now Furniture Comfort Corporation (hereinafter

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Mohasco) is a corporation duly organized and existing under the laws of the State of Delaware, having several furniture divisions, including Avon Company, and manufacturing plants in the state of Mississippi. That Mohasco is licensed to do business in the state of Mississippi having as its registered agent CT Corporation in Jackson, Mississippi. Defendant Mohasco is in the business of manufacturing, distributing and selling upholstered furniture products which are distributed nationally for resale, including distribution to the state of South Carolina.

4. That the Defendant Rhodes, Inc. (hereinafter Rhodes), is a corporation existing under the laws of the state of Georgia, having its corporate offices there. That Rhodes is a furniture retailer who retails upholstered furniture products manufactured and distributed by Defendant Mohasco in virtually every state in the United States, including the state of South Carolina. The Plaintiff is informed and believes that the Defendant Rhodes has been recently acquired by Heilig Myers Company.

5. That prior to July 26, 1993, Avon Company, a division of Defendant Mohasco, manufactured and distributed an Avon Model/Style Number 4-6733 sofa to Defendant Rhodes retail location in Spartanburg, South Carolina for resale. That on or about July 26, 1993, the Plaintiff purchased a Model/Style Number 4-6733 Avon sofa from this retail location for use in the Plaintiff's family's home. That said sofa did reach the Plaintiff's home without substantial change in the condition in which it was manufactured and

distributed by Defendant Mohasco. That the deceased resided with Plaintiff in the family home.

6. That thereafter, on or about December 12, 1995, the Avon sofa was present in the den of the Motts' family home when said sofa was exposed to a small open flame ignition source. That immediately thereafter, the fire rapidly grew in size and intensity and spread to other areas of the Motts' home, including those areas which contained hardwood/plywood paneling as an interior finish.

7. That the fire grew in intensity and spread so rapidly as it raced through the home that the decedent was not able to escape without losing her life.

8. That as a direct and proximate result of the speed at which the fire in Plaintiff's residence spread and grew to dramatic proportions, the decedent was killed. Her statutory beneficiaries have lost her financial contribution and support, loss of her comfort and society, aide and companionship, have endured mental anguish, grief and sorrow over her loss. That the estate has incurred funeral and related expenses associated with her death and burial.

9. That as a further direct and proximate result of the speed at which the fire grew and spread in the decedent's home, the decedent endured great pain and suffering before her death and was asphyxiated by smoke and toxic gasses released by the sofa.

**FOR A FIRST CAUSE OF ACTION
(Strict Liability)**

10. That the Plaintiff incorporates the allegations contained in Paragraphs 1 through 7 above where not inconsistent herewith as if fully repeated herein.

11. That the Defendants are engaged in the business of manufacturing, distributing and selling upholstered furniture products, including the Avon Model/Style Number 4-6733 sofa which is the subject of this action.

12. That the subject Avon Model/Style Number 4-6733 sofa did reach the Plaintiff without substantial change in the condition in which it was sold.

13. That Plaintiff alleges that the Avon Model/Style Number 4-6733 sofa was, at the time of manufacture and sale, in a defective condition, unreasonably dangerous to the user or consumer or to his property in the following, and other particulars, to wit:

a. In possessing physical properties of excessive flammability in the event the sofa is exposed to a small ignition source;

b. In failing to possess fire retardants and/or fire resistive liners around polyurethane foam and/or other petroleum based components of the sofa to retard the rate of fire growth when the sofa is exposed to a small ignition source;

c. In failing to contain adequate warnings to users and consumers of the physical properties of excessive flammability and toxicity;

d. In failing to incorporate flame resistant covering material; and

e. In possessing physical properties permitting emission of toxic chemicals and gasses capable of causing serious injury or death when exposed to small ignition sources.

14. That as a direct and proximate result of the defective and unreasonably dangerous condition of the sofa, the Plaintiff's estate and her statutory beneficiaries sustained the damages and injuries as set forth in Paragraphs 8 and 9 of the Complaint when, on December 12, 1995, the sofa was subjected to a small open flame ignition source while in the den of the Plaintiff's home. That the fire grew in intensity and spread so rapidly as it raced through the Plaintiff's home that the decedent was unable to escape the home in which she met her demise.

15. That the Plaintiff is informed and believes that she is entitled to judgment against the Defendants in an amount of actual damages as may be determined by a jury for wrongful death and survival and for costs of this action.

**FOR A SECOND CAUSE OF ACTION
(Negligence and Recklessness)**

16. That the Plaintiff incorporates the allegations contained in Paragraphs 1 through 13 above where not inconsistent herewith as if fully repeated herein.

17. That the Defendants owe a duty of due care to the Plaintiff's decedent to manufacture, distribute, market and sell upholstered furniture products which are reasonably safe from a fire safety standpoint and which adequately warn Plaintiff and her family about those flammability and toxicity hazards inherent in Defendant's upholstered furniture products, including the Avon Model/Style No. 4-6733 sofa.

18. That the Defendants, in designing, manufacturing, marketing and selling the Avon sofa which is the subject of this action were reckless and negligent in the following, and other particulars, to wit:

a. In failing to incorporate fire retardants and/or fire protective liners around polyurethane foam components to reduce the flammability of the sofa when such design and construction methods were known to be available and feasible;

b. In placing considerations of cost above considerations of fire safety in the design, construction, marketing and selling of the sofa;

c. In failing to incorporate ignition resistant covering material for the sofa;

d. In failing to adequately test its upholstery furniture products to ascertain the rate at which they burn when exposed to small ignition sources;

e. In designing, manufacturing, distributing, marketing and selling a sofa with physical properties of excessive flammability, toxicity and rate of heat release when exposed to a small ignition source;

f. In failing to adequately warn purchasers and users of the inherent flammability and toxicity hazards associated with the sofa, particularly amount of energy contained in foam products, the rate at which foam burns when ignited, the rate of heat release, and in failing to warn of the risk of serious injury or death beyond that understood by the average user or consumer of its products;

g. In failing to warn of serious injury or death which can occur from toxic gases released by the sofa when exposed to a small ignition source;

h. In vigorously opposing efforts by governmental and other entities to regulate and/or lessen the flammability of upholstered furniture products when Defendants knew that more home fire deaths in this country involve furniture than any other product or material; and

i. In failing to act as reasonable and prudent upholstered furniture manufacturers and sellers under the circumstances existing.

19. That as a direct and proximate result of the reckless and negligent acts of the Defendants, the estate and statutory beneficiaries have sustained the damages as alleged in Paragraphs 8 and 9 of the Complaint. Plaintiff is informed and believes that she is entitled to judgment against the Defendants for wrongful death and survival in an amount of actual and punitive damages as may be determined by a jury and for costs of this action.

**FOR A THIRD CAUSE OF ACTION
(Implied Warranty)**

20. That Plaintiff incorporates the allegations contained in Paragraphs 1 through 7 as if fully repeated herein.

21. That the Defendants Mohasco and Rhodes are sellers within the meaning of the Uniform Commercial Code as enacted in Title 36 of the South Carolina Code of Laws.

22. That the Defendant Mohasco did distribute and sell to Defendant Rhodes an Avon Model/Style No. 4-6733 sofa which Defendant Rhodes in turn sold to the Plaintiff for use in the Plaintiff's home on or about July 26, 1993 in Spartanburg, South Carolina. That the Plaintiff's decedent resided in the family home with the Plaintiff.

23. That as a result of the distribution and sale by both Defendants, there arose an implied warranty of merchantability that the sofa was fit for the ordinary purposes for which such sofas are used.

24. That on or about December 12, 1995, the Avon sofa was present in the den of the Motts' family home when said sofa was

exposed to a small open flame ignition source. That immediately thereafter, the fire rapidly grew in size and intensity and spread to other areas of the Motts' home, including those areas which contained hardwood/plywood paneling as an interior finish.

25. That the fire grew in intensity and spread so rapidly as it raced through the home that the Plaintiff's decedent was not able to escape the burning home and met her demise there.


26. That Plaintiff is informed and believes that Defendants breached their implied warranty of merchantability and that said breach proximately caused the injuries and damages sustained by the estate and statutory beneficiaries as alleged in Paragraphs 8 and 9 of the Complaint.

27. That Plaintiff is informed and believes that she is entitled to judgment against the Defendants for wrongful death and survival in an amount of actual and punitive damages as may be determined by a jury and for costs of this action.

WHEREFORE, Plaintiff prays for judgment against the Defendants in an amount of actual and punitive damages as may be determined by a jury and for costs of this action.

FOSTER & FOSTER, L.L.P.

By:


Robert P. Foster (#2093)
Attorneys for the Plaintiff
601 East McBee Avenue, Suite 104
P.O. Box 2123
Greenville, South Carolina 29602
(864) 242-6200

Greenville, South Carolina
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