

IN THE CIRCUIT COURT OF PLATTE COUNTY, MISSOURI

KC WFC Training, LLC,
a Kansas limited liability company,
Plaintiff,

vs.

Civil Action No.

Elite Turf USA, LLC,
a New Jersey limited liability company,

Any Member
Elite Turf USA, LLC
16 W Hanover Avenue
Randolph, New Jersey 07981

Defendant.

PETITION

Plaintiff KC WFC Training, LLC (“KC WFC Training”) alleges as follows for its Petition against Defendant Elite Turf USA, LLC (“Elite”):

Parties

1. KC WFC Training is a Kansas limited liability company, in good standing, and it is registered to do business in Missouri.

2. Elite is a New Jersey limited liability company whose principal place of business is located at 16 W Hanover Avenue, Randolph, New Jersey 07981, and may be served with process there.

Venue and Jurisdiction

3. Venue is proper in this Court to hear all claims and defenses that arise out of the allegations because the claims relate to breaches that first occurred and harmed KC WFC Training

in Riverside, Missouri, which is located in Platte County, Missouri; and the defendant is a resident of this state and this state has personal jurisdiction over the defendant.

4. This Court has jurisdiction over Elite because it transacted business in the State of Missouri and the claims asserted in this Petition arise out of acts conducted in this jurisdiction and harms caused in this jurisdiction, as alleged herein.

General Allegations

The KC Current and the Training Complex

5. Kansas City Current is an American professional women's soccer team ("Team") playing in Kansas City, Missouri, and is a member club of the National Women's Soccer League ("NWSL"). The Team was founded as an expansion team in the NWSL in 2021.

6. KC WFC Training is an affiliate of KC WFC, LLC, which is the limited liability company that owns the membership interest in the NWSL and operates the Team.

7. To support KC Current, KC WFC Training constructed, among other things, a training complex in Riverside, Missouri (the "Training Complex"). The Training Complex consists of two grass pitches, five artificial turf pitches, and a single large building that houses a state-of-the-art weight room and fitness center, locker rooms, film room, recovery rooms and treatment centers, and nutrition-focused facilities including a large kitchen and cafeteria. KC

Current team offices are also located at the Training Complex.

8. KC WFC Training owns and/or operates the entire Training Complex.

9. The seven pitches are numbered based upon their proximity to the Training Complex's building. Pitches 1 and 2, closest to the building, are natural grass fields. Pitches 3 through 7 have artificial turf.

10. KC WFC Training retained Monarch Build (“Monarch”), a commercial general contractor based in Kansas City, to construct the Training Complex, including without limitation all seven pitches.

11. KC WFC Training installed Pitches 3 through 7 at the Training Complex in part because it wanted to host games and tournaments on those pitches for local, regional, and national soccer organizations.

Pitch 3

12. KC WFC Training purchased the turf for Pitch 3 directly from Elite. On or about March 3, 2022, KC WFC Training and Elite entered into a Sales Contract (the “Pitch 3 Contract”) whereby Elite agreed to sell, and KC WFC Training agreed to buy, an artificial turf system to be installed on Pitch 3. The total cost to KC WFC Training of the Pitch 3 Contract was \$504,828.28.

13. Artificial turf systems in athletic settings generally include the turf carpet itself, infill pellets and silica sand in the carpet, and a protective pad separating the turf from the underlying drainage layer.

14. Under the Pitch 3 Contract, Elite agreed to sell an artificial turf system manufactured by Act Global, for whom Elite served as a distributor, to be installed on Pitch 3. This included (i) approximately 98,000 square feet of woven turf product called WX50 Xtreme Woven Turf, (ii) equivalent square footage of infill, (iii) a protective pad, and (iv) 567,000 pounds of silica sand. This turf system is certified by the International Federation of Association Football (“FIFA”).

15. The Pitch 3 Contract did not include detailed specifications of the Act Global turf product. It merely listed in an appendix the materials Elite would use to construct Pitch 3 and their respective cost.

16. Monarch retained Elite as a subcontractor to install the Pitch 3 turf system.

17. The construction of Pitch 3 commenced and was completed in 2022.

Pitches 4-7

18. In September 2022, Monarch, at KC WFC Training's direction, solicited bids for subcontractors in connection with the construction of Pitches 4 through 7 at the Training Complex.

The solicitation made clear that KC WFC Training expected submitted proposals to include Act Global's turf system or other system certified by FIFA.

19. Elite submitted a bid to install the turf on Pitches 4 through 7 shortly thereafter. Elite's bid proposed the same FIFA-certifiable turf system on Pitches 4 through 7 – manufactured by Act Global, including WX50 Xtreme Woven Turf – as it had sold and installed on Pitch 3.

20. Elite pitch materials included a draft sales contract proposing to again sell the Act Global turf system directly to KC WFC Training and specifically identifying WX50 Xtreme Woven Turf as the turf material to be used.

Elite Sells KC WFC Training Elite's Own Turf, Instead of Act Global's Turf

21. By the start of 2023, KC WFC was ready to proceed with the construction of Pitches 4 through 7. In January 2023, Monarch asked Elite to update its proposal to capture any price changes it wished to make.

22. Thereafter, Elite sent its revised bid to Monarch, including an updated sales contract.

23. Elite did not disclose to KC WFC Training or Monarch that, in the time between submitting its original and updated bids, Elite had ceased to be a distributor of Act Global turf products. Nor did Elite identify for KC WFC Training or Monarch that its updated bid and sales contract called for a different turf product – its own turf product – to be used in place of Act Global.

24. Neither KC WFC Training nor Monarch noticed that Elite had switched turf products in its updated bid. At the time, neither KC WFC Training nor Monarch had expertise in the field of artificial turf products and design. KC WFC Training expected Elite as a distributor of artificial turf products to explain and educate KC WFC Training on the products it proposed to sell to KC WFC Training and install on Pitches 4-7.

25. Compounding the dubiousness of Elite's bait and switch was the similarity in cost of materials in the Pitch 3 Contract to the cost of materials in the Original Pitches 4-7 Contract (defined below):

- a. Woven turf: Elite charged \$2.65 per square foot (PSF) in the Pitch 3 Contract and \$2.72 PSF in the Original Pitches 4-7 Contract;
- b. TPE Infill: Elite charged \$0.80 PSF in the Pitch 3 Contract and \$0.94 PSF in the Original Pitches 4-7 Contract;
- c. ProPlay 20D Protective Pad: Elite charged \$0.90 PSF in both the Pitch 3 Contract and the Original Pitches 4-7 Contract, and the pad product was the same under both contracts;
- d. Silica Sand: at six pounds PSF, Elite charged \$0.52 PSF in both the Pitch 3 Contract and the Original Pitches 4-7 Contract; and
- e. Under each contract and included in the purchase price, Elite supplied KC WFC Training with a "10 Year Turf Warranty," a "10 Year Infill Warranty," and a "25 Year ProPlay Pad Warranty."

26. Additionally, the updated Elite sales contract attached a sample "Ten Year Synthetic Turf Warranty" purporting to warrant the "Synthetic Turf" being sold to KC WFC Training and "supplied by Elite" against defects in workmanship. That sample warranty stated: "The term 'Synthetic Turf', as used herein, shall only include product supplied by Act Global."

27. Between these affirmative statements, Elite's failure to disclose the termination of its distributor relationship with Act Global, and Elite's failure to expressly identify the change in turf products between its original and amended bid for Pitches 4-7, KC WFC Training believed it

was purchasing the same, FIFA-certified Act Global turf system from Elite for Pitches 4-7 as it purchased from Elite for Pitch 3. It had no reason to think otherwise.

28. Monarch also believed Elite intended to install the same Act Global system on Pitches 4-7 as it had installed on Pitch 3.

29. KC WFC Training executed Elite's updated sales contract believing it was purchasing the same Act Global turf system it had purchased for Pitch 3. The sales contract was executed by Elite and KC WFC Training as of April 14, 2023 (the "Original Pitches 4-7 Contract"). A true and correct copy of the Original Pitches 4-7 Contract is attached hereto as Exhibit A.

30. The total cost to KC WFC Training of the Original Pitches 4-7 Contract was \$1,974,312.

31. Like the Pitch 3 Contract, the Original Pitches 4-7 Contract did not include detailed specifications of the turf product being sold to KC WFC Training. It merely listed in an appendix the materials Elite would use to construct Pitches 4-7 and their respective cost.

32. Elite also executed a subcontract with Monarch to install the artificial turf system on Pitches 4-7.

33. When it executed the Original Pitches 4-7 Contract, KC WFC Training had no idea that Elite manufactured a turf system, had no knowledge of whether anyone else had purchased or installed Elite's turf system, had no information about the quality or character of Elite's turf system, and had never seen or been provided even a sample of Elite's turf system. KC WFC Training would never have agreed to purchase nearly \$2 million of a product it did not know existed, knew nothing about, and had never even seen. Upon information and belief, the same can be said for Monarch at the time and when Monarch executed its subcontract with Elite to install artificial turf on Pitches 4-7.

Elite's Duplicity Is Discovered

34. Shortly after the Original Pitches 4-7 Contract was executed, Monarch finally noticed that Elite had changed the description of the turf system in its updated bid materials and in the Original Pitches 4-7 Contract without disclosing the change to KC WFC Training or Monarch. Monarch immediately informed KC WFC Training of Elite's bait and switch.

35. KC WFC Training and Monarch demanded answers from Elite. Only then did Elite confess that it no longer had a distribution relationship with Act Global or sold Act Global products. Elite's leadership also admitted that Elite switched the turf system in its updated bid from Act Global to its own product without telling either KC WFC Training or Monarch. It also admitted that the Elite turf system is not FIFA-certified.

36. KC WFC Training threatened to terminate and rescind the Original Pitches 4-7 Contract. Monarch threatened to do the same to its installation subcontract with Elite.

37. Desperate to preserve its sale, Elite provided testing data and other information regarding its turf system product to KC WFC Training and Monarch.

38. Following additional discussions, KC WFC Training and Elite amended the Original Pitches 4-7 Contract, effective June 8, 2023 (the "Amended Pitches 4-7 Contract", and together with the Original Pitches 4-7 Contract, the "Pitches 4-7 Contract"). A true and correct copy of the Amended Pitches 4-7 Contract is attached hereto as Exhibit B.

39. The Amended Pitches 4-7 Contract, among other things, conditioned certain payments from KC WFC Training to Elite on Elite's satisfactions of conditions precedent.

40. As one example, under section 2(a)(iv) of the Amended Pitches 4-7 Contract, 10% of the overall price, or \$197,431.20, would not be due until:

a. SportsLabs, a company that tests playing surfaces, tested the Elite turf system and performed “comparison testing” against the Act Global turf system KC WFC Training purchased under the Pitch 3 Contract; and

b. SportsLabs writes an opinion that Elite’s product is “the same or better quality than the Act Global” product “in all material respects.”

41. As another example, under section 2(a)(vi) of the Amended Pitches 4-7 Contract, 2.5% of the overall price, or \$49,357.80, would not be due until Elite achieves “issuance of FIFA Quality certification for Pitches 4-7.”

42. The Amended Pitches 4-7 Contract also changed the deadlines by which KC WFC Training must make payments to Elite. Other than the first installment payment, which was due on or before April 24, 2023 under both the Original and Amended Pitches 4-7 Sales Contract, the balance of Elite’s installment payments were due only after invoiced by Elite, and then seven days of invoice.

43. The Amended Pitches 4-7 Contract also added a procedure requiring KC WFC Training to provide notice to Elite if it disputed one of Elite’s invoices, then requiring both parties to “cooperate in good faith to reach resolution” of any such dispute.

44. The Amended Pitches 4-7 Contract also changed the terms of certain warranties included in KC WFC Training’s purchase.

45. Had Elite not agreed to sign the Amended Pitches 4-7 Contract, KC WFC Training would have rescinded the Original Pitches 4-7 Contract and ordered FIFA-certified artificial turf from another supplier.

46. Elite installed the artificial turf system on Pitches 4-7 in the summer of 2023.

Elite’s Written Warranties

47. Elite later issue two warranties in connection with its turf system.

48. The first warranty was the Ten Year Synthetic Turf Warranty dated December 12, 2023 (the “Turf Warranty”). Among other things, the Turf Warranty guaranteed the woven turf supplied by Elite “against defects in workmanship for a period of ten years from the date of substantial completion as identified” in the warranty. The Turf Warranty asserted a date of substantial completion of July 31, 2023. A true and correct copy of the Turf Warranty is attached hereto as Exhibit C.

49. The second warranty was the Installation Warranty Agreement dated December 12, 2023 (the “Installation Warranty”). Among other things, the Installation Warranty warrants Elite’s installation of its turf system on Pitches 4-7 “to be free of all defects of any part proving defective in workmanship” for the ten year period from July 31, 2023 to July 31, 2033. The Installation Warranty obligates Elite to repair or replace, free of charge, “any part proving defective in workmanship.” A true and correct copy of the Installation Warranty is attached hereto as Exhibit D.

The Defects In Elite’s Turf Product and Its Installation

50. The Elite turf on Pitches 4-7 is of substandard quality and contains numerous defects.

51. Tests done in April 2024 on samples of turf used on Pitches 4-7 have evidenced that the integrity of the fiber to the backing – referred to in the turf industry as the “tuft bind strength” – is weak. This weakness has and will continue to result in fiber shedding, reduced face weight, poor footing, balding, and loss of overall system integrity on Pitches 4-7.

52. Specifically, the tuft bind strength of the product Elite provided does not meet FIFA standards and will therefore not be eligible for FIFA certification, as required under section 2(a)(vi) of the Pitches 4-7 Contract. While FIFA standards for tuft bind require that the average tuft bind

strength be greater than or equal to 40 Newtons, or 8.99 pounds of force, the test results of the turf installed at Pitches 4-7 is well below 8.99 pounds and evidences improper binding methods within the woven turf.

53. Woven turf of the kind and nature Elite sold KC WFC Training for Pitch 3, and which Elite led KC WFC Training to believe it was ordering for Pitches 4-7, sews (or weaves) the individual synthetic fibers into the backing in what is called a “W binding.” This means that each fiber passes through the backing more than once – forming a W shape and providing greater integration of the fiber to the backing. This is important because woven turf of the kind and nature KC WFC Training contracted for on Pitch 3 (and thought it was getting on Pitches 4-7) was designed to have a thin polyethylene backing, as opposed to a thicker latex or polyurethane backing, making it a more environmentally friendly and permeable product. Woven products are juxtaposed against “tufted” or “non-woven” products, which have only a “U binding” (e.g. the fiber passes through the backing only once) and the necessary tuft bind strength is derived from the latex or polyurethane backing which “glues” the fibers in place.

54. It was discovered in testing performed in April 2024 on samples of turf used on Pitches 4-7 that the turf Elite provided contains *both* W binding and U binding. Where the woven product is not designed to derive strength from the glued backing, any U bindings with the woven product will therefore degrade the tuft bind strength of the product. This clearly bore out in the testing. While the average tuft bind strength for the W fibers on the tested material was itself below FIFA standards and therefore infirm (at an average of 6.6 pounds of force), the U binding fibers had a tuft bind strength of, on average, only 2.7 pounds. This is woefully inadequate and not what KC WFC Training agreed to buy.

55. Upon information and belief, the Elite turf system described in the Original Sales Contract and installed on Pitches 4-7 has not been FIFA certified and, in fact, cannot be FIFA certified due to the tuft bind deficiencies.

56. The turf used on Pitches 4-7 also suffers defects with, among other things, the size and shape of infill product provided and the number of fibers installed per square yard. These deficiencies will lead to lack of resilience, reduced durability, footing issues, and – as with the tuft bind issue – overall system degradation.

57. Further testing may uncover additional defects in the Elite turf system installed on Pitches 4-7.

58. The Elite turf on Pitches 4-7 is also poorly installed and exhibits issues with respect to, among other things, seam failures, wrinkling, trapping of fibers, all of which impact the durability, safety, playability, and overall appearance and quality of the turf.

59. Upon information and belief, the Elite turf on Pitches 4-7 is not the same turf as was tested by SportsLab pursuant to section 2(a)(iv) of the Amended Pitches 4-7 Contract. KC WFC Training and Monarch completed the same testing on the Elite turf actually installed on Pitches 4-7 that Elite performed purportedly in satisfaction of section 2(a)(iv), and the test results showed that the Elite turf was of far inferior quality compared to the Act Global turf system installed on Pitch 3.

60. Additionally, Elite failed to secure “issuance of FIFA Quality certification for Pitches 4-7.” Therefore, Elite is not entitled to payment of the final installment of \$49,357.80 under section 2(a)(vi) of the Amended Pitches 4-7 Contract.

Elite’s Failure to Honor Its Warranties

61. KC WFC Training first notified Elite of defects in the manufacture and installation of the turf on Pitches 4-7 in the Fall of 2023.

62. Elite acknowledged, both verbally and in writing, on multiple occasions between December 2023 and April 2024 that defects existed in both the manufacture and installation of the turf on Pitches 4-7.

63. In an email dated January 5, 2024, Elite stated that it had “no issue fixing any and all issues with field manufacture or installation” and continued through March 2024 to acknowledge issues with the product and its installation, and to promise correction in the future.

64. On or about March 28, 2024, Elite advised KC WFC Training that it would arrive on site to make repairs at the earliest April 28, 2024 and, at the latest, May 2, 2024 but did not specify the nature of the work that would be done, the crew size that would be sent, or the precise schedule for performance of the work.

65. In response, KC WFC Training asked for specifics on the timing and scope of repairs Elite planned to perform.

66. Elite responded by claiming that the Amended Pitches 4-7 Contract was unenforceable for lack of consideration and threatened KC WFC Training that if Elite’s final installment payment was not made in full – payment which, under the Amended Pitches 4-7 Contract was not yet due, and which need not have been paid to make either of the warranties enforceable – that Elite would assume KC WFC Training was breaching the Pitches 4-7 Contract and therefore void the warranty provided and pursue all remedies against KC WFC Training at KC WFC Training’s expense.

67. On or about April 23, 2024, Elite stated to KC WFC Training that “Kansas City is not on our schedule, and we have no plans to return absent payment in full of all monies owed to Elite.”

68. To date, Elite has not returned to the Training Complex to repair or replace any product or work despite its acknowledgement that defects in manufacture and installation existed.

**COUNT I – BREACH OF CONTRACT
PITCHES 4-7 CONTRACT**

69. KC WFC Training realleges and reincorporates all other paragraphs in this Petition as if fully stated herein, and further alleges as follows:

70. The Pitches 4-7 Contract, inclusive of all amendments, is a valid and existing contract.

71. KC WFC Training performed or tendered performance under the Pitches 4-7 Contract, substantially or actually.

72. KC WFC Training had certain rights under the Pitches 4-7 Contract and Elite had certain duties and obligations under the Pitches 4-7 Contract.

73. Elite breached its obligations and duties under the Pitches 4-7 Contract by, among other things, its conduct described herein.

74. Elite’s breach(es) of the Sales Contract caused KC WFC Training damages.

WHEREFORE, Plaintiff KC WFC Training, LLC requests that, after a jury trial, this Court enter a judgment against Defendant Elite Turf USA, LLC on all claims asserted in this Petition; award Plaintiff KC WFC Training, LLC damages of \$1,924,954.20 and such additional amounts as are proven by the evidence for its past and future actual damages, reasonable attorneys’ fees, and court costs; and awarding any such further relief as the Court may deem to be appropriate.

**COUNT II—BREACH OF WARRANTY
INSTALLATION WARRANTY AGREEMENT**

75. KC WFC Training realleges and reincorporates all other paragraphs in this Petition as if fully stated herein, and further alleges as follows:

76. The Installation Warranty Agreement is a valid and existing express warranty between KC WFC Training and Elite.

77. In the Installation Warranty Agreement, Elite warranted that the installation would be free of all defects for 10 years, from July 31, 2023, to July 31, 2033.

78. Elite further warranted that it would repair or replace, free of charge, any part of the installation proving defective in workmanship.

79. KC WFC Training satisfied all conditions precedent, if any, to obtain the benefits of such warranty.

80. KC WFC Training has done nothing to void such warranty.

81. The installation is defective in workmanship.

82. KC WFC Training notified Elite of the defective in workmanship in a timely manner.

83. Elite refused to honor its warranty by repair or replacing, free of charge, the installation proving defective in workmanship.

84. Elite's failure to do so has harmed KC WFC Training.

WHEREFORE, Plaintiff KC WFC Training, LLC requests that, after a jury trial, this Court enter a judgment against Defendant Elite Turf USA, LLC on all claims asserted in this Petition; award Plaintiff KC WFC Training, LLC damages of \$1,924,954.20 and such additional amounts as are proven by the evidence for its past and future actual damages, reasonable attorneys' fees, and court costs; and awarding any such further relief as the Court may deem to be appropriate.

**COUNT III—BREACH OF WARRANTY
TURF WARRANTY**

85. KC WFC Training realleges and reincorporates all other paragraphs in this Petition as if fully stated herein, and further alleges as follows:

86. Elite sold goods to KC WFC Training.

87. Elite made statement(s) of fact to KC WFC Training about the kind and quality of those goods.

88. The statement of fact was a material factor inducing KC WFC Training to purchase the goods.

89. The goods did not conform to the statement of fact.

90. KC WFC Training lacked knowledge that the statement of fact was false or incorrect.

91. The nonconformity of the goods injured KC WFC Training.

92. KC WFC Training notified Elite of the nonconformity in a timely fashion.

WHEREFORE, Plaintiff KC WFC Training, LLC requests that, after a jury trial, this Court enter a judgment against Defendant Elite Turf USA, LLC on all claims asserted in this Petition; award Plaintiff KC WFC Training, LLC damages of \$1,924,954.20 and such additional amounts as are proven by the evidence for its past and future actual damages, reasonable attorneys' fees, and court costs; and awarding any such further relief as the Court may deem to be appropriate.

JURY DEMAND

KC WFC Training, LLC demands a trial by jury on all issues so triable.

Dated: June 14, 2024.

Respectfully submitted,

JAMES SOBBA, LLC

/s/ Christopher P. Sobba

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