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Andrea Stroh Thompson
District Clerk
Collin District

CAUSE NO. 199.00621-203

WILLOW GREENE HOMEOWNERS ASSOCIATION	§	IN THE DISTRICT COURT
	§	
	§	
Plaintiff,	§	
	§	
	§	OF COLLIN COUNTY, TEXAS
v.	§	
	§	
GERARD ROOFING TECHNOLOGIES, A DIVISION OF METALS USA BUILDING PRODUCTS, L.P. AND METALS USA, INC.	§	
	§	
	§	
Defendants	§	<u>199th</u> JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Willow Greene Homeowners Association ("Plaintiff") files this Original Petition against Gerard Roofing Technologies, a division of Metals USA Building Products, L.P. and Metals USA, Inc. ("Defendants").

I. PARTIES

- Willow Greene Homeowners Association ("Willow Greene") is a domestic non-profit corporation with its principle office at 17490 Mcandering Way, Apt. 502, Dallas, Collin County, Texas 75252.
- Gerard Roofing Technologies, a Division of Metals USA Building Products, L.P. ("Gerard"), is a Domestic Limited Partnership doing business in the State of Texas with its principal place of business at 2400 E. Commercial Blvd., Suite 905, Fort Lauderdale, FL 33308, and may be served with process through its registered agent C. T. Corporation System, 350 N. St. Paul St., Ste. 2900, Dallas, Texas 75201-4234.
- Metals USA, Inc. ("Metals") is a Foreign For-Profit Corporation doing business in the State of Texas with its principal office at One Riverway, Suite 1100, Houston, Texas 77056,

and may be served with process through its registered agent C. T. Corporation System, 350 N. St. Paul St., Ste. 2900, Dallas, Texas 75201-4234.

II. JURISDICTION AND VENUE

4. The relief sought by Plaintiff is within the jurisdictional limits of this court. Venue is proper pursuant to Texas Civil Practice & Remedies Code §15.002 and §15.011 because Collin County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred and/or is the county in which the subject property is located.

III. DISCOVERY LEVEL

5. Plaintiff requests that discovery be conducted under Level 3 pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

IV. FACTS

6. Willow Greene is a 25 building, 172-unit condominium complex located in Collin County, Texas. On October 30, 2004, Willow Greene contracted with Horn Brothers Roofing (“Horn Brothers”) as its roofing contractor to replace its exiting roofs with the Gerard Roofing Technologies (“Gerard”) Granite Ridge roofing system. The Granite Ridge roofing system is stone coated roofing panels made to resemble asphalt shingles that Gerard touts to be “some of, if not the best, stone coated steel roofing panels/products available anywhere in the USA.”

7. Gerard provided to Plaintiff a lifetime limited warranty on the Granite Ridge roofing system, warranting that each Gerard roofing panel/product is free from manufacturing defects in workmanship and materials, and weatherproof. Willow Greene paid nearly \$1 Million for the purchase and installation of the new roofs.

8. Installation of the new roofs began in March of 2005. A Gerard technical representative, Russ Earnhart, actively participated in the entire project, beginning at the design phase.

9. Before Horn Brothers began installing the new roofs, Mr. Earnhart lead two pre-construction meetings where he reviewed every installation detail with Horn Brothers and approved the means and manner in which Horn Brothers was to install the roofs. Mr. Earnhart was present at Willow Greene throughout the installation of the roofs, inspecting and approving the roof of each condominium unit upon completion. Mr. Earnhart also participated in the final inspection of the roofs that occurred on March 23, 2005.

10. After some period of time, condominium units at Willow Greene began experiencing water leaks. Because Willow Greene had brand new roofs, neither Horn Brothers nor Willow Greene suspected the roofs as the cause of the leaks. Instead, Horn Brothers began chasing leaks at the chimneys, siding, gutters and skylights, among other possible sources, as the likely culprits.

11. Horn Brothers spent countless hours chasing leaks throughout Willow Greene for many years without success. It was not until February of 2012 that Horn Brothers and Willow Greene found evidence that the new roofs themselves are leaking and began to suspect that there might be a much bigger problem with the Granite Ridge roofing system.

12. On February 29, 2012 and March 1, 2012, and perhaps other days, an authorized representative of Willow Greene had telephone conversations with Andrea Parsons, a Gerard representative in its Mesquite, Texas office. Willow Greene notified Gerard of the leak problem, and asked Ms. Parsons to please send someone from Gerard to take a look at the leak situation. Nobody came.

13. Willow Greene submitted warranty notices to Gerard and received no response. Willow Greene emailed Ron Anderson of Metals, the parent company of Gerard, and received no response. Willow Greene spoke with and emailed the Gerard warranty coordinator, Sandy Perez. She promised to look into the matter and respond to Willow Greene. She did not. On October 16, 2012, representatives from Gerard did finally come to Willow Greene and take a cursory look at the roofs, but later denied Willow Greene's warranty claim.

14. Through an extensive investigation, Willow Greene has determined that the Granite Ridge roofing system is defective. Even if installed correctly in accordance with Gerard's installation manual and procedures, as was done at Willow Greene, the Granite Ridge roofing system leaks. As a result, Willow Greene has useless roofs that are leaking throughout the condominium complex, and has incurred significant damages to both the interiors and exteriors of its condominium units.

V. FIRST CAUSE OF ACTION

Strict Products Liability

15. Plaintiff fully incorporates the foregoing paragraphs by reference.

16. At all times material hereto, Defendants were engaged in the business of designing, manufacturing, marketing, distributing and selling the Granite Ridge roofing system.

17. Defendants are the "manufacturer" of the Granite Ridge roofing system within the meaning of Texas Civil Practice and Remedies Code section 82.001(4), and are liable under the doctrine of strict products liability in tort for the damages produced by the defects in the Granite Ridge roofing system arising out of the design, manufacture, marketing, distributing and selling of the Granite Ridge roofing system.

18. The Granite Ridge roofing system damaged the Plaintiff's property due to defects in the design, manufacture, marketing, distributing and selling of the Granite Ridge roofing system. Said defects were the producing cause of the damages suffered by the Plaintiff.

19. There were design, manufacturing, marketing, distributing and selling defects in the Granite Ridge roofing system at the time it left the possession of Defendants that were the producing cause of Plaintiff's damages. The Granite Ridge roofing system was defective when sold and failed to perform as promised and intended.

20. As a result of the defects in the design, manufacture, marketing, distributing and selling of the Granite Ridge roofing system, Plaintiff has sustained significant damage in an amount to be proven at trial.

VI. SECOND CAUSE OF ACTION

Breach of Express Warranty

21. Plaintiff fully incorporates the foregoing paragraphs by reference.

22. At the time the Defendants sold the Granite Ridge roofing system to Plaintiff, they provided to Plaintiff a written Lifetime Transferable Limited Warranty.

23. Defendants represented that they "manufacture some of, if not the best, stone coated steel roofing panels/products available anywhere in the USA." They also represented that the "Lifetime Limited Warranty is the best warranty available."

24. Defendants also expressly warranted that the Granite Ridge roofing panels are weatherproof and will not leak. Defendants promised to repair or replace any panels that are defective.

25. Defendants' representations and warranties were part of the basis of the bargain and Plaintiff relied on these representations and warranties for its decision to purchase of the Granite Ridge roofing system.

26. The Granite Ridge roofing system does not comply with Defendants' representations and warranties, and does not perform as expected due to the fact that it is not weatherproof and leaks.

27. Plaintiff followed Defendants' warranty claims procedure and notified Defendants of the breach of the express warranty. After demand was made, Defendants failed and refused to honor their warranties, including failing and refusing to repair or replace the Granite Ridge roofing system.

28. Defendants' breach of express warranty directly and proximately caused damage to Plaintiff in an amount to be proven at trial.

VII. THIRD CAUSE OF ACTION

Breach of Implied Warranty of Merchantability

29. Plaintiff fully incorporates the foregoing paragraphs by reference.

30. Defendants, merchants of the Granite Ridge roofing system, sold the Granite Ridge roofing system to Plaintiff.

31. The Granite Ridge roofing system was unmerchantable when Defendants tendered it to Plaintiff because it does not perform as expected due to the fact that it is not weatherproof and leaks. This is a breach of the implied warranty of merchantability.

32. Plaintiff notified Defendants of the breach of warranty of merchantability.

33. Defendants' breach of warranty directly and proximately caused damage to Plaintiff in an amount to be proven at trial.

VIII. FOURTH CAUSE OF ACTION

Deceptive Trade Practices Act

34. Plaintiff fully incorporates the foregoing paragraphs by reference.
35. Plaintiff is a consumer under the Deceptive Trade Practices Act ("DTPA").
36. Defendants are corporations that can be sued under the DTPA.
37. Defendants violated the DTPA when Defendants represented that the Granite Ridge roofing system has characteristics and benefits that it does not. Plaintiff relied on Defendants' representations to its detriment. These acts by Defendants were done knowingly and intentionally.
38. Defendants violated the DTPA when they breached the express and implied warranties as outlined above.
39. Plaintiff gave Defendants notice as required by the Texas Business & Commerce Code section 17.505(a).
40. Defendants' wrongful conduct was a producing cause of Plaintiff's damages in an amount to be proven at trial.

IX. FIFTH CAUSE OF ACTION

Negligence

41. Plaintiff fully incorporates the foregoing paragraphs by reference.
42. Defendants owed Plaintiff a duty of reasonable care in the sale, design, manufacture and distribution of the Granite Ridge roofing system.
43. Defendants breached their duty to Plaintiff by designing, manufacturing, marketing, distributing and selling a roofing system that does not perform as expected or intended. The Granite Ridge roofing system it is not weatherproof and leaks thereby creating conditions that were known, or should have been known, to Defendants as likely to cause significant property damage

to both the interiors and exteriors of the Willow Greene condominium units.

44. As a direct and proximate result of Defendants' breach of duty, Plaintiff's property has sustained significant damage in an amount to be proven at trial.

X. SIXTH CAUSE OF ACTION

Negligent Misrepresentation

45. Plaintiff fully incorporates the foregoing paragraphs by reference.

46. Defendants represented to Plaintiff that the Granite Ridge roofing system was weatherproof and would not leak.

47. Defendants made these representations to Plaintiff in the course of Defendants' business as a designer, manufacturer, marketer, distributor and seller of the Granite Ridge roofing system.

48. Defendants made these representations in the course of the transaction whereby Plaintiff purchased the Granite Ridge roofing system from Defendants. Defendants made these representations for guidance to Plaintiff in Plaintiff's selection and purchase of new roofs.

49. Defendants' representations were a misstatement of fact because the Granite Ridge roofing system is not weatherproof and leaks.

50. Defendants did not use reasonable care in making these representations to Plaintiff.

51. Plaintiff justifiably relied on Defendants' representations when Plaintiff selected the Granite Ridge roofing system.

52. Defendants' misrepresentations directly and proximately caused damage to Plaintiff, including damage to both the interiors and exteriors of the condominium units, in an amount to be proven at trial.

XI. SEVENTH CAUSE OF ACTION

Common Law Fraud

53. Plaintiff fully incorporates the foregoing paragraphs by reference.

54. Defendants represented to the Plaintiff that the Granite Ridge roofing system was weatherproof and would not leak.

55. Defendants' representations to Plaintiff were material because they were important to the Plaintiff in its decision to purchase the Granite Ridge roofing system.

56. Defendants' statements were false statements of fact, and Defendants made these representations to Plaintiff knowing they were false, or recklessly, as positive assertions, and without knowledge of their truth.

57. Defendants intended for Plaintiff to rely on the false representations or had reason to expect Plaintiff would act in reliance on the false representations.

58. Plaintiff justifiably relied on Defendants' false representations when it purchased the Granite Ridge roofing system and had it installed at Willow Greene.

59. Defendants' false representations directly and proximately caused damage to Plaintiff, including damage to both the interiors and exteriors of the condominium units, in an amount to be proven at trial.

XII. TREBLE DAMAGES

60. Pursuant to the DTPA, Plaintiff seeks treble damages for the knowing and intentional acts of the Defendants.

XIII. ATTORNEY FEES

61. As a consequence of Defendants' actions, it was necessary for Plaintiff to retain the undersigned attorneys to file suit. Plaintiff is entitled to recover from Defendants the reasonable and necessary attorney fees and court costs incurred in maintaining this suit.

XIV. PRE-JUDGMENT AND POST-JUDGMENT INTEREST

62. Plaintiff seeks pre-judgment and post-judgment interest as allowed by law.

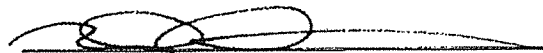
XV. JURY TRIAL

63. Plaintiff requests that the Court try this case before a jury.

XVI. PRAYER

64. Plaintiff prays that Defendants be cited to appear and answer herein, that this cause be set down for trial before a jury, and that Plaintiff recover judgment of and from the Defendants for its actual damages in such amount as the evidence may show and the jury may determine to be proper, together with pre-judgment interest, post-judgment interest, costs of suit, attorney fees, and such other and further relief to which it may show itself to be justly entitled whether legal or equitable.

Respectfully submitted,



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