

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION

FILED  
2018 APR 20 PM 3:49

CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

**SOARING EAGLE LODGE MASTER ASSOCIATION, INC.,**  
a West Virginia non-profit Corporation; and  
**SOARING EAGLE LODGE ASSOCIATION, INC.,**  
a West Virginia non-profit Corporation,  
*Plaintiff,*

vs.)

Civil Action No. 15-C-2202  
Presiding Judge: Tabit  
Resolution Judge: Matish

**SOARING EAGLE DEVELOPMENT COMPANY, LLC,**  
a West Virginia Limited Liability Company;  
**GBBN ARCHITECTS, INC.,**  
an Ohio Corporation; and  
**BRANCH & ASSOCIATES, INC.,**  
a Virginia Corporation,  
*Defendants*

and

**BRANCH & ASSOCIATES, INC.,**  
a Virginia Corporation  
*Third Party Plaintiffs*

vs.)

**APPLIED MECHANICAL SYSTEMS, INC.,**  
a West Virginia Corporation;  
**EASTCOAST SIDING, INC.,**  
a Maryland Corporation;  
**RICHARDSON AND MARCH CARPENTRY, LLC,**  
A West Virginia Limited Liability Company;  
**TRI-STATE ROOFING & SHEET METAL COMPANY OF WEST VIRGINIA,**  
a West Virginia Corporation; and  
*Third Party Defendants*

and

**SOARING EAGLE DEVELOPMENT COMPANY, LLC,**  
a West Virginia Limited Liability Company;  
*Third Party Plaintiff*

vs.)

**TRI-STATE ROOFING & SHEET METAL COMPANY OF  
WEST VIRGINIA, a/k/a, TRI-STATE ROOFING & SHEET  
METAL CO.,**

**a West Virginia Corporation;**

**APPLIED MECHANICAL SYSTEMS, INC.,**

**an Ohio Corporation;**

**RICHARDSON AND MARCH CARPENTRY, LLC,**

**a West Virginia Limited Liability Company;**

**RICHARDSON CARPENTRY, LLC,**

**a West Virginia Limited Company; and**

**EASTCOAST SIDING, INC.,**

**a Maryland Corporation,**

**THE TRAVELERS INDEMNITY COMPANY OF**

**AMERICA, a Connecticut corporation; and TRAVELERS**

**PROPERTY AND CASUALTY COMPANY OF AMERICA,**

*Third Party Defendants,*

vs.)

**O.C. CLUSS LUMBER COMPANY,**

**a Pennsylvania Corporation,**

*Third Party Defendant,*

and

**BRANCH & ASSOCIATES, INC.,**

**a Virginia Corporation**

*Third Party Plaintiff,*

vs.)

**O.C. CLUSS LUMBER COMPANY,**

**a Pennsylvania Corporation; GAF**

**MATERIALS CORPORATION, a New**

**Jersey corporation; QUALITY STONE**

**VENEER, INC.; MODERN LIGHTING**

**PROTECTION, INC.; JAMES HARDIE**

**BUILDING PRODUCTS, INC.; and FIBERON,**

**LLC, a North Carolina Limited Liability Company,**

*Third Party Defendant,*

and

**RICHARDSON AND MARCH CARPENTRY, LLC,**

**A West Virginia Limited Liability Company;**

*Third Party Plaintiff,*

vs.)

**JAMES HARDIE BUILDING PRODUCTS, INC.**  
*Third Party Defendant.*

and

**O.C. CLUSS LUMBER COMPANY,**  
a Pennsylvania Corporation,  
*Fourth Party Plaintiff,*

vs.)

**GAF MATERIALS CORPORATION,**  
a New Jersey Corporation; and  
**FIBERON, LLC,**  
a North Carolina Limited Liability Company,  
*Fourth Party Defendants,*

and

**FIBERON, LLC,**  
a North Carolina Limited Liability Company,  
*Fourth Party Plaintiff,*

vs.)

**JAMES HARDIE BUILDING PRODUCTS, INC.**  
*Fourth Party Defendant.*

**ORDER DENYING GAF MATERIAL CORPORATION'S  
MOTION TO DISMISS RICHARDSON AND MARCH CARPENTRY'S  
AMENDED COUNTERCLAIMS AND/OR CROSS-CLAIMS**

Fourth Party Defendant GAF Materials Corporation has requested that this Court dismiss the Fourth-Party Complaint brought against it by Richardson and March Carpentry, LLC, arguing that the same fails to assert any factual allegation to support any claims of defect.

Complaints must be read liberally pursuant to the notice pleading theory underlying the West Virginia Rules of Civil Procedure. The sufficiency of a complaint is based upon claims asserted and notice thereof, not requiring specific facts upon which the claim is based.

Although entitlement to relief must be shown, a plaintiff is not required to set out facts upon which the claim is based. Nevertheless, despite the allowance in Rule 8(a) that the plaintiff's statement of the claim be "short and plain," a plaintiff may not "fumble around searching for a meritorious claim within the elastic boundaries of a barebones complaint [,]" see *Chaveriat v. Williams Pipe Line Co.*, 11 F.3d 1420, 1430 (7th Cir.1993), or where the claim is not authorized by the laws of West Virginia.

*State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 776, 461 S.E.2d 516, 522 (1995).

Generally, a motion to dismiss should be granted only where "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Murphy v. Smallridge*, 196 W.Va. 35, 36, 468 S.E.2d 167, 168 (1996). The Supreme Court of Appeals of West Virginia has advised that motions to dismiss are viewed with disfavor and that lower courts should rarely grant such motions. *Forshey v. Jackson*, 222 W.Va. 743, 671 S.E.2d 748 (2008); citing *John W. Lodge Distrib. Co., Inc. v. Texaco, Inc.*, 161 W.Va. 603, 605-06, 245 S.E.2d 157, 159 (1978). For the purpose of evaluating a motion to dismiss, a complaint must be "construed in the light most favorable to plaintiff, and its allegations are to be taken as true." *Lodge Distrib. Co., Inc. v. Texaco, Inc.*, 161 W.Va. 603, 605, 245 S.E.2d 157, 158 (1978); *Forshey v. Jackson*, 222 W.Va. 743, 671 S.E.2d 748 (2008). However, where it "appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief" the courts should grant a motion to dismiss to weed out unfounded suits. Syl. pt. 3, in part, *Chapman v. Kane Transfer Co., Inc.*, 160 W.Va. 530, 236 S.E.2d 207 (1977); *Williamson v. Harden*, 214 W.Va. 77, 585 S.E.2d 369 (2003).

Here, GAF asserts that the complaints fail to assert any facts to support the contention that the shingles installed at Soaring Eagle Lodge were defective.

Paragraph 20 of the Third-Party Complaint against GAF alleges that “The alleged roof defect occurred through installation, defective shingles and/or a combination of both.” and that “If the roofing materials were defective, they were defective when they left GAF’s control” Richardson Marsh’s subject Amended Counterclaim and/or Cross Claim against GAF does not make any new allegations but does incorporate the same allegations in paragraph 1.<sup>1</sup>

Richardson March responds that this incorporation meets West Virginia’s notice pleading requirements for implied indemnity and contribution.

Although RM has denied any defective construction or negligence in any form, should RM be adjudged liable to any party with regard to any work or materials, acts or omissions by any of the aforementioned parties, such liability would be derived in whole or in part from the acts and/or omissions of other parties and should be recovered from those parties.

*RM Amended Counterclaim and/or Cross-Claim ¶5.*

If discovery shows that the shingles were defective, as alleged by the incorporated pleadings, then Richardson March could succeed in proving these claims to the finder of fact. While the claim against GAF may have been brief, the cross-claim sufficiently set out the simple claim and put GAF on notice. Richardson March has met the pleading requirements.

THEREFORE, the Court hereby DENIES GAF Material Corporation’s Motion to Dismiss Richardson and March Carpentry’s Amended Counterclaims and/or Cross-Claims. The Clerk of the Circuit Court of Kanawha County, West Virginia, is directed to forward an attested copy of this Order to the Business Court Division Central Office at the Berkeley County

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<sup>1</sup> “Third-Party Defendant Richardson hereby refers to Plaintiffs’ Amended Complaint, the Amended Third-Party Complaint, along with this Third-Party Defendant’s Answer to the Amended Third-Party Complaint as if set forth herein verbatim.” *RM Amended Counterclaim and/or Cross-Claim ¶1.*

Judicial Center, 380 W. South Street, Suite 2100, Martinsburg, West Virginia, 25401; the Resolution Judge, the Honorable James Matish at the Harrison County Courthouse, 301 West Main Street Clarksburg, WV 26301-2967; all counsel of record; and any *pro se* parties.

ENTER this 20<sup>th</sup> day of April, 2018.

Joanna I. Tabit  
HONORABLE JOANNA I. TABIT

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 23rd  
DAY OF April 2018  
Cathy S. Gatson CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA