

03-1660-CD
DONNA BOWERS vs. SHAW INDUSTRIES, INC.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DONNA BOWERS,
Plaintiff

vs.

SHAW INDUSTRIES, INC.,
Defendant

No. 03-1660-CJ

Type of Pleading:

COMPLAINT

Filed on Behalf of:
PLAINTIFF

Counsel of Record for
This Party:

S. Casey Bowers, Esq.
Supreme Court No. 89032
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

814-371-7768

FILED

NOV 06 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION-LAW

DONNA BOWERS,
Plaintiff

VS.

No. _____

**SHAW INDUSTRIES, INC.,
Defendant**

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641 Ext. 1300

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION-LAW

DONNA BOWERS,
Plaintiff

vs.

No. _____

SHAW INDUSTRIES, INC.,
Defendant

COMPLAINT IN A CIVIL ACTION

AND NOW, comes the Plaintiff, DONNA BOWERS, by her attorneys, HANAK, GUIDO AND TALADAY, and hereby brings the within action against the Defendant:

1. Plaintiff is an adult individual residing at 810 Maple Avenue, DuBois, Clearfield County, Pennsylvania, 15801.
2. Defendant, SHAW INDUSTRIES, INC., is a corporation organized and existing under the laws of the State of Georgia, with a mailing address of P. O. Box 40, Dalton, Georgia, 30722-0040.
3. At all times relative hereto, Defendant offered for sale in the Commonwealth of Pennsylvania various products, including carpet and other floor covering materials.
4. At all times relevant hereto, Defendant was a merchant as defined under 13 Pa.C.S.A. §2104 in that it dealt carpet and floor covering materials and/or its employees possessed skill particular to the goods involved in this transaction.
5. On or about April 18, 2001, Plaintiff purchased 75 square yards of Rivista Q4475 05765 Lotus carpet from Jim Stellabuto,

t/d/b/a Jim Stellabuto's Everything Under Foot, an authorized dealer of Defendant's products.

6. The carpet purchased by Plaintiff was manufactured by the Defendant.

7. The carpet in question was installed in Plaintiff's home by Defendant's authorized dealer, Jim Stellabuto's Everything Under Foot.

8. On or about January 1, 2002, Plaintiff discovered what appeared to be green spots on the carpet in question. These spots appeared under a lighted Christmas tree display.

9. Plaintiff immediately notified both Jim Stellabuto and Shaw Industries, Inc., of the problem. Shaw Industries, Inc., then commissioned an independent inspector to inspect the discolored carpet and retrieve samples of such carpet for laboratory analysis.

10. Shaw Industries, Inc., represented that this analysis revealed no manufacturing defects. Nonetheless, Jim Stellabuto's Everything Under Foot replaced the discolored portion of the carpet with carpet remnants left from the original installation.

11. The carpet became discolored under the same lighted Christmas display the following year (Christmas 2002). At that time, Plaintiff also discovered discolored areas under their heating registers.

Count I
Breach of Contract

12. Paragraphs 1 through 11 of this Complaint are incorporated herein by reference as though they were set forth more fully at length.

13. Soon after discovering this additional discoloration, Plaintiff again notified Defendant, Shaw Industries, Inc., of the problem.

14. After receiving such notification, Sue Dixon and Lynn Warnack, both employees of Defendant, Shaw Industries, Inc., made representations to Defendant that if she would have the carpet analyzed and such analysis revealed that the carpet was defective, Shaw Industries, Inc., would replace the carpet in question and pay for the analysis.

15. Acting reliance on Defendant's representations, Plaintiff subsequently employed James Coleman, an F.C.I.T.S. surveyed carpet inspector. Mr. Coleman inspected the carpet and sent samples to Professional Testing Laboratory, Inc., in Dalton, Georgia.

16. This analysis revealed that the discoloration observed in Plaintiff's carpet was the result of the loss of red dye from the carpet.

17. The analysis also revealed that the loss of red dye was due to the fact that the carpet had almost no resistance to ozone.

18. The lack of ozone resistance leaves this carpet particularly susceptible to fading and discoloration and constitutes a defect.

19. Plaintiff has demanded that Defendant pay for replacement carpet and the carpet inspection analysis.

20. Despite Plaintiff's demand, Defendant has refused and continues to refuse to make such payment.

21. Defendant's refusal to make payment to Plaintiff constitutes a breach of the oral contract between Plaintiff and Shaw Industries, Inc., as set forth in Paragraph 14 herein.

22. As a direct result of Defendant's breach of the oral contract between Plaintiff and Defendant, Plaintiff has already or will incur costs in excess of \$3,177.50.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in favor of Plaintiff and against Defendant in an amount not to exceed arbitration limits, together with costs of suit and other relief this Court deems just and equitable.

Count II
Breach of Express Warranty

23. Plaintiff incorporates paragraphs 1 through 22 herein as if said paragraphs were set forth at length.

24. The carpet sold to Plaintiff was represented to be fade and crush resistant and otherwise free from defect.

25. The lack of ozone resistance leaves this carpet particularly susceptible to fading and discoloration and constitutes a material defect in the product.

26. As a direct result of Defendant's breach of express warranty, Plaintiff has already or will incur costs in excess of \$3,177.50.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in favor of Plaintiff and against Defendant in an amount not to exceed arbitration limits, together with costs of suit and other relief as this Court deems just and equitable.

Count III
Breach of Implied Warranty of Fitness
For a Particular Purpose

27. Plaintiff incorporates paragraphs 1 through 26 herein as if said paragraphs were set forth at length.

28. At the time of the sale of the carpet, Defendant had reason to know the carpet would be used in Plaintiff's home, and as such, would be exposed to various compounds commonly occurring in the environment, including but not limited to ozone.

29. At the time of the sale, Defendant had reason to know that Plaintiff was relying on Defendant's skill or knowledge to select and furnish carpet suitable for such household use.

30. An implied warranty was created that the goods would be fit for that particular purpose.

31. Defendant breached this implied warranty in that the carpet in question provides almost no resistance to ozone and is therefore extremely susceptible to fading and color loss.

32. As a direct result of Plaintiff's breach of implied warranty of fitness for a particular purpose, Plaintiff has sustained damages in excess of \$3,177.50.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in favor of Plaintiff and against Defendant in an amount not to exceed arbitration limits, together with costs of suit and any further relief this Court deems just and equitable.

Count IV
Breach of Implied Warranty of Merchantability

33. Plaintiff incorporates paragraphs 1 through 32 herein as if said paragraphs were set forth at length.

34. The carpet in question sold by Defendant is not fit for the ordinary purpose for which such goods are used as set forth in Pa.C.S.A. §2314 in that said carpet is not resistant to ozone and therefore susceptible fading and color loss.

35. Defendant has breached the implied warranty of merchantability as set forth in 13 Pa.C.S.A. §2314.

36. As a result of Defendant's breach, Plaintiff has sustained damages in excess of \$3,177.00.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in favor of Plaintiff and against Defendant in an amount not to exceed arbitration limits, together with costs of suit and any further relief this Court deems just and equitable.

Respectfully submitted,

HANAK, GUIDO AND TALADAY, by:



S. Casey Bowers
Attorney for Plaintiff

VERIFICATION

I, DONNA BOWERS, verify that the statements in the foregoing COMPLAINT are true and correct to the best of my knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

Donna M. Bowers
Donna Bowers

FILED

2cc Amy Bowers
M 11:04 AM
NOV 06 2003
Amy pol. 85.00

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DONNA BOWERS,
Plaintiff

vs.

SHAW INDUSTRIES, INC.,
Defendant

No. 03-1660-CD

Type of Pleading:

AFFIDAVIT OF SERVICE

Filed on Behalf of:
PLAINTIFF

Counsel of Record for
This Party:

S. Casey Bowers, Esq.
Supreme Court No. 89032
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

814-371-7768

FILED

01/16/04 1 CL to CLG
NOV 20 2003
GRC

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION-LAW

DONNA BOWERS,
Plaintiff

vs.

No. 03-1660-CD

SHAW INDUSTRIES, INC.,
Defendant

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA
SS:
COUNTY OF CLEARFIELD

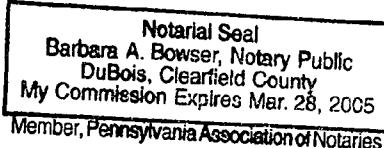
The undersigned, S. CASEY BOWERS, ESQ., hereby swears and affirms that the Defendant, SHAW INDUSTRIES, INC., was duly served with a copy of the Complaint in the above matter at its mailing address of P. O. Box 40, Dalton, Georgia, 30722-0040, by United States Postal Service, Certified Mail, the return receipt No. 7002 2410 0000 3959 6349 is attached hereto.



S. Casey Bowers
Attorney for Plaintiff

Sworn and subscribed before me
this 18th day of November, 2003.

Barbara A. Bowser

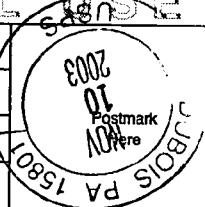


U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
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OFFICIAL USE

Postage	\$ 60
Certified Fee	230
Return Receipt Fee (Endorsement Required)	175
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4,65



Sent To
Shaw Industries Inc.
 Street, Apt. No.,
 or PO Box No. **P O Box 40**
 City, State, ZIP **Dalton GA**

PS Form 3800, June 2002

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Shaw Industries, Inc.
 P O Box 40
 Dalton, GA 30722-0040

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Ch. Hall

Agent
 Addressee

B. Received by (Printed Name)

Ch. Hall

C. Date of Delivery
11-14-03

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number

(Transfer from service label)

7002 2410 0000 3959 6349

PS Form 3811, August 2001

Receipt

102595-02-M-1035

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DONNA BOWERS,

CIVIL ACTION - LAW

Plaintiff,

No. 03-1660-CD

v.

SHAW INDUSTRIES, INC.,

PRAECIPE TO ENTER APPEARANCE

Defendant.

Filed on Behalf of Defendant

Counsel of Record for this Party:

HENRY M. SNEATH, ESQUIRE
PA I.D. No. 40559

ANDREW F. SZEFI, ESQUIRE
PA I.D. No. 83747

PICADIO SNEATH MILLER & NORTON, P.C.
Suite 4710, US Steel Tower
600 Grant Street
Pittsburgh, PA 15219
(412) 288-4000
(412) 288-2405 (Fax)

FILED

DEC 01 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DONNA BOWERS,)
v.)
Plaintiff,)
SHAW INDUSTRIES, INC.,)
Defendant.)
Defendant.)
No. 03-1660-CD

PRAECLP TO ENTER APPEARANCE

TO: PROTHONOTARY:

KINDLY enter the appearance of HENRY M. SNEATH, ESQ., ANDREW F. SZEFI, ESQ. and Picadio Sneath Miller & Norton, P.C., on behalf of Defendant, SHAW INDUSTRIES, INC. in the above-captioned matter.

Respectfully submitted:

PICADIO SNEATH MILLER & NORTON, P.C.

By: Henry Sheath
Henry M. Sheath
Pa. I.D. # 40559
Andrew F. Szefi
Pa. I.D. # 83747
Suite 4710, US Steel Tower
600 Grant Street
Pittsburgh, PA 15219
Phone: 412-288-4000

CERTIFICATE OF SERVICE

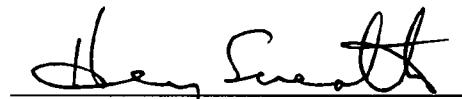
I hereby certify that a true and correct copy of the within Praeclipe to Enter Appearance has been served upon all parties either individually or through counsel by:

Hand Delivery
 First Class Mail, Postage Prepaid
 Certified Mail Return Receipt Requested
 Facsimile
 Federal Express / Overnight Mail

at the following addresses:

S. Casey Bowers, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P O Box 487
DuBois, PA 15801
Counsel for Plaintiffs

PICADIO SNEATH MILLER & NORTON, P.C.


Henry M. Sneath, Esquire
Andrew F. Szefi, Esquire
Counsel for Defendant

Dated: 11-25-03

FILED No cc

DEC 6 2005 copy to CIA

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

DONNA BOWERS,
Plaintiff

vs.

SHAW INDUSTRIES, INC.,
Defendant

No. 03-1660-CD

Type of Pleading:

**PRAECIPE FOR
DISCONTINUANCE**

Filed on Behalf of:
PLAINTIFF

Counsel of Record for
This Party:

S. Casey Bowers, Esq.
Supreme Court No. 89032
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

814-371-7768

FILED 

JUN 24 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL ACTION-LAW

DONNA BOWERS,
Plaintiff

vs.

..... No. 03-1660-CD

SHAW INDUSTRIES, INC.,
Defendant

PRAECIPE FOR DISCONTINUANCE

TO THE PROTHONOTARY:

Please mark the above captioned matter settled, discontinued
and terminated.



S. Casey Bowers
Attorney for Plaintiff

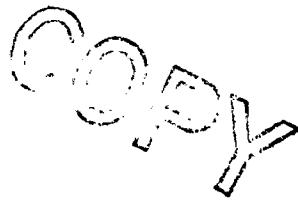
FILED
MAY 28 2004
to Amy Bowers
JUN 24 2004

William A. Shaw
Prothonotary/Clerk of Courts

copy of Cert. to CIA

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION



Donna Bowers

Vs.
Shaw Industries, Inc.

No. 2003-01660-CD

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on June 24, 2004, marked:

Settled, Discontinued and Terminated

Record costs in the sum of \$85.00 have been paid in full by S. Casey Bowers.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 24th day of June A.D. 2004.

William A. Shaw, Prothonotary