

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ST. JOHNS COUNTY, FLORIDA

CASE NO.: 2025-CA-001320A000MX

BRADLEY BYRD, an individual, and
ANNA BYRD, an individual,

Plaintiffs,

v.

COSTCO WHOLESALE CORPORATION,
a foreign for profit corporation, COSTCO-
INNOVEL SOLUTIONS, LLC, d/b/a COSTCO
WHOLESALE LOGISTICS, a foreign limited
Liability company, and RXO LAST MILE, INC.,
a foreign for profit corporation,

Defendants.

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS

Defendants, Costco-Innovel Solutions, LLC, d/b/a Costco Wholesale Logistics, and Costco Wholesale Corporation (“Costco”), hereby file its Answer and Affirmative Defenses to Bradley and Anna Byrd’s (Plaintiffs’) Complaint, and requesting trial by jury states:

PARTIES, JURISDICTION, AND VENUE

1. Without knowledge, therefore denied.
2. Admitted as to principal place of business, otherwise denied.
3. Denied.
4. Without knowledge, therefore denied.
5. Admitted for jurisdictional purposes only.
6. Admitted.
7. Without knowledge, therefore denied.

FACTS

- 8. Admitted a refrigerator was purchased at Costco, otherwise denied.
- 9. Denied.
- 10. Denied.
- 11. Denied.
- 12. Denied.
- 13. Denied.

COUNT ONE – NEGLIGENCE
(Against all Defendants)

- 14. Costco realleges its responses to paragraphs realleged.
- 15. Denied.
- 16. Denied.

COUNT II – BREACH OF IMPLIED WARRANTY
(Against all Defendants)

- 17. Costco realleges its responses to paragraphs realleged.
- 18. Denied.
- 19. Denied.

FIRST AFFIRMATIVE DEFENSE

At all times material, Plaintiffs were negligent, by failing to exercise due care in the manner in which they accepted and instructed the appliance installation and unreasonable delay in discovering any damages allegedly caused by the subject appliance or installation thereof, and left the scene of the installation and without notice or receipt of instructions, and verification of operation, which was the sole legal cause or contributing cause for the subject loss.

SECOND AFFIRMATIVE DEFENSE

The incident described in Plaintiffs' Complaint and Plaintiffs' alleged damages, if any, were caused or contributed by the negligence or wrongful acts or omissions of persons and/or entities over whom Costco had no control or right to control and for whom Defendant is not responsible. Said persons include, but are not limited to, the co-defendants named in this case. Fault of such parties, persons, or entities, including those who may not be joined in this action, shall be apportioned per applicable Florida law, including, but not limited to, Florida Statutes §768.81.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims, in accordance with Florida law, should be reduced by any and all payment advances to Plaintiffs; earnest money payments to Plaintiffs; and collateral sources received by Plaintiffs, and set off by any recoveries in this action.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to mitigate their damages by failing to timely detect and lesson their alleged damages, and to the extent Plaintiffs have failed to do so, Plaintiffs are barred from recovering those damages which would not have occurred but for the failure to mitigate.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' alleged injuries and damages as set forth in their Complaint are not the foreseeable consequences of any act and/or omission and/or conduct on the part of Costco and are too remote and speculative to warrant recovery against Costco.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails against Defendant Costco because there is no evidence that the subject incident was caused or related in any way to the actions of Costco.

SEVENTH AFFIRMATIVE DEFENSE

The subject appliance was not defectively designed, nor defective in any other manner, as result, Costco did not breach any duty under any negligence theory, nor was subject appliance unreasonably dangerous, as result, Costco breached no duty under strict liability theory and is entitled to judgment as a matter of law.

EIGHTH AFFIRMATIVE DEFENSE

Nothing Costco did, or failed to do, resulted in the subject incident, as the subject incident resulted from an intervening force for which Costco did not have control, cause, or contribute to, in particular, any and all handling and manipulation of the subject appliance from the time it left Costco until the time of the subject incident. As result, Costco is entitled to a judgement as a matter of law. Furthermore, Costco did everything a reasonably careful distributor, supplier, or retailer would have done under like circumstances and did not fail to do something that a reasonable careful distributor, supplier, or retailer would have done under like circumstances.

NINETH AFFIRMATIVE DEFENSE

Costco did not breach any warranty of merchantability because Costco did not manufacture, design, or assemble the subject appliance or its packaging, which conformed to industry standard. Furthermore, the subject appliance was not defective, and to the extent Plaintiff contends the installation of the subject appliance was defective, Costco had no control over the installer of the subject appliance at or near the time of the alleged incident.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to John D. “Jack” Webb, Esq., 1662 Stockton Street, Suite 201, Jacksonville, FL 32204,

(Counsel for Plaintiff), jwebb@jackwebblaw.com; arichey@jackwebblaw.com, and Jupton@jackwebblaw.com, Heather L. Stover, Esq. and Richard S. Maselli, Esq., Ogden Sullivan, (Counsel or Defendant RXO), 5422 Bay Center Drive, Suite 100, Tampa, FL 33609, hstover@ogdensullivan.com, RMaselli@ogdensullivan.com, and Eservice@ogdensullivan.com, via Florida E-Portal, this 15th day of December, 2025.

JAKAB LAW, PLLC

/s/ Kevin E. Jakab, Esq.

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