

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CARL OWENS CONTRACTING, INC.,

Plaintiff(s)

vs.

GULFSIDE SUPPLY, INC., ET AL.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018-CP - 10- 5367

Submitted By: Samuel M. Wheeler SC Bar #: 101008 Email: swheeler@scnlaw.com

Address: P.O. Box 40578 Charleston, SC 29423-0578

Telephone #: 843-760-0220

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Other:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint. This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), General (130), Breach of Contract (140), Fraud/Bad Faith (150), Failure to Deliver/Warranty (160), Employment Discrim (170), Employment (180), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -NI- -, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Assault/Battery (370), Slander/Libel (380), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Incapacitated Adult Settlement (790), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Sexual Predator (510), Permanent Restraining Order (680), Interpleader (690), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Pre-Suit Discovery (670), Other (799)

Submitting Party Signature: [Handwritten Signature]

Date: November 6, 2018

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**Effective January 1, 2016**, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**Pursuant to the ADR Rules, you are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Carl Owens Contracting, Inc.,  
Plaintiff,

vs.

Gulfside Supply, Inc. d/b/a Gulfeagle Supply,  
and Weyerhaeuser NR Company,  
Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2018-CP-10-5367

**SUMMMONS**

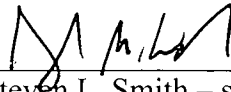
**(Jury Trial Demanded)**

BY \_\_\_\_\_  
JAMES L. HARRIS, JR.  
CLERK OF COURT  
2018 NOV -8 AM 11:01

TO: THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your written response to the said Complaint on the subscribers at the law office of Smith | Closser, P.A., 7455 Cross County Road, Suite 1, Post Office Box 40578, Charleston, South Carolina, 29423-0578, within thirty (30) days after the date of service hereof, exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

**SMITH | CLOSSER, P.A.**



Steven L. Smith – ssmith@scnlaw.com

(SC Bar No.: 05173)

Zachary J. Closser – zclosser@scnlaw.com

(SC Bar No.: 74005)

Samuel M. Wheeler – swheeler@scnlaw.com

(SC Bar No.: 101008)

7455 Cross County Road, Suite 1

P.O. Box 40578

Charleston, SC 29423-0578

843-760-0220

*Attorneys for the Plaintiff*

*Nov. 6*

, 2018

Charleston, South Carolina

18-213

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Carl Owens Contracting, Inc.,  
Plaintiff,

vs.

Gulfside Supply, Inc. d/b/a Gulfeagle Supply,  
and Weyerhaeuser NR Company,  
Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2018-CP-10-5367

**COMPLAINT**

**(Jury Trial Demanded)**

2018 NOV -8 AM 11:01  
JULIE J. ANNE JENNINGS  
CLERK OF COURT  
BY \_\_\_\_\_

The Plaintiff, Carl Owens Contracting, Inc., by and through its undersigned attorneys,  
hereby alleges that:

1. The Plaintiff is a corporation organized and existing legally pursuant to the laws of South Carolina; it conducts business in Charleston County, where the Defendants' actions causing damage to it occurred.
2. Gulfside Supply, Inc. d/b/a Gulfeagle Supply ("Gulfeagle") is registered in South Carolina as a foreign entity, with its principal place of business in Florida. It is conducts business and maintains a supply store in Charleston County, where its actions causing damage to the Plaintiff occurred.
3. Weyerhaeuser NA Company ("Weyerhaeuser") is registered in South Carolina as a foreign entity, with its principal place of business in Washington State. It is conducts business in Charleston County, where its actions causing damage to the Plaintiff occurred.
4. Upon personal service of this action, this Court will have personal jurisdiction over the parties, and subject matter jurisdiction and venue are appropriate.

5. The Defendants are both merchants of building supplies, including, as it relates to this action, cedar roofing shingles, dealing in this type of materials and holding themselves out as having knowledge of the materials.
6. The Plaintiff purchased cedar roofing shingles from Gulfeagle's Charleston County-based store for the construction of a home in Charleston County.
7. Gulfeagle purchased the shingles from Weyerhaeuser.
8. Upon information and belief, the manufacturer of the shingles is a Canadian company that is no longer in business.
9. The Defendants expressly warranted and made representations that the shingles were of a specific grade or quality suited to serve as exterior roofing shingles.
10. Through no fault of the Plaintiff's, the shingles have recently cracked or split, causing moisture intrusion to the home.
11. Through recent investigation, the Plaintiff has determined that the home has been directly and proximately damaged by the defective shingles and that the entire roof will need to be replaced.
12. The Plaintiff has also determined that the shingles were not of the grade or quality warranted or represented by the Defendants.
13. The defective shingles have caused continual and repeated exposure to damaging events, which have occurred each and every year since construction, and will continue to occur until remedied.

**AS A FIRST CAUSE OF ACTION AGAINST THE DEFENDANTS  
(Breach of Warranties – Express and Implied)**

14. Plaintiff realleges the allegations of the preceding paragraphs as though fully restated herein.

15. The Defendants described the cedar shingles as being of a specific grade or quality suited for exterior roofing and also made affirmations of fact concerning the cedar shingles, creating express warranties.
16. The cedar shingles did not conform to the Defendants' description and affirmations, amounting to a breach of those express warranties.
17. The Defendants are sellers and merchants with respect to the cedar shingles, which were sold as exterior roofing shingles.
18. In selling the cedar shingles to the Plaintiff, the Defendants impliedly warranted that the shingles were fit for their ordinary purpose (i.e., as exterior roofing shingles).
19. The shingles were not fit for their ordinary purpose, amounting to a breach of the implied warranty of merchantability.
20. The Defendants also had reason to know the particular use to which the Plaintiff was putting the shingles, and the Plaintiff relied on the Defendants' skill and judgment to furnish suitable shingles fit for an exterior roof.
21. The shingles did not conform to that particular use, amount to a breach of the implied warrant of fitness for a particular purpose.
22. As a direct and proximate result of the Defendants' breach of express and implied warranties, the Plaintiff has suffered and will continue to suffer damages, for which it is entitled to compensation, as determined by a trier of fact. In addition, the Defendants' breach was wanton or in reckless disregard of the Plaintiff's right, entitling it to punitive damages.

**AS A SECOND CAUSE OF ACTION AGAINST THE DEFENDANTS**  
**(Strict Liability, S.C. Code Ann. § 15-73-10 *et seq.*)**

23. Plaintiff realleges the allegations of the preceding paragraphs as though fully restated herein.
24. The Defendants are engaged in the business of selling building materials, including the cedar shingles relevant to this action.
25. The Defendants expected the shingles to reach the Plaintiff, and the shingles did in fact reach the Plaintiff, who was the ultimate user.
26. The shingles were not modified by the Plaintiff, nor did they change in condition from their time of sale to the time of installation.
27. The shingles were unreasonable dangerous to the Plaintiff and the home.
28. As a direct and proximate result of the Defendants' sale of defective shingles, the Plaintiff has suffered and will continue to suffer damages, for which it is entitled to compensation, as determined by a trier of fact. In addition, the Defendants' sale was wanton or in reckless disregard of the Plaintiff's right, entitling it to punitive damages.

**AS A THIRD CAUSE OF ACTION AGAINST THE DEFENDANTS**  
**(Negligent Misrepresentation)**

29. Plaintiff realleges the allegations of the preceding paragraphs as though fully restated herein.
30. The Defendants made false representations concerning the grade and quality of the cedar shingles.
31. The Defendant possessed a pecuniary interest in making the statements and representations.

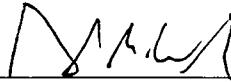
32. As sellers of building materials, including the cedar shingles relevant to this action, with knowledge of product grade and quality, the Defendants owed a duty to the Plaintiff to ensure that truthful information about the shingles was communicated to the Plaintiff.
33. The Defendants breached this duty by failing to exercise due care when they, among other ways, (1) made the false representations about the shingles, and (2) made the representations without ensuring the grade or quality of the shingles was as represented.
34. As the purchaser of shingles from sellers and merchants of materials of this type, the Plaintiff justifiably relied on the representations of the Defendants.
35. The Plaintiff has suffered a pecuniary loss as a direct and proximate result of its reliance on the Defendants' statements. The Plaintiff is entitled to all damages, as determined by a trier of fact, in addition to punitive damages resulting from the Defendants wanton actions.

WHEREFORE, having complained of Defendants, Plaintiff requests a jury trial and prays that this Court inquire into the matters set forth above. Plaintiff further prays that this Court enter judgment in Plaintiff's favor in an amount to be determined at the trial but sufficient to compensate Plaintiff for its expenses associated with the repair of the defects caused by Defendants and with re-roofing the home with new cedar shingles. The Plaintiff further prays for an award of punitive damages sufficient to deter Defendants from further engaging in similar conduct, an award of the Plaintiff's costs and attorney's fees incurred in the prosecution of this action, and an award of such other relief as the Court may deem just and proper.

(Signature on following page)



SMITH | CLOSSER, P.A.



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(SC Bar No.: 74005)

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843-760-0220

*Attorneys for the Plaintiff*

*Nov. 5*

\_\_\_\_\_, 2018  
Charleston, South Carolina

18-213

# Smith | Closser, P.A.

Attorneys at Law  
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swheeler@scnlaw.com

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Fax – 843-552-2678  
www.smithclosser.com

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November 6, 2018

Charleston County Clerk of Court  
Judicial Center  
100 Broad St, Ste 106  
Charleston, SC 29401

Re: Carl Owens Contracting, Inc. v. Gulfside Supply Inc., et al.  
S/C File No.: 18-213

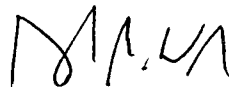
Dear Clerk:

Enclosed please find an original and one copy of the Summons and Complaint in the above referenced matter. I appreciate you filing same and returning the filed copy to me in the envelope provided.

Also, enclosed is this firm's check in the amount of \$150.00 as filing fee.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,



Samuel M. Wheeler

SMW/kap  
Enclosures

cc: Carl Owens Contracting, Inc.