

JUL 30 2009

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA

JOHN F. CORCORAN, CLERK  
BY:   
DEPUTY CLERK

O'SULLIVAN FILMS, INC.  
1944 Valley Avenue  
Winchester, Virginia 22601,

Plaintiff,

v.

PRECISION ROLL GRINDERS, INC.  
6356 Chapmans Road  
Allentown, Pennsylvania 18106

Defendant.

CIVIL ACTION NO. 5:09cv00062

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff O'Sullivan Films, Inc., by its undersigned attorneys, for its complaint against defendant, Precision Roll Grinders, Inc. ("Precision"), alleges the following:

1. Plaintiff, O'Sullivan Films, Inc., is a Delaware corporation with its principal place of business located at 1944 Valley Avenue, in the city of Winchester and the Commonwealth of Virginia. At all times material hereto, O'Sullivan engaged in the business in and about this jurisdiction of producing calendered vinyl and alloy films for various uses, including in the auto industry for vacuum-formed instrument panels.

2. On information and belief, defendant Precision Roll Grinders, Inc., is a Pennsylvania corporation with its principal place of business located at 6356 Chapmans Road, in the city of Allentown and the Commonwealth of Pennsylvania. At all times material hereto, Precision engaged in its business in and about this jurisdiction of maintaining, repairing and servicing calender rolls, and acted as the United States dealer for German calender roll manufacturer Walzen Irle.

3. The jurisdiction of this Court is based on diversity of citizenship pursuant to 28 U.S.C. §1332 because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.

4. Venue is properly laid in this jurisdiction.

5. At all times material hereto, the defendant acted by and through its employees, agents, servants and workmen, each of whom was acting in the course of his or her employment and within the scope of his or her authority, subject to the control and direction and for the benefit of his or her principal and employer, the defendant Precision.

6. O'Sullivan is engaged in the business of, *inter alia*, producing calendered vinyl and alloy films. It uses three Calenders capable of manufacturing flexible films out of PVC or other polymers with a thickness range of 4 to 50 mil and a width range up to 86 inches. The films are used in the auto industry for vacuum-formed instrument panels. The Calenders depend on the use of components called "calender rolls".

7. In 2005, O'Sullivan and Precision negotiated for Precision to sell two calender rolls to O'Sullivan that met O'Sullivan's specifications. The two documents that comprise the contract are Precision Roll Quote #D505-92 Rev. B dated May 17, 2005 (**Exhibit "A"**) and O'Sullivan Purchase Order #C--011858 Change C (**Exhibit "B"**). This action focuses on only one of the rolls, referred to herinafter as "calender roll #4". The price for calender roll #4 was \$110,100.

8. Precision does not manufacture calender rolls; it is the U.S. dealer for German calender manufacturer Walzen Irle ("Walzen").

9. By contract, Precision made the following relevant promises:

"We quote two (2) "New" Calendar Rolls to the following technical data:

36" Diameter x 97" face length x 224.0" O.A.L.

Calender Roll - Tri-pas 200

Quality K40-560-V-S

Hardness 73 Shore C +-2 20-25 MM usable chill depth"

10. Precision's Quote incorporates its Standard Terms and Conditions of Sale and/or Repair or Reprocessing of Customer's Material. (Included with Exhibit "A").

11. O'Sullivan's Purchase Order was issued in June 2005. It added terms to the contract. It specified which of O'Sullivan's three Calenders these two rolls were to be used for - Calender #3. (The new rolls would serve in calender positions #3 and 4 of Calender #3). It also added a warranty period of "18 months from the date which the rolls are first put in service, or 24 months from the date of delivery to Winchester, VA."

12. The rolls were delivered to O'Sullivan's Winchester, Virginia manufacturing facility on January 25, 2006. They were stored in a location protected from the elements and from any extreme ambient conditions.

13. The rolls were first put into service in Calender #3 on February 12, 2007.

14. O'Sullivan discovered a crack on the surface of calender roll #4 on April 3, 2007, just 50 days after it was first placed into service and 2 and 1/2 months after delivery. O'Sullivan promptly contacted Precision to alert it.

15. The new rolls were removed from Calender #3 and replaced with spares. They were shipped to Precision and ultimately to Germany for evaluation by the manufacturer Walzen. Ultrasonic testing confirmed that calender roll #4 was cracked to a depth beyond the "chill depth" specified in the contract and could not be repaired. (Roll #3 was ultrasonically tested and found to have no cracks).

16. Post-failure measurements revealed several problems with roll #4, including but not limited to: (1) HARDNESS - The Precision Quote refers to "Quality K40-560-V-S", which requires a hardness of greater than HV540 to a depth of 24mm in the white iron surface layer. Walzen's analysis found that the Hardness dropped below HV540 at a depth of only 13mm, and below HV400 at a depth of only 17mm; (2) CHILL DEPTH - The Precision Quote specified a "usable chill depth" of 20-25mm. Post-failure testing revealed that the actual usable chill depth for roll #4 was only 16.6 to 17.9mm; (3) CASTING DEFECTS - the roll was found to have excessive porosity, with the pores extending upward to the surface of the white iron shell or surface layer. This porosity occurs during solidification of the original casting when the roll is manufactured.

17. Walzen examined and analyzed calender roll #4. It confirmed the existence of "cracks that started on the barrel surface with axial orientation."

18. Because of the defective condition of calender roll #4, O'Sullivan was required to remove not only the defective roll, but also the other new roll (in case it, too, suffered from the same problems). O'Sullivan had to purchase and install one new roll and possible a second if the calender roll #3 suffered from the same problem. While waiting for the new one, O'Sullivan attempted to mitigate its damages by using spare rolls, but it had to grind them and one of them had to be hot mapped.

19. O'Sullivan lost production from Calender #3.

**COUNT I**  
**BREACH OF CONTRACT, WARRANTY**

20. Plaintiff hereby incorporates by reference the averments set forth in paragraphs 1 through 19, above, as though fully set forth herein.

21. Precision violated and/or breached its contract and its warranties that calender roll #4 would meet O'Sullivan's specifications, would be merchantable, and would be fit for a particular purpose, namely, to allow O'Sullivan to operate Calendar #3 to produce film products.


22. Precision created express warranties to O'Sullivan regarding calender roll #4 by making affirmations of fact and/or promises to O'Sullivan which related to the goods, and by providing a description of the goods, both of which became part of the basis of the bargain.

23. Precision made and breached implied warranties that the goods shall be merchantable and fit for the ordinary purposes for which such goods are used. Precision also made and breached implied warranties that calender roll #4 would be fit for the particular purpose for which it was being sold because, at the time of contracting, Precision had reason to know the particular purpose for which calender roll #4 was required and that O'Sullivan was relying on Precision's skill and/or judgment to furnish suitable goods.

24. As a result of Precision's aforesaid breaches of contract, and of its express and implied warranties, of which O'Sullivan promptly notified Precision, Precision is liable to O'Sullivan for the loss resulting, in the ordinary course of events, from Precision's breach, including but not limited to the cost of a new calender roll, incidental and consequential damages, including but not limited to the cost to remove both rolls from Calendar #3, the cost to grind and install both temporary rolls, and to hot map one of them, the loss of production and resulting loss of profits from Calendar #3 for the aforesaid operations.

WHEREFORE plaintiff O'Sullivan Films, Inc., demands judgment in its favor and against defendant Precision Roll Grinders, Inc. in an amount in excess of \$400,000, together with pre- and post-judgment interest, attorneys fees, costs, and such other relief as this Court shall deem just and proper.

O'SULLIVAN FILMS, INC.  
By Counsel



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KEVIN M. ROSE, ESQUIRE  
VSB No. 35930  
BotkinRose PLC  
3210 Peoples Drive  
Harrisonburg, VA 22801  
(540) 437-0019 (main)  
(540) 437-1808 (direct)  
(540) 437-0022 (fax)  
[krose@botkinrose.com](mailto:krose@botkinrose.com)  
Counsel for Plaintiff

STEVEN L. SMITH, ESQUIRE  
LAW OFFICES OF STEVEN L. SMITH, P.C.  
404 Harvard Avenue  
Swarthmore, PA 19081  
(610) 543-2700 (office)  
(610) 543-4897 (fax)  
[ssmith@subrosmith.com](mailto:ssmith@subrosmith.com)  
Counsel for Plaintiff  
(*pro hac vice* admission to be sought)