

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**

Lynchburg Division

I. M. HURT,)	
)	
Plaintiff,)	Case No. _____
)	
v.)	
)	
SLIPSHOD WINDOWS, INC.)	
)	
Serve:)	PLAINTIFF'S
Jeffrey Tuomala)	VERIFIED COMPLAINT
Liberty University School of Law)	
1971 University Boulevard)	
Lynchburg, VA 24503)	JURY DEMAND
)	
Defendant.)	
_____)	

Now comes Plaintiff, I. M. Hurt, by counsel, and for his cause of action against the Defendant, Slipshod Windows, Inc., alleges and says:

1. This case is brought by I. M. Hurt for Negligence, Strict Liability, Mismatch and Breach of Warranty due to the injuries he sustained when a window installed and manufactured by Slipshod Windows, Inc. fell free from its original installation.

JURISDICTION AND VENUE

2. This court has Personal Jurisdiction over the parties as I. M. Hurt is a resident of the Commonwealth of Virginia and the alleged tortious injury occurred in the Western District of Virginia.

3. This court has Subject Matter Jurisdiction pursuant to 28 U.S.C. §1332(a)(1) and (c)(1). The parties satisfy diversity of citizenship because the state of I. M. Hurt's citizenship

differs from the place of incorporation and principal place of business for Slipshod Windows, Inc. The amount in controversy exceeds the sum of \$75,000, exclusive of interests and costs.

4. Venue for this case lies with this Court for the reason that the Western District of Virginia, Lynchburg Division is the judicial district in which the plaintiff resides and the judicial district in which a substantial part of the events or omissions giving rise to the claims occurred, pursuant to 28 U.S.C. §1391(a)(2).

PARTIES

5. Plaintiff, I. M. Hurt (hereinafter “Hurt”), is an adult male, and a citizen of the Commonwealth of Virginia and a resident of Nelson County, Virginia.

6. Defendant, Slipshod Windows Inc. (hereafter “Slipshod”), is a private company incorporated in the state of Delaware and its principle place of business is located in the State of North Carolina. Slipshod is in the business of manufacture and installation of glass windows.

FACTUAL ALLEGATIONS

7. Hurt purchased a new home from Pretty Good Contractors (hereafter “Pretty Good”) on April 16, 2007.

8. Pretty Good purchased all of the windows for the home from Slipshod.

9. Slipshod had a sub-contract with Pretty Good to manufacture and install the windows in the home.

10. No other party was involved in the purchase, manufacture or installation of the windows in the home.

11. No changes or alterations to the windows occurred after all work on the home by Pretty Good and Slipshod was complete.

12. On April 16, 2008, Hurt was cleaning the windows the inside of the home.

13. Hurt began to clean a window on the second story of his home.
14. Hurt leaned over an object at the window base in order to clean the entire window and subsequently placed one hand on the window frame to support his weight.
15. The window broke free from its casing.
16. The window fell through the air to the ground.
17. Hurt fell with the window's trajectory until he also hit the ground.
18. Hurt suffered severe and permanent physical injuries as a result of the fall.
19. Hurt's injuries are a direct result of the window's poor installation and manufacture which caused his fall from the second story of his home.

COUNT I.

NEGLIGENCE

20. Paragraphs 1 through 19 are fully incorporated here as if fully set forth.
21. A product seller is liable in negligence if he acts or fails to act in such a way as to create an unreasonable risk of harm, loss or injury to the customer or another who might foreseeably be injured.
22. Slipshod had a duty to manufacture and install windows as a reasonable company would. They breached this duty when the windows in Hurt's home were installed in a manner in which the risk of injury was a reasonably foreseeable result of poor or improper installation.
23. This breach of duty was the proximate and foreseeable cause of Hurt's injuries, and as a result, Slipshod is guilty of negligence.

COUNT II.

STRICT LIABILITY

24. Paragraphs 1 through 23 are fully incorporated here as if fully set forth.

25. A corporation is held to strict liability by any user or consumer or his property when an unreasonably dangerous product is manufactured and sold in defective condition.

26. Slipshod manufactured, sold and installed unreasonably dangerous windows in defective condition because Hurt's second story window was not secured to its frame and the window frame was not properly secured to the home.

27. This defective condition resulted in an unreasonable danger to Hurt.

28. This condition was not contemplated or expected by Hurt, a reasonable consumer.

COUNT III.

MISMANUFACTURE

29. Paragraphs 1 through 28 are fully incorporated here as if fully set forth.

30. Mismatch arises when a company manufactures a product according to an acceptable design but an error occurs in the fabrication, quality control, packaging or delivery of the product causes it to become unreasonably dangerous.

31. Slipshod generally manufactures windows according to an acceptable design.

32. During manufacture, an error occurred in securing the glass of a window to its frame and the window was later installed on the second story of Hurt's home.

33. During installation, Slipshod failed to properly secure the window frame to Hurt's home and thus the window was unreasonably dangerous.

COUNT IV.

BREACH OF WARRANTY

34. Paragraphs 1 through 33 are fully incorporated here as if fully set forth.

35. Section 2-314 of the Uniform Commercial Code sets forth an implied warranty of merchantability. This warranty provides that a merchant who sells a product warrants its fitness for its intended purpose of design under ordinary use.

36. Since the window at issue failed to provide the stability, security and strength expected of standard window under ordinary use, the failure of its intended purpose constitutes a breach of this warranty.

37. Section 2-315 of the Uniform Commercial Code sets forth an implied warranty of fitness for a particular purpose. This warranty provides that a buyer reasonably relies on a merchant to have special knowledge and judgment about the product sold to the buyer.

38. The buyer must reasonably rely on the seller's skill or judgment to select or furnish suitable goods, and the seller must have reason to know of the buyer's reasonable reliance on the seller's skill or judgment.

39. Hurt reasonably relied upon Slipshod to be skilled in the design, manufacturing and installation of windows. Hurt relied upon Slipshod to only design, manufacture and install windows suitable for reasonable use.

40. Slipshod is in a position suitable to know the buyer's expectation and purpose for the windows to be used as a secure barrier between the inside and outside of a home as it is in regular business of the design, manufacture, installation and sale of windows. Any buyer, including Hurt, would reasonably rely on Slipshod's skill and judgment to design, manufacture and install safe and proper windows.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment against Defendants and that this Court:

- A. Award damages to the Plaintiff in an amount no less than \$1,000,000 to satisfy past, present and future expenses from medical bills, lost income and pain and suffering;
- B. Pursuant to 42 U.S.C. § 1988 and other applicable law, award Plaintiff his costs and expenses of this action, including reasonable attorneys' fees;
- C. Grant such other and further relief as the Court deems equitable, just, and proper.

JURY DEMAND

Plaintiff hereby requests a trial by jury for all issues so triable in conformity with Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: February 10, 2009
Lynchburg, Virginia

By Counsel for Plaintiff:



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