

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

FIRST AMENDED SUMMMONS

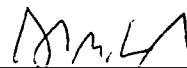
(Jury Trial Demanded)

FILED
2019 JUN 12 AM 11:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

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 | Wheeler, P.A.



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(SC Bar No.: 05173)
Zachary J. Closser – zclosser@scnlaw.com
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843-760-0220
Attorneys for the Plaintiff

June 10, 2019
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,
Weyerhaeuser NR Company, and Dixie
Contracting, LLC
Defendants.

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

FIRST AMENDED COMPLAINT

(Jury Trial Demanded)

FILED
2019 JUN 12 AM 11:48
JULIE J. ARMSTRONG
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. Dixie Contracting, LLC (“Dixie”) is a limited liability company organized and existing pursuant to the laws of South Carolina; its actions causing damage to the Plaintiff occurred in Charleston County.
5. Upon personal service of this action, this Court will have personal jurisdiction over the parties, and subject matter jurisdiction and venue are appropriate.
6. Gulfeagle and Weyerhaeuser 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.
7. The Plaintiff purchased cedar roofing shingles from Gulfeagle’s Charleston County-based store for the construction of a home in Charleston County.
8. Gulfeagle purchased the shingles from Weyerhaeuser.
9. Upon information and belief, the manufacturer of the shingles is a Canadian company that is no longer in business.
10. Gulfeagle and Weyerhaeuser expressly warranted and made representations that the shingles were of a specific grade or quality suited to serve as exterior roofing shingles.
11. Through no fault of the Plaintiff’s, the shingles have recently cracked or split, causing moisture intrusion to the home.
12. 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.
13. The Plaintiff has also determined that the shingles were not of the grade or quality warranted or represented by Gulfeagle and Weyerhaeuser.

14. 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.
15. The Plaintiff had a contract with Dixie under which Dixie was responsible for installing the roof on the home at issue in this action.
16. At all times, Dixie held itself out to be an entity duly licensed to perform its scope of work on the home.
17. Dixie, through its employees, subcontractors or servants, performed the scope of work related to installing the cedar roof, including flashing, drip edges, underlayment and other roofing components, on the home.
18. Dixie undertook, assumed, and owed a duty to the Plaintiff to perform the work free from defects, in a good and workmanlike manner and in accordance with applicable building codes, industry standards and the parties' agreement.
19. The Plaintiff relied on Dixie to utilize its knowledge, experience and skill to ensure that Dixie's work, including the work of its employees, subcontractors or servants, met these duties.
20. Dixie breached its duties and negligently, grossly negligently, recklessly, and with willful and wanton disregard, failed to perform the work in accordance with the applicable building codes, industry standards and the agreement of the parties, failed to perform its work in a careful, diligent and workmanlike manner, and failed to supervise its employees and/or subcontractors.
21. Dixie's negligence and gross negligence have proximately resulted in damage to the components of the home, which upon information and belief, has suffered continual and

repeated exposure to the same generally harmful conditions year after year, and these adverse events have occurred repeatedly each and every year since construction, constituting an “occurrence.”

**AS A FIRST CAUSE OF ACTION AGAINST GULFEAGLE AND WEYERHAEUSER
(Breach of Warranties – Express and Implied)**

22. Plaintiff realleges the allegations of the preceding paragraphs as though fully restated herein.
23. These 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.
24. The cedar shingles did not conform to these Defendants’ description and affirmations, amounting to a breach of those express warranties.
25. These Defendants are sellers and merchants with respect to the cedar shingles, which were sold as exterior roofing shingles.
26. In selling the cedar shingles to the Plaintiff, these Defendants impliedly warranted that the shingles were fit for their ordinary purpose (i.e., as exterior roofing shingles).
27. The shingles were not fit for their ordinary purpose, amounting to a breach of the implied warranty of merchantability.
28. These Defendants also had reason to know the particular use to which the Plaintiff was putting the shingles, and the Plaintiff relied on these Defendants’ skill and judgment to furnish suitable shingles fit for an exterior roof.
29. The shingles did not conform to that particular use, amount to a breach of the implied warrant of fitness for a particular purpose.

30. As a direct and proximate result of these 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, these 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 GULFEAGLE AND WEYERHAEUSER
(Strict Liability, S.C. Code Ann. § 15-73-10 *et seq.*)**

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

32. These Defendants are engaged in the business of selling building materials, including the cedar shingles relevant to this action.

33. These Defendants expected the shingles to reach the Plaintiff, and the shingles did in fact reach the Plaintiff, who was the ultimate user.

34. The shingles were not modified by the Plaintiff, nor did they change in condition from their time of sale to the time of installation.

35. The shingles were unreasonable dangerous to the Plaintiff and the home.

36. As a direct and proximate result of these 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, these 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 GULFEAGLE AND WEYERHAEUSER
(Negligent Misrepresentation)**

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

38. These Defendants made false representations concerning the grade and quality of the cedar shingles.
39. These Defendant possessed a pecuniary interest in making the statements and representations.
40. As sellers of building materials, including the cedar shingles relevant to this action, with knowledge of product grade and quality, these Defendants owed a duty to the Plaintiff to ensure that truthful information about the shingles was communicated to the Plaintiff.
41. These 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.
42. As the purchaser of shingles from sellers and merchants of materials of this type, the Plaintiff justifiably relied on the representations of these Defendants.
43. The Plaintiff has suffered a pecuniary loss as a direct and proximate result of its reliance on these Defendants' statements. The Plaintiff is entitled to all damages, as determined by a trier of fact, in addition to punitive damages resulting from these Defendants wanton actions.

**AS A FIRST CAUSE OF ACTION AGAINST DIXIE
(Negligence/Gross Negligence)**

44. Plaintiff realleges the allegations of the preceding paragraphs as though fully restated herein.
45. Dixie, through its employees, subcontractors or servants, performed the scope of work related to installing the cedar roof, including flashing, drip edges, underlayment and other roofing components, on the home.

46. Dixie undertook, assumed, and owed a duty to the Plaintiff to perform the work free from defects, in a good and workmanlike manner and in accordance with applicable building codes, industry standards and the parties' agreement.
47. The Plaintiff relied on Dixie to utilize its knowledge, experience and skill to ensure that Dixie's work, including the work of its employees, subcontractors or servants, met these duties.
48. Dixie breached its duties and negligently, grossly negligently, recklessly, and with willful and wanton disregard, failed to perform the work in accordance with the applicable building codes, industry standards and the agreement of the parties, failed to perform the work in a careful, diligent and workmanlike manner, and failed to supervise its employees and/or subcontractors. The violations of building code amounts to negligence *per se*.
49. Dixie's negligence and gross negligence have proximately resulted in damage to the components of the home, which upon information and belief, has suffered continual and repeated exposure to the same generally harmful conditions year after year, and these adverse events have occurred repeatedly each and every year since construction, constituting an "occurrence."
50. As a direct, foreseeable, and proximate result of the negligence, gross negligence and/or willful and wanton disregard by Dixie, the Plaintiff has been damaged in that it spent or will spend additional funds to investigate, repair and replace the defects caused by Dixie, and have and will suffer other damages as will be shown at trial.
51. The construction defects alleged herein have caused, among other things, occurrences in the form of leaks and damage to the roofing system, separate from Dixie's work.

52. Therefore, the Plaintiff is entitled to an award of all actual, consequential and punitive damages.

**AS A SECOND CAUSE OF ACTION AGAINST DIXIE
(Breach of Contract)**

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

54. Plaintiff and Dixie had a contract under which Dixie was to install the cedar roof, including all components, on the home.

55. The Plaintiff at all times fulfilled its obligations under the contract.

56. Dixie breached the contract by failing to install the roof and its components as contemplated by the parties.

57. As a direct and proximate result of Dixie's breach, the Plaintiff has suffered damages.

58. The Plaintiff is entitled to an award of all actual, direct, and consequential damages directly and proximately resulting therefrom.

**AS A THIRD CAUSE OF ACTION AGAINST DIXIE
(Breach of Warranties)**

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

60. By operation of law, Dixie impliedly warranted that its work would be performed using the utmost skill and attention and would be of good and workmanlike quality, free from all defects.

61. Dixie breached this implied warrant of workmanlike service by constructing the improvements in a manner that was defective.

62. The breach of this warranty by Dixie has proximately, foreseeably and directly damaged the home, causing the Plaintiff funds to investigate, repair, and replace the defects.

63. The breach of warranties by Dixie entitles the Plaintiff to an award of actual, direct and consequential damages.

**AS A FOURTH CAUSE OF ACTION AGAINST DIXIE
(Negligent Misrepresentation)**

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

65. Dixie made false representations concerning its license; specifically, it at all times held itself out as an entity duly licensed to perform its scope of work on the home. Dixie does not in fact hold any licenses allowing it to perform this scope of work.

66. Dixie possessed a pecuniary interest in making the statements and representations.

67. Dixie owed a duty to the Plaintiff to ensure that truthful information about its license was communicated to the Plaintiff.

68. Dixie breached this duty by failing to exercise due care when it made the false representations about its license.

69. The Plaintiff justifiably relied on the representations of Dixie about its license when the Plaintiff contracted with Dixie.

70. The Plaintiff has suffered a pecuniary loss as a direct and proximate result of its reliance on Dixie's statements and representations. The Plaintiff is entitled to all damages, as determined by a trier of fact, in addition to punitive damages resulting from Dixie's wanton actions.

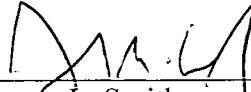
**AS A FIFTH CAUSE OF ACTION AGAINST DIXIE
(Violations of S.C.'s Unfair Trade Practices Act)**

71. Plaintiff realleges the allegations of the preceding paragraphs as though fully restated herein.
72. Dixie's conduct, as set forth herein, constitutes unfair and deceptive trade practices and is a violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, et seq. Furthermore, upon information and belief, Plaintiff's conduct was willful, capable of repetition. It has in fact been repeated by Dixie on other projects with the Plaintiff.
73. Dixie's conduct in such regard is additional and different from its mere breach of the contract with the Plaintiff.
74. Dixie's conduct affects the public interest.
75. Dixie knew or should have known that its actions constituted unfair and deceptive trade practices designed to advance Dixie's pecuniary interest or unfairly shift the risk of a speculative arms-length deal by deceit or duress.
76. As a direct, foreseeable, and proximate result of Dixie's unfair and deceptive trade practices, the Plaintiff has suffered an ascertainable loss of money.
77. The Plaintiff is entitled to recover its actual damages, which amount should be trebled, together with interest and attorney's fees.

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 treble damages, 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.

Smith | Closser | Wheeler, P.A.



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(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

Jan 10, 2019
Charleston, South Carolina

18-213

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Carl Owens Contracting, Inc.,)
 Plaintiff,)
 vs.)
)
 Gulfside Supply, Inc., et al.,)
 Defendant.)

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

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: Samuel M. Wheeler, Bar No. 101008 Address: P.O. Box 40578, Charleston, SC 29423-0578 Phone: 843-760-0220 Fax 843-552-2678 E-mail: ssmith@scnlaw.com Other: _____	Defendant's Attorney: Helen B. Hester, Bar No. _____ Jenna K. McGee Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
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MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

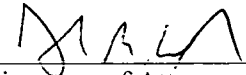
SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

6/10/19
Date submitted

SECTION III: Motion Fee

PAID – AMOUNT: \$ _____
 EXEMPT: (check reason)

Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION	JUDGE CODE _____
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: \$ _____
 CONTESTED – AMOUNT DUE: \$ _____

Smith | Closser | Wheeler, P.A.

Attorneys at Law
7455 Cross County Road, Suite One
Post Office Box 40578
Charleston, South Carolina 29423-0578

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June 10, 2019

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

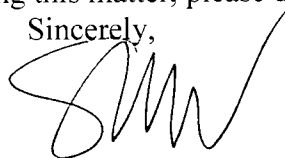
Re: Carl Owens Contracting, Inc. v. Gulfside Supply Inc., et al.
Case No.: 2018-CP-10-5367
SCW File No.: 18-213

Dear Clerk:

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

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

Sincerely,



Samuel M. Wheeler

SMW/kap
Enclosures

cc: Helen B. Hester, Esquire
Jenna K. McGee, Esquire