

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

Rachel Castle,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 20 L 2461
	)	
BBC PH Kinzie, LLC, a Delaware limited	)	
liability company d/b/a Kinzie Hotel,	)	
Urbana Varro Hospitality Management	)	
Company, LLC, a Delaware limited	)	
liability company d/b/a Kinzie Hotel,	)	
Cambium Business Group, Inc., a	)	
California corporation, d/b/a/ Fairmont	)	
Designs, and The Gettys Group, Inc., an	)	
Illinois corporation,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION AND ORDER**

The seller's exception permits a non-manufacturer to be dismissed from a strict products liability cause of action if the entity did not exercise some significant control over the product's design or manufacture. Here, various drawings show the non-manufacturer specified and approved the type of glass that ultimately shattered and injured the plaintiff. Given the available record, the defendant-non-manufacturer's motion to dismiss must be denied.

**Facts**

On March 5, 2019, Rachel Castle was a guest at the Kinzie Hotel, located at 20 West Kinzie Street in Chicago. When Castle placed a small zip-lock toiletry bag on a glass nightstand in her

room, the glass exploded into shards. Some of the shards pierced Castle's right foot and had to be surgically removed.

On November 24, 2020, Castle filed her third-amended complaint against various defendants, including The Gettys Group. The complaint brings two counts against Gettys—counts five and six—and alleges it was in the business of distributing, supplying, and selling furniture, including the exploding glass-topped nightstand. In count six, a cause of action for strict products liability, Castle alleges the glass-topped nightstand Gettys sold, distributed, or supplied was: (1) defective and unreasonably dangerous for its ordinary use; (2) not adequately or safely designed for its ordinary use; (3) unable to withstand a reasonable amount of force in its ordinary use; and (4) lacked structural integrity to hold items placed on it in an intended and foreseeable manner. Castle further claimed that Gettys failed to warn of the nightstand's condition.

On March 5, 2012, Gettys filed a motion to dismiss count six pursuant to the seller's exception provided in the Code of Civil Procedure. That section provides:

- (a) In any product liability action . . . against a defendant . . . other than the manufacturer, that party shall upon answering or otherwise pleading file an affidavit certifying the correct identity of the manufacturer of the product allegedly causing injury. . . .
- (b) Once the plaintiff has filed a complaint against the manufacturer . . . and [it has] . . . answered or otherwise pleaded, the court shall order the dismissal of a product liability action based on any theory or doctrine against the certifying defendant . . . provided the certifying defendant . . . [is] not within the categories set forth in subsection (c) of this Section.
- (c) A court shall not enter a dismissal order relative to any certifying defendant . . . even though full compliance with subsection (a) of this Section has been made where the plaintiff can show one or more of the following:

(1) That the defendant has exercised some significant control over the design or manufacture of the product, or has provided instructions or warnings to the manufacturer relative to the alleged defect in the product which caused the injury. . . ; or

(2) That the defendant had actual knowledge of the defect in the product which caused the injury. . . ; or

(3) That the defendant created the defect in the product which caused the injury, death or damage.

735 ILCS 5/2-621.

Attached to the motion is an affidavit from Bradley Gookins, Gettys' chief financial officer. Gookins avers that Gettys was hired to provide furniture, fixtures, and equipment procurement management services related to the renovation of the Kinzie Hotel. As part of its services, Gettys procured glass-topped nightstands. Gookins avers that Gettys did not design or manufacture the glass-topped nightstands and had no knowledge of or create any defect in them. Gookins further avers that the manufacturer of the glass-topped nightstands Gettys procured or purchased is Fairmont Designs located in Buena Park, California and Taicang City, People's Republic of China. After Gettys certified the manufacturer's correct identity, Castle amended her complaint to add Cambium Business Group, a California corporation doing business under the Fairmont Designs name.

Castle planned to depose Gookins before responding to Gettys' motion to dismiss. Before the deposition, however, Gookins produced a design intent drawing and a shop drawing. The drawing provided manufacturing specifications for the nightstand, including width, depth, height, finish, hardware style, hardware finish, and drawer construction. The drawing specifically indicated the nightstand was to have a "1/4" clear tempered low iron glass top with eased edge." Gettys submitted its design intent drawing to Fairmont Designs. Fairmont Designs later provided Gettys with a shop drawing conforming to Gettys' requirements, including the use of 1/4" low iron glass with an

eased edge. The shop drawing shows Gettys' stamp, indicating the drawing had been reviewed and approved.

At his deposition, Gookins testified that Gettys employs interior designers to design the overall layout of a room as well as furnishings within it. Gettys' designers create a design intent drawing that details the materials, finishes, and manufacturing specifications of the furniture that the designers choose. Gettys then sends the design intent drawing to the manufacturer that provides Gettys with a shop drawing. Gettys reviews the shop drawing to ensure that it meets the specifications in the design intent drawing.

### Analysis

Gettys brings its motion to dismiss count six pursuant to the Code of Civil Procedure's seller's exception. 735 ILCS 5/2-621. The exception provides a defendant with the possibility of being dismissed from the typical product liability action in which all entities in the distribution chain—suppliers, distributors, wholesalers, and retailers—may be liable for injuries resulting from a defective product. *Hammond v. North Am. Asbestos Corp.*, 97 Ill. 2d 195, 206 (1983); *Murphy v. Mancari's Chrysler Plymouth, Inc.*, 381 Ill. App. 3d 768, 770-71 (1st Dist. 2008). In this case, it is uncontested that Gettys supplied the necessary affidavit identifying the manufacturer. There is also no dispute that the second and third exceptions in subsection 2-621(c) are not at issue. Thus, the sole issue for consideration is whether Gettys exercised significant control over the design and manufacture of the glass-topped nightstand.

Gettys' central argument is that its role in the manufacture of the glass-topped nightstand was limited to its design intent. Unfortunately for Gettys, the law does not recognize a definition for the term "design intent." In a generous reading of the phrase, Gettys argues that its role was as an overarching one—a design provider that defined relationships between various objects, in


this instance in a hotel room, to create an overall look the client wished to achieve.

This court is willing to accept Gettys' implicit definition of "design intent" for the purposes of this motion. Notwithstanding Gettys' overall design role, the limited record shows that Gettys played a far more detailed role in the design of the glass-topped nightstand. The design intent drawing specifies the use of "1/4" clear tempered low iron glass top with eased edge." Gettys chose those specifications and supplied them in a design intent drawing to Fairmont Designs. Importantly, the shop drawing Fairmont Designs returned to Gettys' reflects each of Gettys' specifications. Further, Gettys' reviewed and accepted the shop drawing as indicated by the Gettys' company stamp on the drawing. At this point in the proceedings, it is, therefore, unknown whether Gettys' selection of 1/4" glass was insufficiently thick, the tempering had a role in creating glass shards, the low level of iron made the glass top more susceptible to shattering, or the eased edge weakened the top. Any of these suppositions or others may or may not be true, but the current record does not provide this court with any basis to arrive at more definitive answers.

### Conclusion

For the reasons presented above, it is ordered that:

The motion to dismiss count six brought by The Gettys Group is denied.

  
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John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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