

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

ARROWHEAD FOREST PRODUCTS, LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. 12-CV-6047
)	
SHAMROCK BUILDING MATERIALS, INC.,)	
)	
Defendant.)	

COMPLAINT

Plaintiff Arrowhead Forest Products, LLC files the following complaint against defendant Shamrock Building Materials, Inc.:

Jurisdiction and Venue

1. Plaintiff is a limited liability company organized under Missouri law. Plaintiff's sole member is Danny D. Lyons II, a resident of the state of Missouri. Plaintiff's principal place of business is in Platte County, Missouri.
2. Defendant is an Oregon corporation, with its principal place of business in Oregon. Defendant, although conducting business in Missouri, is not registered to do business in Missouri.
3. The amount in controversy in this action, exclusive of interest and costs, exceeds \$75,000.
4. Venue is proper in this judicial district, pursuant to 28 U.S.C. § 1391(b)(2), in that a substantial part of the events or omissions giving rise to plaintiff's claims occurred in the Western District of Missouri.

5. Defendant is subject to personal jurisdiction in the state of Missouri because defendant has transacted business in Missouri, it has made contracts in Missouri, and it has engaged in tortious conduct in Missouri.

Facts Common to All Counts

6. Plaintiff is in the business of purchasing building products at wholesale, and then selling them to building professionals in the Midwest.

7. Prior to 2011, plaintiff had purchased lumber and other building products from defendant for approximately six years.

8. In or about March, 2011, Mr. Lyons was approached by defendant's agents and employees to see if plaintiff would be interested in selling asphalt roofing shingles and supplies being sold by defendant, following defendant's purchase of White Mountain Roofing Materials. Among the shingles manufactured by White Mountain was the Village Shake, the inventor of which was alleged to be Tony Gallo, an employee and agent of defendant.

9. After defendant purchased White Mountain, defendant changed the name of the Village Shake shingle sold by White Mountain to "Limerick 30."

10. Defendant's agents and employees stated that the Limerick 30 brand of shingles being sold by defendant would be suitable for use in the Midwest, or alternatively, failed to state that the Limerick shingles would not be suitable for use in the Midwest, falsely implying that they would be suitable in this region.

11. While investigating defendant's shingles, Mr. Lyons read online complaints about the shingles manufactured by White Mountain, and about Tony Gallo. A copy of the complaints read by Mr. Lyons is attached hereto as Exhibit A.

12. Mr. Lyons forwarded to defendant's agent the online complaints, or links thereto, but was assured by defendant's agents and employees, specifically Jeff Stefanick, that the

complaints had been filed by disgruntled employees and lacked merit, and that defendant's shingles would be suitable for use. Mr. Stefanick stated that he had been told this by one of his superiors at defendant. Cory Crandall, another employee of defendant, made statements to plaintiff to the same effect.

13. Defendant's marketing materials for the Limerick 30 shingles, and the packaging on those shingles, stated that the shingles met or exceeded, among others, ASTM Standard D7158, ASTM Standard D3018, and ASTM Standard 3161.

14. The packaging further stated that the shingles were made from a "non-laminate patented tapered monolithic sheet." According to a patent issued to Anthony Gallo for defendant's shingles (U.S. Patent # 5,690,876), the design of the shingles meant that "there are no geographical limitations as to cold climates."

15. ASTM Standard D3018 provides in part that shingles meeting that standard "shall not stick together in the package so as to cause damage upon being unpacked at ambient temperatures above 10° C [50° F]." The same standard provides that Type I shingles, i.e., self-sealing shingles, "shall have a factory-applied adhesive that will seal the shingles together after application."

16. Defendant's Limerick 30 shingles were designed and marketed as self-sealing shingles.

17. Prior to plaintiff being approached to market defendant's shingles in the Kansas City area, defendant's Limerick 30 shingles had not been sold to any significant extent in the Kansas City market.

18. Because defendant's shingles would be new in the Kansas City market, plaintiff met some resistance from customers, who were more familiar with asphalt shingles

manufactured by familiar companies such as GAF or Certaineed. In an effort to demonstrate the quality of defendant's Limerick 30 shingles, as had been represented to him by defendant's agents and employees, Mr. Lyons agreed to install them on his own home in Platte County, Missouri.

19. Mr. Lyons had advised defendant's agents and employees prior to that time that his business was operated out of his home. In fact, prior to plaintiff's purchase of shingles from defendant, defendant's employees had been in Mr. Lyons' home and knew he operated his business from that location, and plaintiff's contract to purchase defendant's shingles was made in Mr. Lyons' home in Platte County, Missouri.

20. After plaintiff had contracted to sell the Limerick 30 shingles to various roofers based on the representations and warranties of defendant, defendant demanded that plaintiff pre-pay for the bulk of the shingles to be purchased from defendant. Mr. Lyons advised defendant's agents and employees that plaintiff lacked substantial capital, and that pre-paying for the shingles posed a significant risk to plaintiff's cash flow. Defendant ultimately required plaintiff to pre-pay for five truckloads of the Limerick 30 shingles, amounting to about \$65,000.

21. Installation of defendant's Limerick 30 shingles on Mr. Lyon's home began on or about July 13, 2011. The roofing contractor retained by Mr. Lyons, whom Mr. Lyons had also retained for future jobs installing defendant's shingles, immediately began experiencing problems with defendant's shingles, in that they were often stuck together inside the packaging, and frequently tore when efforts were made to pull them apart, significantly increasing the amount of time it took for the shingles' installation, and thereby reducing the efficiency of the contractor.

22. In addition, Mr. Lyons' roofing contractor noticed that the shingles were failing to self-seal within a reasonable time after their installation, despite their being installed in the middle of summer when sealing would ordinarily occur within minutes.

23. As these problems began to mount, Mr. Lyons and the foreman of his roofing contractor contacted defendant. Defendant's agent and employee advised them to cease work on Mr. Lyons' roof, and to install a tarp on the roof, to protect it from the elements while a different lot of Limerick 30 shingles could be sent to Mr. Lyons' home. All of the existing shingles on the home had been torn off, and by the time the roof was tarped, no more than about a quarter of it had been reroofed with defendant's defective shingles.

24. That night, however, a major rainstorm blew over Mr. Lyons' home, causing substantial water damage to his unroofed home, from where he also operated plaintiff's business. The resulting damage interrupted phone and internet service, thus substantially disrupting plaintiff's business.

25. Because plaintiff had been forced to pre-pay for defendant's shingles, plaintiff had insufficient funds available to set up a temporary business location, and Mr. Lyons was also forced to spend all of his available time investigating and attempting to remedy problems with defendant's shingles, including personally hauling additional packages of shingles to job sites because of the fact that so many of the shingles shipped to a site were unusable. All of this combined to create a virtually complete interruption in plaintiff's business.

26. Defendant offered to provide additional Limerick 30 shingles to replace those being used on Mr. Lyons' home, and represented that they would arrive within a few days. Mr. Lyons ultimately re-roofed his home with defendant's Limerick 30 shingles, but his roofing contractor experienced the same problems with shingles sticking together in the package, causing

the job to take much longer than it should have due to the inefficiencies caused by the need to spend time separating shingles on the ground and discarding those that could not be used, as opposed to the normal practice of hoisting entire packages onto the roof where they can be quickly pulled out of the packaging and installed in an efficient manner.

27. Moreover, the Limerick 30 shingles that were installed on Mr. Lyons' home the second time failed to seal properly, ultimately resulting in the need for him to re-roof his home with another brand of shingles, at plaintiff's expense.

28. Plaintiff had also arranged to use defendant's Limerick 30 shingles on a few other homes, but the roofing contractors who used them experienced the same problems with shingles sticking together in the package. Ultimately, the roofing contractors refused to work with the Limerick 30 shingles any longer.

29. Further, the Limerick 30 shingles installed on one of those homes (in Olathe, Kansas) failed to seal, causing substantial damage to the home after wind-driven rain was able to get underneath the shingles and penetrate the roof. The owners of that home have had the Limerick 30 shingles torn off and replaced with other shingles, and are incurring significant costs for repairing damage to the interior of their home. Plaintiff, as the supplier of the defective shingles, has already paid for a portion of the cost of that re-roofing job, and owes money to the roofer who completed the re-roofing.

30. In addition, the Limerick 30 shingles installed on a home on Second Street in St. Joseph, Missouri failed to seal, causing substantial damage to that home after wind-driven rain was able to get underneath the shingles and penetrate the roof. The owners of that home are in the process of determining whether their claim for water damage will be covered by their insurance company.

31. Plaintiff also supplied Limerick 30 shingles for homes in Overland Park, Kansas, and Savannah, Missouri, and a recent investigation of those homes has revealed that an excessive number of the shingles on those homes failed to seal, making those homes susceptible to water damage.

32. Plaintiff notified defendant's agents and employees on numerous occasions of the failure of the Limerick 30 shingles to perform as warranted, providing defendant with photographic evidence of the shingles' failure.

33. The Kansas City area experienced at least two major hail storms in the spring and early summer of 2011, creating unprecedented demand for roofing supplies and shingles, and creating an environment in which those selling roofing products, including shingles, stood to make extraordinary profits.

34. Defendant's demand that plaintiff pre-pay for the bulk of the Limerick 30 shingles purchased from defendant had the effect of tying up virtually all of plaintiff's available liquidity, and prevented plaintiff from being able to purchase replacement shingles in the open market as cover for the defective Limerick 30 shingles sold by defendant in order to satisfy plaintiff's agreements to sell shingles to other roofers.

35. As a result, plaintiff was unable to satisfy known and confirmed demand for shingles by many large customers, who took their business elsewhere, thus causing significant consequential damages to plaintiff in the form of lost profits on jobs for which plaintiff had confirmed arrangements. In addition, the damage to plaintiff's home caused substantial consequential business interruption damages, because it prevented plaintiff from being able to timely invoice and otherwise serve the roofing contractors with whom plaintiff was doing business, thus causing them to take their business elsewhere. Further, plaintiff has sustained, and

continues to sustain, damages because of the need for plaintiff to cover the cost of re-roofing structures for which plaintiff had supplied defendant's defective shingles.

36. Plaintiff has thereby been damaged in the amount of \$2,010,265.

37. The defects in defendant's shingles, namely the fact that they stuck together in the packaging and failed to seal when installed, also caused plaintiff to incur incidental damages because of the inefficiencies thereby created, namely, plaintiff had to spend additional time and effort hauling more packages of shingles to a job than would have ordinarily been required, and/or was required to haul more packages of shingles to a job once it was underway because the roofing crews needed additional packages since they were unable to use so many of the shingles that had been delivered to the job site.

38. In the course of plaintiff's investigation into the problems with defendant's shingles, Mr. Lyons learned that defendant's shingles had been shipped to locations in Minnesota, but had been rejected there because of their defective nature, and shipped back to defendant's facilities in Arizona.

39. Defendant's agents and employees, despite knowing of the defective products that defendant placed in the stream of commerce, failed to disclose this fact to plaintiff. To the contrary, at one point defendant attempted to persuade plaintiff to accept shingles coming back from Minnesota because of an "overshipment," but it was only later that plaintiff learned that the shingles had been rejected in Minnesota due to their defective nature.

40. Defendant has ceased the manufacture and sale of its Limerick 30 shingles.

COUNT I – BREACH OF EXPRESS WARRANTY

41. Plaintiff incorporates by reference the allegations of paragraphs 1 through 33.

42. Defendant sold and plaintiff purchased the Limerick 30 shingles.

43. Defendant's agents and employees expressly warranted to plaintiff that the Limerick 30 shingles would perform their intended purpose of providing protection from water intrusion, notwithstanding the negative online comments that had been made about them.

44. Defendant expressly warranted that its Limerick 30 shingles met or exceeded ASTM standards D7158, D3018, and D3161.

45. Defendant's promotional materials for the Limerick 30 shingles also represented that 39 shingles could be installed per 100 square feet of roofing surface.

46. The representations and warranties made by defendant were made to induce plaintiff to purchase the Limerick 30 shingles, or were a material factor in plaintiff's decision to purchase the Limerick 30 shingles.

47. The Limerick 30 shingles did not conform to the representations and warranties made about them by defendant, in the following respects:

(a) They failed to conform to ASTM standard D3018, in that they stuck together in the package, resulting in damage to the shingles while being unpacked, in temperatures above 50° F.

(b) They failed to conform to ASTM standard D3161 for Class F shingles, in that they did not and could not have withstood wind speeds of up to 110 miles per hour due to the failure of the shingles to self-seal.

(c) By virtue of their physical dimensions and the required exposure of 8½ inches, they could not possibly have been installed at a rate of 39 pieces per square feet, even if every shingle in a package otherwise conformed with ASTM standards, because it would have required 42.9 shingles per 100 square feet to cover a roof.

48. Within a reasonable time after learning that the Limerick 30 shingles did not conform to the warranties that defendant had made about them, plaintiff gave defendant notice of the nonconformity.

49. As a direct result of the failure of the Limerick 30 shingles to conform to defendant's representations and warranties, plaintiff was damaged.

COUNT II – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

50. Plaintiff incorporates by reference the allegations of paragraphs 1 through 33.

51. Defendant sold and plaintiff purchased the Limerick 30 shingles.

52. When sold by defendant, the Limerick 30 shingles were not fit for one of their ordinary purposes, namely to provide a watertight roof for the structures on which the shingles were installed.

53. Plaintiff used the Limerick 30 shingles for that purpose.

54. Within a reasonable time after plaintiff knew or should have known that the Limerick 30 shingles were not fit for their intended purpose, plaintiff have defendant notice thereof.

55. As a direct result of the Limerick 30 shingles being unfit for their ordinary purpose, plaintiff was damaged.

COUNT III – FRUADULENT NONDISCLOSURE

56. Plaintiff incorporates by reference the allegations of paragraphs 1 through 33.

57. Defendant had a duty to inform plaintiff that defendant's Limerick 30 shingles had already been rejected by a purchaser in Minnesota due to defects in their design and/or manufacture, because defendant had superior knowledge of that fact and that fact was not discoverable by plaintiff through ordinary diligence.

58. Defendant failed to disclose to plaintiff the fact that its Limerick 30 shingles had already been rejected by customers due to their defective nature.

59. The fact that defendant's Limerick 30 shingles had been recently rejected was a material fact, particularly in light of the negative online comments by persons who had actually experienced problems with the Limerick 30 shingles and the statements of defendant's agents

and employees which lulled plaintiff into believing that those comments were isolated and not to be given substantial credence.

60. Defendant knew, prior to selling its Limerick 30 shingles to plaintiff, that those shingles had been rejected by a customer in Minnesota.

61. Defendant intended to mislead plaintiff by failing to disclose the rejection of defendant's Limerick 30 shingles by another customer, especially given defendant's statements discounting the validity of the online negative comments about defendant's products.

62. Plaintiff did not know that defendant's Limerick 30 shingles had been rejected by customers elsewhere at the time plaintiff purchased them for use in its business.

63. Plaintiff relied on defendant to provide complete and accurate information about the quality of the Limerick 30 shingles, including whether entire shipments of them had been rejected, after inquiring about the negative online comments that had been made about defendant's products.

64. Plaintiff had the right to rely on defendant to provide complete and accurate information about the quality of the Limerick 30 shingles, including whether an entire shipment of the shingles had been rejected.

65. As a proximate cause of defendant's fraudulent nondisclosure of the rejection of its shingles by other customers, plaintiff has been damaged.

66. The conduct of defendant in failing to disclose to plaintiff that an earlier shipment of its Limerick 30 shingles had been rejected was outrageous because of defendant's evil motive or reckless indifference to the rights of plaintiff and others whom defendant could reasonably foresee would be damaged by its conduct, thereby entitling plaintiff to an award of punitive damages to punish defendant and deter defendant and others from like conduct.

WHEREFORE, plaintiff Arrowhead Forest Products, LLC requests that the Court enter judgment in its favor and against defendant Shamrock Building Materials, Inc. in the amount of \$2,010,265 for plaintiff's actual damages, for punitive damages in an amount to be established by the jury, for plaintiff's costs, and for such other and further relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

SPENCER FANE BRITT & BROWNE LLP

s/ W. Joseph Hatley

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Telecopier: (816) 474-3216

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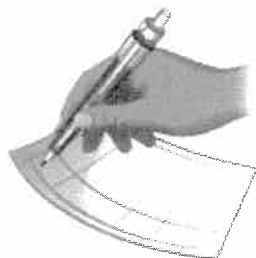
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PRODUCT IS VAULTY WILL FAIL

Comments (0)

[White Mountain Building Products Complaint by Roofer](#)

There roofing shingle from white [mountain](#) is very bad and they have no warrenty support dont purchase this [product](#) its over priced and they dont stand behind there product. We have to sue them to get a response. They also never respond to calls, The product melted off [the roof](#), the granules came off and the roof also shrank. and they also purchase raw [materials](#) that do not meet spec as we called around to ask suppliers. and they are the most unprofessional company we have ever dealt with we should have purchased a established [shingle](#) brand. Dont buy this shingle they are Bad 28a9502

Review #: **268458**
Posted by: **Roofer**
Posted On: 2011-10-15
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WHITE MOUNTAIN BUILDING PRODUCTS

Comments (6)

White Mountain Building Products Complaint by Jimmy23

I feel compelled to write this complaint on this company. The shingle line is vs-30,vs-40,vs-50, wood creek. These shingles were the biggest nightmare I have ever dealt with. The owners Tony Gallo is a crook and the shingle is complete garbage!!! I had excessive granule loss and he did nothing to resolve the issue!!! Unbelievable!!! I spent Thousands of dollars on this product and there is no warranty to stand by the product. I am so angry I wish I would have bought presidential by certain teed!!! I am going to rip off this roof because I don't want the new owner to deal with this nightmare. Horrible company Horrible situation!!! 28a904f

Review #: 164273
Posted by: Jimmy23
Posted On: 2009-12-12
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Comments (6)

1. Written by Tim the Roofer on January 8, 2012

We installed a White Mountain roof. When we install a new product we have a company rep on site to oversee the install. Anthony Gallo's son was on site and approved the product and the installation. Within nine months this product was in complete failure. Granules were almost all gone. White Mountain would not return calls from us or the supplier. They would not meet us on the job site to walk the job with the owner. They finally showed up unannounced and walked the roof with the homeowner. Anthony Gallo's son the same guy who over saw the installation and was there everyday showing us how to install it said we installed it wrong. He is a totally liar and a crook! CSLB State investigator was called and said the roof was installed correctly but the product was faulty. White Mountain has never honored warranty on this roof and I'm in a law suit with owner. NEVER NEVER NEVER install this product! If you do your an idiot!

Report

2. Written by Camshaft1981@gmx.com on October 25, 2010

It's the wrong stuff I know I used, to work there. It's been there for seven yrs. Yes tony gallo is A big time crook.

Report

3. Written by terry on October 18, 2010

I'm a contractor thinking about trying this shingle. I have had one of their sample boards for about 2 years; it's seen plenty of abuse and I don't see any problem with the product; any shingle is going to have granule loss when new, so what's the problem?

Report

4. Written by Consumer Protection Atty on June 1, 2010

I would like to speak to you all about a potential lawsuit against white mountain. e-mail me at truetm@s@aol.com

Report

Most Active Users



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8,692 people like Pissed Consumer.
Randy Gale Dana Ryley Kevin
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Pissed Consumer on Facebook

5. Written by B.Cook on May 25, 2010

The owner is a crook and failed to even pay his employees wages!!

Report

6. Written by Woodcreek Nightmare on December 12, 2009

I didnt think I was the only one who thought bad about this company. Its a small company and the shingle has not been around a long time. The service department was horrible and their tech people are borderline rude. Like Jimmy 23 said go with a bigger company. Not worth the your time and most importantly your money!!!

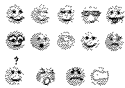
Report

Comments on [White Mountain Building Products](#)

- Keep the topic of messages relevant to the subject.
- Personal attacks will be deleted.
- No Links or Scripts.

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Comment:



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Roofer

#268458

Oct 15, 2011

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Subject:

From: dlyons@arrowheadforestproducts.com

Date: Wed, Jun 29, 2011 12:28 am

To: "Jeff Stefanick" <JStefanick@shamrockbm.com>

<http://jimmy5456.wordpress.com/category/roof-shingles-building-materials/>

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White Mountain Shingle is Sham or Worse!!!

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White Mountain Building Products is a shame or worse

December 7, 2009

I feel compelled to write the letter to let any buyers to beware of this unethical company. The name of the asphalt shingle is called White Mountain Building products out of Payson Arizona. The owner is named Tony Gallo and is a crook is sheeps clothing. He comes off as perfect used car salesman to sell you his shingles. The shingles by the way are called :

Woodcreek

Vs-40

vs-50

vs-30

These shingles are all garbage and Tony is the man behind the shingles. The problem is he does not stand behind his products and will leave you high and dry when problems arise. I have never written a blog before but, I feel if this horrible man takes another innocent customer I would feel bad not writing something. His business practices are unethical and I believe his company name has changed already. This is a bad sign!!!! If you come across the horrible man buy your shingles from a more reputable sources such as Certainteed, Owens Corning, Or any other major brand. He will leave you with his empty promises and two bid lies and in the long run you would have spent thousands of dollars on your roof shingles and he has your money and runs off to his next victim.

Dont let him take you or your money RUN the other way!!!!!!

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