**IN THE UNITED STATES DISTRICT COURT**

**FOR THE WESTERN DISTRICT OF VIRGINIA**

**Lynchburg Division**

**GERALD ROBINSON, )**

 **)**

 **Plaintiff, )**

 **)**

**v. ) Case. No.**

 **)**

**CHESTNUT HILL WINDOWS, INC., ) DEMAND FOR JURY TRIAL**

 **)**

 **Serve: )**

 **Jeffrey C. Tuomala )**

 **1971 University Blvd. )**

 **Lynchburg, VA 24502-2213 )**

 **)**

 **Defendant. )**

**COMPLAINT**

 Plaintiff Gerald Robinson (“Mr. Robinson”), by counsel, alleges as follows for his Complaint against Chestnut Hill Windows, Inc. (“Chestnut Hill”):

**Parties**

1. Mr. Robinson is a citizen of Virginia. He resides at 4223 Waterlick Road, Forest, VA 24551.
2. On information and belief, Chestnut Hill is a Delaware Corporation with a principal place of business at 1 University Road, Pembroke, NC 28372.

**Jurisdiction and Venue**

3. This Court has Subject Matter Jurisdiction pursuant to 28 U.S.C. §1332, diversity of citizenship of the parties and the amount in controversy. Mr. Robinson is a citizen of the Commonwealth of Virginia. Defendant is a corporation incorporated under the laws of the State of Delaware having its principal place of business in the State of North Carolina. The amount in controversy exceeds the sum of seventy-five thousand dollars ($75,000), exclusive of interests and costs.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391, in that the events giving rise to the claims occurred within the district and because defendants conducted business within the district, and has engaged in, and continues to engage in, acts of selling and promoting goods and products to consumers in the district.

**Facts**

5. On April 17, 2008, Mr. Robinson purchased a brand new home, located at 4223 Waterlick Road, Forest, VA 24551, from Maddux Contractors.

6. Maddux Contractors purchased all of the windows for the home, located at 4223 Waterlick Road, Forest, VA 24551, from Chestnut Hill.

7. Chestnut Hill manufactured and installed the entire windows in the home, located at 4223 Waterlick Road, Forest, VA 24551.

8. No other contractor assisted with the window installation.

9. None of the windows in the home were changed or altered in any way after the installation by Chestnut Hill.

10. On April 15, 2009, Mr. Robinson attempted to clean the windows of his home.

11. While Mr. Robinson attempted to clean the second story bay window, it broke free from its casing and fell to the ground causing Mr. Robison to fall through the window and fall to the floor.

12. Mr. Robinson suffered severe and permanent physical injuries as a result of the fall.

**Count I – Defective Design**

13. Plaintiff repeats and realleges paragraphs 1 through 12 as if fully set forth herein.

14. Defendant sold and distributed the Plaintiff’s window in a defective condition because the window was not reasonably safe for use as a home window.

15. A reasonable person who knew of the window’s potential for causing injury would have concluded that the window, which was not reasonably safe for its intended use because of a design defect, should not have been marketed in that condition.

16. Plaintiff used the window for its intended or reasonable foreseeable purpose.

17. Defendant knew or otherwise expected that the window would reach the Plaintiff, without substantial change from or alteration of, the condition in which it was originally manufactured and sold.

18. The Defendant’s window did reach the Plaintiff in an unaltered condition from its originally manufactured condition.

19. As a direct and proximate result of Defendant’s distribution of a defective product to the Plaintiff, he suffered severe and permanent physical injuries.

**Count II – Negligence**

20. Plaintiff repeats and realleges paragraphs 1 through 12 as if fully set forth herein.

21. Defendant had a duty to exercise reasonable care in the design, manufacture, and installation of the Plaintiff’s window, including a duty to warn the Plaintiff, of the dangers associated with the use of the windows that were known or should have been known to the Defendant at the time of the installation of the window in the Plaintiff’s home.

22. Defendant failed to exercise reasonable care in the design, manufacture, and installation of the windows because the Defendant knew or should have known the window had a propensity to cause serious injury, including, breaking free from its casing.

23. Defendant knew or should have known the Plaintiff could foreseeably suffer injury as a result of the Defendant’s failure to exercise reasonable care as described above.

24. Defendant breached its duty of reasonable care to the Plaintiff by failing to exercise reasonable care under the circumstances.

25. As a direct and proximate result of Defendant’s acts, including their failure to exercise reasonable care in the design, manufacture, and installation of the window, the Plaintiff suffered severe and permanent physical injuries for which they are entitled to damages.

**Count III – Manufacturing Defect**

26. Plaintiff repeats and realleges paragraphs 1 through 12 as if fully set forth herein.

27. At all times material to this action, the window was expected to reach and did reach the Plaintiff herein without substantial change in the way it was manufactured and installed.

28. Defendant designed, manufactured, and installed the window in a condition that posed unreasonable risks from reasonably anticipated use.

29. The window was expected to and did reach the Plaintiff without substantial change in condition from the time that it left the control of the Defendant.

30. The defective conditions alleged herein rendered the window unreasonably dangerous to the Plaintiff and proximately caused the injuries and damages for which this lawsuit seeks recovery.

31. At all times material to this action, the window was designed, manufactured, and installed by the Defendant in a defective and unreasonably dangerous condition at the time is was placed in the stream of commerce in ways which include, but not limited to, one or more of the following particulars:

a. When placed in the stream of commerce, the window contained manufacturing defects which rendered the product unreasonably dangerous;

b. The window’s manufacturing defect occurred while the product was in the possession and control of the Defendant;

c. The window’s manufacturing defects existed before it left the control of the Defendant.

32. The defective manufacture by the Defendant caused and proximately caused the Plaintiff severe and permanent physical injuries.

**Count IV – Failure to Warn**

33. Plaintiff repeats and realleges paragraphs 1 through 12 as if fully set forth herein.

34. Defendant knew, or in the light of reasonably available knowledge, should have known, of the danger in the window that caused the damage for which recovery is sought.

35. The ordinary user of the window would not have realized such dangers.

36. Defendant neglected to provide the Plaintiff with warnings that reasonably could have been expected to catch the attention of a reasonably prudent person under similar circumstances taking into account the characteristics of, and the ordinary knowledge common to an ordinary person who uses the windows.

37. Defendant failed to provide warnings that would accurately advise an ordinary consumer of the scope, severity and likelihood of serious injury for the use of its windows.

38. Had such warnings been provided, the injuries and damages sustained by the Plaintiff could have been avoided.

39. As a direct and proximate result of the Defendant’s conduct, the Plaintiff suffered severe and permanent physical injuries.

**Count V – Breach of Implied Warranty of Merchantability**

40. Plaintiff repeats and realleges paragraphs 1 through 12 as if fully set forth herein.

41. At all times material to this action, the Defendant was in the business of designing, manufacturing, and installing residential windows.

42. The Plaintiff used the window for the purposes for which they were sold.

43. As a direct and proximate result of the Defendant’s conduct, the Plaintiff suffered severe and permanent physical injuries.

**Count VI – Breach of Implied Warranty of Fitness For a Particular Purpose**

44. Plaintiff repeats and realleges paragraphs 1 through 12 as if fully set forth herein.

45. The Defendant had reason to know of the Plaintiff’s particular purpose for the window.

46. The Defendant had reason to know of the Plaintiff’s reliance on the Defendant’s skill and knowledge in furnishing and installing the windows.

47. The Plaintiff relied on the Defendant’s skill and knowledge in regards to the manufacturing and installation of the window.

48. As a direct and proximate result of the Defendant’s conduct, the Plaintiff suffered severe and permanent physical injuries in an amount to be proven at trial.

**Damages and Relief Requested**

49. Wherefore, the Plaintiff prays for judgment against the Defendant as follows:

a. Awarding compensatory damages to the Plaintiff in the amount of $85,000.00

b. Awarding pain and suffering in the amount of $50,000.00

c. Awarding past and future medical expenses in the amount of $35,000.00

d. Awarding past and future lost earnings in the amount of $50,000.00

50. Plaintiff requests such other relief as this Court may deem just and proper together with interest and costs.

**PLAINTIFF DEMANDS TRIAL BY JURY**.

 Marco A. Ramirez

 By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Of Counsel

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Attorney for Plaintiff

Dated: February 1, 2011