

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DR. EMMANUEL D. BRAVOS,)
)
 Plaintiff,)
)
 v.) C.A. No: S23C-03-023 MHC
)
 NVR, INC. t/a RYAN HOMES,)
)
)
 Defendant.)
)

ORDER

Submitted: February 27, 2026

Decided: March 20, 2026

Upon Consideration of Defendant's Motion for Summary Judgment,
GRANTED.

Thomas Crumplar, Jacobs and Crumplar PA, *Attorney for Plaintiff*

Scott G Wilcox, Giordano and Gagne, LLC, *Attorney for Defendant*

CONNER, J

INTRODUCTION

Before the Court is NVR, Inc. t/a Ryan Homes' ("Defendant") Motion for Summary Judgment. For the reasons set forth hereinafter, the Motion for Summary Judgment is **GRANTED**.

STATEMENT OF FACTS

On May 28, 2021, Dr. Emmanuel David Bravos ("Plaintiff") signed a Delaware purchase agreement (the "Contract") with Defendant for the purchase of 37318 Kestrel Way, Millville, Delaware (the "Home"). The parties settled on January 24, 2022.

Plaintiff hired Bayside Home Inspections ("Bayside") to inspect the Home. Bayside identified items that it believed needed to be repaired and recommended further examination by an industrial hygienist. Then, Plaintiff commissioned Chesapeake Environmental Services ("Chesapeake") to do an investigation on the Home due to a concern for mold exposure. Chesapeake noted mold in the attic and upstairs, and drywall dust in the living room. Chesapeake provided an estimate of \$43,982.36 to remediate the trusses in the attic, interior of the Home, and Plaintiff's furniture. On December 23, 2022, Plaintiff submitted a Warranty Request to Defendant's warranty department due to mold growth on the framing in the attic. Plaintiff's former counsel, William Larson, Esquire, sent a letter to Defendant on January 23, 2023, requesting Defendant perform all remediation work and testing as

part of Plaintiff's warranty claim.¹ Defendant denied wrongdoing, but offered to clean the trusses and perform general cleaning in the home to remediate the concerns, but at a lower cost. Plaintiff rejected Defendant's offer because Plaintiff wanted Chesapeake to remediate and believed Defendant's proposal was a limited remediation.

Plaintiff filed a Complaint on March 27, 2023, which was amended on July 1, 2024. The Amended Complaint asserts four claims: (1) negligence; (2) failure to warn; (3) strict liability; and (4) willful and wanton conduct. Defendant filed the instant Motion for Summary Judgment on January 9, 2026. Plaintiff filed his Answering Brief in Opposition on February 13, 2026. Defendant filed its Reply Brief on February 27, 2026.

PARTIES' CONTENTIONS

A. Defendant's Motion for Summary Judgment

Defendant's first argument supporting its Motion for Summary Judgment is that the claim is time-barred due to the Contract, which imposes a one-year limitations period for claims not arising from the limited warranty.² Defendant argues the contract provision unambiguously bars all of Plaintiff's claims. The contract provision states the following:

¹ Pl.'s Answ. Br. in Opp'n to Def.'s Mot. for Summ. J., D.I. 53, Ex. C.

² Def.'s Mot. for Summ. J., D.I. 47, at 11.

YOU AND WE AGREE THAT ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, SETTLEMENT HEREUNDER, OR IMPROVEMENTS TO THE PROPERTY, REGARDLESS OF LEGAL THEORY, EXCEPT ANY CLAIMS UNDER THE LIMITED WARRANTY (“CLAIMS”), SHALL BE SUBJECT TO A ONE (1) YEAR LIMITATION OF ACTION PERIOD AND BAR DATE. SUCH CLAIMS BASED ON MATTERS OCCURRING BEFORE THE SETTLEMENT DATE SHALL BE DEEMED TO HAVE ARISEN AND ACCRUED, IF AT ALL, AND THE ONE YEAR LIMITATION OF ACTION PERIOD FOR ALL SUCH CLAIMS SHALL BEGIN TO RUN ON THE ACTUAL SETTLEMENT DATE. ALL APPLICATION OF THE SO-CALLED “DISCOVERY RULE” IS MUTUALLY WAIVED BY THE PARTIES. BY EXECUTING THIS AGREEMENT, YOU ACKNOWLEDGE YOUR UNDERSTANDING AND AGREEMENT TO THESE TERMS AND THAT THE SAID ONE (1) YEAR PERIOD IS COMPLETELY REASONABLE IN ALL RESPECTS. NOTWITHSTANDING THE FOREGOING, THESE BAR DATE TERMS SHALL NOT APPLY TO CLAIMS FOR INDEMNITY AND/OR CONTRIBUTION BY US AGAINST YOU AND/OR ANY OTHER PERSON. THESE RIGHTS MAY ONLY BE ENFORCED BY YOU AND US AND NOTHING HEREIN SHALL BE CONSTRUED TO CREATE ANY THIRD-PARTY BENEFICIARY RIGHTS IN ANY OTHER PERSON OR ENTITY.³

Defendant argues that by signing the Contract, Plaintiff agreed to the one-year statute of limitations. Plaintiff alleges construction-related defects, such as claims that Defendant “used wet or muddy building materials, failed to implement proper containment and cleaning procedures, and failed to seal the HVAC system prior to drywall installation and sanding.”⁴ The parties settled on January 24, 2022, and

³ *Id.* at Ex. A.

⁴ *Id.* at 12.

Plaintiff did not file the action until March 27, 2023, which is more than one year after the settlement and agreed-upon limitations period.

Next, Defendant argues that Plaintiff lacks the necessary experts to support his claims.⁵ Without an expert, Plaintiff cannot establish that Defendant breached its duty of care by allegedly installing wet or muddy materials, failing to employ appropriate containment and cleaning protocols, and failing to shut down or seal the HVAC system prior to drywall installation and sanding. Therefore, the Defendant argues that summary judgment should be granted.

Additionally, Defendant argues that Plaintiff has failed to produce evidence to support his claims of failure to warn, strict liability, and willful and wanton conduct.⁶ Plaintiff has not provided a factual basis for these claims, and failed to supplement his answer to the interrogatories, specifically asking to identify all facts that support these allegations. For these reasons, Defendant argues the claims must be dismissed.

Also, Defendant argues that Plaintiff has produced no evidence to establish breach.⁷ Plaintiff's claims are based on mere speculation. Additionally, Plaintiff has produced no evidence that Defendant was required to implement containment or cleaning protocols. Plaintiff also fails to show that this alleged failure caused the mold growth. Furthermore, Plaintiff has no proof that the standard of care required

⁵ *Id.* at 13.

⁶ *Id.* at 15.

⁷ *Id.*

Defendant to seal the HVAC system, or that Defendant failed to do so. Therefore, Defendant argues summary judgment should be granted.

Next, Defendant argues that Plaintiff cannot establish causation.⁸ Plaintiff's own experts found that the Home's indoor air quality reflected a "normal fungal ecology."⁹ The experts' testing did not show that the mold in the attic migrated into the living space. Furthermore, the only expert qualified to address causation is the defense expert, Mr. Cooper. Plaintiff's medical experts are not qualified to offer opinions on building-related causation, which is necessary to support the claim. Additionally, there is no evidence that Defendant caused the mold in the attic. There is also no evidence that the failure to seal the HVAC system during drywall installation caused or exacerbated Plaintiff's asthma. For these reasons, Defendant argues summary judgment should be granted.

Lastly, Defendant argues that Plaintiff has failed to mitigate damages¹⁰. Plaintiff rejected Defendant's proposal to hire DiBiaso Cleaning & Restoration to remediate the Home. Plaintiff requested a remediation done by Chesapeake, which was \$43,982.36, compared to DiBiaso's price of \$5,521.50. Plaintiff chose not to remediate the home. Therefore, Defendant argues that any claim for damages beyond the reasonable cost of remediation is barred.

⁸ *Id.* at 21.

⁹ *Id.*

¹⁰ *Id.* at 25.

B. Plaintiff's Answering Brief

Plaintiff argues that the lawsuit was timely filed because he submitted an online claim with the warranty department, as he had done before.¹¹ Additionally, the word “claim” is undefined in the contract and is ambiguous. Under the doctrine of *contra proferentem*, “any ambiguity in the contract is construed against the drafting party,” which is Defendant.¹² Additionally, the contract is a contract of adhesion. Therefore, the Court should not grant summary judgment.

Next, Plaintiff argues that there is sufficient evidence to support the claims for strict liability, failure to warn, and negligence.¹³ Plaintiff notes that he is dropping his demand for punitive damages under the willful and wanton claim. Plaintiff argues that in order to establish strict liability, the plaintiff only needs to show a defect. The drywall and dust in the Home are clear evidence of a defect. Whether the defect was present at the time of the sale is a question of fact for the jury. Furthermore, the failure to warn claim is based on Delaware’s Buyer Property Protection Act, which requires the seller to disclose all material defects at the time of closing. The jury must decide whether the defect existed at the time of the sale.

¹¹ Pl.’s Answ. Br. in Opp’n to Def.’s Mot. for Summ. J., D.I. 53, at 8-9.

¹² *Id.* at 8.

¹³ *Id.* at 9.

Plaintiff also argues that an expert is not needed to establish that the presence of mold and drywall dust is a breach in the duty of care.¹⁴ Based on common sense and the Delaware Buyer Property Protection Act, one does not need an expert to prove that a new home should be free of material defects. The issue of whether the defects existed at the time of the sale is a question for the jury. Even so, Plaintiff argues the case should go to the jury under the doctrine of *res ipsa loquitur* because mold and drywall dust do not occur spontaneously.

Next, Plaintiff argues that the issue of medical causation is a question for the jury.¹⁵ Plaintiff has evidence from his treating provider, Dr. Diette, and an expert, Dr. Eliasson, who link his exposure to the mold and drywall dust at the Home to the escalation of his asthma. Summary judgment should be denied, and the issue should be tried.

Lastly, Plaintiff argues that he properly mitigated his damages.¹⁶ Once he was informed by his doctor that the exposure at his Home was causing the escalation of his asthma, he stopped living there. Plaintiff requested a thorough remediation by Chesapeake. Defendant instead offered a different, limited remediation. The issue of which remediation was necessary is a question for the jury.

¹⁴ *Id.* at 10.

¹⁵ *Id.* at 11.

¹⁶ *Id.* at 13.

For these reasons, the Plaintiff asks the Court to deny the Motion for Summary Judgment.

C. Defendant's Reply Brief

Defendant argues that the contract is not ambiguous and the doctrine of *contra proferentem* does not apply.¹⁷ While it is true that “claim” is undefined, the language “any and all claims . . . regardless of legal theory” eliminates any ambiguity and covers all claims except those under the limited warranty.¹⁸ Additionally, Plaintiff’s reliance on the course of dealing to define “claim” is unsupported.¹⁹ The contract specifically states that oral statements or promises that are not in writing are unenforceable. Plaintiff could only bring a claim under the limited warranty. Defendant adds that even if Plaintiff brought a claim under the limited warranty, the claim would have been excluded because the contract expressly excludes “biological impurities” from warranty coverage. Therefore, the contract is unambiguous, the doctrine of *contra proferentem* does not apply, and summary judgment should be granted.

Next, Defendant continues to argue that there is no evidentiary basis for the strict liability claim.²⁰ Plaintiff has produced no evidence to support this claim, or

¹⁷ Def.’s Reply Br. in Supp. of Mot. for Summ. J., D.I. 62, at 4.

¹⁸ *Id.* at 5.

¹⁹ *Id.*

²⁰ *Id.* at 7.

presented case law to support that Delaware recognizes strict liability claims in this context. Plaintiff's reliance on *res ipsa loquitor* is also misplaced. Plaintiff has not shown the necessary elements to establish *res ipsa loquitor*.

Defendant argues that Plaintiff's reliance on the Delaware Buyer Property Protection Act is procedurally barred and unsupported.²¹ Until the present Motion, Plaintiff had not identified the Delaware Buyer Property Protection Act as its basis for the failure to warn claim. Discovery is closed. Plaintiff cannot introduce a new legal theory. Even so, Plaintiff cannot show that the mold or drywall dust existed at the time of closing. There is no evidence to support a failure to warn claim.

Defendant continues to argue that Plaintiff has failed to produce an expert to testify regarding the standard of care or breach for construction.²² The claim involves technical matters beyond an ordinary experience and therefore requires an expert. Without an expert, Plaintiff cannot establish the applicable standard of care. *Res ipsa loquitor* does not eliminate the need for expert proof.

Additionally, Defendant argues that Plaintiff has no proof of causation.²³ Plaintiff relies on two pulmonologists, neither of which are qualified to offer testimony regarding building conditions, mold development, construction practices, or HVAC-related particulate dispersion.

²¹ *Id.* at 10.

²² *Id.* at 12.

²³ *Id.* at 14.

Lastly, Defendant continues to argue that Plaintiff failed to mitigate damages. He has provided no testimony that Defendant's proposed remediation plan was insufficient or unreasonable.

For these reasons, Defendant asks the Court to grant its Motion for Summary Judgment.

STANDARD OF REVIEW

Under Delaware Superior Court Civil Rule 56, a party is entitled to summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.²⁴ If the moving party satisfies the initial burden, then the burden of proof shifts to the nonmoving party to establish the existence of genuine issues of material facts.²⁵ The Motion will be viewed in the light most favorable to the non-moving party. “[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.”²⁶ “If the evidence is *merely colorable, or is not significantly probative*, summary judgment may be granted.”²⁷

²⁴ Super. Ct. Civ. R. 56(c).

²⁵ *Brown v. Dollar Tree Stores, Inc.*, 2009 WL 5177162, at *2 (Del. Super. Ct. 2009).

²⁶ *Health Sols. Network, LLC v. Grigorov*, 2011 WL 443996, at *2 (Del. 2011) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)).

²⁷ *Id.* at 250-51.

DISCUSSION

A. Plaintiff's Claims are Time-Barred.

Plaintiff's claims are time-barred by the statute of limitations provision in the Contract.

Delaware “recognizes the right of contracting parties to impose a shorter period of limitation than that provided by statute.”²⁸ When parties choose to contract a shorter statute of limitations, “that determination will be respected as a wholesome determination of the interests of the parties, entirely in keeping with the purposes of the statute: to promote prompt resolution of issues and eliminate stale claims.”²⁹

Delaware courts have found that:

Delaware law does not have any bias against contractual clauses that shorten statutes of limitations because they do not violate the legislatively established statute of limitations, there are sound business reasons for such clauses, and our case law has long upheld such clauses as a proper exercise of the freedom of contract.³⁰

In the present case, it is clear to the Court that the parties unambiguously agreed to shorten the statute of limitations for any and all claims to one year after settlement. The contract between the parties specifically states, “any and all claims,” except those under the limited warranty. Plaintiff did not bring a claim against Defendant under the limited warranty. The date of settlement on the Home was

²⁸ *Eni Holdings, LLC v. KBR Grp. Holdings, LLC*, 2013 WL 6186326, at *1 (Del. Ch. 2013).

²⁹ *Id.*

³⁰ *Id.* at *7.

January 24, 2022. Plaintiff filed the first Complaint on March 27, 2023, which is more than one-year after the settlement date. Plaintiff argues that the claim is not time-barred because Plaintiff filed a claim with Defendant's warranty department on December 23, 2022, which was within the statute of limitations. However, the language of the Contract clearly indicates the parties' intent to limit the statute of limitations for legal claims arising from the settlement or Contract. Even though Plaintiff filed a warranty request to Defendant on December 23, 2023, Plaintiff did not initiate the lawsuit or bring claims for negligence, strict liability, failure to warn, and willful and wanton conduct until after the one-year statute of limitations period.

The parties agreed to limit the statute of limitations for any and all claims, regardless of legal theory, to one year. Therefore, Plaintiff's claims are time-barred.

B. The Doctrine of Contra Proferentem is not Appropriate in this Case.

Despite Plaintiff's contentions, the doctrine of *contra proferentem* does not apply, and the Contract is not ambiguous.

Under the doctrine of *contra proferentem*, the Court will construe the ambiguous terms against the drafter.³¹ Delaware courts have held that *contra proferentem* is a principle of "last resort, such that a court will not apply it if a

³¹ *Holzbaaur v. Trolley Square Hosp., LLC*, 340 A.3d 603, 613 (Del. Ch. 2025), *aff'd sub nom. Holzbaaur v. Trolley Square Hosp. Grp., LLC*, 2026 WL 261522 (Del. 2026).

problem in construction can be resolved by applying more favored rules of construction.”³² The doctrine will only apply if the terms are ambiguous.

Plaintiff also argues that due to the unequal bargaining power of the parties and the “take it or leave it position” of Defendant, the Contract is a contract of adhesion and should be construed in Plaintiff’s favor. A contract of adhesion is “typically a standard form contract where the bargaining power of the drafter greatly outweighs that of the other party, and where the terms are presented on a take-it-or-leave-it basis.” However, this alone is not sufficient to establish a contract of adhesion. The Plaintiff must also show “the contract at issue was gained through sheer economic force under circumstances where assent to its terms was absent.”³³ Typically, in a contract of adhesion, “[t]he dominant party knows that the other party would not accept the terms, and thus employs the practices of minute print, unintelligible legalese, or high pressure sales technique.”³⁴

In the present case, Plaintiff has not raised a genuine issue of material fact that Defendant engaged in any of those activities. Even though Plaintiff has signed an affidavit stating that he believed the contract was a “take-it-or-leave-it” situation, that alone is insufficient to establish that the contract is a contract of adhesion.³⁵

³² *Id.*

³³ *Waters v. Delaware Moving & Storage, Inc.*, 300 A.3d 1, 26-27 (Del. Super. Ct. 2023).

³⁴ *Id.* at 27.

³⁵ Pl.’s Answ. Br. in Opp’n to Def.’s Mot. for Summ. J., D.I. 53, at Ex. N, ¶ 4.

Further, the Court notes that the Plaintiff is well educated and there is no shortage of new construction houses in Sussex County.

Additionally, as aforementioned, the terms of the contract are unambiguous. The provision limiting the statute of limitations specifically states that it applies to “any and all claims . . . regardless of legal theory.”³⁶ Plaintiff argues that the word “claim” is ambiguous, and if Defendant wanted to limit the statute of limitations for a lawsuit, then it should have used the word “lawsuit” and not “claim.” The Court does not find that the contract is ambiguous. The word “claim” clearly refers to legal claims.

CONCLUSION

Plaintiff’s claims are time-barred by the statute of limitations provision included in the Contract. The Contract’s terms are unambiguous and clearly limit the Plaintiff’s ability to bring any and all legal claims against Defendant. The doctrine of *contra proferentem* does not apply. The facts do not support this was a contract of adhesion situation. Thus, the Court does not need to address Defendant’s other claims in the Motion for Summary Judgment. For these reasons, Defendant’s Motion for Summary Judgment is **GRANTED**.

³⁶ Def.’s Mot. for Summ. J., D.I. 47, Ex. A.

IT IS SO ORDERED.

/s/ Mark H. Conner

Mark H. Conner, Judge

oc: Prothonotary