

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WHEELS OF WILLIAMSPORT, INC., :
Plaintiff : No. 06-01298
vs. : CIVIL ACTION – LAW
MYERS CONSTRUCTION, INC. and :
STOLTZFUSS BUILDERS and :
84 LUMBER CO. a/k/a :
84 COMPONENTS, : 84 Lumber Co’s preliminary objections
Defendants :

ORDER

AND NOW, this ___ day of August 2007, upon consideration of Defendant 84 Lumber Co.’s preliminary objections to Plaintiff’s complaint, it is ORDERED and DIRECTED as follows:

1. The court GRANTS Defendant’s preliminary objection requesting Plaintiff be required to plead its damages with more specificity. Plaintiff merely asserts the building collapsed and caused damage to Plaintiff’s real and personal property. The court cannot tell from Plaintiff’s complaint whether the building was completed at the time of its collapse and the personal property damaged was Plaintiff’s business inventory or whether the building project was still in progress and the personal property was supplies for other portions of the construction project. Even if Plaintiff believes this is an unliquidated claim and does not believe it can put a dollar figure on the damages, it can certainly describe the type of damage to the real property and list the items of personal property that were damaged or destroyed.

2. Due to Plaintiff’s lack of specificity regarding damages, it is difficult to rule on Defendant’s preliminary objection that asserts Plaintiff’s claims sounding in

negligence and strict liability are barred by the economic loss doctrine. The economic loss doctrine does not apply when there is personal injury or injury to other property of the plaintiff. Defendant contends the product is the entire building and only the building was damaged. Plaintiff contends the product is the defective truss and damage to other portions of the building would constitute injury to other property.

Defendant relies on New York State Electric and Gas Corp. v. Westinghouse Electric Corp. 387 Pa.Super. 537, 564 A.2d 919 (1989) for the proposition that the entire building was the product. In that case, New York State Electric argued a defective seal caused damage to other parts of the generator in an attempt to show damage to other property.¹ The Superior Court rejected this contention and, citing Industrial Uniform Rental Co. v. International Harvester Co., 317 Pa.Super. 65, 463 A.2d 1085 (1983), noted that “where various components of a product are provided by the same supplier as part of a complete and integrated package, even if a defect in one component damages another, there is no damage to ‘other property’ of the plaintiff.” 387 Pa.Super. at 550, 564 A.2d at 919. Plaintiff argues in its brief that 84 Lumber only supplied the trusses; it did not supply a complete building kit. This, however, is not clear from Plaintiff’s complaint, and Plaintiff should amend its complaint accordingly. If 84 Lumber only provided framing materials and the project was passed the framing stage, the court would deny 84 Lumber’s preliminary objection in the nature of a demurrer without prejudice to raising this issue at a later stage of the proceedings.

¹ Westinghouse supplied the generator to New York State Electric and Gas (NYSEG). Pursuant to a contractual arrangement for service and/or repair, Westinghouse replaced a seal in the blower spacer. A few months later, the generator had to be shut down for a couple of months to repair a cracked flange in the blower spacer. NYSEG believed problems with the seal caused the damage to other parts of the blower spacer. NYSEG sued Westinghouse for in excess of eight million dollars in lost profits and the cost of purchasing replacement energy

3. The court GRANTS 84 Lumber's demurrer to the portion of Count V of Plaintiff's complaint which attempts to assert an express warranty claim against 84 Lumber (specifically paragraph 26 and the last phrase of paragraph 27). As a third party, in order to set forth a claim for express warranty, Plaintiff must plead facts to show that (1) 84 Lumber intended to extend the specific terms of the warranty to Plaintiff and (2) Plaintiff was aware of the specific terms of the warranty and the identity of the party issuing the warranty. See Goodman v. PPG Industries, Inc., 849 A.2d 1239, 1246 (Pa.Super. 2004)(trial court's order granting of preliminary objections and dismissing complaint upheld where appellants were not aware of the specific 26-year warranty that they sought to enforce, and were not aware when they purchased their Marvin products that PPG had ever issued a warranty). Plaintiff has not alleged any such facts. In fact, it appears that Plaintiff concedes in its brief that it was not and still is not aware of the specific terms of the warranty. See Plaintiff's brief, p.5 ("it can reasonably be deduced that Plaintiff is not aware of its specific contents).

In accordance with paragraphs 1 and 2 of this Order, Plaintiff shall file an amended complaint within thirty days of the date of this Order.

By The Court,

Kenneth D. Brown,
President Judge

cc: Richard J. Boyd, Jr., Esquire
Nelson Levine DeLuca & Horst
Four Sentry Parkway, Suite 300
Blue Bell PA 19422
Ellen P. Milcic, Esquire
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while the generator was shut down for repairs to the blower spacer.

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Work file

Gary Weber, Esquire (Lycoming Reporter)