

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

Alvin Ploen and Melissa Ploen v. Andersen Windows, Inc.

Ploen · No. 8:25CV359 · Decided December 29, 2025

SUMMARY

The United States District Court for the District of Nebraska granted Andersen Windows, Inc.’s Rule 12(b)(6) motion in a dispute concerning allegedly defective residential windows. The court dismissed the negligence claim under the economic loss doctrine, dismissed the breach-of-contract claim as duplicative of warranty claims, and denied the plaintiffs’ motion to amend as futile.

CASE DETAILS

COURT	United States District Court for the District of Nebraska
WRITING FOR THE COURT	Robert F. Rossiter, Jr.
JURISDICTION	United States District Court for the District of Nebraska
DECIDED	December 29, 2025
DOCKET	8:25CV359
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the negligence claim and to dismiss the breach-of-contract claim as duplicative of the warranty claims. Plaintiffs moved to amend their complaint after their motion for leave to file a late response to the dismissal motion was denied.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. Leave to amend may be denied when the proposed amendment would be futile, including when it would not save an otherwise meritless claim.
PRECEDENTIAL VALUE	unpublished district court memorandum and order; persuasive value only

TOPICS

- motions to dismiss
- motion to amend
- negligence
- contracts
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the complaint plausibly stated a negligence claim when the alleged damages were economic losses, the alleged duty arose from the window-sale contract, and no personal injury or damage to other property was alleged.
2. Whether the breach-of-contract claim was duplicative of the breach-of-warranty claims because all claims were based on the alleged defective windows.
3. Whether leave to amend should be denied as futile when the proposed amendments alleged that the windows were likely to damage the home and that a later inspection-and-repair agreement existed.

HOLDINGS

1. The negligence claim was barred by the economic loss doctrine and failed to state a claim because the Ploens alleged only economic losses, the asserted duty arose from the contractual relationship concerning the windows, and they alleged no personal injury or damage to other property.
2. The breach-of-contract claim was duplicative and was dismissed because it was based on the same alleged manufacture and sale of defective windows as the breach-of-express-warranty and breach-of-implied-warranty claims.
3. Leave to amend was denied as futile because alleging that the windows were likely to cause damage did not overcome the economic loss doctrine, and the proposed allegation of a later inspection-and-repair agreement did not plausibly plead a separate contract.

KEY QUOTATIONS

“To survive a motion to dismiss, their ‘complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”

“That proposed amendment does not salvage the negligence claim.”

FACTUAL BACKGROUND

In June 2023, Alvin and Melissa Ploen installed Andersen windows in their Iowa home after purchasing them from a Nebraska lumber company and hiring a local contractor for installation. They alleged that dust, precipitation, outside air, insects, and light entered around the window frames, and that Andersen's attempted repair with spacers did not solve the problems. They sought more than \$179,000 for window replacement, contractors, cleaning, and increased utility costs, but alleged no personal injury or damage to property other than the windows and home-related economic losses.

PROCEDURAL HISTORY

The Ploens filed a diversity action asserting breach of contract, breach of express warranty, breach of implied warranties, unjust enrichment, and negligence. Andersen moved to dismiss, and the Ploens later moved to amend

their complaint. The court granted the motion to dismiss, dismissed the negligence and breach-of-contract claims with prejudice, and denied the motion to amend as futile.

DISPOSITION

other

CASES CITED

- Braden v. Wal-Mart Stores, Inc., 588 F.3d 585, 594 (8th Cir. 2009)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 556 (2007)
- Baumann v. Zhukov, 802 F.3d 950, 953 (8th Cir. 2015)
- A.W. v. Lancaster County School District 0001, 784 N.W.2d 907, 913 (Neb. 2010)
- Lesiak v. Central Valley Ag Cooperative, 808 N.W.2d 67, 81 (Neb. 2012)
- Des Moines Flying Service, Inc. v. Aerial Services Inc., 880 N.W.2d 212 (Iowa 2016)
- Nelson v. Todd's Ltd., 426 N.W.2d 120, 123 (Iowa 1988)
- Blakley v. Schlumberger Technology Corp., 648 F.3d 921, 932 (8th Cir. 2011)
- General Mills Operations, LLC v. Five Star Custom Foods, Ltd., 703 F.3d 1104, 1112 (8th Cir. 2013)
- Genesis Health Clubs, Inc. v. LED Solar & Light Co., 639 Fed. Appx. 550 (10th Cir. 2016) (unpublished)
- Marmo v. Tyson Fresh Meats, Inc., 457 F.3d 748, 755 (8th Cir. 2006)
- Kozlov v. Associated Wholesale Grocers, Inc., 818 F.3d 380, 394-95 (8th Cir. 2016)
- Jackson v. Riebold, 815 F.3d 1114, 1122 (8th Cir. 2016)
- Knowles v. TD Ameritrade Holding Corp., 2 F.4th 751, 758 (8th Cir. 2021)