

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ABC SUPPLY CO., INC.,)	
AND MULE HIDE)	
PRODUCTS CO., INC.)	
)	
Defendants Below,)	
Appellants,)	
)	
v.)	C.A. CPU 4-09-001271
)	
MEYER & MEYER, INC.,)	
)	
Plaintiff Below,)	
Appellee)	
)	

Submitted: October 29, 2010
Decided: November 24, 2011

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DECISION AFTER TRIAL

This is an appeal from an Order of the Justice of the Peace Court for trial *de novo* pursuant to 10 *Del. C.* § 9571(c). Trial was held on October 12, 2010. The parties submitted data to support their respective positions and this is the Court’s Decision and Order.

Meyer & Meyer, Inc. (herein Meyer or Plaintiff) alleged that roofing products purchased from ABC Supply Co., Inc. (herein ABC) and produced by Mule Hide Products Co., Inc. (herein Mule Hide) were defective, specifically that the product did not adhere to the roof surface and bubbled and peeled off the roof surface within six months of its application, and that the Defendants failed to comply with their warranty claims. Meyer sought damages of \$15,000.00, the amount paid for the products plus court costs and post-judgment interest. Defendants ABC and Mule Hide denied that the products were defective and that any warranty was applicable in this case.

PERTINENT FACTS

Meyer is a real estate development firm which has a construction company within the firm. Peter Meyer, President of Meyer sought to renovate an existing structure to use as a childcare center. On this building is a metal-based roof, which includes an A-frame design in the front of the building and a flat roof on the addition to the rear of the building. The building had a roof of corrugated metal of which approximately one-half was a new roof and the other one-half was a pre-existing roof. Meyer had purchased the metal roof from ABC¹ and installed the 12,000 square-foot roof himself. The metal roof was insulated with a spray foam product, approximately eight to ten inches in thickness in order for the building to be an energy-saving structure.

Meyer needed to coat the roof to seal it from water. Meyer went to ABC, with whom he had previous business dealings for larger construction projects, in order to obtain a product to seal the roof. ABC is a supply warehouse which sells products to licensed contractors. Meyer asked an ABC employee, Michael Balay (herein Balay), if

¹ Plaintiff's Exhibit # 2 (Invoice from ABC evidencing purchase of the metal).

ABC carried such a product and Meyer also asked for recommendations of such products from Balay. Balay has been employed by ABC as an outside sales representative for the past four years.

In his job capacity, Balay travels and informs contractors about ABC's products. Meyer was told that he needed to seal the roof in stages, priming the roof, then coating it and lastly, applying a sealing agent. Balay stated that the licensed contractors that purchase products from ABC are aware of the proper application for the products which they use.

Meyer consulted with Balay, approximately at the end of 2006/early 2007, to determine how many gallons would be needed for the project. Balay stated that he provided Meyer with Mule Hide's specifications regarding how much area a gallon of the product would cover. Meyer purchased an elastomeric latex-based product from ABC in order to seal the roof. This was Meyer's first experience with Mule Hide products and this particular coating. According to Balay, Meyer consulted with ABC, ordered the product, picked up the product, and received and signed the accompanying invoices. Meyer paid for the products in full and owes no outstanding balance to ABC.

Meyer decided to apply the product to the roof himself. Meyer has completed many commercial and residential construction projects and is licensed by the State of Delaware and County of New Castle for commercial construction. Meyer has also testified as a witness in the Superior Court of the State of Delaware regarding construction matters.

Meyer received from ABC video tapes which demonstrated the application process to seal the roof. Meyer watched the video tapes from beginning to end. Meyer

additionally received information regarding the product from ABC's showroom floor brochure case.

Meyer also received from Mule Hide information², in great detail, regarding the product, the product's application and warranties³ which he read carefully. Balay did not recall if he provided Meyer with the application handbook for the product but he did provide literature to Meyer including disclaimers.⁴ Mule Hide guarantees their products from defects.⁵ Meyer did not attend any training seminars to learn about the application process because he did not believe such a course was offered. Balay denied giving Meyer any personal instruction on the application process. Balay explained the product is used to extend the life of an existing roof or to allow a roof to be energy-efficient.

Meyer did not ask ABC or Mule Hide to inspect the roof before he purchased the product. Balay confirmed this.

Meyer stated that as a general contractor he takes into account recommendations from experts in making his decision about a product. But, ultimately it was his decision as a general contractor as to which products he decided to use. However, Meyer did provide a sample of the existing roof when he consulted ABC. Balay could not recall if Meyer brought photographs of the roof when he came to ABC. Meyer performed an adhesion test prior to the application of the product and everything seemed to be fine on the test.⁶

Richard Barbeau, a sales rep for Mule Hide, (herein Barbeau) denied any knowledge of Meyer's performance of an adhesion test. Barbeau testified that he would

² Plaintiff's Exhibit # 3 (Meyer stated that he read this handbook from cover to cover.)

³ *Id.*

⁴ *Id.*

⁵ Plaintiff's Exhibit # 3, Page 6.

⁶ Plaintiff's Exhibit # 3, Page 20.

have been the person to send Meyer the adhesion test kit which he denied doing. Barbeau stated that the only way Meyer could have performed an adhesion test was if he used the product after he purchased it. Meyer countered that he received the adhesion test kit directly from Mule Hide. He stated that he received a quart of each color, primer and flashing materials prior to the placement of his order with ABC. Meyer stated that he obtained the materials for a color match, not to perform an adhesion test.

Meyer stated he applied the product correctly to the roof, in his words he “did exactly as on the tape.” According to Meyer, the video tape segregated the process of sealing the entire roof into three phases which included cleaning the roof, allowing the roof to dry for one day, priming the roof, allowing the roof to dry, flashing the roof⁷, allowing the roof to dry and finally, painting the finish on the roof.

Meyer initially applied the product to the roof in January 2007. The roof looked good for approximately four to five months. However, by June 2007, the product had begun to bubble and crack as well as peel throughout the entire roof.⁸ Meyer also experienced water coming into the building.

Meyer returned to ABC and informed them of the condition of the roof. Balay contacted Mule Hide’s representative, Richard Barbeau. Barbeau is a college graduate who has received various certifications through the NRCA such as wind uplift and moisture control during his tenure with Mule Hide and also completed an educational program for the product in issue. Barbeau, a territory sales representative for Mule Hide for the past twelve years, met with Meyer on the job site in approximately May or June 2007, after receiving a product failure complaint. Barbeau walked the roof with Meyer,

⁷ Flashing is a process by which an elastic white paste is placed over the seams and nail heads of the roof.

⁸ Plaintiff’s Exhibit # 5 (Depicting the condition of the roof approximately six to seven months after the initial application but prior to the second application.)

inquired about the application process, and informed Meyer that he had completed the application process correctly but that there was not enough product on the roof. Barbeau stated that the flashing on the dormers was performed incorrectly and the problem was the installation. Barbeau stated that the problem was “so obvious” and that he spotted it right away. Barbeau stated that Meyer had used tape rather than primer to flash the dormers.

Meyer placed another order for the product with ABC and commenced the second application of the product in approximately June or July 2008. On the recommendation of Mule Hide, Meyer pressure washed the roof and scraped the bubbles from the roof in order to have a clean surface in which to apply the product. Meyer scraped bubbles from the roof, pressure washed and primed the roof, applied the flashing to the seams and nail heads and applied the coating. Meyer utilized the same application process as he had followed initially but applied more product because he was told the bubbles were a result of not having enough product.

Meyer was assisted in the second application by Edward Strickland (herein Strickland.) Strickland is a former store manager and foreman for ICI Paints. Strickland stated that the coating had bubbled, buckled and peeled when he observed it. Meyer directed Strickland as to the application process as Strickland has never previously worked with this particular product. Strickland did not deviate from Meyer’s instruction. Strickland has been involved within the coating industry for years. Strickland stated he personally did not perform an adhesion test on the roof nor was he aware that one had been performed. Strickland did state that if a surface is not primed correctly then the

paint would lift. Strickland indicated that on the days of application of the product, there was neither moisture on the exterior of the roof nor any rain.

Approximately six months after the second application of the product, approximately the end of 2008, bubbling occurred again throughout the roof.⁹

The roof additionally began to leak constantly and the flashing between the seams began to crack. According to Meyer, pockets of water formed underneath the coating. Meyer stated that he formed his opinion that the product was defective based upon his seventeen years experience in construction as well as upon consultation with several experts. Meyer stated that a metal roof will move and that the product he used did not move with the roof.

Meyer contacted Mule Hide and Barbeau stated that approximately in January or February 2008, Meyer informed him of massive leaks. Barbeau returned to inspect the roof again.. He observed bubbling, blistering, peeling and water bubbles on the roof. He went into the interior of the structure and observed the spray-foam insulation. He observed that the seams had blown out due to condensation. Barbeau stated that based upon his experience, this problem was not due to a manufacturer's defect but rather was caused by the spray-foam insulation. He supported his position by stating the lower roof without spray-foam insulation had no problems. He told Meyer that the bubbling was caused by a condensation problem specifically there was no ventilation in the attic due to the dynamics of an energy-saving structure.

Barbeau took a sample of the roof. He sent the sample to the product laboratory in which the product was observed microscopically and tested. Meyer received

⁹ Plaintiff's Exhibit # 6.

correspondence from Mule Hide¹⁰ which noted that samples of the product taken from Meyer's roof had been tested and that the roof is experiencing a condensation problem which is caused when humidity touches a metal building. Barbeau stated the pattern of honeycombing on the roof depicted in photographs in evidence indicated a build-up of moisture. He sent a letter to Meyer in which he denied Meyer's claim of product failure and stated that if other evidence became available, the denial would be reconsidered, Meyer disputed Barbeau's assessment.

Meyer then contacted the manufacturer of the spray foam insulation, John Husbands (herein Husbands), owner of Thermal Seal Experts.¹¹ Husbands is a foam sealer installer who provides a lifetime warranty on his work. Husbands had installed the spray-foam insulation¹² on the majority of Meyer's roof including the sloped area of the roof, but not the flat roof on the addition which had fiberglass insulation. Husbands, accompanied by two assistants, inspected the roof and measured the amount of condensation and heat coming from the building in late spring/summer 2008 with a thermal infrared camera. The results of Husbands' testing of the insulation revealed that there was no issue with regard to condensation. Husbands stated that there is no gap space between the foam insulation and the roof, thus precluding the accumulation of condensation. Husbands stated that the only manner in which condensation may form is when the dew point¹³ is reached and that would result in condensation being formed on the inside. Husbands found that the dew point had not been reached. Husbands stated

¹⁰ Plaintiff's Exhibit # 7.

¹¹ As Husbands described, spray-on foam insulation adheres to any surface, providing an air seal and insulation in which air will not pass through.

¹² As Husbands described, spray-foam insulation is open-cell insulation, in that it is a tight open cell which acts as an air barrier. The spray-foam insulation also reduces heat transfer of approximately 95% and stated that one degree may pass through the roof on a cold day.

¹³ Dew point refers to the condition of the climate inside the structure.

that there may be conditions which would increase the dew point and allow condensation to form such as an indoor swimming pool or a kitchen in the building but Meyer denied these existed. Husbands did concede that in areas where there is no spray-foam insulation, condensation may be able to pass through. Further, when presented with the NCRA, referred to by roofers in the industry, Husbands stated that condensation occurs with metal roofing due to the lack of air space between the roof and spray-foam insulation. Husbands stated that a number of conditions could affect a metal roof. Husbands was unaware that Meyer used an elastomeric roof covering and further stated that he is not specialized in roofing and/or coating systems.

Meyer received correspondence from Mule Hide that Barbeau had sent samples of the product taken from Meyer's roof for testing.

Regarding the issue of warranty of the product, Meyer testified that Balay referred to a five to ten year warranty both verbally and with information regarding the product. In Meyer's words, the warranties were "all throughout the pamphlets."¹⁴ Meyer studied the brochure supplied to him by ABC.¹⁵ Meyer did not recall being informed that he had to apply for warranty coverage. It was Meyer's understanding that ABC and Mule Hide would stand behind their products or in other words an implied warranty. Meyer understood the warranty to be a five-year limited material warranty. Balay disputed that he made Meyer aware of a five to ten year guarantee. Balay denied informing Meyer of any warranty or that Mule Hide would replace the product at their expense. Balay did testify as to the existence of a warranty eligibility program which is determined and defined by the manufacturer of the product. Balay stated that Meyer had no extended

¹⁴ Plaintiff's Exhibit # 3, Page 12 (indicating a five-year limited warranty.)

¹⁵ Plaintiff's Exhibit # 4 (Document references "No statement supersedes unless it is in writing by Mule Hide – printed July 2010.")

warranty regarding the product. Although this was the first time Meyer had used this particular product, he had prior dealings with ABC. Further, invoices from ABC, on the reverse side, state a disclaimer.¹⁶ Meyer noted that he places an order at times without seeing the invoice. Meyer did not recall if similar language was posted on the product.¹⁷ Barbeau stated that he did not mention a warranty to Meyer. In addition, Barbeau stated that the product packaging, brochures, sales literature and video tapes all contain disclaimers for failure due to building design and/or product application¹⁸ and that there is a warranty eligibility certification program which guarantees that the product is free from manufacturers' defects. The extended material warranty is available when applied for by the purchaser of the product at no cost.¹⁹ Barbeau stated that Meyer did not apply for the extended material warranty. He testified that the materials come with a limited one year warranty as the packaging of the product and literature regarding the product indicates. Barbeau stated that Mule Hide stands behind their products if there is a manufacturing defect. Meyer stated that the quality of his workmanship was never discussed by Barbeau but that Barbeau did contend that an issue with the design of the building and/or the workmanship of the project would not render Mule Hide liable.

Parties' Contentions

Plaintiff's Contentions

Plaintiff argues that many express warranties were made, specifically one by ABC and four by Mule-Hide. In support of the argument, Plaintiff cites to 6 *Del. C.* § 2-313.

¹⁶ Defendant's Exhibit # 1, Paragraph # 2.

¹⁷ Defendant's Exhibit # 2 (Label from the can of the product.)

¹⁸ Plaintiff's Exhibit # 3, Page 6.

¹⁹ According to Bovey, the process of application for an extended material warranty is as follows: After a meeting with the material representative, the contractor would apply prior to commencement of the project and an inspection would occur after completion of the project.)

Plaintiff contends that the express warranty was created by ABC when Balay, informed Meyer, after being asked, that he recommended the Mule-Hide product and that the Mule-Hide product would be warranted for five years. Plaintiff argues that Balay's "sales pitch" created the express warranty by ABC.

Plaintiff further contends that four express warranties were created by Mule-Hide. The first express warranty made by Defendant Mule-Hide, Plaintiff argues, can be found in the Application Handbook²⁰ provided to Meyer, specifically on Page 11 which states:

"5-Year & 10-Year Limited Material Warranty

To qualify, application of Mule-Hide Elastomeric Acrylic Coatings must meet the guidelines as published in this handbook. However, no fee or inspection is required, and the applicator is not required to be a Mule-Hide Warranty Eligible Contractor."

Plaintiff further argues that Mule-Hide extends another express warranty also on Page 11 of the Application Handbook, which states:

"Mule-Hide Products Co. Inc. warrants that its products are of professional grade and free of any manufacturing defects, and that they will meet all stated physical properties as outlined in this handbook and Product Data Sheets."

Plaintiff cites to the states physical properties of the product as found on Page 5 of the Application Handbook, which states:

"Mule-Hide Elastomeric Acrylic Coatings are an economical alternative to a costly reroof. Advances in polymer chemistry have resulted in elastomeric coatings that provide lasting restoration, retrofit, or repair. This 'liquid membrane' completely bonds to the surface as it dries; yet remains 'elastomeric'. It stretches as the substrate moves and then returns to its original shape without deformation."

The third express warranty, Plaintiff alleges, was made by Defendant Mule-Hide's employee, Richard Barbeau, when he inspected the roof after the first application of the product. Plaintiff alleges that when he asked Barbeau what had to be done to cure

²⁰ Plaintiff's Exhibit 3.

the bubbling, peeling and cracking of the product, Barbeau informed him to purchase more Mule-Hide product and apply it in a thicker coat and this constitutes an express warranty.

Finally, the fourth warranty, according to Plaintiff, can be found on the label of the product's container²¹ which states:

“All products sold are subject to the following Limited Warranty: Mule-Hide Products, Inc. (“Seller”) warrants that for a period of one (1) year from date of delivery that the product is free from defects in material and workmanship.”

Plaintiff alleges that this warranty refers specifically to a defect and that it is uncontroverted that the Mule-Hide product bubbled, cracked and peeled. Plaintiff further contends that for a product that is intended to adhere to the surface of a roof, all of the above conditions indicate a defect in the product. Plaintiff cites *71 CJS Products Liability* § 12 to stand for the proposition that courts employ many tests to establish whether a product is defective, one of which is whether the product is reasonably fit for its intended use.

Plaintiff further argues that 6 *Del. C.* § 2-317 is instructive in regard to the warranty claims. 6 *Del. C.* § 2-317 states:

“Warranties whether express or implied shall be construed as consistent with each other and as cumulative...”

Plaintiff further supports its argument through case law and cites *Townsend Grain & Feed Co.*²² for the proposition that each warranty is mutually exclusive and

²¹ Defendant's Exhibit # 3.

independent of one another, and cites *Cooper v. Cities Service Oil Co.*²³, for the proposition that cumulative means that plaintiff can seek the use of all express warranties even if the Court finds that there are no implied warranties.

Plaintiff argues that the language of exclusion of warranties must be conspicuous as required by 6 *Del. C.* § 2-316(2) and the language on the back of ABC's invoice is ineffective to apprise Plaintiff of such. Plaintiff relies upon *Lecates v. Hertrich Pontiac Buick Co.*²⁴, to argue that language on the back of an invoice or sales receipt is ineffective and certainly not conspicuous because it was tendered after an agreement to purchase was made.

In sum, Plaintiff argues that in application of the Uniform Commercial Code, both ABC and Mule-Hide warranted the product for five years and that it would completely bond to the surface. Further, the product was warranted to stretch and return to its original shape without deformation. The product was warranted to cure the bubbling, cracking and peeling if a second thicker coat was applied. It was warranted to be free to defects for one year. Plaintiff alleges that each of the warranties was breached and seeks return of its money expended to purchase the product.

Defendants' Contentions

Defendants argue that it is undisputed that neither ABC or Mule-Hide inspected the roof prior to Plaintiff's application nor did ABC or Mule-Hide apply the roof coating. Defendants deny any project warranties or extended warranties to Plaintiff. Further, Defendants argue that the sales brochures as well as the application handbook that

²² *Townsend Grain & Feed Co.*, 163 Bankr. 709 (Bankr. D. Del. 1994).

²³ *Cooper v. Cities Service Oil Co.*, 55 A.2d 239 (N.J. Supr. 1947).

²⁴ *Lecates v. Hertrich Pontiac Buick Co.*, 515 A.2d 163 (Del. Super. 1986).

Plaintiff received clearly show disclaimers of implied warranties and further, limit express warranties to an authorized agent.

Defendants cite 6 *Del. C.* § 2-313(1) (a) as the authority for express warranties.

That section states:

“any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.”

Defendants argue that based upon 6 *Del. C.* § 2-313(1) (a), Defendants must have made a promise relating to the roof covering which became the basis of the bargain which did not occur.

Defendants dispute Plaintiff’s claim that the application handbook and sales brochures contain express warranties that the roof coating will last for five to ten years. Defendants argue rather that when the product is applied to Plaintiff’s structure, Mule-Hide’s express warranty is limited to a warranty that the coating complies with the chemical composition and that the coating itself is free from manufacturing defects as specified.

Defendants cite to Page 6 of the Application Handbook to stand for the proposition that the inclusion of this language disclaims liability for defect in application.

The relevant portion states:

“No responsibility, however, is implied or assumed by Mule-Hide for the design, positioning, application or functional interrelation of any building components. This is the responsibility of the architect, engineer, applicator and building owner.”

Further, Defendants cite the Application Handbook as providing disclaimers under the “Warranty Program” materials in the handbook. Defendants argue that another disclaimer limits the warranty to manufacturing defects only. The relevant portion states:

“Mule-Hide Products Co., Inc. warrants that its products are of professional grade and free of any and all manufacturing defects, and that they will meet all stated physical properties as outlined in this handbook and Product Data Sheets. Mule-Hide does not warrant the existing roof system or structural deck or other components not supplied by Mule-Hide. Any damages to the coating system caused by ponding or by the existing roofing system, including but not limited to, delamination, blistering, bleed-thru, deck deterioration or related failures are outside the scope of the Mule-Hide Warranty.”

Defendants argue that in the sales brochure²⁵ provided to Plaintiff there are limits as to the warranties that may be provided or enforceable by sales persons in association with the product. The “Important Notes” section of the sales brochure not only explains the disclaimer of warranty in regard to defects with the existing roof system but also explains the disclaimer that no statement made by anyone may supersede the written information in the product literature except when provided in writing by Mule-Hide Products Co., Inc. Further, Defendants argue that the same information and disclaimer is contained on Page 29 of the Application Handbook²⁶ which states:

“The statements provided concerning the material shown are intended as a guide for material usage and are believed to be true and accurate. No statement made anyone may supersede this information, except when done in writing by Mule-Hide Products Co., Inc. Since the manner of use is beyond our control, Mule-Hide does not make nor does it authorize anyone to make any warranty of merchantability or fitness for a particular purpose or any warranty, guarantee or representation, expressed or implied, concerning this material except that it conforms to Mule-Hide physical properties. Buyer and user accept the product under these conditions and assume the risk of any failure, any injury of person or property (including that of the user), loss or liability resulting from the

²⁵ Plaintiff’s Exhibit 4.

²⁶ Plaintiff’s Exhibit 3.

handling, storage or use of the product whether or not it is handled, stored or used in accordance with the directions or specifications. Mule-Hide must be notified in writing of any claims and be given the opportunity to inspect the complaint or failure before repairs are made.”

Discussion and Analysis

The relevant statutory provision in this case is the Uniform Commercial Code, specifically 6 *Del. C.* § 2-313 which governs the creation of express warranties. 6 *Del. C.* § 2-313 states:

- “(1) Express warranties by the seller are created as follows:
- (a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and become part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.
 - (b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.”

It is not disputed in this case that the product bubbled, cracked and peeled when applied to Plaintiff’s roof. However, Plaintiff has not shown by a preponderance of the evidence that the product was solely responsible for the occurrence and further that any warranty was made and breached. Rather, the record indicates that Plaintiff was apprised of numerous disclaimers throughout the sales literature he received and which he read.

Plaintiff received the sales brochures and application handbook which he read “cover to cover.” The materials contain numerous disclaimers of warranty. The first express warranty that Plaintiff alleges refers to a limited material warranty so long as the application of the coating was in accordance with the guidelines set forth in the handbook.

Plaintiff followed these guidelines and instructed his assistant as to the proper procedure to utilize for the application. There is some question whether this was done on the seams or joints in the metal roof. However, this is only one part of the equation. Though Plaintiff stated that he did not deviate in any way from the application process, the surface to which he applied the coating gives pause. Plaintiff experienced bubbling, cracking and peeling on the A-frame portion of the roof initially, not the flat portion of the roof. During the second application of the product, the bubbling, cracking and peeling was systemic throughout the entire roof. Mule-Hide representative Barbeau indicated that there was a problem with the application of the product to the flashers on the roof. Thus, it appears that the coating may not have adhered to the roof because of the roof itself. Plaintiff argued that the product itself was defective and for that reason the failure occurred. However, this Court must take all the evidence into account and in doing so, considers not just the product but also the application process and the surface to which the coating was applied.

Mule-Hide or ABC did not indicate that during the relevant time period, there were other product defect complaints. Further, Plaintiff received two separate batches of the product, specially ordered to suit color that failed.

ABC did not make any express warranty as ABC employee Balay denied informing Plaintiff that the coating would last five to ten years. In the application handbook that Plaintiff read “cover to cover”, there is relevant information on who may make an express warranty to a purchaser and that is Mule-Hide.

Mule-Hide, in its Application handbook, disclaims any liability in regard to application and design of the structure. Mule-Hide does not warrant the existing roof

system as the Application handbook indicates. Specifically, the handbook states that “Any damages to the coatings system caused by ponding or by the existing roofing system, including but not limited to, blistering...or related failures are outside the scope of the Mule-Hide warranty.” Plaintiff experienced ponding of water and blistering which is clearly outside the scope of warranty as indicated and cannot be attributed to a defect in the product itself.

This Court is not convinced by a preponderance of the evidence that the product contained a material defect and that any warranty was breached in this case. As such, no liability can be attributed to the Defendants. Judgment will be entered in favor of the Defendants. Costs are assessed to Plaintiff.

IT IS SO ORDERED.

Alfred Fraczkowski
Associate Judge²⁷

²⁷ Sitting by appointment pursuant to Del. Const., Art. IV, § 38 and 29 *Del. C.* § 5610.