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# DAILY REPORT

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## Feud Over Fish Tank Deaths Ends in Defense Win

GREG LAND

A lawsuit seeking to recoup about \$170,000 for a fish tank whose residents kept dying went belly-up when a DeKalb County jury declined to award any damages to the aquarium's owners.

The plaintiffs, a couple whose remodeling of a Buckhead penthouse included the 750-gallon, two-tank system overlooking the Atlanta skyline, had argued that some defect had to be causing the fish deaths. But last month a jury agreed with the aquarium's builder that there was no apparent defect in its design.

Defense attorney David Sawyer said that, at trial, no one could pinpoint why the fish kept dying, although the best explanation involved speculation that fumes from paint or other volatile solvents were poisoning them.

"My folks went to great lengths to get to the bottom of it," said Sawyer, an associate at Gray, Rust, St. Amand, Moffett & Brieske, whose win marked his first solo trial.



Interior photo of the Fish Tank at the center of litigation.

He said his side's expert tested the tank in the apartment and took the smaller tank for off-site tests. "The fish did fine there," he said.

Sawyer said experts on both sides of the case testified that they could find nothing amiss about the aquarium's design.

"It's a complicated system, but it's also very simple," he said. "It's basically a pump, tank and water."

The plaintiffs are represented by Neal Wilcove and Matthew Foree of Freeman, Mathis & Gary. Foree said they could not comment on any possible appeal or other posttrial litigation.

The case began in 2014, when Dennis and Helene Liotta launched what Sawyer termed a "massive build-out" of a condo in the 50-story Sovereign building.

As part of the renovations, the Liottas commissioned Aquatic Associates, described by Sawyer as a 50-year-old “mom-and-pop” business that crafts custom aquariums, to install the fish tank. Aquarium Associates’ principal Ed Symmes subcontracted with another contractor, Mark Gardner and Architectural Interior Millwork, to provide custom woodwork around the aquarium and elsewhere in the unit.

Shortly after the millwork was installed, it began to develop cracks, ridges, bubbling and discoloration, according to the lawsuit the Liottas filed against Aquatic Associates, Architectural Interior and Gardner in DeKalb County Superior Court in 2014. The complaint also said that, “[d]espite numerous attempts to introduce aquatic life into the aquarium, nearly every creature that has entered the aquarium has died there prematurely.”

The aquarium was designed to hold saltwater fish, said Sawyer, but the Liottas and Symmes first used freshwater and goldfish to test the unit. The goldfish—a fairly hearty species, Sawyer noted—kept dying.

“All we could ever come up with was these paint fumes” to explain the deaths, said Sawyer. “My folks kept saying, ‘Make sure there are no solvents or paint fumes around.’”

A defense filing said the Liottas repeatedly were warned that no paint or volatile organic compounds could be in the aquarium’s environment.

“Nonetheless,” it said, “each time [Symmes] introduced fish into the aquarium, plaintiffs failed or were unable to ensure that the environment would be free of toxic fumes, thus killing the fish.”

The complaint said the aquarium was “defective and incapable of supporting aquatic life” and included claims for breach of contract, breach of express warranty, breach of implied warranty of merchantability, breach of implied warranty of fitness for a particular purpose and negligence.

The plaintiffs settled their claims against Architectural Interior out of court, Sawyer said; the company’s attorney, Strickland & Schwartz partner William Strickland, declined to comment.

The case against Symmes and his company continued. In October, a mediation before Tom Tobin with Henning Mediation and Arbitration Services failed to resolve the dispute, and the case went to trial on April 11 before Judge Linda Hunter.

At trial, Sawyer said he emphasized the multiple efforts Symmes had made to solve the problem and the lack of any defect that could be found. He also said that an outside contractor the Liottas had brought in to assess the aquarium had told them that, once it was functioning properly, the complex salt-water system would cost at least \$1,000—and perhaps as much as \$2,000—a month to maintain.

“We talked about it being a case of buyer’s remorse,” Sawyer said. “After things broke down between the Liottas and my folks, it went from ‘We want this corrected.’ to ‘We never knew it was going to cost this much.’”

“At trial, they just kept saying it was incomplete, that [Symmes] didn’t install certain parts and that they wanted their money back,” Sawyer said.



David Sawyer

There also was testimony that the aquarium was the third the Liottas had purchased from Symmes and that they had been quite friendly until the aquarium dispute drove them apart.

An aquarium expert hired by the plaintiffs “thought some things needed to be added for a salt water aquarium, but there was nothing that would have killed goldfish,” Sawyer said.

At closing, he said the plaintiffs’ lawyers asked for about \$170,000 in damages.

On April 13, the jury took between three and four hours to return a defense verdict.

Sawyer said the jury foreman asked if he could make a statement, Sawyer said, and the foreman delivered a “touching soliloquy about how much they’d all loved the experience of being jurors and that they hoped [the Liottas and Symmes] could become friends again and enjoy this aquarium they’d spent all this money on.”