

Flexible connectors and chemical products: A case of failure to warn

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There have been multiple water losses in recent years caused by the failure of metal flexible connectors. One matter recently made its way to trial before the Superior Court of Quebec, in *La Capitale assurances générales inc. c. Construction McKinley inc.* [2023] J.Q. no 882 (*La Capitale*). (The decision is currently under appeal (court file no. 200-09-010604-236)).

The facts are as follows. Martin Tremblay and Annie Thibault purchased a parcel of land in 2012 and retained the services of a general contractor, McKinley, to build their house. They chose Rubi brand faucets directly from the supplier, Céramique Décor, who sold them to McKinley, who then billed them to Tremblay and Thibault. For years, Tremblay and Thibault used Lysol Advanced to clean their toilet bowls. This product was stored in the cabinets under the bathroom sink. However, on Feb. 12, 2017, one of the metal flexible connectors located under the sink failed, causing \$137,000 in damages.

Tremblay and Thibault's subrogated property insurer commenced an action against McKinley, Céramique Décor and the manufacturer of Lysol Advanced, Reckitt Benckiser. All experts at trial agreed on the cause of the failure: corrosion caused by chlorine fumes from the Lysol Advanced product. Indeed, Lysol Advanced contains 12 per cent hydrochloric acid, and fumes may leak if the cap is not tightly sealed. The Rubi faucets were particularly prone to corrosion.

In a judgment rendered on Feb. 14, 2023, Justice Alain Michaud held that Céramique Décor and Reckitt Benckiser were jointly and severally liable to the plaintiffs, but absolved McKinley of any liability.

i) The flexible connector was not defective

The plaintiffs argued that the flexible connector was defective and that therefore, the seller McKinley and the distributor Céramique Décor should be held liable. Justice Michaud disagreed – in his view, the flexible connector was not defective *per se*. It did not fail because of a defect, but because it was exposed to chemical products, which led to corrosion.

Regarding McKinley, Justice Michaud further held that although McKinley did sell the Rubi faucet to the plaintiffs, McKinley is not a professional seller of faucets (*La Capitale*, para. 33 (translated)).

Under Quebec civil law, there is a strong presumption of liability applicable against professional sellers, and they are liable for all consequential damages, such as the water damages caused by the failure of the Rubi faucet. Although McKinley is a professional home builder, it does not warrant, through the construction and sale of a home, that the hundreds of accessories installed inside the house, such as light fixtures and faucets, are free of any defects (para. 33). McKinley was therefore not found liable for this loss.

ii) Céramique Décor and Reckitt Benckiser's failure to warn

As Justice Michaud found that the flexible connectors were not defective, the main issue became whether there was any failure to warn on the distributor's and manufacturer's part.

It was established that between 2014 and 2022, Céramique Décor had received a total of 87 complaints of failure regarding its Rubi faucets. All complaints came from insurers, and Céramique Décor was keeping track of these complaints. Given this high number of failures concerning the Rubi brand faucets, Céramique Décor had reached the conclusion that there was an incompatibility between the Rubi faucets and chemical products. Céramique Décor decided to include a notice in the boxes of Rubi products, which indicated: "Avoid contact and storage with household, chemical and corrosive products" (para. 50 (translated)).

Justice Michaud appeared to find the notice insufficient, as it was imprecise, intended for the installer, and not attached to the flexible connectors (para. 85). In any event, he noted that the flexible connectors prone to fail were those already sold and installed, and not those for sale (paras. 86-87). Céramique Décor did not take any steps to notify former customers who had previously bought any of the Rubi products. For this reason, Céramique Décor was held liable for failure to warn (para. 91).

Lastly, Justice Michaud concluded that Reckitt Benckiser should bear the greater part of the liability, since the risk of corrosion was not indicated anywhere on their product. Their argument that the plaintiffs failed to tightly close the cap did not convince the court, since Reckitt Benckiser did not indicate on its product the risk of corrosion that this could result in:

"(...) the failure to comply with the recommendation to tightly close a container cap – which is found on the label of many products – does not lead to the same consequences depending on whether it is attached to a common product such as Hertel, or to a corrosive product such as Lysol Advanced. Therefore, it is imperative that the consumer is clearly and precisely informed of the risks presented by the chlorine vapors emanating from the latter" [para. 130 (translated)].

The court also dismissed Reckitt Benckiser's argument that the plaintiffs failed to inspect the metal flexible connectors under the sink periodically, because hardly anyone ever carries out any such inspection (para. 175 (translated)).

As a result, Céramique Décor and Reckitt Benckiser were jointly and severally found 100 per cent liable towards the plaintiffs. However, as between them, their respective shares of liability were established at 25 per cent and 75 per cent respectively.

Justice Michaud's judgment clearly sets out who is liable for the failure of flexible connectors caused by the exposure to chemical products. Even if the connectors are not defective, the distributor and manufacturer can be held liable for failure to warn.

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