

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JBLANCO ENTERPRISES,)	CASE NO. 1:13-cv-2831
)	
Plaintiff/Third-party Defendant,)	JUDGE SARA LIOI
)	
vs.)	
)	MEMORANDUM OPINION
SOPREMA ROOFING AND)	
WATERPROOFING, INC.,)	
)	
Defendant/Third-party Defendant,)	
)	
vs.)	
)	
BARLOVENTO, LLC,)	
)	
Third-party Plaintiff/Intervenor,)	
)	
vs.)	
)	
GREAT AMERICAN INSURANCE GROUP,)	
)	
Third-Party Defendant.)	

This matter is before the Court upon the motion of defendant and third-party defendant Soprema Roofing and Waterproofing, Inc.¹ (“Soprema”) for summary judgment on: (1) the complaint of plaintiff JBlanco Enterprises, Inc. (“JBlanco”); (2) counts II, III, IV, and VII of the complaint of intervenor/third-party plaintiff Barlovento, LLC’s (“Barlovento”); and (3) Soprema’s breach of contract claim against JBlanco. (Doc. Nos. 67 and 67-1 [“Mot.”].) Both JBlanco and Barlovento opposed Soprema’s motion. (Doc. No. 68 [“Barlovento Opp’n”]; Doc.

¹ In its motion for summary judgment, Soprema states that it has been improperly named as Soprema Roofing and Waterproofing, Inc., and that its correct name is Soprema, Inc. (Mot. at 495 (All references to page numbers are to the page identification numbers generated by the Court’s electronic docketing system.))

No. 70 [“JBlanco Opp’n”].) Soprema filed separate replies. (Doc. No. 72 [“Reply to Barlovento”]; Doc. No. 73 [“Reply to JBlanco”].) Barlovento was granted leave to file a sur-reply. (Doc. No. 74-3 [“Barlovento Sur-reply”].)

For the reasons that follow, Soprema’s motion for summary judgment is granted.

I. BACKGROUND

JBlanco’s complaint

This case, before the Court on diversity jurisdiction pursuant to 28 U.S.C. § 1332, was originally filed in district court in Colorado and transferred to the Northern District of Ohio. (Doc. No. 21.) JBlanco, a Colorado corporation, is a commercial roofing contractor. (Doc. No. 1 [“JBlanco Compl.”] ¶ 1.) Soprema, an Ohio corporation, sells roofing materials to contractors like JBlanco. (*Id.* ¶ 2.) Soprema provided roofing materials to JBlanco for installation on certain government buildings at the United States Air Force Academy (“Academy”).² (*Id.* ¶¶ 8-9.) Problems arose with those government roofing projects. JBlanco claims the problems are caused by the roofing materials supplied by Soprema, and asserts a single contract claim against Soprema for breach of express and implied warranties under the law of the State of Colorado. (*Id.* ¶¶ 10-24.)

Soprema’s complaint

Soprema sued JBlanco in a separate lawsuit, Case No. 1:14-cv-79,³ for failing to pay Soprema for the roofing materials purchased by JBlanco for the government roofing projects at issue in JBlanco’s complaint. (Doc. No. 1-2 in Case No. 1:14-cv-79 [“Soprema Compl.”].)

² JBlanco’s complaint identifies the buildings at issue as Vanderberg Hall, Arnold Hall, and GSA Building No. 50. (JBlanco Compl. ¶ 9.)

³ Soprema’s lawsuit, filed in the Medina County Court of Common Pleas, was removed by JBlanco to this Court on the basis of diversity jurisdiction, 28 U.S.C. § 1332.

Soprema's complaint asserts four causes of action in that regard: (1) breach of the authorized roofing contractor agreement between Soprema and JBlanco; (2) breach of JBlanco's application for credit contract with Soprema; (3) conversion of roofing materials supplied by Soprema to JBlanco; and (4) unjust enrichment. (*Id.* ¶¶ 14-39.) The Court consolidated Soprema's case with the above-captioned action, treating Soprema's complaint in Case No. 1:14-cv-79 as a counterclaim to JBlanco's complaint. (Doc. No. 15 in Case No. 1:14-cv-79.) On summary judgment, Soprema seeks \$556,693.41 in unpaid invoices and finance charges, as well as attorney fees.⁴

Barlovento's complaint

Barlovento was granted leave to intervene as a third-party plaintiff in the above-captioned case when the roof repairs to the Air Force's Consolidated Educational Training Facility ("CETF") at the Academy in Colorado (the "CETF project") were added by JBlanco and Soprema to the scope of the litigation between them. (Doc. No. 49-1 at 239; Minute Order 09/09/2015.) Barlovento's complaint raises allegations against JBlanco and Soprema with respect to the CETF project only, and not the other government roofing projects at issue between JBlanco and Soprema. (*See* Doc. No. 50 ["Barlovento Compl."].)

Barlovento, an Alabama limited liability company, provides general contractor, design, and construction services to the government and industry clients. (*Id.* at ¶ 7.) Barlovento contracted with the United States Department of the Air Force to replace the roof on the CETF, and subcontracted with JBlanco to provide the labor, materials, and equipment for that job. (*Id.* ¶¶ 8-10.) JBlanco purchased the roofing materials from Soprema. Barlovento does not have a

⁴ If Soprema's motion on the counterclaim is granted, Soprema requests a hearing at which it will present evidence of reasonable attorney fees.

contract with Soprema. As part of the subcontract with Barlovento, JBlanco was required to obtain a performance bond, and did so from Great American Insurance Group (“Great American”). (*Id.* ¶¶ 11-12.)

After the CETF project was complete, the Air Force would not accept the roof because of discoloration, cracking, and blistering, and required the roof to be replaced in its entirety. (*Id.* ¶¶ 19-21.) Barlovento claims: (1) breach of contract against JBlanco (counts I⁵ and V⁶) for failing to properly store, prepare and apply the roofing materials on the CETF project, and for failing to indemnify Barlovento in accordance with the terms of the subcontract between them; (2) breach of contract against Soprema (Count II⁷) for breaching implied warranties of merchantability and fitness for a particular purpose in Soprema’s agreement with JBlanco, to which Barlovento alleges it is a third-party beneficiary; (3) negligence against both JBlanco and Soprema (counts III⁸ and IV⁹); (4) breach of express warranty against JBlanco (count VI¹⁰) with respect to the subcontract between Barlovento and JBlanco; (5) breach of express warranty against Soprema (count VII¹¹) with respect to an alleged 10-year written manufacturer’s warranty issued by Soprema to the Air Force for the CETF project, to which Barlovento alleges it is a third-party beneficiary; and (6) breach of performance bond against Great American (count VIII¹²). Soprema moves for summary judgment on all of Barlovento’s claims against it.

⁵ Barlovento Compl. ¶¶ 22-26.

⁶ Barlovento Compl. ¶¶ 48-52.

⁷ Barlovento Compl. ¶¶ 27-32.

⁸ Barlovento Compl. ¶¶ 33-39.

⁹ Barlovento Compl. ¶¶ 40-47.

¹⁰ Barlovento Compl. ¶¶ 53-59.

¹¹ Barlovento Compl. ¶¶ 60-65.

¹² Barlovento Compl. ¶¶ 66-71.

II. DISCUSSION

A. Summary Judgment Standard

Summary judgment is appropriate where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A fact is material if its resolution affects the outcome of the lawsuit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A dispute is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* If a reasonable jury could return a verdict for the nonmoving party, then summary judgment is not appropriate. *Id.*

The moving party must provide evidence to the Court which demonstrates the absence of a genuine dispute as to any material fact. Once the moving party meets this initial burden, the opposing party must come forward with specific evidence showing that there is a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); *Anderson*, 477 U.S. at 250. The nonmoving party may oppose a summary judgment motion “by any of the kinds of evidentiary material listed in Rule 56(c), except the mere pleadings themselves[.]” *Celotex*, 477 U.S. at 324. The Court must view all facts and evidence, and inferences that may be reasonably drawn therefrom, in favor of the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1962).

General averments or conclusory allegations of an affidavit do not create specific fact disputes for summary judgment purposes. *See Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888-89, 110 S. Ct. 3177, 111 L. Ed. 2d 695 (1990). “Summary judgment requires that a plaintiff present more than a scintilla of evidence to demonstrate each element of a prima facie case.” *Garza v. Norfolk S. Ry. Co.* 536 F. App’x 517, 519 (6th Cir. 2013) (citing *Van Gorder v. Grand*

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