

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
WEST VIRGINIA, HUNTINGTON DIVISION

7827 Tennis Enterprises, Inc. v. Appalachian Spray Foam Solution,
L.L.C., Cody Hunley, Chase Hunley, and Profoam Corporation

7827 Tennis Enterprises · No. 3:25-0160 · Decided June 26, 2026

SUMMARY

The United States District Court for the Southern District of West Virginia partially granted and partially denied Profoam Corporation’s motion for summary judgment. The court entered judgment for Profoam on the breach-of-contract, express-warranty, and fraud claims, but allowed the implied-warranty and negligence claims to proceed based on factual disputes concerning Profoam’s product recommendations and the conduct of its sales representative.

CASE DETAILS

COURT	United States District Court for the Southern District of West Virginia, Huntington Division
WRITING FOR THE COURT	Robert C. Chambers
JURISDICTION	United States District Court for the Southern District of West Virginia, Huntington Division
DECIDED	June 26, 2026
DOCKET	3:25-0160
DISPOSITION	other
PROCEDURAL POSTURE	Defendant Profoam Corporation moved for summary judgment on all claims asserted against it in Plaintiff's Second Amended Complaint.
STANDARD OF REVIEW	Summary judgment is appropriate when the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court views the facts and reasonable inferences in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	unpublished district court memorandum opinion; persuasive authority only

TOPICS

- summary judgment
- breach of contract
- construction law
- negligence
- commercial litigation

PRACTICE AREAS

contracts

torts

construction law

commercial litigation

civil procedure

QUESTIONS PRESENTED

1. Whether Profoam was entitled to summary judgment on Plaintiff's breach-of-contract claim where Plaintiff sought to enforce the Profoam-Appalachian contract as an intended third-party beneficiary.
2. Whether Profoam was entitled to summary judgment on Plaintiff's breach-of-express-warranty claim where the alleged ten-year warranty appeared in Plaintiff's contract with Appalachian rather than in a warranty issued by Profoam.
3. Whether a genuine dispute of material fact existed on the elements of Plaintiff's implied warranty of fitness for a particular purpose claim.
4. Whether Profoam was entitled to summary judgment on Plaintiff's fraud claim where the alleged warranty misrepresentation was made by Appalachian rather than Profoam.
5. Whether a genuine dispute of material fact existed as to Profoam's duty and alleged negligence in advising or supervising Appalachian's roof-coating work.

HOLDINGS

1. Profoam was entitled to summary judgment on Plaintiff's breach-of-contract claim because the evidence did not show that the Profoam-Appalachian contract was made for Plaintiff's sole benefit.
2. Profoam was entitled to summary judgment on Plaintiff's breach-of-express-warranty claim because the record contained no evidence that Profoam issued the warranty at issue to Plaintiff.
3. Profoam was not entitled to summary judgment on Plaintiff's implied-warranty claim because genuine disputes existed concerning whether Profoam had reason to know Plaintiff's particular purpose, whether Appalachian relied on Profoam's skill or judgment in selecting the product, and whether the product was unfit for that purpose.
4. Profoam was entitled to summary judgment on Plaintiff's fraud claim because the alleged warranty misrepresentation was made by Appalachian, not Profoam, and the record did not show that Plaintiff believed Profoam issued the warranty.
5. Profoam was not entitled to summary judgment on Plaintiff's negligence claim because the evidence could support a finding that Profoam owed Plaintiff a duty and that its representative negligently instructed or supervised Appalachian's work.

KEY QUOTATIONS

“A “court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.””

“Accordingly, a nonresponse to summary-judgment is not dispositive. The movant still bears the burden to show it is entitled to relief.”

FACTUAL BACKGROUND

Plaintiff operated a West Virginia tennis facility whose roof leaked. Appalachian agreed to apply an acrylic coating system, purchased products from Profoam, and received assistance from Profoam sales representative Jeremy Green concerning product selection and application. The leaks returned after the work was completed, and Plaintiff's expert identified several possible application, environmental, and product-related causes. The evidence disputed whether Green merely provided technical advice or effectively supervised the work.

PROCEDURAL HISTORY

Plaintiff sued Appalachian Spray Foam Solution, L.L.C. and Cody and Chase Hunley in West Virginia state court. The case was removed to federal court, after which Plaintiff filed a Second Amended Complaint adding Profoam Corporation and asserting claims for breach of contract, breach of express warranty, breach of implied warranty, fraud, and negligence. The court granted Profoam's motion for summary judgment as to the breach-of-contract, express-warranty, and fraud claims, but denied it as to the implied-warranty and negligence claims.

DISPOSITION

other

CASES CITED

- *Bhattacharya v. Murray*, 93 F.4th 675, 686 (4th Cir. 2024)
- *Woodford v. Glenville State Coll. Hous. Corp.*, 225 S.E.2d 671, 674 (W. Va. 1976)
- *Jones, Inc. v. W. Va. Wiedebusch Plumbing & Heating Co.*, 201 S.E.2d 248, 254 (W. Va. 1973)
- *Dawson v. Canteen Corp.*, 212 S.E.2d 82 (W. Va. 1975)
- *Aikens v. Debow*, 541 S.E.2d 576 (W. Va. 2000)
- *Jack v. Fritts*, 457 S.E.2d 431 (W. Va. 1995)
- *Sewell v. Gregory*, 371 S.E.2d 82 (W. Va. 1988)
- *Shenandoah Life Ins. Co. v. Hawes*, 256 F. Supp. 366, 368