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**SC Court of Appeals**

**FORM 15  
RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Hon. Bentley D. Price, Circuit Judge 2766

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Case No. 2022-CP-23-05339  
Associated Case No. 2018-CP-23-00695  
Appellant Case No:2024-001197

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Milton A. Gatlin and Marla S. Gatlin, Plaintiffs,

v.

John M. Hornbeck, III, Custom Castles Roofing and Construction,  
Inc., and Custom Castles Construction, LLC, Defendants,

of which Milton A. Gatlin is the Appellant, and John M Hornbeck,  
III is the Respondent.

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**RECORD ON APPEAL**

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Milton A. Gatlin  
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Appellant Pro Se

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Milton A Gatlin et al  
PLAINTIFF(S)

John M Hornbeck, III et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

Plaintiff's Motion for Reconsideration or Reopening is denied.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/28/2024 .

Marla S Gatlin for Marla S Gatlin  
 Marla S Gatlin for Marla S Gatlin  
 Milton A Gatlin for Milton A Gatlin  
 Milton A Gatlin for Milton A Gatlin

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Greenville Common Pleas

**Case Caption:** Milton A Gatlin , plaintiff, et al vs. John M Hornbeck III , defendant, et al  
**Case Number:** 2022CP2305339  
**Type:** Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2024-06-28 11:08:28 page 3 of 3

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Milton A. Gatlin and Marla S. Gatlin )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
John M. Hornbeck, III, Custom Castles )  
Roofing and Construction, Inc. and Custom )  
Castles Construction, LLC, )  
 )  
Defendants. )  
\_\_\_\_\_ )

THIRTEENTH JUDICIAL CIRCUIT  
IN THE COURT OF COMMON PLEAS  
C/A No. 2022-CP-23-05339

**MOTION FOR RECONSIDERATION  
OR REOPENING**

**"Oral Hearing Requested"**

Plaintiffs, Milton A. Gatlin and Marla S. Gatlin, a married couple, residing in Greenville County, at 105 Silver Pine Ct. Greer, SC 29650, respectfully request the Honorable Judge Bentely Price to reconsider his Order of March 20, 2023 granting Defendants' Motion For Summary Judgement and in support thereof avers as follows:

The original case 2018-CP-23-00695 was stricken from the docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure.in September 2021. The current case 2022-CP-23-05339 placed the case back on the docket in September 2022. There is no difference between the cases other than the number. The facts and the evidence are the same. Defendants' Summary Judgement Motion, which was submitted after Plaintiffs' ammended compaint, under the old case number, was denied based on finding that genuine issues of material fact remain in dispute. (Exhibit A, Ruling On Original Motion For Summary Judgement Case No: 2018-CP-23-00695))

RULE 56 (c) States the motion shall be served at least 10 days before the time fixed for the hearing. It doesn't say at least part of the complete motion shall be filed at least 10 days before the time fixed for the hearing. Part of the Defendants' motion was filed in November 2022, however the MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT was not filed until February 13, 2023, less than

10 days before the time fixed for the hearing and the days included a Federal Holiday. With that in mind, please consider the fact the MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT was 100% of the Defendants' Attorneys' argument at the SJ hearing and the reduced time (8 days) did not allow Pro Se Plaintiffs time to sufficiently prepare. Two additional days would have been significant in preparing Plaintiffs' presentation.

Also, if in the hearing it was determined there is no genuine issue as to any material fact in light of the Plaintiff's testimony being sketchy, and without detail, Plaintiffs humbly request a review of this detailed Motion for Reconsideration or Reopening.

Additionally, Plaintiffs requests consideration be given to Attorney Misconduct which may include: fraudulent misrepresentation, false or misleading statements, hiding evidence & failing to disclose all relevant facts. (Exhibit B, Attorney Misconduct)

**NEW INFORMATION HAS JUST BEEN DISCOVERED** that will have a major impact on the case. The SC Residential Builders Commission informed Plaintiff on March 17, 2023 that the person holding the Residential Builders License is responsible and liable for any and all work a Company is performing under that person's Residential Builders Licence. A Residential Builder can have multiple Companies listed under his license but the licence is held by the licensee. That is one reason the licensee is required to maintain a Surety Bond. Residential Builder licensees are different from Commercial or Industrial licensees in that Commercial or Industrial Contractors have a qualifier for the Company and the Company is responsible and liable for the work and actually holds the Contractor's License.. Therefore, according to the Residential Builders Commission, Mr. John M. Hornbeck III is responsible and liable for the roofing and siding replacement at Plaintiffs' home, regardless of whether Custom Castles Roofing and Construction, Inc. is listed under Mr. Hornbeck's license or not. The fact Mr. John M. Hornbeck III obtained the roofing permit in his on name, further solidifies his responsibility and liability.

**DISCUSSION OF ORDER GRANTING**  
**DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT**

**a. Breach of Contract**

Defendants' Attorney argues: "Plaintiff's claim of Breach of Contract against one or more of Defendants fails for three reasons: (1) Plaintiff Breached the Contract first; (2) Plaintiff's anticipatory breach of the Contract excused further performance of Defendants; and (3) Plaintiff prevented CCRC from performing its duties under the contract."(Order, p. 2, line 7-10)

Attorney's argument fails for the following reasons:

1. Defendants Breached the Contract first by performing illegal acts. Defendant Custom Castles Roofing and Construction, Inc. was not licensed/listed in accordance with SC Code of Laws Title 40 Article 1 Section 40-59-30 License requirement, enforcement of contracts, restraining orders; to perform the roofing and siding replacements on Plaintiffs' home. Therefore from the first day CCRC was on the Plaintiffs' property they were performing illegal acts.
2. Attorney stated "Mr. Gatlin testified in his deposition that he has never paid CCRC in full for the siding." Attorney left out the fact the siding was not complete and never has been completed. (Order, p. 2, line 28-29)
3. Attorney stated "Furthermore,Plaintiff did not endorse over the check from its insurance company to CCRC and therefore breached its Contract with CCRC." (Order, p.2, line 29, p, 3, line 1) The attorney made that statement without knowing whether it was true or false, which amounts to Attorney misconduct for false or misleading statements. The check referred to was not issued by Plaintiffs' Insurance Company until ~3 weeks after CCRC submitted the invoice for the remaing contract amount.(Exhibit O, Payments) The amount paid was a partial payment, from Plaintiffs' personal funds, with the amount remaining being retainage for uncompleted work. The retainage

was never paid due to CCRC never completing the work and Defendant Hornbeck's reneging on correcting work he promised to correct, just as soon as he received Plaintiffs' personal funds check.

4. Attorney stated "It is further evident that the Plaintiffs committed an anticipatory breach of the Contract by only partially paying CCRC for the siding and then "running them (CCRC) off." ( Order, p. 3, line 7-8) The Attorney committed fraudulent misrepresentation by changing Plaintiffs deposition testimony to include (CCRC) in the quoted part of the statement which says "running them (CCRC) off". By doing so Attorney intentionally intended to change the deposition to include everyone associated with the work when the deposition actually says, we got into an argument and I told them to get off of my property, which was referring to Mr. George Huth and Mr. John Von der Lieth. In addition the date inferred by the statement was not included because Attorney did not know what the date was. His inferred date was October 21, 2017, which he didn't know. The actual date was October 14, 2017, which he didn't know. Also, Plaintiff can prove he didn't "run them (CCRC) off" by copy of a check paid to the siding installers for helping Plaintiff with lawn reconstruction after stopping work on the siding when Hornbeck told them he wasn't paying for any items on the agreed upon corections list. (Exhibit M, Siding Installers Check) Plaintiff also has proof of who was run off and when in a text message from Mr.George Huth. (Exhibit L, Mr. George Huth, et al, Texts)
5. Attorney stated "Furthermore, Plaintiffs prevented CCRC from performing it's statutory right to cure pursuant to the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code of Laws § 40-59-810. (Order, p. 3, Line 12-14) It was determined under the previous case number the Defendants had no statutory right to cue because they were not licensed and the Residential Builders Commission would not allow CCRC back on Plaintiffs' site to complete any work. Attorney should have known that before making this false statement.

6. Attorney's statement saying "Because of the breach and anticipatory breach of contract, the Defendants were relieved of any further duty under the contract and Defendants are entitled to Summary Judgment." (Order, p. 3, line 19-21) failed, therefore Defendants are not entitled to Summary Judgment on Breach of Contract.

### **b. Quantum Meruit**

Defendants argued that Plaintiffs never conferred a benefit upon Defendants.(Order, p. 4, line 2)

Plaintiffs disagree for the following reasons:

1. The Plaintiff conferred a benefit upon the Defendants in the form of payments for work never completed & work that was faulty and never corrected. (Exhibit F, Plaintiff Losses, Exhibit G, Uncomplete Items, Exhibit H, Siding Installation Defects & Exhibit I, Roofing Installation Defects)
  - (a) Roofing and Siding were not installed in accordance with the 2015 International Residential Code and the Manufacturers' Installation Instructions (Exhibit K, Code Requirements & Installation Instructions) which resulted in roof leaks even after replacement of the roof and wall leaks even after replacement of the siding.Defendants never corrected the defective work.
  - (b) Defendants never reinstalled downspouts removed by them.
  - (c) Defendants never reinstalled shutters removed by them.
  - (d) Plaintiffs replaced the undersized furnace vent cap installed by Defendants.
  - (e) Defendants never repaired ceiling damage from a water leak caused by Defendants.
  - (f) Plaintiffs reinstalled exterior lights knocked off the wall by Defendants.

(g) Defendants never replaced the light fixture globe broken by Defendants.

2. The Defendants realized a benefit in the form of work stated on the contract that was never done. (Exhibit C, Contract & Exhibit F, Plaintiff Losses)
  - (a) Remove Trash From Roof, Gutters & Yard
  - (b) Protect Landscaping Where Applicable
  - (c) Roll Yard With Magnetics Roller
  - (d) Quality Control Inspection
  - (e) Valley Ice & Water Shield
  - (f) Ridge Vents
  - (g) Emergency Repair (Tarps on Roof)
3. Plaintiffs paid for supervision that was not done. Project manager Mr. George Huth was out of town the entire week siding was being installed and only came by the first day roofing started and at the end of roofing installation to collect payment and advise Plaintiffs they ran out of shingles and would complete the roofing as soon as they could get additional ones. The other person involved, other than Hornbeck, was Mr. John Von der Lieth who told Plaintiffs he was a salesman and new nothing about construction. (Exhibit F, Plaintiff Losses)
4. Plaintiffs did not receive payment for costs incurred by Plaintiffs for completing work in the contract not done by Defendants or for completing work that was promised to be corrected by Defendants that was never done. (Exhibit F, Plaintiff Losses)
5. There is a statement that says the Defendants were never fully paid. The amount Defendants were not not paid was retainage for work never completed but costs were incurred by the Plaintiffs for having to complete the work themselves..(Exhibit F, Plaintiff Losses)

Therefore, the Motion for Summary Judgment on the Quantum Meruit cause of action should not be granted.

**c. Breach of Contract Accompanied by a Fraudulent Act**

Plaintiff erred in thinking Defendants' Attorney was required to take into account all previous testimonial or documentary evidence.

Attorney stated:

“With respect to Plaintiffs’ cause of action for Breach of Contract Accompanied by a Fraudulent Act, Defendants argued that the damages claimed by the Plaintiffs for this cause of action are the same as under their Breach of Contract cause of action. Plaintiffs have not identified any separate damage specific to this cause of action.”

“Moreover, in order to support an allegation of fraud, the basis of such claim must be plead with particularity (emphasis added). Rule 9(b), SCRPC provides the following:

(b) Fraud, Mistake, Condition of Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally (emphasis added).

Plaintiffs’ cause of action fails to meet this pleading requirement. No specific facts are alleged. Plaintiffs cause of action is a mere recitation of the elements.”

“Plaintiffs’ cause of action fails to meet the “particularity” requirements of SCRPC 9(b), fails to allege the fraudulent acts that accompanied the breach and there is no proof that any fraudulent act was intended to deceive the Plaintiffs”.

“Furthermore, there is a heightened burden of proof for Fraud. Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence. *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). Plaintiffs have asserted fraud, but have failed to provide any evidence which is clear, cogent and convincing to prove such allegations.” (Order, p. 4, line 19-31, p. 5, line 1-18)

Plaintiffs aver as follows:

“To recover for breach of contract accompanied by a fraudulent act, a plaintiff must establish (1) the contract was breached; (2) the breach was accomplished with a fraudulent intention; and (3) the breach was accompanied by a fraudulent act. *Minter*, 322 S.C. at 529-30, 473 S.E.2d at 70.

1. The contract was breached by John M Hornbeck III by stating on the contract, CCRC was Licensed, Bonded and Insured. (Exhibit C, Contract)

2. The breach was accomplished with fraudulent intention based on Defendants proposing to do the work when Defendants knowingly knew it was illegal to propose to do the work without being licensed/listed. In addition the Defendants knowingly submitted a contract that was illegal to submit without a license/listing and knowingly submitted a contract that included fraudulent information about CCRC being licensed, bonded, insured and the types of work they legally did. (Exhibit C, Contract)
3. The fraudulent information on the contract was intentionally included to deceive potential clients.. The contract was a custom preprinted multicopy form with fill in the blanks and check boxes. Obviously, the contract was designed to be used on a regular basis by Defendants with knowledge of the fraudulent content which would unjustly benefit the Defendants monetarily and be unfair to legally licensed contractors. (Exhibit C, Contract)

"In an action for breach of contract accompanied by a fraudulent act, the fraudulent act element is met by any act characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of another's property by design." Perry v. Green, 313 S.C. 250, 254, 437 S.E.2d 150, 152 (Ct. App. 1993).

4. The breach was accompanied by a fraudulent act when CCRC knowingly started working on contract stated items without being licensed/listed and by hiring an unlicensed/listed roofing subcontractor. Plaintiffs had to complete contracted items that were never done. (Exhibit F, Plaintiff Losses)
5. Defendants promised to do corrective work in order to receive payment for faulty work then reneged and never corrected the work which Plaintiffs then had to pay for.(Exhibit F, Plaintiff Losses)
6. The Defendants included fraudulent information on CCRC's website to deceive their potential clients. For example, Defendants bragged about work being done in Willmington, North Carolina, but intentionally did not tell they were not licensed to work in North Carolina. (Exhibit.D, False Advertising)

Therefore, Defendants' Motion for Summary Judgment as to Plaintiff's cause of action for Breach of Contract Accompanied by a Fraudulent Act should not be granted.

#### **d. Fraud or Fraud in the Inducement**

Plaintiff erred again in thinking Defendants' Attorney was required to take into account all previous testimonial or documentary evidence.

Attorney stated:

"While the Plaintiffs successfully include each element of Fraud in their complaint, they again fail to plead with any particularity. "In order to prevail on a claim for Fraud, the Plaintiff must prove the following: A cause of action for fraud requires: (1) a representation of fact; (2) its falsity; (3) its materiality; (4) either knowledge of the falsity of the representation or reckless disregard of its truth or falsity; (5) the intent that the representation be acted on; (6) the hearer's ignorance of the falsity of the representation; (7) the hearer's reliance on the truth of the representation; (8) the hearer's right to rely on the representation; and (9) the hearer's consequent and proximate injury." Schnellmann v. Roettger, 373 S.C. 379, 645 S.E.2d 239 (2007). Hollman v. Woolfson, 384 S.C. 571, 579-80, 683 S.E.2d 495, 499 (2009).

Plaintiffs advanced no argument at the hearing that would overcome the Defendants' arguments for summary judgment on this issue and therefore, the Court grants Defendants' Motion for Summary Judgment of this issue. Plaintiffs have not articulated or provided evidence of any specific damages suffered as a result of the Defendants' misrepresentations. The Plaintiffs in this case rely upon a single allegation that the work performed by CCRC was deficient, nothing more. Also, this cause of action does not include the elements for Fraud in the Inducement. "In order to prevail on a claim for Fraud in the Inducement, the Plaintiff must prove the following: To establish a claim or defense of fraud in the inducement, a plaintiff must prove the nine elements of fraud as well as the following three elements: "(1) that the alleged fraudfeasor made a false representation relating to a present or preexisting fact; (2) that the alleged fraudfeasor intended to deceive him; and (3) that he had a right to rely on the representation made to him." Darby v. Waterboggan of Myrtle Beach, Inc., 288 S.C. 579, 584, 344 S.E.2d 153, 155 (Ct.App.1986). Moseley v. All Things Possible, Inc., 388 S.C. 31, 36, 694 S.E.2d 43, 45 (Ct. App. 2010), aff'd, 395 S.C. 492, 719 S.E.2d 656 (2011).

Again, there is a heightened burden of proof for Fraud. Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence. Ardis v. Cox, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). See also, Hancock, 381 S.C. at 330-31, 673 S.E.2d at 803 (2009) (stating

in cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment).

Plaintiffs have asserted fraud, but have provided no proof of that and there is certainly no evidence which is clear, cogent and convincing to prove such allegations.” (Order, p. 5, line 24-25, p.6, line 1-31)

Plaintiff avers as follows:

“In order to prevail on a claim for Fraud, the Plaintiff must prove the following: A cause of action for fraud requires: (1) a representation of fact; (2) its falsity; (3) its materiality; (4) either knowledge of the falsity of the representation or reckless disregard of its truth or falsity; (5) the intent that the representation be acted on; (6) the hearer's ignorance of the falsity of the representation; (7) the hearer's reliance on the truth of the representation; (8) the hearer's right to rely on the representation; and (9) the hearer's consequent and proximate injury.”

In addition:

“In order to prevail on a claim for Fraud in the Inducement, the Plaintiff must prove the following: To establish a claim or defense of fraud in the inducement, a plaintiff must prove the nine elements of fraud as well as the following three elements: “(1) that the alleged fraudfeasor made a false representation relating to a present or preexisting fact; (2) that the alleged fraudfeasor intended to deceive him; and (3) that he had a right to rely on the representation made to him.”

Fraud in the inducement occurs when a person tricks another person into signing an agreement to one's disadvantage by using fraudulent statements and representations. Because fraud negates the “meeting of the minds” required of a contract, the injured party can seek damages or terminate the contract. Had the Plaintiff known about all the fraudulent and deceiving information Plaintiff would never have entered into an agreement with CCRC. (Exhibit C, Contract & Exhibit D, False Advertising) The Plaintiff had a right to believe Defendants. Plaintiff never would have signed a contract with the Defendants for the following reasons:

1. Plaintiff knew ahead of time based on nearly 50 years working as a professional in Engineering and Construction it was illegal for Plaintiff to hire an unlicensed/listed contractor for his work because of it's cost.

2. Plaintiff knew ahead of time it was illegal for a contractor to even propose to do work if contractor was not licensed/listed and bonded for the work.

3. Plaintiff knew ahead of time it was illegal for an unlicensed/unlisted contractor to offer a contract for doing Plaintiffs' work.

4. Plaintiff new ahead of time licensed residential builders were required to purchase a Surety bond.

5. Plaintiff knew ahead of time it was not wise to hire an uninsured contractor.

6. Plaintiff knew ahead of time specialty subcontractors (Roofing) were required to have a license or be registered for the work and had to purchase a Surety bond unless a licensed residential builder accepted liability for the work and provided supervision and inspected the work to ensure the work met the required regulations, codes and accepted practice.

7. Plaintiffs knew ahead of time that experience counts and hiring an inexperienced or incompetent contractor could be disastrous.

Defendants proposed to do work knowing it was illegal to propose work without being licensed.

Defendants offered a contract knowing it was illegal to offer a contract without being licensed. work without being licensed.

Defendants offered a contract knowing it included fraudulent and misleading information. Plaintiffs had a right to believe the contract wording. (Exhibit C, Contract)

Defendants performed work without concern about laws, codes and installation requirements which produced installations with major defects which they refused to correct. The knowingly fraudulent activity placed a large financial burden on the Plaintiffs. (Exhibit F, Plaintiffs Losses)

Therefore, Motion for Summary Judgment as to this cause of action should not be granted.

#### **d. Fraud or Fraud in the Inducement**

Attorney Stated:

“While the Plaintiffs successfully include each element of Fraud in their Complaint, they again fail to plead with any particularity.

“In order to prevail on a claim for Fraud, the Plaintiff must prove the following: A cause of action for fraud requires: (1) a representation of fact; (2) its falsity; (3) its materiality; (4) either knowledge of the falsity of the representation or reckless disregard of its truth or falsity; (5) the intent that the representation be acted on; (6) the hearer's ignorance of the falsity of the representation; (7) the hearer's reliance on the truth of the representation; (8) the hearer's right to rely on the representation; and (9) the hearer's consequent and proximate injury.” Schnellmann v. Roettger, 373 S.C. 379, 645 S.E.2d 239 (2007). Hollman v. Woolfson, 384 S.C. 571, 579–80, 683 S.E.2d 495, 499 (2009). “

Plaintiffs advanced no argument at the hearing that would overcome the Defendants' arguments for summary judgment on this issue and therefore, the Court grants Defendants' Motion for Summary Judgment of this issue.

Plaintiffs have not articulated or provided evidence of any specific damages suffered as a result of the Defendants' misrepresentations. The Plaintiffs in this case rely upon a single allegation that the work performed by CCRC was deficient, nothing more. Also, this cause of action does not include the elements for Fraud in the Inducement.

“In order to prevail on a claim for Fraud in the Inducement, the Plaintiff must prove the following: To establish a claim or defense of fraud in the inducement, a plaintiff must prove the nine elements of fraud as well as the following three elements: “(1) that the alleged fraudfeasor made a false representation relating to a present or preexisting fact; (2) that the alleged fraudfeasor intended to deceive him; and (3) that he had a right to rely on the representation made to him.” Darby v.

Waterboggan of Myrtle Beach, Inc., 288 S.C. 579, 584, 344 S.E.2d 153, 155 (Ct.App.1986). Moseley v. All Things Possible, Inc., 388 S.C. 31, 36, 694 S.E.2d 43, 45 (Ct. App. 2010), aff'd, 395 S.C. 492, 719 S.E.2d 656 (2011).

Again, there is a heightened burden of proof for Fraud. Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence. Ardis v. Cox, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). See also, Hancock, 381 S.C. at 330–31, 673 S.E.2d at 803 (2009) (stating in cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment).

Plaintiffs have asserted fraud, but have provided no proof of that and there is certainly no evidence which is clear, cogent and convincing to prove such allegations. For these

reasons, Defendants' Motion for Summary Judgment as to this cause of action is granted." (Order, p. 5, line 24-25, p. 6, line 1- 31, p. 7, line 1-2)

Plaintiffs avers as follows:

1. The Defendants' made representations to the Plaintiff.
2. The representations were false. (Exhibit C, Contract)
3. The representations were material to the Plaintiffs decision to enter into the contract.
4. The Defendants had knowledge of the representations' falsity or exhibited a reckless disregard of its truth or falsity.
5. Defendants' intent was that the representations be acted upon by the Plaintiff.
6. Based on Defendants' website, Facebook pages and standardized contract Defendants had been using the false representations for quite some time with much success.
7. The Plaintiff was ignorant of its falsity.
8. The Plaintiff relied on the representations' truth.
9. The Plaintiff had a right to rely on the truth of the representations.
10. Damage was suffered by the Plaintiff as a direct and proximate result of the Defendants' misrepresentation.
11. Plaintiffs relied on their insurance settlement to provide the funds to repair the hail storms damage.
12. Plaintiffs had a right to rely on their insurance settlement.
13. Plaintiffs suffered considerable losses due to Defendants representations on the contract and throughout the project. (Exhibit F, Plaintiff Losses, Exhibit, Exhibit, G Uncomplete Items, Exhibit H, Siding Installation Defects, Exhibit I, Roofing Installation Defects)

For these reasons, Defendants' Motion for Summary Judgment as to this cause of action should not be granted

#### **e. Negligent Misrepresentation**

Attorney stated:

"Defendants also seek Summary Judgment as to Plaintiffs cause of action for Negligent Misrepresentation. Again, Plaintiffs have failed to identify any damages specific to this

cause of action. Moreover, Plaintiffs have failed to prove how any damages claimed in this case were proximately caused by any alleged representation made by the Defendants. “To prove a claim for the common law tort of negligent misrepresentation, the following elements must be established:

(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation.” *West v. Gladney*, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct.App.2000) (emphasis added).

“Evidence of a mere broken promise is not sufficient to prove negligent misrepresentation.” *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 407, 581 S.E.2d 161, 166 (2003) (quoting *Winburn v. Ins. Co. of N. Am.*, 287 S.C. 435, 443, 339 S.E.2d 142, 147 (Ct.App.1985)). Ordinarily, to be actionable, a statement must relate to a present or preexisting fact, and cannot be predicated on unfulfilled promises or statements as to future events. *Davis v. Upton*, 250 S.C. 288, 291, 157 S.E.2d 567, 568 (1967). *Turner v. Milliman*, 392 S.C. 116, 123, 708 S.E.2d 766, 769–70 (2011) (emphasis added).

Because Plaintiffs have failed to identify any misrepresentations or damages related to this cause of action, Defendants are entitled to Summary Judgment.” (Order, p. 7, line 4-28)

Plaintiffs avers as follows:

1. Defendant Hornbeck made promises followed by “We trusted you, now you need to trust us “. The promises were reneged on as soon as payment was received and Plaintiffs ended up paying for the work associated with the broken promises. (Exhibit F, Plaintiff Losses)
2. When the Plaintiff told Defendant Hornbeck Mr. Huth had way overpurchased siding, pointing to the leftover stack of material (HardiPlank, fasteners provided by the Distributor that were never used and two cases of caulking that were never applied), and asking for the excess materials to be removed, Mr. Hornbeck told Plaintiff, Mr. Huth did not order the material but that he did. After Mr. Hornbeck said that, Plaintiff made the comment, I know your company did, after which Mr. Hornbeck said he meant he had personally ordered the material. Later Mr. Hornbeck denied making the statement. Who would bother denying making a statement like that unless they had become concerned about their personal liability. (Exhibit F, Plaintiff Losses)

3. When told by the Plaintiff, Hardi Plank starter strips were not installed, Mr. Hornbeck said many of his clients didn't want starter strips installed. Who in their right mind would believe such a statement when it clearly states in the installation instructions starter strips are to be installed. Undoubtedly Mr. Hornbeck has never read the Hardi Plank installation instructions or seen the instructions that are printed on the HardiPlank wrapper. (Exhibit I, Siding Installation Defects & Exhibit F, Plaintiff Losses)
4. When told by the Plaintiff the Hardi Plank was not properly fastened in most cases, Mr. Hornbeck said Contractors new better ways of installing materials than the manufacturers. Again that is unbelievable since the 2015 International Residential Code includes requirements for installing fiber cement siding planks, including fastener types and spacing, that were not followed by CCRC. Also, Hardi Planks' installation instructions follow the building code which requires the installation to be capable of withstanding 70 mph winds (in the Greenville County area & 110 mph in some other areas of the state). The installation requirements were also confirmed in discussions with a Hardi Plank technical representative. (Exhibit H & Exhibit F, Plaintiff Losses)
5. When Plaintiff told Mr. Hornbeck the workers were not following OSHA's requirements for sawing HardiPlanks Mr. Hornbeck said he wasn't worried about OSHA because he had plenty of money and plenty of lawyers. The reason Plaintiff told Mr. Hornbeck about the OSHA requirements wasn't to keep Mr. Hornbeck out of trouble but was for Plaintiff's concern about the workers exposure to Silica dust which is a known carcinogen. Obviously Mr. Hornbeck only had himself in mind. In addition Plaintiffs had to clean up the silica dust left behind from the sawing operation.(Exhibit G, Uncomplete Items)

For these reasons, Defendants' Motion for Summary Judgment as to this cause of action should not be granted

**f. Negligence**

Attorney stated:

“Plaintiffs’ negligence claim is barred by the Economic Loss Rule. “A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie.” *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 54–55, 463 S.E.2d 85, 88 (1995). In the case at hand, the Contract sets for the duties of CCRC and the Plaintiff. Plaintiff’s sole remedy is under contract law and the Negligence claim is duplicative and barred by the Economic Loss Rule and Defendants are entitled to Summary Judgment on this issue.” (Order, p. 7, line 28-31, p. 8, line 1-3)

Plaintiffs avers as follows:

Attorney’s argument fails in the residential homebuilding context. The SC Supreme Court recognized two exceptions to the economic loss rule.

”In creating the new exceptions, the court rejected the majority view of the economic loss doctrine, stating that view “employs a legal framework that focuses on consequence, not action.” *Id.* at \*3. The South Carolina Supreme Court in 1989 had recognized exceptions to the economic loss rule in the residential homebuilding context. In *Kennedy v. Columbia Lumber & Mfg. Co.*, South Carolina recognized tort liability for builders who ”place defective and inferior construction into the stream of commerce” if the construction violates industry standards or poses a serious risk of physical injury. *Id.* at \*4 (Hunton & Williams, *Emerging Issues In Consumer Litigation*, September 2008)

CCRC performed defective, faulty and inferior construction by intentionally sidestepping the 2015 International Residential Code, the siding manufacturers’ and roofing manufacturers’ installation instructions and not meeting accepted industry standards for construction.

The following results are due to the faulty construction, lack of supervision, followup and inspection by CCRC.

1. GAF, the roofing manufacturer, would not honor their warranty.
2. James Hardie Company, the siding manufacturer, would not honor their warranty.

3. After CCRC said they had completed the roof and had been paid the full amount, Plaintiffs had continuing leaks in two bathrooms, a bedroom, the dining room and den. Due to the incorrect installation strong winds would eventually begin to blow shingles off the roof. After CCRC said they had completed the siding, Plaintiffs had two continuing interior leaks around the windows in a bedroom. Due to the damage to the exterior sheathing during the siding being installed wrong, moisture and air infiltration would begin reducing energy efficiency, by allowing increased cold/hot air and moisture into the home, reduce the wall's insulation value, set up conditions for mold and mildew growth and allow for insect infestations. Also by not coating the sawed edges of the siding, delamination of the siding would eventually begin. Also the home's curb appeal was reduced by CCRC not repairing and reinstalling the two exterior lights knocked off the wall by the siding installers, not reinstalling the downspouts removed by the siding installers, by not reinstalling the window shutters removed by the siding installers, by not installing siding with the correct exposure, by leaving a length of siding removed exposing the sheathing, by installing shingles that curved over the eave and rake, by not installing ridge vents, by not installing drip edge in some areas. In addition, CCRC installed an undersized furnace vent cap filled with caulking that caused a backpressure on the furnace. That backpressure would reduce the furnaces life by causing moisture accumulation and rusting of the furnace due to incomplete combustion. The backpressure would cause a life safety issue by increasing the chance of carbon monoxide escaping from the furnace and entering the homes' bedrooms through the attic. Carbon monoxide tests have shown it easily penetrates sheetrock, even painted sheetrock because carbon monoxide molecules are 1,000 times smaller than the pores in sheetrock and paint barely makes any difference. It's estimated the above items could devalue the Plaintiffs home by as much as 30%, or approximately \$100,000.00. Also, code violations could affect insurance claims resulting in thousands of dollars out of the Plaintiffs' pocket.

(Exhibit F, Plaintiff Losses, Exhibit G, Uncomplete Items, Exhibit H, Siding Installation Defects, Exhibit I, Roofing Installation Defects)

For these reasons, Defendants' Motion for Summary Judgment as to this cause of action should not be granted

**g. Unfair Trade Practices Act Violation**

Attorney stated:

"Plaintiffs' SCUTPA claim fails as a matter of law because it is a private dispute that does not affect the public interest. "Our courts have made it clear that UTPA is not available to redress a private wrong where the public interest is unaffected. UTPA is not an alternative vehicle to pursue an alleged breach of contract. Even an intentional breach of a contract does not rise to the level of a violation of UTPA." *Dove Data Prod., Inc. v. DeVeaux*, 2008 WL 98641167 at (Ct. App. 2008) (internal citations omitted). This matter is a private dispute between a homeowner and contractor for which Plaintiffs cannot seek recovery under the SCUTPA. Moreover, Plaintiffs failed to properly plead this cause of action."

"To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct.App.2006).

Plaintiffs failed to allege that the unfair or deceptive act affected the public interest. Moreover, Plaintiffs fails to allege that they suffered monetary damage or property loss as a result of the Defendant's unfair or deceptive acts. Plaintiff has provided no proof or law in this hearing to refute the Defendants' allegations in the motion and therefore Defendants' Motion for Summary Judgment as to Plaintiffs' cause of action for South Carolina Unfair Trade Practice Act Violation is granted." (Order, p. 8, line 5-24)

Plaintiffs disagree and aver as follows:

"In South Carolina, as in most jurisdictions, unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. *See South Carolina Unfair Trade Practices Act* (the "Act"), S.C. Code Ann. §39-5-10, et seq. In order to be actionable, an act must be unfair or deceptive, and must have an impact upon the public interest. Impact on public interest may be established if

the act or practice has the potential for repetition. Potential for repetition may be demonstrated by showing the same kind of action previously occurred, making it likely it will continue to occur without deterrence, or by showing a company's procedures create the potential for repetition of the unfair and deceptive act. (Author, Cheryl D. Shoun, Nexen/Pruitt)

SECTION 39-5-20. Unfair methods of competition and unfair or deceptive acts or practices unlawful; application of federal act.

(a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

(b) It is the intent of the legislature that in construing paragraph (a) of this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to Section 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended. (SC Code of Laws, Title 39, Chapter 5, Unfair Trade Practices, Article 1, General Provisions)

Defendants Unfair Trade Practices that affect licensed, law abiding diligent, and honest Residential Builders includes:

1. Inferring CCRC has three offices, one in Anderson and two in Greenville County when they don't have any. According to contract employees all meetings are held at Hornbeck's house.
2. By getting away with utilizing a fraudulent contract.
3. Pretending they have direct employees engaged in supervising, performing and inspecting their work when they don't. According to two of Hornbecks' contract employees, John Hornbeck is the only payroll employee of Custom Castles Roofing and Construction, Inc. and Custom Castles Construction, Inc.

4. Operating CCRC for years without being licensed/listed, not being bonded and not carrying general liability or workers compensation insurance which opens clients up to numerous types of claims.
5. For not providing services in accordance with building codes, manufacturers installation requirements and not following accepted practice.
6. By negligent hiring of contract employees and subcontractors.
7. By making false advertising claims on Facebook and the Defendants website.

For these reasons, Defendants' Motion for Summary Judgment as to this cause of action should not be granted

#### **h. Disregard of Corporate Entity**

Attorney stated:

"Plaintiffs have brought a cause of action against the Defendants seeking to hold John Hornbeck personally liable for the acts of CCRC. It is generally recognized that a corporation is an entity that is separate and distinct from, and its debts are not the individual debts of, its officers and stockholders. *Hunting*, 359 S.C. at 223, 597 S.E.2d at 806 (citing *DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co.*, 540 F.2d 681, 683 (4th Cir.1976)). Although the corporate entity may be disregarded in some situations, piercing the corporate veil is not a doctrine to be applied without substantial reflection. *Baker v. Equitable Leasing Corp.*, 275 S.C. 359, 367, 271 S.E.2d 596, 600 (1980) ("However, 'piercing the corporate veil' is not a doctrine to be applied without substantial reflection."). *Mid-S. Mgt. Co. Inc. v. Sherwood Dev. Corp.*, 374 S.C. 588, 597, 649 S.E.2d 135, 140 (Ct. App. 2007).

The only contract at issue in this case is the one between CCRC and Plaintiffs dated July 31, 2017. Moreover, Plaintiff, Milton Gatlin, testified in his deposition that he never even met John Hornbeck until after the siding and roof was replaced by CCRC at his house.

Plaintiffs have submitted no evidence or law at this hearing to support this cause of action.

In order to determine whether the corporate formalities were observed under the first prong of the *Sturkie* test, the courts consider eight factors:

- (1) whether the corporation was grossly undercapitalized;
- (2) failure to observe corporate formalities;
- (3) non-payment of dividends;

- (4) insolvency of the debtor corporation at the time;
- (5) siphoning of funds of the corporation by the dominant stockholder;
- (6) non-functioning of other officers or directors;
- (7) absence of corporate records; and
- (8) the fact that the corporation was merely a façade for the operations of the dominant stockholder. *Mid-S. Mgt. Co. Inc. v. Sherwood Dev. Corp.*, 374 S.C. 588, 598, 649 S.E.2d 135, 140–41 (Ct. App. 2007).

During his deposition, Milton Gatlin, admitted to having no personal knowledge about the “Sturkie factors” and Defendant entities. Plaintiffs presented no evidence to pursue this case of action. For this reason, Defendants’ Motion for Summary Judgment on disregarding the corporate entity is granted.” (Order, p. 9, line 1-32)

The Plaintiffs avers as follows:

Defendants Hornbeck and CCC argue, in their old motion to dismiss, that they are not parties to the contract at issue in this action and that Defendants CCC and CCRC are legally separate entities. As such, Defendants Hornbeck and CCC should be dismissed as it is their opinion that no claim has been made that can reach them under Rule 12(b) (6) of the South Carolina Rules of Civil Procedure. These are grossly inaccurate legal conclusions for the following reasons.”

A. The Corporate Veil Should Be Pierced

Plaintiffs allege in paragraph 4 of their complaint that Defendant companies are under the same corporate umbrella. Defendants CCC and CCRC are corporate shells of Defendant Hornbeck, thus the corporate veil should be pierced. It is Plaintiffs' belief that piercing the veil will reveal that Defendant Hornbeck is in reality a sole proprietor instead of merely the owner and/or majority shareholder and/or officer of Defendant companies; that Defendant CCC was not in reality a limited liability company, but rather a sole proprietorship; and that Defendant CCRC is not in reality a corporation, but rather a sole proprietorship.

Under the two-prong test laid out in *Sturkie v. Sif7y*, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984), eight factors must be considered in determining whether corporate formalities are being observed by the dominant shareholders for the first prong. The factors are:

- 1) whether the corporation was grossly undercapitalized;

- 2) failure to observe corporate formalities;
- 3) non-payment of dividends;
- 4) insolvency of the debtor corporation at the time;
- 5) siphoning of funds of the corporation by the dominant stockholder;
- 6) non-functioning of other officers or directors;
- 7) absence of corporate records;
- 8) the fact that the corporation was merely a facade for the operations of the dominant stockholder.

"The conclusion to disregard the corporate entity must involve a number of the eight factors, but need not involve them all." *Dumas v. Infosafe Corp.*, 320 S.C. 188, 192, 463 S.E.2d 641 (Ct. App. 1995). Evidence currently in Plaintiffs' possession indicates that Defendants CCC and CCRC are merely facades for the operations of Defendant Hornbeck who, upon information and belief, is the majority shareholder.

Defendants allege that Defendant companies are separate and distinct. However, as Defendants have already admitted in their answer pleading, Defendant CCC did business as Defendant CCRC. At the time the contracted work took place Defendant CCRC did not have a contracting license registered to it, but Defendant CCC had Defendant Hornbeck's licensed to it, as stated in paragraph 10 of Plaintiffs' complaint. Defendant Hornbeck used his license to obtain the re-roofing permit in his name.

CCC was not listed on Greenville Counties website as contractor or subcontractor for a contract where Defendant CCRC was the promisor. If the Defendant companies are distinct and separate as Defendants allege then Defendant CCRC should have had its own registered contracting license. Upon information and belief, it was Defendant Hornbeck, solely and without consultation of any other officers/ directors of the Defendant companies that made the decision to do this. Defendant Hornbeck's actions indicate that he was and is using both Defendant companies as facades for his own operations as a general contractor which none of the Defendants are.....

The second prong of the test requires Plaintiffs to show that injustice or fundamental unfairness will occur if the veil is not pierced by proving "that (1) the

defendant was aware of the plaintiff's claim against the corporation, and (2) thereafter, the defendant acted in a self-serving manner with regard to the property of the corporation and in disregard to the plaintiff's claim in the property." Dumas, 320 S.C. at 192, 463 S.E.2d at 644. "The essence of the fairness test is simply that an individual businessman cannot be allowed to hide from the normal consequences of carefree entrepreneuring by doing so through a corporate shell." Multimedia Publ'g of S. C., Inc. v. Mullins, 314 S.C. 551, 556, 431 S.E.2d 569, 573 (1993).

As to the first prong, Defendants were made aware of Plaintiffs' claim at least as far back as February 2018 when they initiated this suit. As to the second prong, Defendant Hornbeck acted in a self-serving manner in disregard to Plaintiffs' by dissolving Defendant CCC in March 2018. Plaintiffs believe it will show property that would otherwise have been subject to Plaintiffs' claim against Defendant CCC was either transferred to Defendant CCRC's or Defendant Hornbeck's possession. These are the actions of an "an individual businessman . . . to hide from the normal consequences of carefree entrepreneuring by doing so through a corporate shell." Id Therefore, it is necessary to pierce the corporate veil in order to insure fairness to Plaintiffs.

B. Defendants' Interests Are So Amalgamated As To Blur the Lines Between the Parties.

In the alternative, Defendants CCC, CCRC, and Hornbeck have interests that are amalgamated as to blur the lines between the parties. In Kincaid v. Landing Development Corp., 289 S.C. 89, 344 S.E.2d 869 (S.C. App. 1986), the Defendants of that case argued that the trial court erred in refusing to distinguish Defendant RMG from the other Defendants because they were merely the sales and marketing agent for the development. Kincaid vs Landing Development Corp., S.C. 89, 344 S.E.2d 869, 874 (S.C. App. 1986). The evidence showed that all of the Defendant companies had officers and shareholders that were mostly the same for each company; that all of the Defendant companies' offices were located at the same place concurrently; that when a Plaintiff called Defendant RMG regarding an issue with their house someone would show up to deal with it; and a letter with an RMG letterhead with the notation "A Development, Construction, Sales, and

Property Management Company." Id. The Court held that "the evidence revealed<sup>J</sup> an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between the corporations and their activities.'" Id. As a result, each of the Defendants were all held to be liable for the torts alleged. See *Kincaid vs Landing Development corp.*, S.C. 89, 344 S.E.2d 869 (S.C. App. 1986).

Similarly, evidence already in Plaintiffs' possession reveals that such an amalgamation exists regarding the Defendants in this case. Both Defendants CCC and CCRC shared the same office and website concurrently at the time Plaintiffs entered into contract with Defendant CCRC. Indeed, even though Defendant CCC has dissolved since the beginning of this case they continue to have an active Facebook page that exists concurrently with Defendant CCRC's. Both of these Facebook pages have a website link for [www.customcastles.net](http://www.customcastles.net). Defendants CCC and CCRC used the same graphic logo concurrently. Defendant CCC has roofing listed as one of the services that it provides on its Facebook page concurrently with Defendant CCRC which has "Roofing" in its name. Defendant Hornbeck obtained the re-roofing permit required to perform the contract on his behalf and not that of the Defendant CCRC. Evidence in Plaintiffs' possession also tends to indicate that Defendant Hornbeck was the registered agent of each Defendant company concurrently and that they had the same physical location registered with the Department of Labor, Licensing, and Registration. Plaintiffs also believe that continued discovery will reveal that the Defendant companies have many if not all of the same officers or shareholders.

All of this evidence shows that the lines between the Defendants as separate entities is blurred and that Defendant Hornbeck's and Defendant CCC's interests and activities are amalgamated with Defendant CCRC's.

#### C. Defendant Hornbeck is individually Liable for SCUTPA Violation

Plaintiffs allege in paragraphs 57-60 of their complaint that Defendant(s) have engaged in activities in violation of the South Carolina Unfair Trade Practices Act (SCUTPA). SCUTPA makes directors and officers of companies that conduct unfair or deceptive trade practices liable for those acts if they directed, participated in, or exercised direct control over said activities. Code 1976, S 39-5-10 et seq. As an officer, director,

or controlling person of the Defendant companies, Defendant Hornbeck is jointly and severably liable for violations of the SCUTPA because he has participated in or directed unfair or deceptive acts performed by the Defendant Companies. See *Neeltec Enterprises, Inc. v. Long*, 402 S.C. 524, 741 S.E.2d 767 (S.C.App. 2013). As the sole or majority shareholder and directing controlling officer of the Defendant CCC and Defendant CCRC. Upon information and belief, Defendant Hornbeck directed and participated in the following deceptive acts (Compl. 18 - 19):

1. False representations that Defendant CCRC was operating with a valid contractor's license at the time Plaintiffs entered into contract with Defendant CCRC (Compl. 156));
2. These false representations were made on the Custom Castles website;
3. These false representations are made on Defendant CCRC's form contracts;
4. False representations that Defendant CCRC has regular employees other than Defendant Hornbeck. Specifically, John Von der Lieth has business cards identifying him as the Director of Client relations and Defendant Hornbeck has acknowledged him as such on Defendant CCRC's Facebook page. Mr. Von der Lieth is in fact a sub-contractor hired by Defendant Hornbeck and not a regular employee of Defendant CCRC. In addition, George Huth presented himself as a project manager of CCRC and in fact he is also a sub-contractor; That Defendant Hornbeck used his residential builders license to obtain a re-roofing permit with the County of Greenville for Defendant CCRC's contract with Plaintiffs;
5. False representations that Defendant CCRC is registered with the County of Greenville to do business there; and
6. False representations that Defendant CCRC maintains an office at 33 Market Point Drive, Greenville, SC which is false and Defendant CCC maintains an office at 3300 N. Main St. Ste D in Anderson, SC which in fact is only a post office box at a UPS Store. Mr. Von Der Lieth told

Plaintiffs that Defendant CCRC's real office is Defendant Hornbeck's house and he met Defendant Hornbeck there numerous times for business purposes.

7. Defendant Hornbeck did not apply for the re-roofing permit for Plaintiffs' home until October 25, 2017 which is after he stopped work on Plaintiffs' home.

The above-mentioned actions are also capable of repetition and thus have an adverse impact on the public interest. *C+eSadigi v. Daghihfekr*, 36 F. Supp. 2d 279 (D.S.C. 1999). As Defendant CCC and Defendant CCRC concurrently existed for some years it is likely that Defendant Hornbeck has repeated these deceptive acts with other customers. See *Barnes v. Jones Chevrolet co.*, 292 S.C. 607, 358 S.E.2d 156 (Ct.App. 1987); *York v. Conway Ford, Inc.*, 325 S.C. 170, 480 S.E.2d 726 (19%).

These acts were purposefully deceptive in concept and nature and either under the direction of Defendant Hornbeck or had his participation in them.

After filing the Complaint, the Plaintiffs have discovered evidence they believe show that each of the Defendant corporations are either alter egos of Defendant John M. Hornbeck, Ill or, alternatively, the lines distinguishing the parties is blurred to the point where they have amalgamated interests and activities.

#### **i. All Tort Actions are Barred by the Economic Loss Rule**

Attorney stated:

“All of Plaintiff’s tort claims are barred by the Economic Loss Rule. “A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie.” *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 54–55, 463 S.E.2d 85, 88 (1995). In the case at hand, the Contract sets forth the duties of CCRC and the Plaintiff. Plaintiff’s sole remedy is under contract law and any tort claim that arises out of the same circumstances, actions and facts are duplicative and barred by the Economic Loss Rule and Defendants’ Motion for Summary Judgment on dismissal of the tort actions is granted.” (Order, p. 10, line 1-10)

The Defendants’ Attorney erred based on the fact the Attorney did not do Due Diligence and used case law that was misleading. The Economic Loss Rule does not apply

in South Carolina in the residential homebuilding context. The SC Supreme Court recognized two exceptions to the economic loss rule.

”In creating the new exceptions, the court rejected the majority view of the economic loss doctrine, stating that view “employs a legal framework that focuses on consequence, not action.” *Id.* at \*3. The South Carolina Supreme Court in 1989 had recognized exceptions to the economic loss rule in the residential homebuilding context. In *Kennedy v. Columbia Lumber & Mfg. Co.*, South Carolina recognized tort liability for builders who ”place defective and inferior construction into the stream of commerce” if the construction violates industry standards or poses a serious risk of physical injury. *Id.* at \*4 (Hunton & Williams, Emerging Issues In Consumer Litigation, September 2008)

Therefore, Defendants are not entitled to Summary Judgement on this issue.

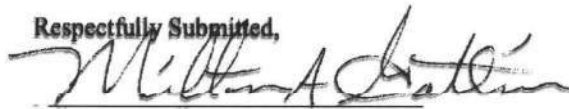
### **Conclusion**

Plaintiffs pray for the following

1. For the Defendants to be found to be unjustly enriched by the benefit conferred upon them by the Plaintiff;
2. For the Defendants to be found liable for breach of contract accompanied by fraudulent intent.
3. For the Defendants to be found liable for fraud or fraud in the inducement.
4. For the Defendants to be found liable for negligent misrepresentation.
5. For the Defendants to be found liable for negligence.
6. For the Defendants to be found in violation of the Unfair Trade Practices Act.
7. For the corporate veil of Defendants Custom Castles Construction, LLC and Custom Castles Roofing and Construction, Inc. to be pierced and allow personal liability against Defendant John M. Hornbeck, III.

8. That this matter be tried by jury.
9. For such other and further relief as the Court may deem just and proper.

Respectfully Submitted,



Milton A. Gatlin  
105 Silver Pine Court Greer, SC 29650  
(864) 404-9259 (Cell)  
(864) 244-5021 (Home)

[milton@dti.us](mailto:milton@dti.us)

Pro Se for Plaintiffs

Attachments  
March 29, 2013  
Greer, South

STATE OF SOUTH CAROLINA )  
COUNTY OF Greenville )

IN THE COURT OF COMMON PLEAS  
13th JUDICIAL CIRCUIT

CASE NO: 2022 CP-23-05339

William A Gattin & Marie Gattin  
Plaintiff, )

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

vs. )

John M Hornbeck et al  
Defendant. )

23 MAR 29 PM 4:53  
Paul Wickensimer COC 611, SC

Plaintiff's Attorney: <u>William Gattin</u> , Bar No. _____ Address: <u>105 Silver Pine Ct Greenville SC 29650</u> Phone: _____ Fax <u>29650</u> E-mail: _____ Other: _____	Defendant's Attorney: <u>Wendell Hawkins</u> Bar No. _____ Address: <u>310 The Parkway Greenville SC 29650</u> Phone: _____ Fax _____ E-mail: _____ Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b> Nature of Motion: <u>Motion for Reconsideration or Reopening</u> Estimated Time Needed: <u>1 hr</u> Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b> <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <u>William Gattin</u> Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant Date submitted <u>3-29</u> , 20 <u>23</u>	
<b>SECTION III: Motion Fee</b> <input checked="" type="checkbox"/> PAID - AMOUNT: \$ <u>25.00</u> <input type="checkbox"/> EXEMPT: (check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> 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: _____ <input type="checkbox"/> Other: _____	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____, 20____
<b>CLERK'S VERIFICATION</b> Collected by: <u>KM</u> Date Filed: <u>March 29</u> , 20 <u>23</u> <input checked="" type="checkbox"/> MOTION FEE COLLECTED. \$ <u>25.00</u> <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

**Exhibit A**

**Ruling On**

**Original Motion For Summary Judgement**

**Case No: 2018-CP-23-00695**

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Greenville  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2300695

Milton A Gatlin et al  
PLAINTIFF(S)

John M Hornbeck, III et al  
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

This matter comes before the Court pursuant to Defendant's Motion for Summary Judgment. This Court finds that genuine issues of material fact remain in dispute. Therefore, the Motion is denied.

ORDER INFORMATION

This order  ends  does not end the case.  See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/26/2019 .

Marla S Gatlin for Marla S Gatlin  
 Marla S Gatlin for Marla S Gatlin  
 Milton A Gatlin for Milton A Gatlin  
 Milton A Gatlin for Milton A Gatlin

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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ELECTRONICALLY FILED - 2019 Apr 26 3:32 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2300695



Greenville Common Pleas

**Case Caption:** Milton A Gatlin , plaintiff, et al vs. John M Hornbeck III , defendant,  
et al  
**Case Number:** 2018CP2300695  
**Type:** Order/Electronic Form 4

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2019-04-26 13:14:54 page 3 of 3

ELECTRONICALLY FILED - 2019 Apr 26 3:32 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2300695

## **Exhibit B**

### **Attorney Misconduct**

### **Attorney Misconduct**

Attorney misconduct may include: fraudulent misrepresentation, false or misleading statements, hiding evidence, failing to disclose all relevant facts, arguing a position while neglecting to disclose prior law which might counter the argument. A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity.

The following are items that should be considered as possible misconduct by the Defendants' Attorney in this case.

1. The Defendants' Attorney committed fraudulent misrepresentation by changing Plaintiff's deposition testimony in Attorney's Memorandum. (Atty Mem p. 5, line 1-2)

Plaintiff's actual deposition testimony says,

"So, anyway, they came to the house. We got in an argument and I ran them off.

Q. What do you mean by ran them off?

I told them to leave my property, and I used some expletives that I can't say in front of you.",

(Gatlin Dep. P. 43, line 15-20) (Attorney's Exhibit B)

Attorneys' Memorandum says, in quotation marks, "running them (CCRC) off".

(Atty Mem p. 5, line 2) By intentionally adding (CCRC) in the quotation,

Defendants' Attorney tried to change the true meaning of Plaintiff's testimony, with

the clear intent of misleading the Court to gain an advantage for his Defendants. Without, “(CCRC)” being inserted in Plaintiff’s testimony the Attorney’s argument, that appears four times, in one way or another, in his memorandum, saying, Plaintiffs did not allow CCRC to complete the work, fails and should be stricken. The truth about Plaintiffs’ testimony is supported by Mr. George Huth’s text message. (Exhibit L, Mr. George Huth, et al Texts)

2. The Defendants’ Attorney was negligent and misleading, by failing to disclose all relevant facts when referring to the “Contract” favorably for the Defendants numerous times and including it as Exhibit A. in his Memorandum knowing ahead of time, based on the original case, the contract was fraudulent, deceiving, illegal and unenforceable. The contract was fraudulent because it said Custom Castles Roofing and Construction, Inc. was licensed, bonded and insured which they were not. It was deceiving and fraudulent by misrepresenting that CCRC did Commercial and Residential projects they were not licensed to do. The contract was also illegal because CCRC would have to perform illegal activities and was in violation of SC Code of Laws Title 40 Article 1 Section 40-59-30 License requirement, enforcement of contracts, restraining orders. (Exhibit C, Contract)
3. Attorney stated “Plaintiff did not endorse over the check from its insurance company to CCRC and therefore breached its Contract with CCRC.” The attorney made that statement without knowing whether it was true or false, which amounts to Attorney misconduct for false or misleading statements. The check referred to was not issued

by Plaintiffs' Insurance Company until 3 weeks after CCRC submitted the invoice for the remaining contract amount.

4. The Attorney's sentence in the first paragraph of BACKGROUND, "After CCRC performed the roof and siding replacement, Plaintiffs paid CCRC \$19,546.64, a portion of the sum due under the contract." was misleading because by saying "performed" Attorney inferred "completed" which they never did and "paid a portion of the sum due under the contract" was as if the Plaintiffs had not paid the total amount for the completed work when in fact the work was not completed and the amount remaining was retainage for uncompleted items.

The Attorney's sentence "Plaintiffs' payment to CCRC was paid out of insurance proceeds received as a result of hail and wind damage." could not have been proven because it was not true.

4. Plaintiffs' payment of \$8,200.00 was paid out of Plaintiffs' personal funds prior to Plaintiffs receiving payment from their insurance company. (Exhibit O, Payments)

Attorney states (Atty Mem p.6, lines 3-6) "Furthermore, Plaintiffs prevented CCRC from performing its statutory right to cure pursuant to the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code of Laws § 40-59810." knowing in the original case the Court had ruled against that argument which was confirmed by the Residential Builders Commission saying that it didn't apply to CCRC because CCRC was not licensed and had been performing illegal acts. That wouldn't change just because the case number changed.

5. In Atty argument against Plaintiffs' Negligent Misrepresentation action, Atty states "Defendants also seek Summary Judgment as to Plaintiffs cause of action for

Negligent Misrepresentation. Again, Plaintiffs have failed to identify any damages specific to this cause of action. Moreover, Plaintiffs have failed to prove how any damages claimed in this case were proximately caused by any alleged representation made by the Defendants. In this cause of action,

Plaintiffs plead as follows:

48) The Defendants have made the following false misrepresentations to the Plaintiff:

g. That he was a general contractor accustomed to performing the nature, scope, and type of work which he was hired to perform.

h. That Defendant was the owner of the company, and the individuals performing the work on the Plaintiff's home were under the Defendant's direct scope and authority.

i. That the Defendant and his other agents would perform the work on the Plaintiff's home to the exact specifications required by the Plaintiff.

j. That the Defendant's would be using the materials requested by the Plaintiff, to their manufacturing specifications.

Attorney stated "Plaintiff did not endorse over the check from its insurance company to CCRC and therefore breached its Contract with CCRC." The attorney made that statement without knowing whether it was true or false, which amounts to Attorney misconduct.

6. Under h. Disregard of Corporate Entity, Attorney made the statement "During his deposition, Milton Gatlin, admitted to having no personal knowledge about the "Sturkie factors" and Defendant entities.

Plaintiff requests Attorney show Plaintiff where the words "Sturkie factors" show up in Plaintiff's deposition because his word search failed to.

During Plaintiffs short introduction to the Judicial System they have come to realize it's hard for justice to prevail over dishonesty, especially when the end justifies any means.

**Exhibit C**  
**Contract**

**IT WAS ILLEGAL UNDER SC CODE OF LAWS SECTION 40-11-200  
FOR OFFERING A PROPOSAL AND THIS CONTRACT**

**FRAUDULENT STATEMENT  
NOT LICENSED FOR THIS  
WORK**

**FRAUDULENT STATEMENT  
NOT LICENSED, BONDED  
OR INSURED**

**CUSTOMER AGREEMENT**

Commercial • Residential  
1-855-777-HAIL (4245)

**Custom Castles**  
www.customcastles.net **Licensed. Bonded. Insured**

SALES ASSOC. ~~John~~ John Vander Linn

**CUSTOMER AGREEMENT IS SUBJECT TO INSURANCE COMPANY APPROVAL**

Full Name Gatlin Milton ("Customer")  
Last, First M.I.

Address 105 Silver Pine Ct  
Greer, SC 29650

Home Phone 864-404-9259 Ins. Co. Allstate  
Cell Phone \_\_\_\_\_ Claim No. 449926020  
Email \_\_\_\_\_ Mortgage Co. \_\_\_\_\_

Insurance Agreed Payment Amount (Prior to any Supplement Request) - \$ \_\_\_\_\_  
Upgrades \_\_\_\_\_  
Additional Upgrade Expenses \$ \_\_\_\_\_

**ROOF SPECIFICATIONS** GAF  
Shingle Color Golden Harvest Initial \_\_\_\_\_  
Shingle Style GAF  
Shingle Grade GAF HD  
Ridge Material Aluminum Ridge  
Valley Ice + Water  
Vents Pagevent  
Plumbing Stacks \_\_\_\_\_  
Tear Off  Yes  No No. of Layers 1  
Felt Smartfelt  
Pitch 5/12 2-Story yes  
Number of Decking Sheets 1  
Decking Additional Cost \$25 Initial \_\_\_\_\_

**SPECIAL ATTENTION AREAS**  
Cover Pool  Yes  No  
Existing Gutter Damage  Yes  No  
Existing Driveway Damage  Yes  No  
Ice/Water Shield  Yes  No  
Emergency Repair  Yes  No  
Skylights no  
Leaks yes  
Interior Damage yes

INSURANCE PAYMENT SCHEDULE				
1ST. INS. CK.	CK#	DATE	\$	
PROGRESS PYMT.	CK#	DATE	\$	
DEPRECIATION CK.	CK#	DATE	\$	

**RECOMMENDATIONS-NOTES-UPGRADE DETAILS**  
Shingle upgrade - \$1000  
Ridge vent →

INSURANCE/MORTGAGE COMPANY NOTE: I hereby authorize the insurance company and/or the mortgage company to make any checks payable jointly.

TERMS: By signing this contract, Customer authorizes Custom Castles Roofing and Construction, Inc. "CCRC" to pursue the Customer's best interest for a project replacement and/or repair at the "insurance agreed payment amount" to Customer's insurance company and CCRC with no additional costs to the Customer except the deductible. When the "insurance agreed payment amount" is determined it shall be written in the blank provided above. Customer authorizes CCRC to obtain labor and material in accordance with the "insurance agreed payment amount" and the specifications and terms set forth herein and on the reverse side hereof to accomplish the replacement and/or repair.

**NOT  
DONE**

Notice of Cancellation: You may cancel this Contract at any time before midnight on the fifth business day after you have received written notification from your insurer that all or any part of this claim or Contract is not a covered loss under the insurance policy. This right to cancel is in addition to any other rights of cancellation which may be found in state or federal law or regulation. See attached notice of cancellation form for an explanation of this right.

Accepted by Customer Milton Gatlin Date 7/31/17  
The Customer agrees to all of the provisions above

Custom Castles Construction Rep. [Signature] Date 7/31/17  
CCRC 002

**NOT  
ATTACHED**

## CUSTOMER AGREEMENT

In consideration of good and valuable consideration, the receipt, value, and sufficiency of which are hereby acknowledged, Customer and CCRC (hereinafter from time to time collectively referred to as the "Parties") agree as follows:

1. Customer acknowledges and appoints CCRC as its general contractor. As its compensation, CCRC will be entitled to ten percent (10%) as overhead, and ten percent (10%) as profit, for a total of twenty percent (20%) from the amount received by Customer from insurance, as allowed by insurance industry standards to be paid to CCRC, plus expenses or charges for bond insurance premiums or costs beyond normal insurance coverage. Any such additional expenses, premiums, or costs shall be added to the amount of the Contract (for example, performance bonds or maintenance bonds). Replacement of deteriorated decking, fascia boards, roof jacks, ventilators, flashing, or other materials, unless otherwise stated in this Contract, are not included and will be charged as extra charges for work and materials.
2. This Contract is subject to approval of CCRC's credit department. The CCRC representative executing this Contract must obtain the approval of the officer of CCRC for this Contract to be effective. If the Contract is not approved, CCRC will notify Customer.
3. BUYER'S RIGHT TO CANCEL: If you decide you do not want the goods or services, you may cancel this Contract by mailing notice to CCRC. The notice must say that you do not want the goods or services and must be sent "certified mail" before midnight of the third business day after you sign this Contract. The notice must be sent to: Custom Castles Roofing & Construction, Inc. at 3300 N. Main St. Ste. D-194 Anderson, SC 29621. If cancellation is made after CCRC has met your adjuster, charges for travel, time, and estimating will be billed in accordance with line 14.
4. Upon full RCV payment, CCRC grants Customer a warranty for five (5) years on roof replacement, two (2) years on siding replacement, and one (1) year on gutter repairs. There is no warranty on temporary roof repairs. Extended service warranties are available for an additional charge, which must be in writing signed by both Parties.
5. CCRC is not and shall not be responsible for construction problems of Customer's home.
6. Customer understands that existing framing issues such as uneven rafters and bowed sheathing are not the responsibility of CCRC to fix and will only be repaired if needed and on a time and material basis to be agreed upon in writing by both Parties.
7. CCRC shall have no responsibility for damages from rain, fire, tornado, windstorm, or other perils as is normally contemplated to be covered by home owner's insurance or business risk insurance.
8. After ninety (90) days, CCRC reserves the right to revise its prices in accordance with costs in effect at the time. (For example, increases in material costs).
9. CCRC shall not be liable for failures or failure to performance due to labor controversies, strikes, fires, weather, inability to obtain materials from usual sources, or any other circumstances beyond the control of CCRC, whether of a similar or dissimilar nature.
10. CCRC is not responsible for any damage due to leaks by excessive wind, driven rain, ice, or hail during the period of warranty. (Excessive wind is 65 m.p.h.)
11. If material has to be reordered or restocked because of a cancellation by the Customer there will be a restocking fee equal to fifteen percent (15%) of the Contract price.
12. This Contract shall not be assigned except by or with the written permission of CCRC.
13. CCRC is not and shall not be responsible for any mold or interior damage resulting from mold.
14. If for any reason Customer does not permit CCRC to complete performance under this Contract other than by cancelling the Contract within five (5) business days after Customer has received written notification from its insurer that all or any part of its claim on this Contract is not a covered loss under the insurance policy, Customer shall pay CCRC for its inspection services, estimating, meeting with Customer, travel time, and working with adjuster at the rate of \$100.00 per hour worked, plus all expenses spent on the job. If CCRC is required to collect any amounts owed under this Contract from Customer, it shall be entitled to recover from Customer its expenses, including its reasonable attorneys' fees, costs, and interest at eighteen percent (18%) per annum on all amounts owed. If Customer cancels this Contract in compliance with the Notice of Cancellation on the first page of this Contract, the Customer shall only be required to pay CCRC for its services and expenses that were acknowledged in writing by the Customer to have been necessary to prevent damage to the premises, i.e. emergency services and expenses.
15. This Contract shall be construed and interpreted in accordance with the laws of the State in which it was signed, without regard to its choice of law rules. Should any provision of this Contract require interpretation, the Parties agree that the individual, entity, or court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one Party by reason of the rule of construction that a document is to be more strictly construed against the Party who itself or through its agents prepared the same. In the event that any of the provisions of this Contract (including any provision within a single section or sentence) is held by a court to be invalid, void, or otherwise unenforceable, the remaining provisions are severable and shall remain enforceable to the full extent permitted by law.
16. This Contract represents the complete understanding among the Parties and supersedes and replaces any and all prior agreements and representations regarding the subject matter of the Contract. No prior or contemporaneous statements, representations, inducements, promises, or agreements, oral or otherwise between or among the Parties, not embodied herein shall have any force and effect.
17. This Contract and any of its provisions may not be modified, waived, or amended except by a subsequent writing executed by both Parties and making specific reference hereto. This Contract shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each Party hereto.
18. CCRC's maximum liability to Customer for any claimed negligence, default, or breach of this Contract by CCRC or for CCRC's negligence shall be an amount equal to the original cost of labor and materials for the repairs and/or replacement contemplated by this Contract.
19. During the duration of the work the Customer's homeowner's insurance will be responsible for any interior damage as long as CCRC has taken reasonable action to protect the roof during the repair of the roof.
20. If there are any solar panels on Customer's roof, CCRC will not be responsible for any damage during repairs and/or replacement. Customer agrees to have solar panel company take the appropriate action to protect it, if necessary.
21. CCRC is not responsible for any damage on or below the roof due to leaks from skylights unless CCRC completed the skylight replacement.
21. Payments by Customer are to be made as follows: One third down payment at the time this Contract is signed by Customer or receipt of the first insurance check, whichever is greater. CCRC reserves the right to bill proportionately based on percentage of work complete. Further, Customer agrees to endorse and turn over to CCRC any check received from an insurance company or third party within seven (7) days receipt thereof. Failure to do so will be a breach of this Contract. Customer hereby authorizes the insurance company and/or the mortgage company to make any checks payable jointly to Customer and CCRC. Customer agrees to pay in full at the time of the completion of Contract and/or change order(s).
22. Any hidden conditions or building code related issues which result in additional labor and/or material costs will require a change order signed by both Parties to proceed. Customer understands that CCRC may issue a stop work order if change order is not accepted. (For example, rotten decking, fascia, gas vents, HVAC lines or coils, etc.). CCRC is not responsible for damages to any of the foregoing.
23. Customer understands all insurance proceeds are to be paid to CCRC for insurance approved repairs unless noted in writing in this Contract or in a change order.
24. CCRC may enforce its right to payment by other means, including, but not limited to, filing of a lien against the property of Customer, reporting to appropriate credit reporting agencies, and any other legal remedies available at law or in equity.
25. Customer understands that CCRC subcontracts all dumpster work and such other work as CCC may in its sole discretion determine. Any flat tires due to nails left under the dumpster, driveway, or garage are the responsibility of the contracted dumpster company, not CCRC.
26. All notices to CCRC shall be sent via U.S. Mail to its administrative office addressed to: Custom Castles Roofing and Construction, Inc., 3300 N. Main St. Ste. D-194, Anderson, SC 29621.
27. The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Contract.

**ADMINISTRATIVE OFFICE IS A PO  
BOX AT A UPS STORE**

# **Exhibit D**

## **False Advertising**



## Custom Castles Roofing & Construction, Inc.



April 6, 2017 · 🌐

While everyone else is focused on the storm area in Greer. Little Mike is still working his personal honey hole. Good old StoneHaven has given us a roof a month for the past 5 years. StoneHaven subdivision - we love you



**A LOT OF UNLICENSED WORK**

Shows common identity

This is the website for both Custom Castles Construction, LLC and Custom Castles Roofing and Construction, Inc.

# NEED ROOF REPAIRS?

Damages may be covered by insurance. Schedule an inspection today.

SCHEDULE INSPECTION

ROOFING



RESIDENTIAL



COMMERCIAL



HAIL DAMAGE



Prior to 3/8/18 Custom Castles Roofing and Construction, Inc. was not licensed to do any of this work and Custom Castles Construction, LLC was only licensed to do residential work.

Provide copies of bonds, licenses, and insurance for the CPJ 200 Tanner Dr. Taylors, SC 29687 and Schneider Tree Care 231 Tanner Dr. Taylors, SC 29687 projects started approximately October 2017

Custom Castles Knows:  
Every Man's Home Is His Castle

Custom Castles is a licensed general contractor. We work hand in hand with your insurance company in repairing and restoring your residential and commercial property that has been damaged by hail, wind, fire or water.

## FOR FREE HAIL DAMAGE INSPECTION CALL 864-847-6633

WIND DAMAGE



FIRE DAMAGE



WATER DAMAGE



Licensed for only roofing (since 3/8/18), this implies total building

Even with Hornbeck's new license Custom Castles is not a GC in terms you normally think of. Custom Castles is only a GC - General Roofing and Specialty Roofing. They are not licensed to do commercial property work other than roofs.

Bogus

Which Custom Castles?

Roofing only

Bogus

### OUR LOCATION

Address: 3300 N. Main St.  
Ste. D, PMB 194  
City: Anderson, SC  
Zip: 29621  
Telephone: (855) 777-HAIL

### ABOUT CUSTOM CASTLES

Custom castles is a licensed general contractor. We work hand-in-hand with your insurance company in repairing and restoring your residential and commercial property that has been damaged by hail, wind, fire or water.

### FEATURED ARTICLES

- Do I Need A New Roof?  
June 2, 2014
- What To Do When A Storm Hits  
June 2, 2014
- How To File A Roofing Claim  
June 2, 2014

### OUR NEWSLETTER

Email address:  
Your email address

Sign up

## Which Custom Castles?

RESIDENTIAL ROOFING COMMERCIAL ROOFING

### Custom Castles Residential Roofing

Have extreme temperatures caused your roof to blister, buckle or crack? Were roofing shingles loosened by hail storms or other severe weather conditions? Have falling tree limbs damaged your siding, gutters, or roofing materials? Even simple wear and tear can cause your roof to fail. And a falling roof is a big problem.

Trust Custom Castles to restore your damaged roof, gutters and siding with superior workmanship and quick, professional service.

Custom Castles is a local roofing contractor with 20 years of residential and commercial roofing experience. We focus diligently on returning your storm-damaged home back to your exacting standards.



### Comprehensive roofing services

From thorough inspection and repair to installation of just about any kind of residential roof you can think of, we're committed to bringing you outstanding service and practical, unbiased solutions. When you partner up with Custom Castles, you'll experience the full spectrum of residential roofing services, including:

- o free exterior inspection report
- o quick, accurate data collection
- o help with your insurance claims
- o in-house independent licensed insurance adjusters at your service
- o fully bonded, insured, licensed and manufacturer-certified team
- o emergency service 24/7
- o no out-of-pocket expenses until the job is finished
- o lifetime warranty on every installation we perform

? Provide copies of the bond, insurance, license and certifications for the 101 & 105 Silver Pine Ct, Greer, SC projects

### Serving you with integrity

Living in a home that's been damaged can be tremendously stressful. At Custom Castles, we'll do everything in our power to make the repair process quick and painless.

We meet with every client to explain exactly what's going to happen -- for your peace of mind. We make sure that all building materials arrive on-site in a timely fashion, to keep the process moving along smoothly.

When the work is complete, we'll send an inspector out to confirm the quality of our job. We'll notify your insurance company when it's time to release funds -- and you'll pay only the cost of any upgrades you might have requested along with your insurance deductible.

A damaged roof will continue to deteriorate without proper attention. Keep your home safe and secure -- call Custom Castles today for your free roof inspection.

#### 3 Tab Asphalt Shingle



#### Architectural Shingles



#### Premium Asphalt Shingles



#### Tile



#### Slate



#### Stone Coated Steel



#### Wood Shake



Same comments as other pages

#### OUR LOCATION

Address: 3300 N. Main St.  
Ste. D, PMB 194  
City: Anderson, SC  
Zip: 29621  
Telephone: (853) 777-HAIL

#### ABOUT CUSTOM CASTLES

Custom castles is a licensed general contractor. We work hand-in-hand with your insurance company in repairing and restoring your residential and commercial property that has been damaged by hail, wind, fire or water.

#### FEATURED ARTICLES

- Do I Need A New Roof? June 2, 2014
- What To Do When A Storm Hits June 2, 2014
- How To File A Roofing Claim June 2, 2014

#### OUR NEWSLETTER

Email address:  
Your email address

Sign up

Which Custom Castles?

## CONTACT US

### Our Location

Address: 35 Market Point Drive, Greenville, SC 29607

This shows both Custom Castles Construction, LLC and Custom Castles Roofing and Construction, Inc. have the same address.

### Contact Custom Castles

Name \*

Input fields for Name (First and Last)

Address

Input field for Street Address

City

Input fields for City and State (pre-filled with South Carolina)

ZIP Code

Email

Input field for Email

Phone

Input field for Phone

How would you like to be contacted?

Radio buttons for Phone and Email

What is the best time of day to contact you?

Radio buttons for Morning, Midday, and Afternoon

What problems are you noticing?

Checkboxes for Missing Shingles, Water Spots On Ceiling, Damaged Siding, and Other

Age of Roof (best guess):

Input field for Age of Roof

Name of Insurance Company (optional):

Input field for Insurance Company Name

Submit

This is a large building with many suites. They will not provide a suite number and they have not registered this location with Greenville County as required by law.

This is not a real LOCATION. It is a PO Box at a UPS Store actual location is Hornbeck's house

CCC was a Residential Builder. CCRC since 3/8/18 is a Residential Builder and licensed General Contractor for General and Special Roofing **ONLY** Most customers don't understand that!

Custom Castles is not licensed to do Building projects

Which Custom Castles?

These are bogus

### OUR LOCATION

Address: 3300 N. Main St., Ste. D, PMB 194  
City: Anderson, SC  
Zip: 29621  
Telephone: (855) 777-HAIL

### ABOUT CUSTOM CASTLES

Custom Castles is a licensed general contractor. We work hand-in-hand with your insurance company in repairing and restoring your residential and commercial property that has been damaged by hail, wind, fire or water.

### FEATURED ARTICLES

- Do I Need A New Roof? June 2, 2014
- What To Do When Hail Hits June 2, 2014
- How To File A Roofing Claim June 2, 2014

### OUR NEWSLETTER

Email address:  Your email address

Which Custom Castles?

Hornbeck should prove that past commercial work was done legally

## COMMERCIAL ROOFING

CCC never licensed for Commercial Roofing, CCRC only licensed after 3/8/18

### Custom Castles Commercial Roofing

Are you looking for a full service roofing contractor to handle your next commercial or multi-residential job? Call Custom Castles. We've got the experience and the attention to detail that gives you the best bang for your commercial roofing buck.

### Commercial roofing, gutter and siding solutions

Whether we're completing a free inspection, putting a roof onto new construction or restoring your existing roof, our highly-trained team will deliver the very highest standard of workmanship. Call on our professional crew for:

- leak analysis and source location
- full roof replacement
- re-roofing and retrofitting
- full replacement of siding, gutters and downspouts
- efficient drainage solutions including roof drains and vents
- thermal imaging scan inspections
- specialized coatings
- green alternatives to conventional materials
- emergency service 24/7
- customer service and support 7 days a week, 365 days a year

Has no crew

No

Neither CCC or CCRC have ever been licensed for Commercial Siding, GC - Building Classification

Only if they hire an experienced subcontractor

This is bogus

### Superior workmanship backed by guarantees

At Custom Castles, we specialize in all types of commercial roofing, including flat top, asphalt shingle and metal. We pride ourselves in providing you with the very best roofing solutions within your budget and materials that will last a lifetime. And we stand behind our work with an iron-clad, lifetime warranty on all our installations.

To protect your manufacturer warranties, we offer comprehensive maintenance programs. Our work is fully bonded and insured. Our team members hold manufacturer certifications as well as OSHA and EPA safety certifications.

Enjoy security and peace of mind with our:

- full inspection of your property's exterior
- thorough inspection report
- assistance with insurance claims
- fully licensed, independent insurance adjusters on our team
- lifetime warranties on all installations

Residential

Why? Not qualified or licensed

Some may

How many does Custom Castles hold?

This is not what the agreement says!

Count on Custom Castles for all your commercial roofing needs — we'll be there when you need us with top quality, reliable service. Call us today for your free inspection, and let's get busy.

Which Custom Castles?

Not licensed for this before 3/8/18

#### COMMERCIAL ASPHALT SHINGLES



#### COMMERCIAL METAL ROOFS



#### COMMERCIAL FLAT ROOFS



D-6  
50

Bogus

Which Custom Castles?

Licensed for only roofing (since 3/8/18), this implies total building Roofing only

Bogus

#### OUR LOCATION

- Address: 3300 N. Main St. Ste. D, PMB 194
- City: Anderson, SC
- Zip: 29621
- Telephone: (855) 777-HAIL

#### ABOUT CUSTOM CASTLES

Custom Castles is a licensed general contractor. We work hand-in-hand with your insurance company in repairing and restoring your residential and commercial property that has been damaged by hail, wind, fire or water.

#### FEATURED ARTICLES

- Do I Need A New Roof? June 2, 2014
- What To Do When A Storm Hits June 2, 2014
- How To File A Roofing Claim June 2, 2014

#### OUR NEWSLETTER

Email address:  
Your email address

Sign up



Another nice unlicensed project!

UNLICENSED WORK



**Custom Castles Roofing & Construction, Inc.**



April 1, 2017 · 🌐

This week we put on 3 roofs, a 24 sq, 52 sq, and 57 sq. This house is a simple gable replaced with Certainteed Weatherwood. What was cool here is the excellent landscaping including a long creek-like water feature in the backyard. The view in the yard is great but even better from where we were.



Like



Comment



Share

## A LOT OF UNLICENSED WORK



**Custom Castles Roofing & Construction, Inc.**



April 1, 2017 · 🌐

I have been stubborn for last 43 years (since I was born.) I am now caving in. I realize that I am losing customers simply because they don't know my long, proud history. If I had started this years ago, they would know of the many custom homes that I personally framed. They would know of the many happy customers I've had who are now also my friends. They would know of the over 200 roofs we put on last yr, and our records setting year of 2014 when we put on over 600 roofs. I am going to try to keep this up to date so that my customers a year from now can have the confidence that they have chosen a company with a long successful history.

## Which Custom Castles?

# STORM AND HAIL DAMAGE

## Custom Castles — Storm and Hail Damage Repair Experts

Is your roof riddled with tiny cracks and dents from a violent hailstorm? Are there missing, bruised, or dented shingles on your roof? Are you and your family waiting for the next heavy rain to find out if your damaged roof is leaking?

When it comes to a **storm-damaged roof**, the waiting game can be a dangerous one. Let's take a look at how minor hail damage can progress into serious problems:



### Immediately following a hail storm

Shingles that suffer a direct hit from hailstones start to loosen and detach from the granular bond that holds them to the asphalt layer below. When this happens, you'll see an accumulation of bonding granules in your gutters or at the spots where your gutters drain. This is a clear sign it's time to have Custom Castles inspect your roof.

### More damage as time passes

When minor **roof damage** goes unnoticed or unrepaired, your roof will continue to decay. Loose bonding granules will fall off the shingles completely and expose the asphalt to the elements. UV light from the sun shines down on the bare asphalt, drying it until it's brittle and cracked. Extreme temperature changes — especially the winter cold — will cause weak shingles to expand, contract, curl up and crack.

### Interior leaks caused by roof damage

Once your roof is in a state of decay, it's only a matter of time before water starts leaking into your home. And water damage is serious. Ceilings, walls and electrical systems may need repairs, and black mold can grow undetected behind walls, in attics and under baseboards.

### Don't put off your roof inspection!

A simple inspection by a **roofing contractor** will determine whether or not your roof has been damaged by hail — and any repairs you have completed quickly will save you money in the long run.

It's also true that most insurance companies put a time limit on claims submitted for **hail-damaged roofs**. Waiting too long for an inspection could endanger the entire claims process.

Having a safe, solid roof over your head isn't a luxury — it's a must. If you think a hail storm may have damaged your roof, give Custom Castles a call. Our **storm damage inspections** are free. Your peace of mind is priceless.

## MISLEADING INFORMATION

#### OUR LOCATION

🏠 Address: 3300 N. Main St.  
Ste. D, PMB 194

📍 City: Anderson, SC

📠 Zip: 29621

📞 Telephone: (855) 777-HAIL

#### ABOUT CUSTOM CASTLES

Custom castles is a licensed general contractor. We work hand-in-hand with your insurance company in repairing and restoring your residential and commercial property that has been damaged by hail, wind, fire or water.

#### FEATURED ARTICLES

[Do I Need A New Roof?](#)  
June 2, 2014

[What To Do When A Storm Hits](#)  
June 2, 2014

[How To File A Roofing Claim](#)  
June 2, 2014

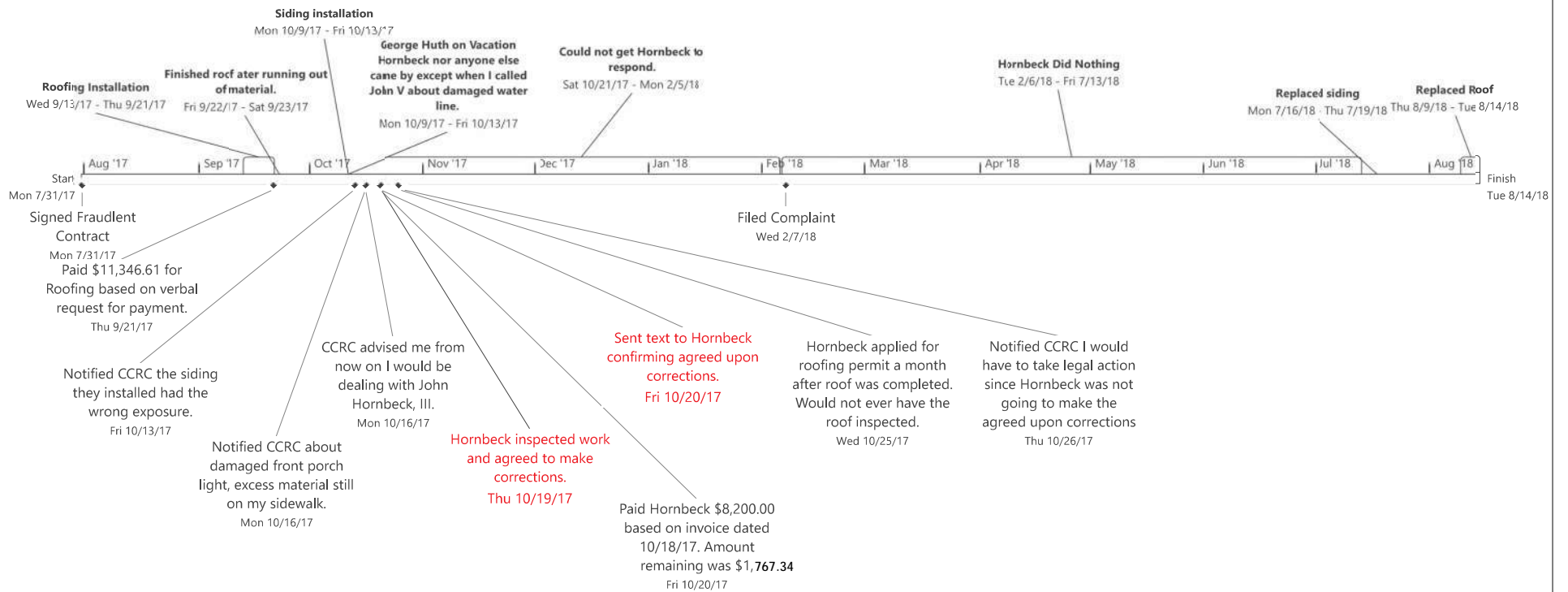
#### OUR NEWSLETTER

Email address:

# **Exhibit E**

## **Project Timeline**

# Project Timeline



**Exhibit F**  
**Plaintiff Losses**

**PLAINTIFF LOSSES**  
**Preliminary Estimate**

Replace Existing Roof incl/damaged sheathing	\$12,169.00
Replace Existing Siding incl/ damaged sheathing	15,960.00
Replace Furnace Vent Cap	187.00
Relocate Excess Siding	360.00
Replace 2 Porch lights	390.00
Re-Caulk Siding	920.00
Painting	5,270.00
Reinstall Downspouts	640.00
Repair Ceiling Damaged by Water Leak	340.00
Repair Ceilings Damaged by Roof Leaks	1,060.00
Repair Walls an Floor Caused by Wall Leaks	690.00
Inspections	800.00
Printing and Supplies	1334.00
Travel Expense	1,422.00
Cleaning Supplies	<u>63.00</u>
SubTotal	\$41,605.00
Finance Charges (18%)	26,751.00
Total Loss	\$68,356.00

**THESE LOSSES ALONG WITH ~\$30,000.00 IN LEGAL FEES AND EXPENSES WOULD AMOUNT TO ~ \$250,000.00 BASED ON A REASONABLE RATE OF RETURN AND THE RULE OF 72 AT THE TIME PLAINTIFFS' 3 GRANDAUGHTERS NEEDED IT FOR COLLEGE, WHICH IS WHAT PLAINTIFFS HAD THESE FUNDS EARMARKED FOR. IN EFFECT HORNBECK DEPRIVED PLAINTIFFS' GRANDAUGHTERS OF THESE FUNDS WHICH AMOUNTS TO RAPE!**

## **Exhibit G**

### **Uncomplete Items**

## Incomplete Items

Plaintiffs reinstalled the front porch lights knocked off the exterior wall by the siding installers.

A broken globe in one light has never been replaced.

Plaintiff purchased and replaced the undersized furnace ventcap installed by CCRC after the roofers knocked the original vent cap off the stack.

Plaintiff paid his painter to reinstall the downspouts removed by CCRC.

The shutters removed by CCRC have never been reinstalled.

Plaintiff repaired 2 interior walls where water came in around window frames that the specified flashing was never installed.

Plaintiffs 2 ½ year old granddaughter and their son had been afraid they would not be able to greet trick or treaters so the two Plaintiffs along with a neighbor and a lawn and garden tractor relocated several hundred lbs of excess material from Plaintiffs sidewalk to the rear of their home. Mr Hornbeck, Mr. Huth and Mr. Von der Lieth were requested for weeks to remove the excess material before Halloween but they never did.

Later the excess material along with all the lawn debris and trash in the shrubbery was hauled to the dump by the Plaintiffs.

The kitchen ceiling was never repaired from damage caused by the siding installers hitting a water line with a fastener.

Ceiling damage in a bedroom, two bathrooms, and den sustained after CCRC “performed” the roofing was never repaired.

Wall and floor damage in the dining room sustained after CCRC “performed” the roofing was never repaired.

Defendants never replaced the wrong width siding they installed.

Defendants did not coat the sawn edges of the siding.

Defendants did not install siding starter strips.

Defendants did not install the required window flashing.

Defendants did not install the caulking provided by the siding distributor.

Defendants did not install fasteners per code and manufacturer.

Defendants did not install step flashing and ridge vents.

Defendants did not install drip edge, starter shingles and valley ice and water shield in some areas.

Defendants did not provide GAF roofing warranty.

Defendants did not provide James Hardie Company siding warranty.

Defendants did not repair continuing roof leaks in two bathrooms, a bedroom, the dining room and den.

Defendants did not repair two continuing interior leaks around the windows in a bedroom.

Defendants did not replace the damaged exterior sheathing destroyed during the siding installation.

Defendants never replaced shingles that curved over the eave and rake.

Defendants never replaced the improperly installed shingles.

Defendants did not remove Trash From Roof, Gutters & Yard.

Defendants did not Protect Landscaping Where Applicable.

Defendants did not Roll Yard With Magnetics Roller.

Defendants did not provide Quality Control Inspections.

Defendants did not provide Emergency Repair (Tarps on Roof).

## **Exhibit H**

### **Siding Installation Defects**

**Responses to questions asked to Mark with Hardie Technical Support that John Hornbeck said he would correct.**

Mark was advised that the house is wood framed 2 x 4s on 16-inch centers and that the sheathing is plywood on the corners and fiberboard in between.

---

Mark advised that butt joints must be made at studs because the joint needs to be at a structural member. **Custom Castles did not do this.** It's not okay to make butt joints between studs where the sheathing is fiber board. **But that is what Custom Castles did.** One nail is required in each board of a butt joint. **Custom Castles used the wrong kind of nails and placement in most cases.** The distance between butt joints in adjacent rows needs to be a minimum of 32". **Custom Castles did not do this.**

There needs to be a 1" clearance between the Hardy Plank and the roof shingles where the roof shingles and wall meet. **Custom Castles did not do this.**

Starter strips must be installed under the first row of plank to provide the correct plank angle. **Custom Castles did not do this.**

Horizontal metal flashing is required at the top of windows where the top of the window is exposed to weather. **Custom Castles did not do this.** A starter strip is only required if when you push on the Hardy Plank it flexes. The starter strip does not have to be continuous. It can be a short piece in the middle or at 2 or 3 places across the top of the window. No starter strip is required at the bottom of the window. Where the roof overhang is close to the top of the window no flashing is required. I would like to see an 1/8" gap at the top of the window to allow for proper caulking.

Starter strips should be 1/4" to 5/16" thick and 1 1/4 inch wide. Starter strip material can be any material such as treated wood, vinyl, Hardy Plank, etc. that is rot resistant. **Custom Castles did not do this.**

The maximum fastener spacing for Hardy Plank is 24". Therefore, for studs on 16" centers fasteners are required in every stud so they hit a structural member (stud) at less than 24". **Custom Castles did not do this in all cases.**

When installing Hardy Plank the back and edges do not need to be primed or painted because it comes pre-primed. When Hardy board is cut the cut edges must be caulked, primed or painted. **Custom Castles did not do this.** The exposed edges have to be sealed. Starter strip does not need to be primed or painted.

Where Hardy Plank meets trim at corners, windows, etc. there needs to be an 1/8" gap. This will allow for proper sealing when caulked. **Custom Castles did not do this.**

**The items below were not originally discussed with Mark with technical support but were agreed to by John Hornbeck and myself on 10/19/2017.**

Custom Castles will have the starter strips installed that were not installed when the siding was first put up. **Custom Castles has not done this work.**

The Hardie Plank exposure was to be 4". Custom Castles purchased a 6.25" wide plank which would normally be installed with a 5" exposure (which is what the subcontractor did since he was not instructed otherwise). John Hornbeck suggested he could have the planks reinstalled with a 4.5" exposure and at that time I accepted the compromise. **Custom Castles did not do this work.** Later when discussing this with Hardie Technical Support I was told by Mark that Hardie did not recommend removing and reinstalling Hardie Plank. He said their engineers have found that when Hardie Plank is removed a lot of it is visibly damaged but more importantly there is a lot of internal damage that can not be seen which compromises the structural integrity of the plank. He also said if the exposure is changed it will affect the system aesthetics and there may be problems at windows and trim. The one plank removed by the subcontractor on Oct 21st. was totally destroyed and would not have been able to be reused. For these reasons I told Custom Castles I could not now accept reinstalling the 6 1/4" plank with a 4 1/2" exposure.

### **Additional Items**

A kick out flashing should have been installed where the roof edge meets a wall. **Custom Castles did not do this (Roofer nor Siding installer).**

When the one plank was removed on Oct 21st it exposed the hidden nails supporting the plank below it. By exposing these nails it was found that all of them had been countersunk which is not acceptable due to the reduction in structural strength. The countersunk nails should have been caulked and a new nail installed. **Custom Castles did not caulk the countersunk nails. In some cases a second nail was installed but it was the wrong kind.** It should have been a nail with a head but a finish nail was installed instead.

One of the front porch lights' glass was broken and needs to be repaired. **John Von der Lieth said it would be taken care of but has not been.**

During installation of the siding the installer accidentally hit a water line which caused a leak. The installer repaired the leak but water damaged the kitchen ceiling so it needs to be repaired. **The damage was shown to John Hornbeck and he just shrugged it off.** In addition the repair was not done by a plumber nor was the repair soldered. When the siding is removed the repair needs to be checked to make sure it is a permanent repair and that any insulation disturbed was replaced so the line won't freeze in the future.

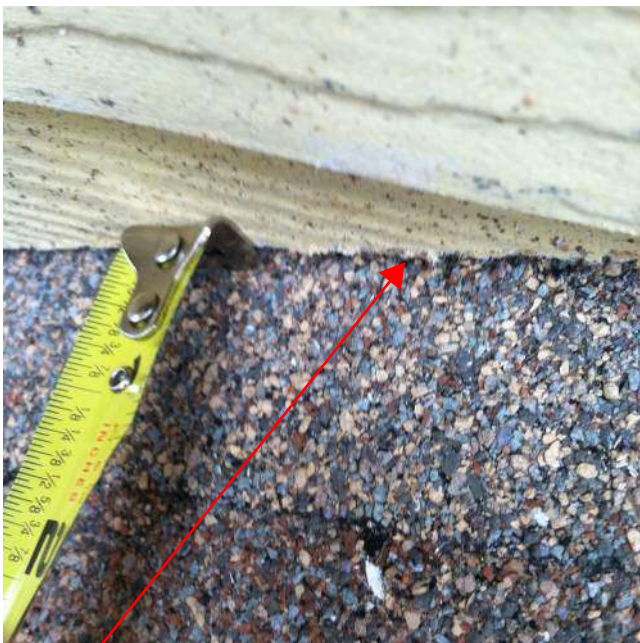
Custom Castles should pay for the painter to re-caulk the siding after the installation is corrected.



Metal Flashing  
Over Windows  
Not Provided



Gap Not Provided  
At Windows For  
Caulking



1" Gap Between  
Siding And Roof  
Not Provided



Cut Edges Not  
Primed, Painted  
Or Caulked



Butt Joints Not On Studs And Spacing Incorrect



Caulking Gap Not Provided At Trim

Siding Removed But Not Reinstalled

Downspouts Can Not Be Installed Which Is Allowing Water To Go Under House



Kick Out Flashing Not Installed



DID NOT RUN ANYONE OFF

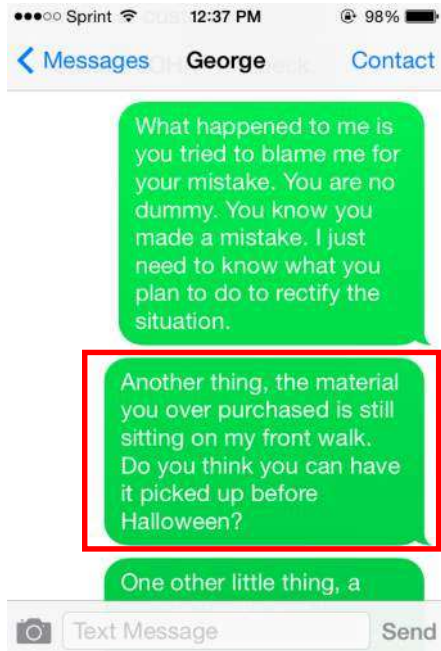
H-6



Countersunk Nail Holes With No Second Nail and Wrong Spacing



Left Over Hardie Plank That My Wife And I Moved To The Rear Of My House In About Three Hours With Some Help From A Neighbor



This Text Shows Where I Asked George To Move The Siding Before Halloween. On Oct 23rd I also Asked John Von der Lieth To Move It Before Halloween. Neither One Did It. This Caused A Lot Of Stress In Our Family. My Two Year Old Granddaughter And Handicapped Son Were Afraid They Would Not Be Able To Get Any Trick Or Treaters To Our Door!



Existing Screen Porch Siding With A 4" Exposure



Most Of The Instructions Are On The Package



Hardie Plank Was Left Uncovered. That Is A No No



Damaged Kitchen Ceiling From Water Leak



Broken Porch Light Glass



COUNTERSUNK  
NAIL BUT NO  
SECOND NAIL



NO NAILS IN  
BUTT JOINT



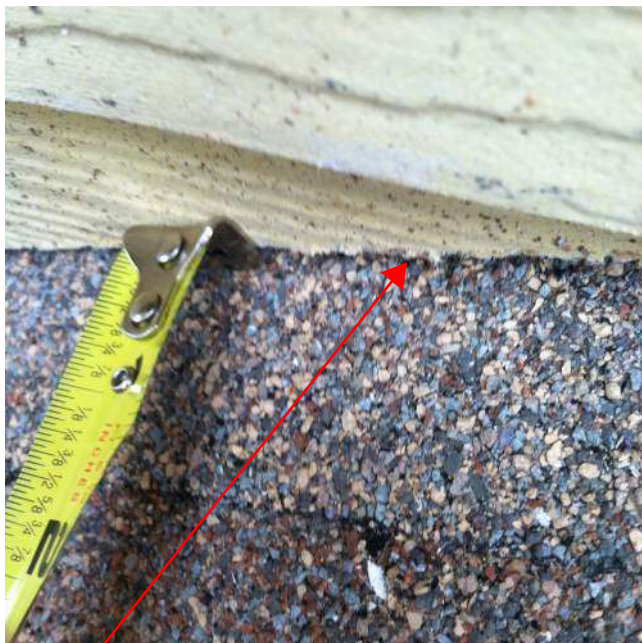
NAIL MISSED  
STUD



Metal Flashing  
Over Windows  
Not Provided



Gap Not Provided  
At Windows For  
Caulking



1" Gap Between  
Siding And Roof  
Not Provided



Cut Edges Not  
Primed, Painted  
Or Caulked



Butt Joints Not On Studs And Spacing Incorrect



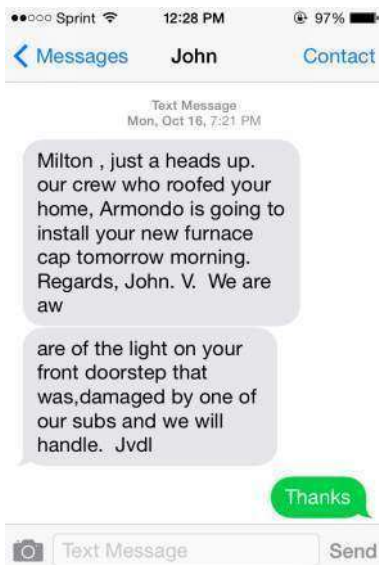
Caulking Gap Not Provided At Trim

Siding Removed But Not Reinstalled

Downspouts Not Installed Which Is Allowing Water To Go Under My House



Kick Out Flashing Not Installed



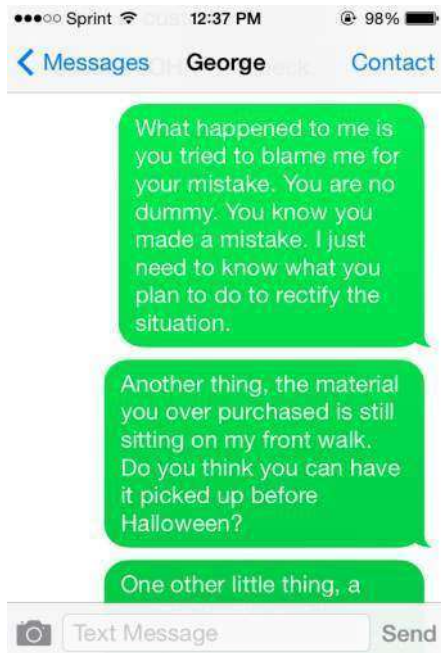
Left Over Hardie Plank On Sidewalk



Countersunk Nail Holes With No Second Nail?



Left Over Hardie Plank That My Wife And I Moved To The Rear Of My House With Some Help From A Neighbor



This Text Shows Where I Asked George To Move The Siding Before Halloween. On Oct 23rd I also Asked John Von der Lieth To Move It Before Halloween. Neither One Did It. This Caused A Lot Of Stress In Our Family. My Two Year Old Granddaughter And Handicapped Son Were Afraid They Would Not Be Able To Get Any Trick Or Treaters To Our Door!



Existing Screen Porch Siding With A 4" Exposure



COUNTERSUNK  
NAIL BUT NO  
SECOND NAIL



NO NAILS IN  
BUTT JOINT

When I took these pictures you can see there were no second nails but if you look at my house now second nails are there. When were they installed?



NAIL MISSED  
STUD



Butt Joint W/ Wrong Type Of Nails  
(Finish Nails Are Not Acceptable Here)



Countersunk Nails (Should Have  
Been Caulked And A Second Nail  
Installed)



Nail Missed Stud



Starter Strip Not  
Installed

Downspouts Can Not Be  
Reinstalled Causing Water  
Problems In The Crawl  
Space Of The House  
Leading To Mold Problems

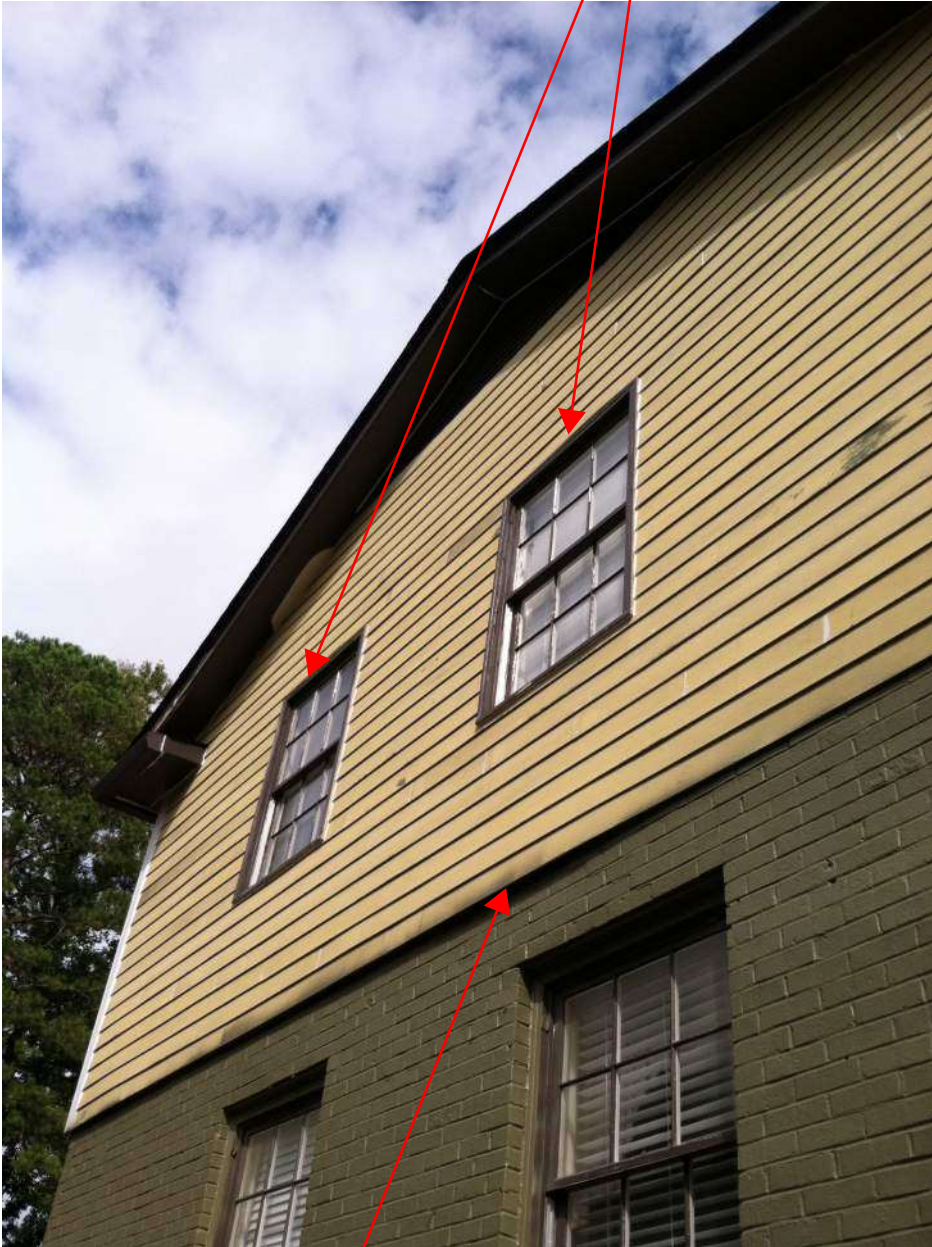


Original Siding With  
4" Exposure



Starter Strip Not  
Installed

Flashing Not Installed  
Over Windows



Starter Strip Not  
Installed

Flashing Not Installed  
Over Windows



Cut Edges Not  
Primed, Caulked Or  
Painted (Typical)

Clearance Between  
Wall And Roof Not  
Provided

Clearance Between  
Wall And Roof Not  
Provided



Cut Edges Not  
Primed, Caulked Or  
Painted

Cut Edges Not  
Primed, Caulked Or  
Painted



Slit In Flashing  
Allowing Water Leak



No Nails Installed At Butt Joint



Sheathing Destroyed  
During Siding  
Installation And Must  
All Be Replaced



H-23

# **Exhibit I**

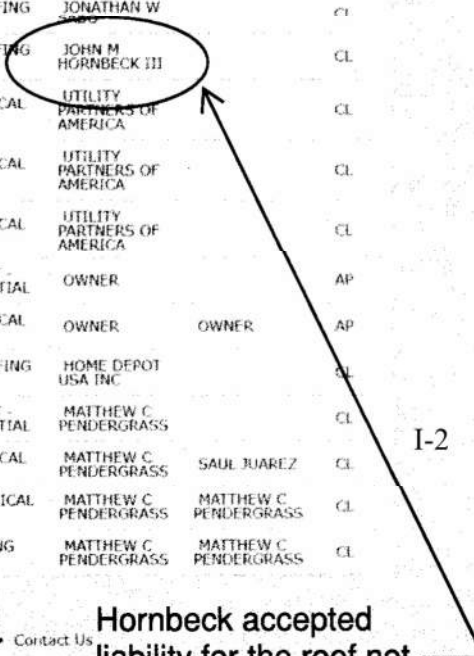
## **Roofing Installation Defects**

Although CCRC replaced the roof at 101 Silver Pine Ct (2 doors down from the Gatlin's house) this shows Hornbeck did not get a roofing permit

PERMITS ISSUED

Back to Search

Application	Permit #	Address	Permit Type	Contractor	Subcontractor	Status
2-0204	020000204	110 SILVER PINE CT	ELECTRICAL PERMIT	KENNETH M HALL	KENNETH M HALL	CL
3-589	030000589	110 SILVER PINE CT	BLDG - RESIDENTIAL	OWNER		CL
3-589	030000589	110 SILVER PINE CT	ELECTRICAL PERMIT	OWNER	KENNETH M HALL	CL
3-589	030000589	110 SILVER PINE CT	MECHANICAL PERMIT	OWNER	G S MECHANICAL HTG & A/C INC	CL
4-856	040000856	112 SILVER PINE CT	MECHANICAL PERMIT	CAROLINA DELTA MECHANICAL INC	CAROLINA DELTA MECHANICAL INC	CL
11-1953	1100001953	100 SILVER PINE CT	RE-ROOFING PERMIT	GUY ROOFING LLC	GUY ROOFING LLC	CL
11-8164	1100008164	102 SILVER PINE CT	RE-ROOFING PERMIT	LUTHER V BUIS		CL
14-1226	1400001226	104 SILVER PINE CT	ELECTRICAL PERMIT	STEPHEN B CARSON	STEPHEN B CARSON	CL
14-2099	1400002099	107 SILVER PINE CT	ADD/ALT - RESIDENTIAL	WILLIAM R WILE	WILLIAM R WILE	CL
14-2099	1400002099	107 SILVER PINE CT	ELECTRICAL PERMIT	WILLIAM R WILE	WILLIAM R WILE	CL
14-2099	1400002099	107 SILVER PINE CT	MECHANICAL PERMIT	WILLIAM R WILE	WILLIAM R WILE	CL
15-3911	1500003911	100 SILVER PINE CT	MECHANICAL PERMIT	DAVIS SERVICES INC		AP
16-740	160000740	104 SILVER PINE CT	RE-ROOFING PERMIT	LUCIUS FOWLER III	LUCIUS FOWLER III	CL
17-4012	1700004012	107 SILVER PINE CT	RE-ROOFING PERMIT	LAWRENCE MAXWELL		CL
17-4807	1700004807	100 SILVER PINE CT	RE-ROOFING PERMIT	GUY ROOFING		CL
17-5090	1700005090	106 SILVER PINE CT	RE-ROOFING PERMIT	LAWRENCE MAXWELL		CL
17-8195	1700008195	103 SILVER PINE CT	RE-ROOFING PERMIT	ASPEN CONTRACTING INC		AP
17-11493	1700011493	111 SILVER PINE CT	RE-ROOFING PERMIT	LANIER ROOFING & RESTORATION		CL
17-11518	1700011518	102 SILVER PINE CT	RE-ROOFING PERMIT	JAMES J SLICE		CL
17-12776	1700012776	104 SILVER PINE CT	RE-ROOFING PERMIT	JONATHAN W		CL
17-15569	1700015569	105 SILVER PINE CT	RE-ROOFING PERMIT	JOHN M HORNBECK III		CL
18-4852	1800004852	104 SILVER PINE CT	ELECTRICAL PERMIT	UTILITY PARTNERS OF AMERICA		CL
18-4853	1800004853	103 SILVER PINE CT	ELECTRICAL PERMIT	UTILITY PARTNERS OF AMERICA		CL
18-4865	1800004865	100 SILVER PINE CT	ELECTRICAL PERMIT	UTILITY PARTNERS OF AMERICA		CL
18-6034	1800006034	105 SILVER PINE CT	ADD/ALT - RESIDENTIAL	OWNER		AP
18-6034	1800006034	105 SILVER PINE CT	ELECTRICAL PERMIT	OWNER	OWNER	AP
18-6453	1800006453	105 SILVER PINE CT	RE-ROOFING PERMIT	HOME DEPOT USA INC		CL
19-2475	1900002475	104 SILVER PINE CT	ADD/ALT - RESIDENTIAL	MATTHEW C PENDERGRASS		CL
19-2475	1900002475	104 SILVER PINE CT	ELECTRICAL PERMIT	MATTHEW C PENDERGRASS	SAUL JUAREZ	CL
19-2475	1900002475	104 SILVER PINE CT	MECHANICAL PERMIT	MATTHEW C PENDERGRASS	MATTHEW C PENDERGRASS	CL
19-2475	1900002475	104 SILVER PINE CT	PLUMBING PERMIT	MATTHEW C PENDERGRASS	MATTHEW C PENDERGRASS	CL



Hornbeck accepted liability for the roof not his company



In This Area Of Our Yard I picked Up 52 Nails  
(This Is Where The Roofer Parked His Trailer When Loading Trash)



Step Flashing Not Installed



Kick Out Flashing Not Installed



Slit In Flashing  
(Several Places)



Step Flashing Not Installed  
Where Roof Meets Wall



Step & Kick Out Flashing Not Installed Where Roof Meets Wall



Step Flashing Improperly Nailed At Chimney

Below are two items that may turn out to be problems. I will need to show these to the inspector and review GAF's installation instructions before I know for sure. I really don't have any confidence that the parts of the roof you can't see are installed correctly (ie valley flashing, etc.) Inspector advises valley shingles are not installed correctly.



Small Piece Of Shingle Taped On



88 Some Spacing Between Shingle Joints On Adjacent Rows Is Too Close

A problem I found was that during construction the vent cap on my furnace flue was torn off. Gorge Huth was notified and he advised he would replace it. The problem is he replaced it with a cap that was too small. I don't know why it was replaced with an undersized cap or if he didn't know any better but that cap created a Life Safety issue for my family. By installing the wrong size cap back pressure on the furnace exhaust was increased which can allow carbon monoxide gas to potentially harm my family. I phoned the Greenville County mechanical inspector, Tony Longino. He advised I should replace the the cap as soon as possible to prevent any potential problems.



I Removed This Vent Cap Because It Was A Danger To My Family



Shingles Installed With A Gutter Effect (GAF Technical Support Advised This Will Eventually Start Leaking)





Kick Out  
Flashing Not  
Installed



This Is Original Flashing  
New Flashing Was Not Installed

Slit In Flashing  
Allowing Leaks



Shingle Joint Is  
Overlapped As Much  
As 1"  
GAF Said This Is Not  
Acceptable



What Is This



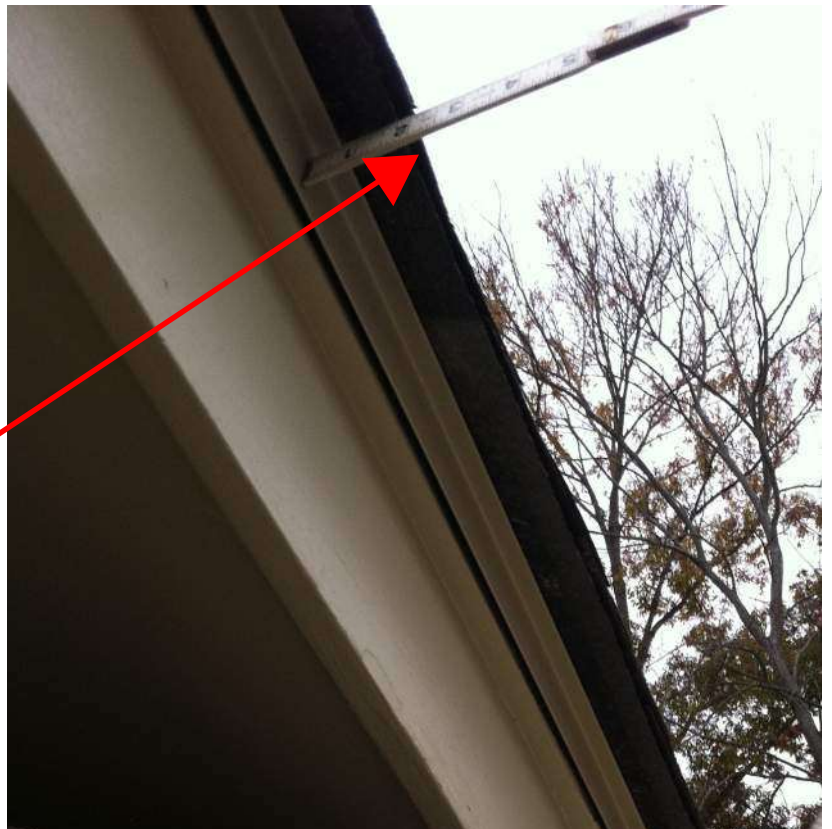
Drip Edge Not Installed At Turn Backs (8)



Starter Shingle Not Installed At Turn Backs



Shingles Curling Under  
Due To Excessive  
Overhang  
Also, Starter Shingle  
Overhang Varies



Overhang At Eve And  
Rake Approx. 2"  
(GAF Said It Needs To Be  
3/4" To 1" To Prevent  
Curling)



I Replaced Undersized Vent Cap With A Properly Sized One (This Was A Life Safety Issue)

I Repaired Hole In Vent Flashing

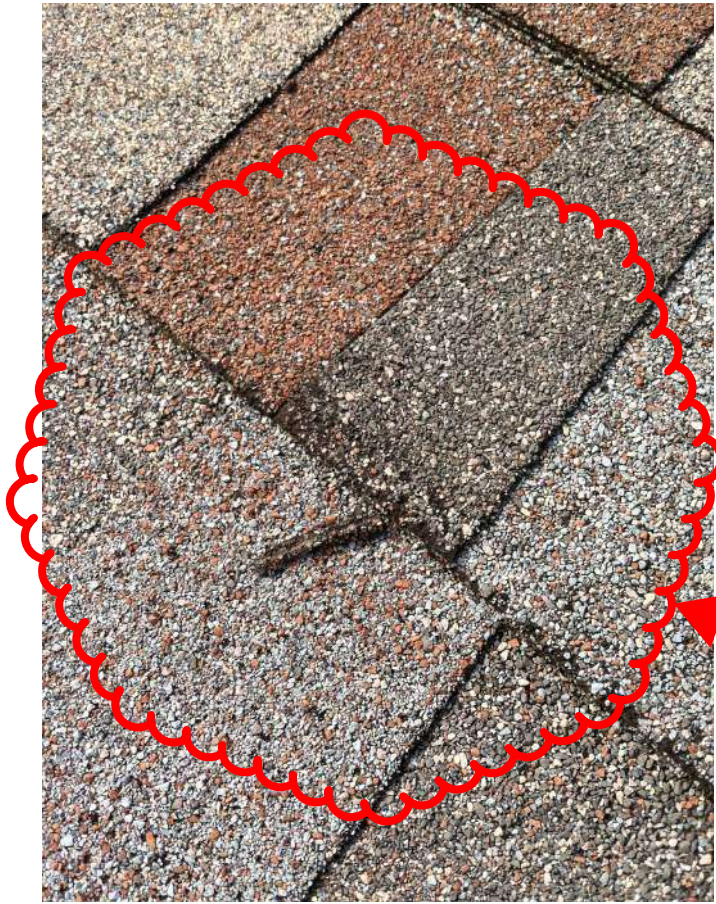
Hole In Vent Flashing



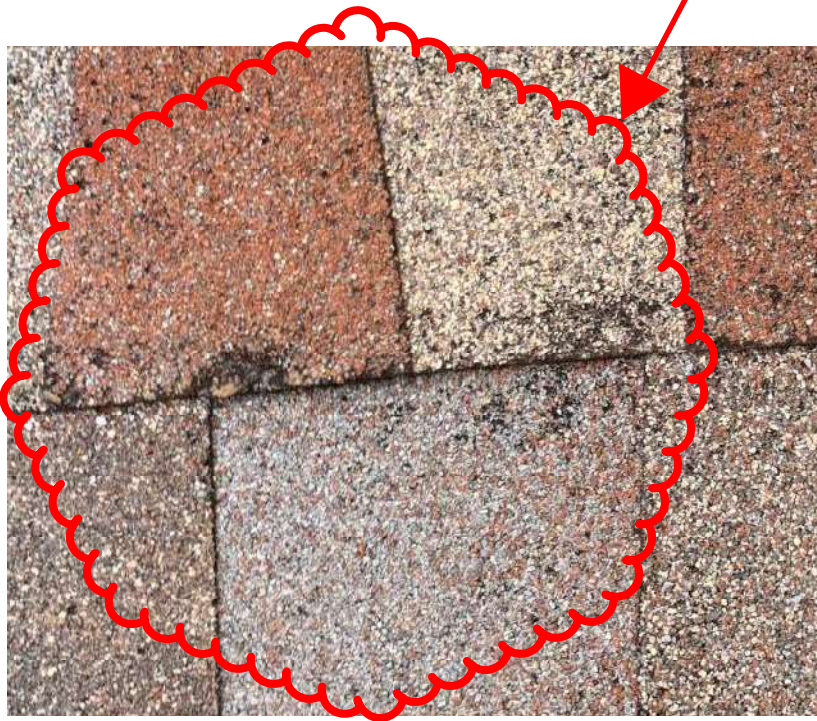


Step Flashing  
Not Installed

Kick Out  
Flashing Not  
Installed



Damage To Shingles  
During Installation  
(Typical)



## **Exhibit J**

### **Roof and Siding Inspection Reports**

(Siding Report Missing)



***Dolly's Roofing, Inc.***

7015-D Well's Highway

Seneca, SC 29678

864-882-1555

**Date:**

May 14, 2018

**Property Address:**

Milron Gaitlin

105 Silver Pine Ct.

Greer, SC 29650

**Findings: Please see accompanying pictures**

Inspected the roof on 5/3/2018.

- Drip edge is missing from the shed.
- Poor ventilation on shed.
- No starter was used on shed.
- No valley treatments or flashing.
- Area where flashing has been cut.
- Paint is peeling on the pipe boots.
- There are angled nails which can cut the shingles.
- High nails on the top roof.
- Uneven nailing patterns.
- Deck is buckling on the top roof.
- Dip in roof that holds water.
- Numerous areas of overlapped shingles.
- Low nails with skirts to cover them.
- Soft uneven wood on the top part of the house.
- Marred shingles due to a hot weather installation.
- Poor work on returns, too few nails.
- No underlayment installed on returns.
- Missing step flashing on wall.
- Areas where nails have "shot" thru shingles.

**Disclaimer:**

Dolly' Roofing is a general contracting firm in the state of South Carolina, not an engineering firm. This assessment is our professional opinion based on a cursory inspection and not an in-depth inspection. If you would like a more in-depth opinion we would suggest that you hire a certified engineer.

**Inspected by:**

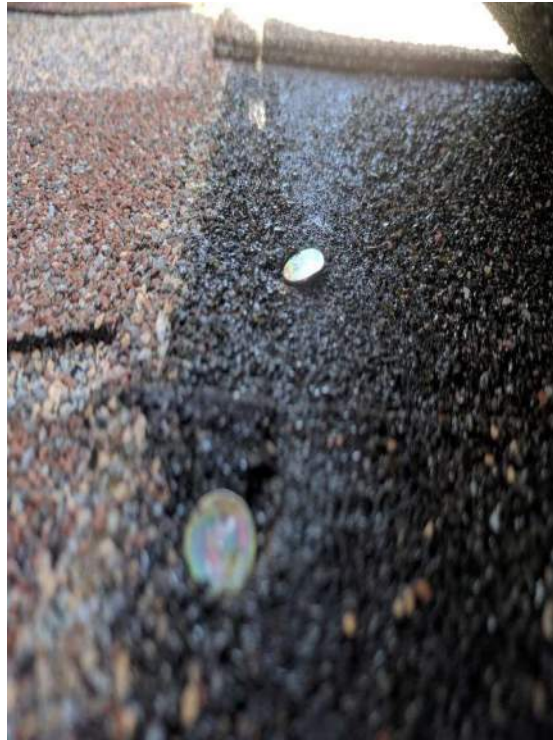
99

Charles P. Dolly – Roofing General Contractor

J-2



PAINT PEELING ON BOOTS



ANGLED NAILS CAN CUT THE SHINGLES



HIGH NAIL ON THE TOP ROOF



DECK BUCKLING ON THE TOP ROOF



OVERLAPPED SHINGLES



LOW NAILS



OVERLAPPED SHINGLES



SOFT UNEVEN WOOD ON TOP PART OF HOUSE



MARRED SHINGLES DUE TO A HOT WEATHER  
INSTALLATION



LOW NAILS INSTALLED WITH SKIRT TO COVER



OVERLAPPED SHINGLES



POOR WORK ON RETURNS, FEW NAILS



NO UNDERLAYMENT INSTALLED



CLOSE UP OF RETURN



NO STEP FLASHING ON WALL



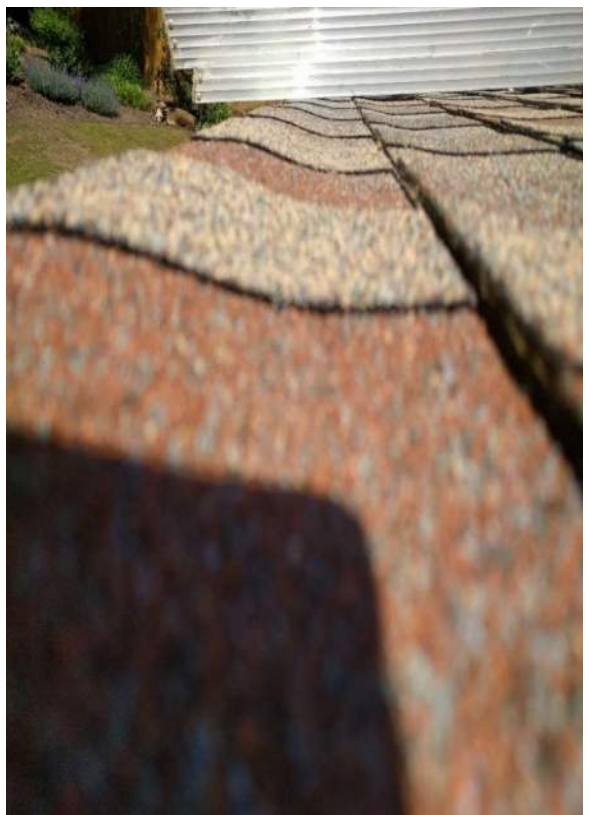
UNEVEN NAILING PATTERN



NAILS HAVE SHOT THROUGH



DIP IN ROOF HOLDS WATER



DIP IN ROOF HOLDS WATER



SHED IS MISSING DRIP EDGE



SHED IS MISSING DRIP EDGE



POOR VENTILATION ON SHED



POOR VENTILATION ON SHED



CUT FLASHING



NO VALLEY TREATMENT OR FLASHING



NO STARTER USED ON SHED

# **Exhibit K**

## **Code Requirements & Installation Instructions**

**CHAPTER 7  
WALL COVERING** **ES E**

**SECTION R701  
GENERAL** **ES**

**R701.1 Application.**

The provisions of this chapter shall control the design and construction of the interior and exterior wall covering for buildings.

**R701.2 Installation.**

Products sensitive to adverse weather shall not be installed until adequate weather protection for the installation is provided. Exterior sheathing shall be dry before applying exterior cover.

**SECTION R702  
INTERIOR COVERING** **ES**

**R702.1 General** **E**.

Interior coverings or wall finishes shall be installed in accordance with this chapter and Table R702.1(1), Table R702.1(2), Table R702.1(3) and Table R702.3.5. Interior masonry veneer shall comply with the requirements of Section R703.7.1 for support and Section R703.7.4 for anchorage, except an airspace is not required. Interior finishes and materials shall conform to the flame spread and smoke-development requirements of Section R302.9.

**HAD HORNBECK BEEN IN COMPLIANCE WITH THIS AND THE FOLLOWING SECTION OF THE 2015 INTERNATIONAL BUILDING CODE ALONG WITH THE MANUFACTURERS' INSTRUCTIONS THERE WOULD NEVER HAVE BEEN A PROBLEM**

**TABLE R702.1(1) THICKNESS OF PLASTER**

PLASTER BASE	FINISHED THICKNESS OF PLASTER FROM FACE OF LATH, MASONRY, CONCRETE (inches)	
	Gypsum Plaster	Cement Plaster
Expanded metal lath	$\frac{5}{8}$ , minimum <sup>a</sup>	$\frac{5}{8}$ , minimum <sup>a</sup>
Wire lath	$\frac{5}{8}$ , minimum <sup>a</sup>	$\frac{3}{4}$ , minimum (interior) <sup>b</sup> $\frac{7}{8}$ , minimum (exterior) <sup>b</sup>
Gypsum lath <sup>d</sup>	$\frac{1}{2}$ , minimum	$\frac{3}{4}$ , minimum (interior) <sup>b</sup>
Masonry walls <sup>c</sup>	$\frac{1}{2}$ , minimum	$\frac{1}{2}$ , minimum
Monolithic concrete walls <sup>c, d</sup>	$\frac{5}{8}$ , maximum	$\frac{7}{8}$ , maximum
Monolithic concrete ceilings <sup>c, d</sup>	$\frac{3}{8}$ , maximum <sup>e</sup>	$\frac{1}{2}$ , maximum
Gypsum veneer base <sup>f, g</sup>	$\frac{1}{16}$ , minimum	$\frac{3}{4}$ , minimum (interior) <sup>b</sup>
Gypsum sheathing <sup>h</sup>	—	$\frac{3}{4}$ , minimum (interior) <sup>b</sup> $\frac{7}{8}$ , minimum (exterior) <sup>b</sup>

For SI: 1 inch = 25.4 mm.

- a. Where measured from back plane of expanded metal lath, exclusive of ribs, or self-furring lath, plaster thickness shall be  $\frac{3}{4}$  inch minimum.
- b. Where measured from face of support or backing.
- c. Because masonry and concrete surfaces vary in plane, thickness of plaster need not be uniform.
- d. Where applied over a liquid bonding agent, finish coat shall be permitted to be applied directly to concrete surface.
- e. Approved acoustical plaster shall be permitted to be applied directly to concrete or over base coat plaster, beyond the maximum plaster thickness shown.
- f. Attachment shall be in accordance with Table R702.3.5.
- g. Where gypsum board is used as a base for cement plaster, a water-resistive barrier complying with Section R703.2 shall be provided.

**TABLE R702.1(2) GYPSUM PLASTER PROPORTIONS<sup>a</sup>**

NUMBER	COAT	PLASTER BASE OR LATH	MAXIMUM VOLUME AGGREGATE PER 100 POUNDS NEAT PLASTER <sup>b</sup> (cubic feet)	
			Damp Loose Sand <sup>a</sup>	Perlite or Vermiculite <sup>c</sup>
Two-coat work	Base coat	Gypsum lath	2.5	2
	Base coat	Masonry	3	3
Three-coat work	First coat	Lath	2 <sup>d</sup>	2
	Second coat	Lath	3 <sup>d</sup>	2 <sup>e</sup>
	First and second coats	Masonry	3	3

For SI: 1 inch = 25.4 mm, 1 cubic foot = 0.0283 m<sup>3</sup>, 1 pound = 0.454 kg.

- a. Wood-fibered gypsum plaster shall be mixed in the proportions of 100 pounds of gypsum to not more than 1 cubic foot of sand where applied on masonry or concrete.
- b. Where determining the amount of aggregate in set plaster, a tolerance of 10 percent shall be allowed.
- c. Combinations of sand and lightweight aggregate shall be permitted to be used, provided the volume and weight relationship of the combined aggregate to gypsum plaster is maintained.
- d. If used for both first and second coats, the volume of aggregate shall be permitted to be 2.5 cubic feet.
- e. Where plaster is 1 inch or more in total thickness, the proportions for the second coat may be increased to 3 cubic feet.

**TABLE R702.1(3) CEMENT PLASTER PROPORTIONS, PARTS BY VOLUME**

CEMENT	CEMENTITIOUS MATERIALS			VOLUME OF AGGREGATE PER CUBIC FOOT
	Portland Cement			

COAT	PLASTER TYPE	Type I, II or III or Blended Cement Type IP, I (PM), IS or I (SM)	Plastic Cement	Masonry Cement Type M, S or N	Lime	SUM OF SEPARATE VOLUMES OF CEMENTITIOUS MATERIALS <sup>b</sup>
First	Portland or blended	1			$\frac{3}{4} - 1\frac{1}{2}$ <sup>a</sup>	2 $\frac{1}{2}$ - 4
	Masonry				1	2 $\frac{1}{2}$ - 4
	Plastic		1			2 $\frac{1}{2}$ - 4
Second	Portland or blended	1			$\frac{3}{4} - 1\frac{1}{2}$	3 - 5
	Masonry			1		3 - 5
	Plastic		1			3 - 5
Finish	Portland or blended	1			$\frac{3}{4} - 2$	1 $\frac{1}{2}$ - 3
	Masonry			1		1 $\frac{1}{2}$ - 3
	Plastic		1			1 $\frac{1}{2}$ - 3

For St: 1 inch = 25.4 mm, 1 pound = 0.454 kg.

- Lime by volume of 0 to  $\frac{3}{4}$  shall be used where the plaster will be placed over low-absorption surfaces such as dense clay tile or brick.
- The same or greater sand proportion shall be used in the second coat than used in the first coat.

## R702.2 Interior plaster.

### R702.2.1 Gypsum plaster.

Gypsum plaster materials shall conform to ASTM C 5, C 22, C 28, C 35, C 59, C 61, C 587, C 631, C 847, C 933, C 1032 and C 1047, and shall be installed or applied in compliance with ASTM C 843 and C 844. Gypsum lath or gypsum base for veneer plaster shall conform to ASTM C 1396. Plaster shall be not less than three coats where applied over metal lath and not less than two coats where applied over other bases permitted by this section, except that veneer plaster shall be applied in one coat not to exceed  $\frac{3}{16}$  inch (4.76 mm) thickness, provided the total thickness is in accordance with Table R702.1(1).

### R702.2.2 Cement plaster.

Cement plaster materials shall conform to ASTM C 91 (Type M, S or N), C 150 (Type I, II and III), C 595 [Type IP, I (PM), IS and I (SM), C 847, C 897, C 926, C 933, C 1032, C 1047 and C 1328, and shall be installed or applied in compliance with ASTM C 1063. Gypsum lath shall conform to ASTM C 1396. Plaster shall be not less than three coats where applied over metal lath and not less than two coats where applied over other bases permitted by this section, except that veneer plaster shall be applied in one coat not to exceed  $\frac{3}{16}$  inch (4.76 mm) thickness, provided the total thickness is in accordance with Table R702.1(1).

#### R702.2.2.1 Application.

Each coat shall be kept in a moist condition for not less than 24 hours prior to application of the next coat.

**Exception:** Applications installed in accordance with ASTM C 926.

#### R702.2.2.2 Curing.

The finish coat for two-coat cement plaster shall not be applied sooner than 48 hours after application of the first coat. For three-coat cement plaster, the second coat shall not be applied sooner than 24 hours after application of the first coat. The finish coat for three-coat cement plaster shall not be applied sooner than 48 hours after application of the second coat.

### R702.2.3 Support.

Support spacing for gypsum or metal lath on walls or ceilings shall not exceed 16 inches (406 mm) for  $\frac{3}{8}$ -inch-thick (9.5 mm) or 24 inches (610 mm) for  $\frac{1}{2}$ -inch-thick (12.7 mm) plain gypsum lath. Gypsum lath shall be installed at right angles to support framing with end joints in adjacent courses staggered by not less than one framing space.

## R702.3 Gypsum board and gypsum panel products.

### R702.3.1 Materials.

Gypsum board and gypsum panel product materials and accessories shall conform to ASTM C 22, C 475, C 514, C 1002, C 1047, C 1177, C 1178, C 1278, C 1396 or C 1658 and shall be installed in accordance with the provisions of this section. Adhesives for the installation of gypsum board and gypsum panel products shall conform to ASTM C 557.

### R702.3.2 Wood framing.

Wood framing supporting gypsum board and gypsum panel products shall be not less than 2 inches (51 mm) nominal thickness in the least dimension except that wood furring strips not less than 1-inch by 2-inch (25 mm by 51 mm) nominal dimension shall be permitted to be used over solid backing or framing spaced not more than 24 inches (610 mm) on center.

### R702.3.3 Cold-formed steel framing.

Cold-formed steel framing supporting gypsum board and gypsum panel products shall be not less than  $1\frac{1}{4}$  inches (32 mm) wide in the least dimension. Nonload-bearing cold-formed steel framing shall comply with AISI S220 and ASTM C645, Section 10. Load-bearing cold-formed steel framing shall comply with AISI S200 and ASTM C 955, Section 8.

### R702.3.4 Insulating concrete form walls.

Foam plastics for insulating concrete form walls constructed in accordance with Sections R404.1.2 and R608 on the interior of habitable spaces shall be protected in accordance with Section R316.4. Use of adhesives in conjunction with mechanical fasteners is permitted. Adhesives used for interior and exterior finishes shall be compatible with the insulating form materials.

### R702.3.5 Application

Supports and fasteners used to attach gypsum board and gypsum panel products shall comply with Table R702.3.5. Gypsum sheathing shall be attached to exterior walls in accordance with Table R602.3(1). Gypsum board and gypsum panel products shall be applied at right angles or parallel to framing members. All edges and ends of gypsum board and gypsum panel products shall occur on the framing members, except those edges and ends that are perpendicular to the framing members. Interior gypsum board shall not be installed where it is directly exposed to the weather or to water.

**TABLE R702.3.5 MINIMUM THICKNESS AND APPLICATION OF GYPSUM BOARD AND GYPSUM PANEL PRODUCTS**

THICKNESS OF GYPSUM BOARD OR GYPSUM PANEL PRODUCTS (inches)	APPLICATION	ORIENTATION OF GYPSUM BOARD OR GYPSUM PANEL PRODUCTS TO FRAMING	MAXIMUM SPACING OF FRAMING MEMBERS (inches o.c.)	MAXIMUM SPACING OF FASTENERS (inches)		SIZE OF NAILS FOR APPLICATION TO WOOD FRAMING <sup>c</sup>	
				Nails <sup>a</sup>	Screws <sup>b</sup>		
<b>Application without adhesive</b>							
$\frac{3}{8}$	Ceiling <sup>d</sup>	Perpendicular	16	7	12	13 gage, 1 $\frac{1}{4}$ " long, 1 $\frac{9}{64}$ " head; 0.098" diameter, 1 $\frac{1}{4}$ " long, annular-ringed; or 4d cooler nail, 0.080" diameter, 1 $\frac{3}{8}$ " long, 7 $\frac{7}{32}$ " head.	
	Wall	Either direction	16	8	16		
$\frac{1}{2}$	Ceiling	Either direction	16	7	12	13 gage, 1 $\frac{3}{8}$ " long, 1 $\frac{9}{64}$ " head; 0.098" diameter, 1 $\frac{1}{4}$ " long, annular-ringed; 5d cooler nail, 0.086" diameter, 1 $\frac{5}{8}$ " long, 1 $\frac{5}{64}$ " head; or gypsum board nail, 0.086" diameter, 1 $\frac{5}{8}$ " long, 3 $\frac{3}{32}$ " head.	
	Ceiling <sup>d</sup>	Perpendicular	24	7	12		
	Wall	Either direction	24	8	12		
$\frac{5}{8}$	Wall	Either direction	16	8	16	13 gage, 1 $\frac{5}{8}$ " long, 1 $\frac{9}{64}$ " head; 0.098" diameter, 1 $\frac{3}{8}$ " long, annular-ringed; 6d cooler nail, 0.092" diameter, 1 $\frac{7}{8}$ " long, 1 $\frac{1}{4}$ " head; or gypsum board nail, 0.0915" diameter, 1 $\frac{7}{8}$ " long, 1 $\frac{9}{64}$ " head.	
	Ceiling	Either direction	16	7	12		
	Ceiling	Perpendicular	24	7	12		
	Type X at garage ceiling beneath habitable rooms	Perpendicular	24	6	6		1 $\frac{7}{8}$ " long 6d coated nails or equivalent drywall screws. Screws shall comply with Section R702.3.5.1
	Wall	Either direction	24	8	12		
Wall	Either direction	16	8	16	13 gage, 1 $\frac{5}{8}$ " long, 1 $\frac{9}{64}$ " head; 0.098" diameter, 1 $\frac{3}{8}$ " long, annular-ringed; 6d cooler nail, 0.092" diameter, 1 $\frac{7}{8}$ " long, 1 $\frac{1}{4}$ " head; or gypsum board nail, 0.0915" diameter, 1 $\frac{7}{8}$ " long, 1 $\frac{9}{64}$ " head.		
<b>Application with adhesive</b>							
$\frac{3}{8}$	Ceiling <sup>d</sup>	Perpendicular	16	16	16	Same as above for $\frac{3}{8}$ " gypsum board and gypsum panel products.	
	Wall	Either direction	16	16	24		
$\frac{1}{2}$ or $\frac{5}{8}$	Ceiling	Either direction	16	16	16	Same as above for $\frac{1}{2}$ " and $\frac{5}{8}$ " gypsum board and gypsum panel products, respectively.	
	Ceiling <sup>d</sup>	Perpendicular	24	12	16		
Two $\frac{3}{8}$ layers	Wall	Either direction	24	16	24	Base ply nailed as above for $\frac{1}{2}$ " gypsum board and gypsum panel products; face ply installed with adhesive.	
	Ceiling	Perpendicular	16	16	16		

For SI: 1 inch = 25.4 mm.

- For application without adhesive, a pair of nails spaced not less than 2 inches apart or more than 2 $\frac{1}{2}$  inches apart shall be permitted to be used with the pair of nails spaced 12 inches on center.
- Screws shall be in accordance with Section R702.3.6. Screws for attaching gypsum board or gypsum panel products to structural insulated panels shall penetrate the wood structural panel facing not less than  $\frac{7}{16}$  inch.
- Where cold-formed steel framing is used with a clinching design to receive nails by two edges of metal, the nails shall be not less than  $\frac{5}{8}$  inch longer than the gypsum board or gypsum panel product thickness and shall have ringed shanks. Where the cold-formed steel framing has a nailing groove formed to receive the nails, the nails shall have barbed shanks or be 5d, 13 $\frac{1}{2}$  gage, 1 $\frac{5}{8}$  inches long, 1 $\frac{9}{64}$  inch head for  $\frac{1}{2}$  inch gypsum board or gypsum panel product; and 6d, 13 gage, 1 $\frac{7}{8}$  inches long, 1 $\frac{5}{64}$  inch head for  $\frac{5}{8}$  inch gypsum board or gypsum panel product.
- Three-eighths-inch-thick single-ply gypsum board or gypsum panel product shall not be used on a ceiling where a water-based textured finish is to be applied, or where it will be required to support insulation above a ceiling. On ceiling applications to receive a water-based texture material, either hand or spray applied, the gypsum board or gypsum panel product shall be applied perpendicular to framing. Where applying a water-based texture material, the minimum gypsum board thickness shall be increased from  $\frac{3}{8}$  inch to  $\frac{1}{2}$  inch for 16-inch on center framing, and from  $\frac{1}{2}$  inch to  $\frac{5}{8}$  inch for 24-inch on center framing or  $\frac{1}{2}$  inch sag-resistant gypsum ceiling board shall be used.

**R702.3.5.1 Screw fastening.**

Screws for attaching gypsum board and gypsum panel products to wood framing shall be Type W or Type S in accordance with ASTM C 1002 and shall penetrate the wood not less than  $\frac{5}{8}$  inch (15.9 mm). Gypsum board and gypsum panel products shall be attached to cold-formed steel framing with minimum No. 6 screws. Screws for attaching gypsum board and gypsum panel products to cold-formed steel framing less than 0.033 inch (1 mm) thick shall be Type S in accordance with ASTM C 1002 or bugle head style in accordance with ASTM C 1513 and shall penetrate the steel not less than  $\frac{3}{8}$  inch (9.5 mm). Screws for attaching gypsum board and gypsum panel products to cold-formed steel framing 0.033 inch to 0.112 inch (1 mm to 3 mm) thick shall be in accordance with ASTM C 954 or bugle head style in accordance with ASTM C 1513. Screws for attaching gypsum board and gypsum panel products to structural insulated panels shall penetrate the wood structural panel facing not less than  $\frac{7}{16}$  inch (11.1 mm).

**R702.3.6 Horizontal gypsum board diaphragm ceilings.**

Gypsum board and gypsum panel products shall be permitted on wood joists to create a horizontal diaphragm in accordance with Table R702.3.6. Gypsum board and gypsum panel products shall be installed perpendicular to ceiling framing members. End joints of adjacent courses of board and panels shall not occur on the same joist. The maximum allowable diaphragm proportions shall be 1 $\frac{1}{2}$ :1 between shear resisting elements. Rotation or cantilever conditions shall not be permitted. Gypsum board or gypsum panel products shall not be used in diaphragm ceilings to resist lateral forces imposed by masonry or concrete construction. Perimeter edges shall be blocked using wood members not less than 2-inch by 6-inch (51 mm by 152 mm) nominal dimension. Blocking material shall be installed flat over the top plate of the wall to provide a nailing surface not less than 2 inches (51 mm) in width for the attachment of the gypsum board or gypsum panel product.

**TABLE R702.3.6 SHEAR CAPACITY FOR HORIZONTAL WOOD-FRAMED GYPSUM BOARD DIAPHRAGM CEILING ASSEMBLIES**

MATERIAL	THICKNESS OF MATERIAL (min.) (inch)	SPACING OF FRAMING MEMBERS (max.) (inch)	SHEAR VALUE <sup>a, b</sup> (plf of ceiling)	MINIMUM FASTENER SIZE <sup>c, d</sup>
Gypsum board or gypsum panel product	1/2	16 o.c.	90	5d cooler or wallboard nail; 1 5/8-inch long; 0.086-inch shank; 15/16-inch head
Gypsum board or gypsum panel product	1/2	24 o.c.	70	5d cooler or wallboard nail; 1 5/8-inch long; 0.086-inch shank; 15/16-inch head

For SI: 1 inch = 25.4 mm, 1 pound per linear foot = 1.488 kg/m.

a. Values are not cumulative with other horizontal diaphragm values and are for short-term loading caused by wind or seismic loading. Values shall be reduced 25 percent for normal loading.

b. Values shall be reduced 50 percent in Seismic Design Categories D<sub>0</sub>, D<sub>1</sub>, D<sub>2</sub> and E.

c. 1 1/4-inch, No. 6 Type S or W screws shall be permitted to be substituted for the listed nails.

d. Fasteners shall be spaced not more than 7 inches on center at all supports, including perimeter blocking, and not less than 3/8 inch from the edges and ends of the gypsum board.

**R702.3.7 Water-resistant gypsum backing board.**

Gypsum board used as the base or backer for adhesive application of ceramic tile or other required nonabsorbent finish material shall conform to ASTM C 1396, C 1178 or C 1278. Use of water-resistant gypsum backing board shall be permitted on ceilings. Water-resistant gypsum board shall not be installed over a Class I or II vapor retarder in a shower or tub compartment. Cut or exposed edges, including those at wall intersections, shall be sealed as recommended by the manufacturer.

**R702.3.7.1 Limitations.**

Water-resistant gypsum backing board shall not be used where there will be direct exposure to water, or in areas subject to continuous high humidity.

**R702.4 Ceramic tile** ES.

**R702.4.1 General.**

Ceramic tile surfaces shall be installed in accordance with ANSI A108.1, A108.4, A108.5, A108.6, A108.11, A118.1, A118.3, A136.1 and A137.1.

**R702.4.2 Backer boards.**

Materials used as backers for wall tile in tub and shower areas and wall panels in shower areas shall be of materials listed in Table R702.4.2, and installed in accordance with the manufacturer's recommendations.

**TABLE R702.4.2 BACKER BOARD MATERIALS**

MATERIAL	STANDARD
Glass mat gypsum backing panel	ASTM C 1178
Fiber-reinforced gypsum panels	ASTM C 1278
Nonasbestos fiber-cement backer board	ASTM C 1288 or ISO 8336, Category C
Nonasbestos fiber mat reinforced cementitious backer units	ASTM C 1325

**R702.5 Other finishes.**

Wood veneer paneling and hardboard paneling shall be placed on wood or cold-formed steel framing spaced not more than 16 inches (406 mm) on center. Wood veneer and hard board paneling less than 1/4-inch (6 mm) nominal thickness shall not have less than a 3/8-inch (10 mm) gypsum board or gypsum panel product backer. Wood veneer paneling not less than 1/4-inch (6 mm) nominal thickness shall conform to ANSI/HPVA HP-1. Hardboard paneling shall conform to CPA/ANSI A135.5.

**R702.6 Wood shakes and shingles.**

Wood shakes and shingles shall conform to CSSB *Grading Rules for Wood Shakes and Shingles* and shall be permitted to be installed directly to the studs with maximum 24 inches (610 mm) on-center spacing.

**R702.6.1 Attachment.**

Nails, staples or glue are permitted for attaching shakes or shingles to the wall, and attachment of the shakes or shingles directly to the surface shall be permitted provided the fasteners are appropriate for the type of wall surface material. Where nails or staples are used, two fasteners shall be provided and shall be placed so that they are covered by the course above.

**R702.6.2 Furring strips.**

Where furring strips are used, they shall be 1 inch by 2 inches or 1 inch by 3 inches (25 mm by 51 mm or 25 mm by 76 mm), spaced a distance on center equal to the desired exposure, and shall be attached to the wall by nailing through other wall material into the studs.

**R702.7 Vapor retarders.**

Class I or II vapor retarders are required on the interior side of frame walls in Climate Zones 5, 6, 7, 8 and Marine 4.

**Exceptions:**

1. Basement walls.
2. Below-grade portion of any wall.
3. Construction where moisture or its freezing will not damage the materials.

**R702.7.1 Class III vapor retarders**

Class III vapor retarders shall be permitted where any one of the conditions in Table R702.7.1 is met.

**TABLE R702.7.1 CLASS III VAPOR RETARDERS**

CLIMATE ZONE	CLASS III VAPOR RETARDERS PERMITTED FOR: <sup>a</sup>
Marine 4	Vented cladding over wood structural panels. Vented cladding over fiberboard. Vented cladding over gypsum. Continuous insulation with $R$ -value $\geq 2.5$ over $2 \times 4$ wall. Continuous insulation with $R$ -value $\geq 3.75$ over $2 \times 6$ wall.
5	Vented cladding over wood structural panels. Vented cladding over fiberboard. Vented cladding over gypsum. Continuous insulation with $R$ -value $\geq 5$ over $2 \times 4$ wall. Continuous insulation with $R$ -value $\geq 7.5$ over $2 \times 6$ wall.
6	Vented cladding over fiberboard. Vented cladding over gypsum. Continuous insulation with $R$ -value $\geq 7.5$ over $2 \times 4$ wall. Continuous insulation with $R$ -value $\geq 11.25$ over $2 \times 6$ wall.
7 and 8	Continuous insulation with $R$ -value $\geq 10$ over $2 \times 4$ wall. Continuous insulation with $R$ -value $\geq 15$ over $2 \times 6$ wall.

For SI: 1 pound per cubic foot = 16 kg/m<sup>3</sup>.

a. Spray foam with a maximum permeance of 1.5 perms at the installed thickness, applied to the interior cavity side of wood structural panels, fiberboard, insulating sheathing or gypsum is deemed to meet the continuous insulation requirement where the spray foam  $R$ -value meets or exceeds the specified continuous insulation  $R$ -value.

**R702.7.2 Material vapor retarder class.**

The vapor retarder class shall be based on the manufacturer's certified testing or a tested assembly.

The following shall be deemed to meet the class specified:

- Class I: Sheet polyethylene, unperforated aluminum foil.
- Class II: Kraft-faced fiberglass batts.
- Class III: Latex or enamel paint.

**R702.7.3 Minimum clear airspaces and vented openings for vented cladding.**

For the purposes of this section, vented cladding shall include the following minimum clear airspaces. Other openings with the equivalent vent area shall be permitted.

1. Vinyl lap or horizontal aluminum siding applied over a weather-resistive barrier as specified in Table R703.3(1).
2. Brick veneer with a clear airspace as specified in Table R703.8.4.
3. Other approved vented claddings.

**SECTION R703**  
**EXTERIOR COVERING** ES

**R703.1 General.**

Exterior walls shall provide the building with a weather-resistant exterior wall envelope. The exterior wall envelope shall include flashing as described in Section R703.4.

**Exception:** Log walls designed and constructed in accordance with the provisions of ICC 400.

**R703.1.1 Water resistance.**

The exterior wall envelope shall be designed and constructed in a manner that prevents the accumulation of water within the wall assembly by providing a water-resistant barrier behind the exterior veneer as required by Section R703.2 and a means of draining to the exterior water that enters the assembly. Protection against condensation in the exterior wall assembly shall be provided in accordance with Section R702.7 of this code.

**Exceptions:**

1. A weather-resistant exterior wall envelope shall not be required over concrete or masonry walls designed in accordance with Chapter 6 and flashed in accordance with Section R703.4 or R703.8.
2. Compliance with the requirements for a means of drainage, and the requirements of Sections R703.2 and R703.4, shall not be required for an exterior wall envelope that has been demonstrated to resist wind-driven rain through testing of the exterior wall envelope, including joints, penetrations and intersections with dissimilar materials, in accordance with ASTM E 331 under the following conditions:
  - 2.1. Exterior wall envelope test assemblies shall include at least one opening, one control joint, one wall/eave interface and one wall sill. All tested openings and penetrations shall be representative of the intended end-use configuration.
  - 2.2. Exterior wall envelope test assemblies shall be at least 4 feet by 8 feet (1219 mm by 2438 mm) in size.
  - 2.3. Exterior wall assemblies shall be tested at a minimum differential pressure of 6.24 pounds per square foot (299 Pa).
  - 2.4. Exterior wall envelope assemblies shall be subjected to the minimum test exposure for a minimum of 2 hours.

The exterior wall envelope design shall be considered to resist wind-driven rain where the results of testing indicate that water did not penetrate control joints in the exterior wall envelope, joints at the perimeter of openings penetration or intersections of terminations with dissimilar materials.

**R703.1.2 Wind resistance.**

Wall coverings, backing materials and their attachments shall be capable of resisting wind loads in accordance with Tables R301.2(2) and R301.2(3). Wind-pressure resistance of the siding and backing materials shall be determined by ASTM E 330 or other applicable standard test methods. Where wind pressure resistance is determined by design, test data from approved design standards and analysis performance to

methods. Wind uplift-resistance is determined by design analysis, data from approved design standards and analysis conforming to generally accepted engineering practice shall be used to evaluate the siding and backing material and its fastening. All applicable failure modes including bending rupture of siding, fastener withdrawal and fastener head pull-through shall be considered in the testing or design analysis. Where the wall covering and the backing material resist wind load as an assembly, use of the design capacity of the assembly shall be permitted.

**R703.2 Water-resistive barrier** **ES**.

One layer of No. 15 asphalt felt, free from holes and breaks, complying with ASTM D 226 for Type 1 felt or other approved water-resistive barrier shall be applied over studs or sheathing of all exterior walls. Such felt or material shall be applied horizontally, with the upper layer lapped over the lower layer not less than 2 inches (51 mm). Where joints occur, felt shall be lapped not less than 6 inches (152 mm). The felt or other approved material shall be continuous to the top of walls and terminated at penetrations and building appendages in a manner to meet the requirements of the exterior wall envelope as described in Section R703.1. The water-resistive barrier is not required for detached accessory buildings.

**R703.3 Nominal thickness and attachments** **E**.

The nominal thickness and attachment of exterior wall coverings shall be in accordance with Table R703.3(1), the wall covering material requirements of this section, and the wall covering manufacturer's installation instructions. Cladding attachment over foam sheathing shall comply with the additional requirements and limitations of Sections R703.15 through R703.17. Nominal material thicknesses in Table R703.3(1) are based on a maximum stud spacing of 16 inches (406 mm) on center. Where specified by the siding manufacturer's instructions and supported by a test report or other documentation, attachment to studs with greater spacing is permitted. Fasteners for exterior wall coverings attached to wood framing shall be in accordance with Section R703.3.2 and Table R703.3(1). Exterior wall coverings shall be attached to cold-formed steel light frame construction in accordance with the cladding manufacturer's installation instructions, the requirements of Table R703.3(1) using screw fasteners substituted for the nails specified in accordance with Table R703.3(2), or an approved design.

**TABLE R703.3(1) SIDING MINIMUM ATTACHMENT AND MINIMUM THICKNESS**

SIDING MATERIAL		NOMINAL THICKNESS (inches)	JOINT TREATMENT	TYPE OF SUPPORTS FOR THE SIDING MATERIAL AND			
				Wood or wood structural panel sheathing into stud	Fiberboard sheathing into stud	Gypsum sheathing into stud	Foam plastic sheathing into stud <sup>1</sup>
Anchored veneer, brick, concrete, masonry or stone (see Section R703.8)		2	Section R703.8	Section R703.8			
Adhered veneer: concrete, stone or masonry (see Section R703.12)		—	Section R703.12	Section R703.12			
Fiber cement siding	Panel siding (see Section R703.10.1)	<sup>5</sup> / <sub>16</sub>	Section R703.10.1	6d common (2" x 0.113")	6d common (2" x 0.113")	6d common (2" x 0.113")	6d common (2" x 0.113")
	Lap siding (see Section R703.10.2)	<sup>5</sup> / <sub>16</sub>	Section R703.10.2	6d common (2" x 0.113")	6d common (2" x 0.113")	6d common (2" x 0.113")	6d common (2" x 0.113")
Hardboard panel siding (see Section R703.5)		<sup>7</sup> / <sub>16</sub>	—	0.120" nail (shank) with 0.225" head	0.120" nail (shank) with 0.225" head	0.120" nail (shank) with 0.225" head	0.120" nail (shank) with 0.225" head
Hardboard lap siding (see Section R703.5)		<sup>7</sup> / <sub>16</sub>	Note e	0.099" nail (shank) with 0.240" head	0.099" nail (shank) with 0.240" head	0.099" nail (shank) with 0.240" head	0.099" nail (shank) with 0.240" head
Horizontal aluminum <sup>3</sup>	Without insulation	0.019 <sup>b</sup>	Lap	Siding nail 1 1/2" x 0.120"	Siding nail 2" x 0.120"	Siding nail 2" x 0.120"	Siding nail <sup>h</sup> 1 1/2" x 0.120"
		0.024	Lap	Siding nail 1 1/2" x 0.120"	Siding nail 2" x 0.120"	Siding nail 2" x 0.120"	Siding nail <sup>h</sup> 1 1/2" x 0.120"
	With insulation	0.019	Lap	Siding nail 1 1/2" x 0.120"	Siding nail 2 1/2" x 0.120"	Siding nail 2 1/2" x 0.120"	Siding nail <sup>h</sup> 1 1/2" x 0.120"
Insulated vinyl siding		0.035 (vinyl siding layer only)	Lap	0.120 nail (shank) with a 0.313 head or 16-gage crown <sup>h,1</sup>	0.120 nail (shank) with a 0.313 head or 16-gage crown <sup>h</sup>	0.120 nail (shank) with a 0.313 head or 16-gage crown <sup>h</sup>	0.120 nail (shank) with a 0.313 head Section R703.11.1
Particleboard panels		<sup>3</sup> / <sub>8</sub>	—	6d box nail (2" x 0.099")	6d box nail (2" x 0.099")	6d box nail (2" x 0.099")	6d box nail (2" x 0.099")
		<sup>1</sup> / <sub>2</sub>	—	6d box nail (2" x 0.099")	6d box nail (2" x 0.099")	6d box nail (2" x 0.099")	6d box nail (2" x 0.099")
		<sup>5</sup> / <sub>8</sub>	—	6d box nail (2" x 0.099")	8d box nail (2 1/2" x 0.113")	8d box nail (2 1/2" x 0.113")	6d box nail (2" x 0.099")
Polypropylene siding <sup>c</sup>		Not applicable	Lap	Section 703.14.1	Section 703.14.1	Section 703.14.1	Section 703.14.1

Steel <sup>c</sup>		29 ga.	Lap	Siding nail (1 <sup>3</sup> / <sub>16</sub> " x 0.113") Staple—1 <sup>3</sup> / <sub>16</sub> "	Siding nail (2 <sup>3</sup> / <sub>16</sub> " x 0.113") Staple—2 <sup>1</sup> / <sub>2</sub> "	Siding nail (2 <sup>1</sup> / <sub>2</sub> " x 0.113") Staple—2 <sup>1</sup> / <sub>4</sub> "	Siding nail (1 <sup>3</sup> / <sub>16</sub> " x 0.113") Staple—1 <sup>3</sup> / <sub>16</sub> "
Vinyl siding (see Section R703.11)		0.035	Lap	0.120" nail (shank) with a 0.313" head or 16-gage staple with <sup>3</sup> / <sub>16</sub> " to 1 <sup>1</sup> / <sub>2</sub> "-inch crown <sup>h, i</sup>	0.120" nail (shank) with a 0.313" head or 16-gage staple with <sup>3</sup> / <sub>16</sub> " to 1 <sup>1</sup> / <sub>2</sub> "- inch crown <sup>h</sup>	0.120" nail (shank) with a 0.313" head or 16-gage staple with <sup>3</sup> / <sub>16</sub> " to 1 <sup>1</sup> / <sub>2</sub> "- inch crown <sup>h</sup>	0.120" nail (shank) with a 0.313" head Section R703.11.
Wood siding (see Section R703.5)	Wood rustic, drop	<sup>3</sup> / <sub>8</sub> min.	Lap	6d box or siding nail (2" x 0.099")	6d box or siding nail (2" x 0.099")	6d box or siding nail (2" x 0.099")	6d box or siding nail (2" x 0.099")
	Shiplap	<sup>19</sup> / <sub>32</sub> average	Lap				
	Bevel Butt tip	<sup>7</sup> / <sub>16</sub> <sup>3</sup> / <sub>16</sub>	Lap				
Wood structural panel ANSI/APA PRP-210 siding (exterior grade) (see Section R703.5)		<sup>3</sup> / <sub>8</sub> - 1 <sup>1</sup> / <sub>2</sub>	Note e	2" x 0.099" siding nail	2 <sup>1</sup> / <sub>2</sub> " x 0.113" siding nail	2 <sup>1</sup> / <sub>2</sub> " x 0.113" siding nail	2 <sup>1</sup> / <sub>2</sub> " x 0.113" siding nail
Wood structural panel lap siding (see Section R703.5)		<sup>3</sup> / <sub>8</sub> - 1 <sup>1</sup> / <sub>2</sub>	Note e Note g	2" x 0.099" siding nail	2 <sup>1</sup> / <sub>2</sub> " x 0.113" siding nail	2 <sup>1</sup> / <sub>2</sub> " x 0.113" siding nail	2 <sup>1</sup> / <sub>2</sub> " x 0.113" siding nail

For SI: 1 inch = 25.4 mm.

- Aluminum nails shall be used to attach aluminum siding.
- Aluminum (0.019 inch) shall be unbacked only where the maximum panel width is 10 inches and the maximum flat area is 8 inches. The tolerance for aluminum siding shall be +0.002 inch of the nominal dimension.
- Shall be of approved type.
- Where used to resist shear forces, the spacing must be 4 inches at panel edges and 8 inches on interior supports.
- Vertical end joints shall occur at studs and shall be covered with a joint cover or shall be caulked.
- Face nailing: one 6d common nail through the overlapping planks at each stud. Concealed nailing: one 11-gage 1<sup>1</sup>/<sub>2</sub>-inch-long galv. roofing nail through the top edge of each plank at each stud in accordance with the manufacturer's installation instructions.
- Vertical joints, if staggered, shall be permitted to be away from studs if applied over wood structural panel sheathing.
- Minimum fastener length must be sufficient to penetrate sheathing other nailable substrate and framing a total of a minimum of 1<sup>1</sup>/<sub>4</sub> inches or in accordance with the manufacturer's installation instructions.
- Where specified by the manufacturer's instructions and supported by a test report, fasteners are permitted to penetrate into or fully through nailable sheathing or other nailable substrate of minimum thickness specified by the instructions or test report, without penetrating into framing.
- Insulated vinyl siding shall comply with ASTM D 7793.
- Polypropylene siding shall comply with ASTM D 7254.
- Cladding attachment over foam sheathing shall comply with the additional requirements and limitations of Sections R703.15, R703.16 and R703.17.

**TABLE R703.3(2) SCREW FASTENER SUBSTITUTION FOR SIDING ATTACHMENT TO COLD-FORMED STEEL LIGHT FRAME CONSTRUCTION<sup>a, b, c, d, e</sup>**

NAIL DIAMETER PER TABLE R703.3(1)	MINIMUM SCREW FASTENER SIZE
0.099"	No. 6
0.113"	No. 7
0.120"	No. 8

For SI: 1 inch = 25.4 mm

- Screws shall comply with ASTM A 1619 and shall penetrate a minimum of three threads through minimum 99 mil (99 gage) solid ferrous steel frame construction.
- Screw head diameter shall be not less than the nail head diameter required by Table R703.3(1).
- Number and spacing of screw fasteners shall comply with Table R703.3(1).
- Pan head, hex washer head, modified truss head or other screw head types with a flat attachment surface under the head shall be used for vinyl siding attachment.
- Aluminum siding shall not be fastened directly to cold-formed steel light frame construction.

### R703.3.1 Wind limitations.

Where the design wind pressure exceeds 30 psf or where the limits of Table R703.3.1 are exceeded, the attachment of wall coverings shall be designed to resist the component and cladding loads specified in Table R301.2(2), adjusted for height and exposure in accordance with Table R301.2(3). For the determination of wall covering attachment, component and cladding loads shall be determined using an effective wind area of 10 square feet (0.93 m<sup>2</sup>).

**TABLE R703.3.1 LIMITS FOR ATTACHMENT PER TABLE R703.3(1)**

Ultimate Wind Speed (mph 3-second gust)	MAXIMUM MEAN ROOF HEIGHT		
	B	C	D
115	NL	50'	20'
120	NL	30'	DR
130	60'	15'	DR
140	35'	DR	DR

For SI: 1 foot = 304.8 mm, 1 mile per hour = 0.447 m/s.

NL = Not limited by Table R703.3.1, DR = Design required.

### R703.3.2 Fasteners.

Exterior wall coverings shall be securely fastened with aluminum, galvanized, stainless steel or rust-preventative coated nails or staples in accordance with Table R703.3(1) or with other approved corrosion-resistant fasteners in accordance with the wall covering manufacturer's installation instructions. Nails and staples shall comply with ASTM F 1667. Nails shall be T-head, modified round head, or round head with smooth or deformed shanks. Staples shall have a minimum crown width of <sup>7</sup>/<sub>16</sub> inch (11.1 mm) outside diameter and be manufactured of minimum 16-gage wire. Where fiber-board, gypsum or foam plastic sheathing backing is used, nails or staples shall be driven into the studs.

Where wood or wood structural panel sheathing is used, fasteners shall be driven into studs unless otherwise permitted to be driven into sheathing in accordance with either the siding manufacturer's installation instructions or Table R703.3.2.

**TABLE R703.3.2 OPTIONAL SIDING ATTACHMENT SCHEDULE FOR FASTENERS WHERE NO STUD PENETRATION NECESSARY**

APPLICATION	NUMBER AND TYPE OF FASTENER	SPACING OF FASTENERS <sup>b</sup>
Exterior wall covering (weighing 3 psf or less) attachment to wood structural panel sheathing, either direct or over foam sheathing a maximum of 2 inches thick. <sup>a</sup> Note: Does not apply to vertical siding.	Ring shank roofing nail (0.120" min. dia.)	12" o.c.
	Ring shank nail (0.148" min. dia.)	15" o.c.
	No. 6 screw (0.138" min. dia.)	12" o.c.
	No. 8 screw (0.164" min. dia.)	16" o.c.

For 5/8" = 15.9 mm.

- a. Fastener length shall be sufficient to penetrate back side of the wood structural panel sheathing by at least 1/4 inch. The wood structural panel sheathing shall be not less than 7/16 inch in thickness.  
b. Spacing of fasteners is per 12 inches of siding width. For other siding widths, multiply "Spacing of Fasteners" above by a factor of 12/s, where "s" is the siding width in inches. Fastener spacing shall never be greater than the manufacturer's minimum recommendations.

**R703.3.3 Minimum fastener length and penetration.**

Fasteners shall have the greater of the minimum length specified in Table R703.3(1) or as required to provide a minimum penetration into framing as follows:

1. Fasteners for horizontal aluminum siding, steel siding, particleboard panel siding, wood structural panel siding in accordance with ANSI/APA-PRP 210, fiber-cement panel siding and fiber-cement lap siding installed over foam plastic sheathing shall penetrate not less than 1 1/2 inches (38 mm) into framing or shall be in accordance with the manufacturer's installation instructions.
2. Fasteners for hardboard panel and lap siding shall penetrate not less than 1 1/2 inches (38 mm) into framing.
3. Fasteners for vinyl siding and insulated vinyl siding installed over wood or wood structural panel sheathing shall penetrate not less than 1 1/4 inches (32 mm) into sheathing and framing combined. Vinyl siding and insulated vinyl siding shall be permitted to be installed with fasteners penetrating into or through wood or wood structural sheathing of minimum thickness as specified by the manufacturer's instructions or test report, with or without penetration into the framing. Where the fastener penetrates fully through the sheathing, the end of the fastener shall extend not less than 1/4 inch (6.4 mm) beyond the opposite face of the sheathing. Fasteners for vinyl siding and insulated vinyl siding installed over foam plastic sheathing shall be in accordance with Section R703.11.2. Fasteners for vinyl siding and insulated vinyl siding installed over fiberboard or gypsum sheathing shall penetrate not less than 1 1/4 inches (32 mm) into framing.
4. Fasteners for vertical or horizontal wood siding shall penetrate not less than 1 1/2 inches (38 mm) into studs, studs and wood sheathing combined, or blocking.
5. Fasteners for siding material installed over foam plastic sheathing shall have sufficient length to accommodate foam plastic sheathing thickness and to penetrate framing or sheathing and framing combined, as specified in Items 1 through 4.

**R703.4 Flashing.**

Approved corrosion-resistant flashing shall be applied shingle-fashion in a manner to prevent entry of water into the wall cavity or penetration of water to the building structural framing components. Self-adhered membranes used as flashing shall comply with AAMA 711. Fluid-applied membranes used as flashing in exterior walls shall comply with AAMA 714. The flashing shall extend to the surface of the exterior wall finish. Approved corrosion-resistant flashings shall be installed at the following locations:

1. Exterior window and door openings. Flashing at exterior window and door openings shall extend to the surface of the exterior wall finish or to the water-resistive barrier complying with Section 703.2 for subsequent drainage. Mechanically attached flexible flashings shall comply with AAMA 712. Flashing at exterior window and door openings shall be installed in accordance with one or more of the following:
  - 1.1. The fenestration manufacturer's installation and flashing instructions, or for applications not addressed in the fenestration manufacturer's instructions, in accordance with the flashing manufacturer's instructions. Where flashing instructions or details are not provided, pan flashing shall be installed at the sill of exterior window and door openings. Pan flashing shall be sealed or sloped in such a manner as to direct water to the surface of the exterior wall finish or to the water-resistive barrier for subsequent drainage. Openings using pan flashing shall incorporate flashing or protection at the head and sides.
  - 1.2. In accordance with the flashing design or method of a registered design professional.
  - 1.3. In accordance with other approved methods.
2. At the intersection of chimneys or other masonry construction with frame or stucco walls, with projecting lips on both sides under stucco copings.
3. Under and at the ends of masonry, wood or metal copings and sills.
4. Continuously above all projecting wood trim.
5. Where exterior porches, decks or stairs attach to a wall or floor assembly of wood-frame construction.
6. At wall and roof intersections.
7. At built-in gutters.

**R703.5 Wood, hardboard and wood structural panel siding**

Wood, hardboard, and wood structural panel siding shall be installed in accordance with this section and Table R703.3(1). Hardboard siding shall comply with CPA/ANSI A135.6. Hardboard siding used as architectural trim shall comply with CPA/ANSI A 135.7.

**R703.5.1 Vertical wood siding.**

Wood siding applied vertically shall be nailed to horizontal nailing strips or blocking set not more than 24 inches (610 mm) on center.

**R703.5.2 Panel siding.**

3/8-inch (9.5 mm) wood structural panel siding shall not be applied directly to studs spaced more than 16 inches (406 mm) on center where long dimension is parallel to studs. Wood structural panel siding 7/16 inch (11.1 mm) or thinner shall not be applied directly to studs spaced more than 24 inches (610 mm) on center. The stud spacing shall not exceed the panel span rating provided by the manufacturer unless the panels are installed with the face grain perpendicular to the stud or over sheathing approved for that stud spacing.

Joints in wood, hardboard or wood structural panel siding shall be made as follows unless otherwise approved. Vertical joints in panel siding shall occur over framing members, unless wood or wood structural panel sheathing is used, and shall be shiplapped or covered with a batten. Horizontal joints in panel siding shall be lapped not less than 1 inch (25 mm) or shall be shiplapped or flashed with Z-flashing and occur over solid blocking, wood or wood structural panel sheathing.

CHAPTER 9  
ROOF ASSEMBLIES <sup>ES</sup> <sup>ES</sup>SECTION R901  
GENERAL <sup>ES</sup>**R901.1 Scope.**

The provisions of this chapter shall govern the design, materials, construction and quality of roof assemblies.

SECTION R902  
FIRE CLASSIFICATION <sup>ES</sup>**R902.1 Roofing covering materials.**

Roofs shall be covered with materials as set forth in Sections R904 and R905. Class A, B or C roofing shall be installed in jurisdictions designated by law as requiring their use or where the edge of the roof is less than 3 feet (914 mm) from a lot line. Class A, B and C roofing required by this section to be listed shall be tested in accordance with UL 790 or ASTM E 108.

**Exceptions:**

1. Class A roof assemblies include those with coverings of brick, masonry and exposed concrete roof deck.
2. Class A roof assemblies include ferrous or copper shingles or sheets, metal sheets and shingles, clay or concrete roof tile, or slate installed on noncombustible decks.
3. Class A roof assemblies include minimum 16 ounces per square foot copper sheets installed over combustible decks.
4. Class A roof assemblies include slate installed over underlayment over combustible decks.

**R902.2 Fire-retardant-treated shingles and shakes.**

Fire-retardant-treated wood shakes and shingles shall be treated by impregnation with chemicals by the full-cell vacuum-pressure process, in accordance with AWPA C1. Each bundle shall be marked to identify the manufactured unit and the manufacturer, and shall be *labeled* to identify the classification of the material in accordance with the testing required in Section R902.1, the treating company and the quality control agency.

**R902.3 Building-integrated photovoltaic product.**

Building-integrated photovoltaic products installed as the roof covering shall be tested, listed and labeled for fire classification in accordance with Section R902.1.

**R902.4 Rooftop-mounted photovoltaic panels and modules.**

Rooftop-mounted photovoltaic panels and modules installed on or above the roof covering shall be tested, listed and identified with a fire classification in accordance with UL 1703. Class A, B or C photovoltaic panels and modules shall be installed in jurisdictions designated by law as requiring their use or where the edge of the roof is less than 3 feet (914 mm) from a lot line.

SECTION R903  
WEATHER PROTECTION <sup>ES</sup>**R903.1 General.**

Roof decks shall be covered with *approved* roof coverings secured to the building or structure in accordance with the provisions of this chapter. Roof assemblies shall be designed and installed in accordance with this code and the *approved* manufacturer's instructions such that the roof assembly shall serve to protect the building or structure.

**R903.2 Flashing.**

Flashings shall be installed in a manner that prevents moisture from entering the wall and roof through joints in copings, through moisture permeable materials and at intersections with parapet walls and other penetrations through the roof plane.

**R903.2.1 Locations.**

Flashings shall be installed at wall and roof intersections, wherever there is a change in roof slope or direction and around roof openings. A flashing shall be installed to divert the water away from where the eave of a sloped roof intersects a vertical sidewall. Where flashing is of metal, the metal shall be corrosion resistant with a thickness of not less than 0.019 inch (0.5 mm) (No. 26 galvanized sheet).

**R903.2.2 Crickets and saddles.**

A cricket or saddle shall be installed on the ridge side of any chimney or penetration more than 30 inches (762 mm) wide as measured perpendicular to the slope. Cricket or saddle coverings shall be sheet metal or of the same material as the roof covering.

**Exception:** Unit skylights installed in accordance with Section R308.6 and flashed in accordance with the manufacturer's instructions shall be permitted to be installed without a cricket or saddle.

**R903.3 Coping.**

Parapet walls shall be properly coped with noncombustible, weatherproof materials of a width not less than the thickness of the parapet wall.

Roofers did not install roofing in accordance with this section of the 2015 International Residential Building Code.  
IT WAS HORNBECK'S RESPONSIBILITY TO INSURE THEY DID

**R903.4 Roof drainage.**

Unless roofs are sloped to drain over roof edges, roof drains shall be installed at each low point of the roof.

**R903.4.1 Secondary (emergency overflow) drains or scuppers.**

Where roof drains are required, secondary emergency overflow roof drains or scuppers shall be provided where the roof perimeter construction extends above the roof in such a manner that water will be entrapped if the primary drains allow buildup for any reason. Overflow drains having the same size as the roof drains shall be installed with the inlet flow line located 2 inches (51 mm) above the low point of the roof, or overflow scuppers having three times the size of the roof drains and having a minimum opening height of 4 inches (102 mm) shall be installed in the adjacent parapet walls with the inlet flow located 2 inches (51 mm) above the low point of the roof served. The installation and sizing of overflow drains, leaders and conductors shall comply with Sections 1106 and 1108 of the *International Plumbing Code*, as applicable.

Overflow drains shall discharge to an *approved* location and shall not be connected to roof drain lines.

**SECTION R904  
MATERIALS **

**R904.1 Scope.**

The requirements set forth in this section shall apply to the application of roof covering materials specified herein. Roof assemblies shall be applied in accordance with this chapter and the manufacturer's installation instructions. Installation of roof assemblies shall comply with the applicable provisions of Section R905.

**R904.2 Compatibility of materials.**


Roof assemblies shall be of materials that are compatible with each other and with the building or structure to which the materials are applied.

**R904.3 Material specifications and physical characteristics.**

Roof covering materials shall conform to the applicable standards listed in this chapter.

**R904.4 Product identification.**

Roof covering materials shall be delivered in packages bearing the manufacturer's identifying marks and *approved* testing agency *labels* required. Bulk shipments of materials shall be accompanied by the same information issued in the form of a certificate or on a bill of lading by the manufacturer.

**SECTION R905  
REQUIREMENTS FOR ROOF COVERINGS **

**R905.1 Roof covering application.**

Roof coverings shall be applied in accordance with the applicable provisions of this section and the manufacturer's installation instructions. Unless otherwise specified in this section, roof coverings shall be installed to resist the component and cladding loads specified in Table R301.2(2), adjusted for height and exposure in accordance with Table R301.2(3).

**R905.1.1 Underlayment.**

Underlayment for asphalt shingles, clay and concrete tile, metal roof shingles, mineral-surfaced roll roofing, slate and slate-type shingles, wood shingles, wood shakes and metal roof panels shall conform to the applicable standards listed in this chapter. Underlayment materials required to comply with ASTM D 226, D 1970, D 4869 and D 6757 shall bear a label indicating compliance to the standard designation and, if applicable, type classification indicated in Table R905.1.1(1). Underlayment shall be applied in accordance with Table R905.1.1(2). Underlayment shall be attached in accordance with Table R905.1.1(3).

**Exceptions:**

1. As an alternative, self-adhering polymer-modified bitumen underlayment complying with ASTM D 1970 installed in accordance with both the underlayment manufacturer's and roof covering manufacturer's instructions for the deck material, roof ventilation configuration and climate exposure for the roof covering to be installed, shall be permitted.
2. As an alternative, a minimum 4-inch-wide (102 mm) strip of self-adhering polymer-modified bitumen membrane complying with ASTM D 1970, installed in accordance with the manufacturer's instructions for the deck material, shall be applied over all joints in the roof decking. An approved underlayment for the applicable roof covering for maximum ultimate design wind speeds,  $V_{ult}$  less than 140 miles per hour shall be applied over the entire roof over the 4-inch-wide (102 mm) membrane strips.

**TABLE R905.1.1(1) UNDERLAYMENT TYPES**

ROOF COVERING	SECTION	MAXIMUM ULTIMATE DESIGN WIND SPEED, $V_{ult} < 140$ MPH	MAXIMUM ULTIMATE DESIGN WIND SPEED, $V_{ult} \geq 140$ MPH
Asphalt shingles	R905.2	ASTM D 226 Type I ASTM D 4869 Type I, II, III or IV ASTM D 6757	ASTM D 226 Type II ASTM D 4869 Type IV ASTM D 6757
Clay and concrete tile	R905.3	ASTM D 226 Type II ASTM D 2626 Type I ASTM D 6380 Class M mineral-surfaced roll roofing	ASTM D 226 Type II ASTM D 2626 Type I ASTM D 6380 Class M mineral-surfaced roll roofing
Metal roof shingles	R905.4	ASTM D 226 Type I or II ASTM D 4869 Type I, II, III or IV	ASTM D 226 Type II ASTM D 4869 Type IV
Mineral-surfaced roll roofing	R905.5	ASTM D 226 Type I or II ASTM D 4869 Type I, II, III or IV	ASTM D 226 Type II ASTM D 4869 Type IV
Slate and slate-type shingles	R905.6	ASTM D 226 Type I ASTM D 4869 Type I, II, III or IV	ASTM D 226 Type II ASTM D 4869 Type IV

Wood shingles	R905.7	ASTM D 226 Type I or II ASTM D 4869 Type I, II, III or IV	ASTM D 226 Type II ASTM D 4869 Type IV
Wood shakes	R905.8	ASTM D 226 Type I or II ASTM D 4869 Type I, II, III or IV	ASTM D 226 Type II ASTM D 4869 Type IV
Metal panels	R905.10	Manufacturer's instructions	ASTM D 226 Type II ASTM D 4869 Type IV

**TABLE R905.1.1(2) UNDERLAYMENT APPLICATION**

ROOF COVERING	SECTION	MAXIMUM ULTIMATE DESIGN WIND SPEED, $V_{ult} < 140$ MPH	MAXIMUM ULTIMATE DESIGN WIND SPEED, $V_{ult} \geq 140$ MPH
Asphalt shingles	R905.2	For roof slopes from two units vertical in 12 units horizontal (2:12), up to four units vertical in 12 units horizontal (4:12), underlayment shall be two layers applied in the following manner: apply a 19-inch strip of underlayment felt parallel to and starting at the eaves. Starting at the eave, apply 36-inch-wide sheets of underlayment, overlapping successive sheets 19 inches. Distortions in the underlayment shall not interfere with the ability of the shingles to seal. For roof slopes of four units vertical in 12 units horizontal (4:12) or greater, underlayment shall be one layer applied in the following manner: underlayment shall be applied shingle fashion, parallel to and starting from the eave and lapped 2 inches. Distortions in the underlayment shall not interfere with the ability of the shingles to seal. End laps shall be 4 inches and shall be offset by 6 feet.	Same as Maximum Ultimate Design Wind Speed, $V_{ult} < 140$ mph except all laps shall be not less than 4 inches.
Clay and concrete tile	R905.3	For roof slopes from two and one-half units vertical in 12 units horizontal (2½:12), up to four units vertical in 12 units horizontal (4:12), underlayment shall be a minimum of two layers applied as follows: starting at the eave, apply a 19-inch strip of underlayment parallel with the eave. Starting at the eave, apply 36-inch-wide strips of underlayment felt, overlapping successive sheets 19 inches. For roof slopes of four units vertical in 12 units horizontal (4:12) or greater, underlayment shall be a minimum of one layer of underlayment felt applied shingle fashion, parallel to and starting from the eaves and lapped 2 inches. End laps shall be 4 inches and shall be offset by 6 feet.	Same as Maximum Ultimate Design Wind Speed, $V_{ult} < 140$ mph except all laps shall be not less than 4 inches.
Metal roof shingles	R905.4	Apply in accordance with the manufacturer's installation instructions.	For roof slopes from two units vertical in 12 units horizontal (2:12), up to four units vertical in 12 units horizontal (4:12), underlayment shall be two layers applied in the following manner: apply a 19-inch strip of underlayment felt parallel to and starting at the eaves. Starting at the eave, apply 36-inch-wide sheets of underlayment, overlapping successive sheets 19 inches, and fastened sufficiently to hold in place. For roof slopes of four units vertical in 12 units horizontal (4:12) or greater, underlayment shall be one layer applied in the following manner: underlayment shall be applied shingle fashion, parallel to and starting from the eave and lapped 4 inches. End laps shall be 4 inches and shall be offset by 6 feet.
Mineral-surfaced roll roofing	R905.5		
Slate and slate-type shingles	R905.6		
Wood shingles	R905.7		
Wood shakes	R905.8		
Metal panels	R905.10		

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm.

**TABLE R905.1.1(3) UNDERLAYMENT ATTACHMENT**

ROOF COVERING	SECTION	MAXIMUM ULTIMATE DESIGN WIND SPEED, $V_{ult} < 140$ MPH	MAXIMUM ULTIMATE DESIGN WIND SPEED, $V_{ult} \geq 140$ MPH
Asphalt shingles	R905.2	Fastened sufficiently to hold in place	The underlayment shall be attached with corrosion-resistant fasteners in a grid pattern of 12 inches between side laps with a 6-inch spacing at the side laps. Underlayment shall be attached using metal or plastic cap nails or cap staples with a nominal cap diameter of not less than 1 inch. Metal caps shall have a thickness of not less than 32-gage sheet metal. Power-driven metal caps shall have a minimum thickness of 0.010 inch. Minimum thickness of the outside edge of plastic caps shall be 0.035 inch. The cap nail shank shall be not less than 0.083 inch for ring shank cap nails and 0.091 inch for smooth shank cap nails. Staples shall be not less than 21 gage. Cap nail shank and cap staple legs shall
Clay and concrete tile	R905.3		

			have a length sufficient to penetrate through the roof sheathing or not less than $\frac{3}{4}$ inch into the roof sheathing.
Metal roof shingles	R905.4	Manufacturer's installation instructions.	The underlayment shall be attached with corrosion-resistant fasteners in a grid pattern of 12 inches between side laps with a 6-inch spacing at the side laps. Underlayment shall be attached using metal or plastic cap nails or cap staples with a nominal cap diameter of not less than 1 inch. Metal caps shall have a thickness of at least 32-gage sheet metal. Power-driven metal caps shall have a minimum thickness of 0.010 inch. Minimum thickness of the outside edge of plastic caps shall be 0.035 inch. The cap nail shank shall be not less than 0.083 inch for ring shank cap nails and 0.001 inch for smooth shank cap nails. Staples shall be not less than 21 gage. Cap nail shank and cap staple legs shall have a length sufficient to penetrate through the roof sheathing or not less than $\frac{3}{4}$ inch into the roof sheathing.
Mineral-surfaced roll roofing	R905.5		
Slate and slate-type shingles	R905.6		
Wood shingles	R905.7		
Wood shakes	R905.8		
Metal panels	R905.10		

For SI: 1 inch = 25.4 mm.

#### R905.1.2 Ice barriers.

In areas where there has been a history of ice forming along the eaves causing a backup of water as designated in Table R301.2(1), an ice barrier shall be installed for asphalt shingles, metal roof shingles, mineral-surfaced roll roofing, slate and slate-type shingles, wood shingles and wood shakes. The ice barrier shall consist of not fewer than two layers of underlayment cemented together, or a self-adhering polymer-modified bitumen sheet shall be used in place of normal underlayment and extend from the lowest edges of all roof surfaces to a point not less than 24 inches (610 mm) inside the exterior wall line of the building. On roofs with slope equal to or greater than 8 units vertical in 12 units horizontal, the ice barrier shall also be applied not less than 36 inches (914 mm) measured along the roof slope from the eave edge of the building.

**Exception:** Detached accessory structures not containing conditioned floor area.

#### R905.2 Asphalt shingles.

The installation of asphalt shingles shall comply with the provisions of this section.

##### R905.2.1 Sheathing requirements.

Asphalt shingles shall be fastened to solidly sheathed decks.

##### R905.2.2 Slope.

Asphalt shingles shall be used only on roof slopes of two units vertical in 12 units horizontal (2:12) or greater. For roof slopes from two units vertical in 12 units horizontal (2:12) up to four units vertical in 12 units horizontal (4:12), double underlayment application is required in accordance with Section R905.1.1.

##### R905.2.3 Underlayment.

Underlayment shall comply with Section R905.1.1.

##### R905.2.4 Asphalt shingles.

Asphalt shingles shall comply with ASTM D 3462.

##### R905.2.4.1 Wind resistance of asphalt shingles.

Asphalt shingles shall be tested in accordance with ASTM D 7158. Asphalt shingles shall meet the classification requirements of Table R905.2.4.1 for the appropriate ultimate design wind speed. Asphalt shingle packaging shall bear a label to indicate compliance with ASTM D 7158 and the required classification in Table R905.2.4.1.

**Exception:** Asphalt shingles not included in the scope of ASTM D 7158 shall be tested and labeled to indicate compliance with ASTM D 3161 and the required classification in Table R905.2.4.1.

TABLE R905.2.4.1 CLASSIFICATION OF ASPHALT ROOF SHINGLES

MAXIMUM ULTIMATE DESIGN WIND SPEED, $V_{ult}$ FROM FIGURE R301.2(4)A (mph)	MAXIMUM BASIC WIND SPEED, $V_{ASD}$ FROM TABLE R301.2.1.3 (mph)	ASTM D 7158 <sup>a</sup> SHINGLE CLASSIFICATION	ASTM D 3161 SHINGLE CLASSIFICATION
110	85	D, G or H	A, D or F
116	90	D, G or H	A, D or F
129	100	G or H	A, D or F
142	110	G or H	F
155	120	G or H	F
168	130	H	F
181	140	H	F
194	150	H	F

For SI: 1 foot = 304.8 mm; 1 mph = 0.447 m/s.

a. The standard calculations contained in ASTM D 7158 assume Exposure Category B or C and building height of 60 feet or less. Additional calculations are required for conditions outside of these assumptions.

**R905.2.5 Fasteners.**

Fasteners for asphalt shingles shall be galvanized steel, stainless steel, aluminum or copper roofing nails, minimum 12-gage [0.105 inch (3 mm)] shank with a minimum  $\frac{3}{8}$ -inch-diameter (9.5 mm) head, complying with ASTM F 1667, of a length to penetrate through the roofing materials and not less than  $\frac{3}{4}$  inch (19.1 mm) into the roof sheathing. Where the roof sheathing is less than  $\frac{3}{4}$  inch (19.1 mm) thick, the fasteners shall penetrate through the sheathing.

**R905.2.6 Attachment.**

Asphalt shingles shall have the minimum number of fasteners required by the manufacturer, but not less than four fasteners per strip shingle or two fasteners per individual shingle. Where the roof slope exceeds 21 units vertical in 12 units horizontal (21:12, 175-percent slope), shingles shall be installed as required by the manufacturer.

**R905.2.7 Ice barrier.**

Where required, ice barriers shall comply with Section R905.1.2.

**R905.2.8 Flashing.**

Flashing for asphalt shingles shall comply with this section.

**R905.2.8.1 Base and cap flashing.**

Base and cap flashing shall be installed in accordance with manufacturer's instructions. Base flashing shall be of either corrosion-resistant metal of minimum nominal 0.019-inch (0.5 mm) thickness or mineral-surfaced roll roofing weighing not less than 77 pounds per 100 square feet (4 kg/m<sup>2</sup>). Cap flashing shall be corrosion-resistant metal of minimum nominal 0.019-inch (0.5 mm) thickness.

**R905.2.8.2 Valleys.**

Valley linings shall be installed in accordance with the manufacturer's instructions before applying shingles. Valley linings of the following types shall be permitted:

1. For open valleys (valley lining exposed) lined with metal, the valley lining shall be not less than 24 inches (610 mm) wide and of any of the corrosion-resistant metals in Table R905.2.8.2.
2. For open valleys, valley lining of two plies of mineral-surfaced roll roofing, complying with ASTM D 3909 or ASTM D 6380 Class M, shall be permitted. The bottom layer shall be 18 inches (457 mm) and the top layer not less than 36 inches (914 mm) wide.
3. For closed valleys (valley covered with shingles), valley lining of one ply of smooth roll roofing complying with ASTM D 6380 and not less than 36 inches wide (914 mm) or valley lining as described in Item 1 or 2 shall be permitted. Self-adhering polymer modified bitumen underlayment complying with ASTM D 1970 shall be permitted in lieu of the lining material.

**TABLE R905.2.8.2 VALLEY LINING MATERIAL**

MATERIAL	MINIMUM THICKNESS (inches)	GAGE	WEIGHT (pounds)
Cold-rolled copper	0.0216 nominal	—	ASTM B 370, 16 oz. per square foot
Lead-coated copper	0.0216 nominal	—	ASTM B 101, 16 oz. per square foot
High-yield copper	0.0162 nominal	—	ASTM B 370, 12 oz. per square foot
Lead-coated high-yield copper	0.0162 nominal	—	ASTM B 101, 12 oz. per square foot
Aluminum	0.024	—	—
Stainless steel	—	28	—
Galvanized steel	0.0179	26 (zinc coated G90)	—
Zinc alloy	0.027	—	—
Lead	—	—	2 $\frac{1}{2}$
Painted terne	—	—	20


For St. 1 inch = 25.4 mm, 1 pound = 0.454 kg.

**R905.2.8.3 Sidewall flashing. **

Base flashing against a vertical sidewall shall be continuous or step flashing and shall be not less than 4 inches (102 mm) in height and 4 inches (102 mm) in width and shall direct water away from the vertical sidewall onto the roof or into the gutter. Where siding is provided on the vertical sidewall, the vertical leg of the flashing shall be continuous under the siding. Where anchored masonry veneer is provided on the vertical sidewall, the base flashing shall be provided in accordance with this section and counterflashing shall be provided in accordance with Section R703.7.2.2. Where exterior plaster or adhered masonry veneer is provided on the vertical sidewall, the base flashing shall be provided in accordance with this section and Section R703.6.3.

**R905.2.8.4 Other flashing.**

Flashing against a vertical front wall, as well as soil stack, vent pipe and chimney flashing, shall be applied in accordance with the asphalt shingle manufacturer's printed instructions.

**R905.2.8.5 Drip edge. **

A drip edge shall be provided at eaves and rake edges of shingle roofs. Adjacent segments of drip edge shall be overlapped not less than 2 inches (51 mm). Drip edges shall extend not less than  $\frac{1}{4}$  inch (6.4 mm) below the roof sheathing and extend up back onto the roof deck not less than 2 inches (51 mm). Drip edges shall be mechanically fastened to the roof deck at not more than 12 inches (305 mm) o.c. with fasteners as specified in Section R905.2.5. Underlayment shall be installed over the drip edge along eaves and under the drip edge along rake edges.

Inspection Of Siding Installation By James Hardie  
Manufacturers Representative In June 2018 Confirmed  
Defective Siding Installation

Advised Manufacturer's Warranty Would Be Voided



DAVID ANGLIN

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hardieinstallation.com

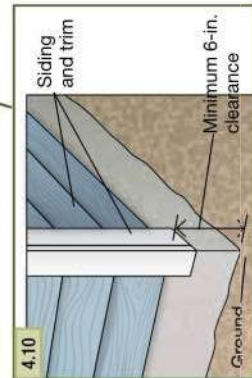
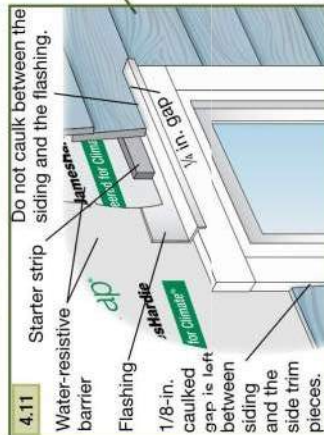
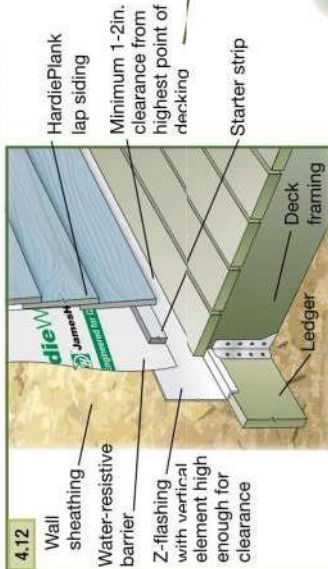
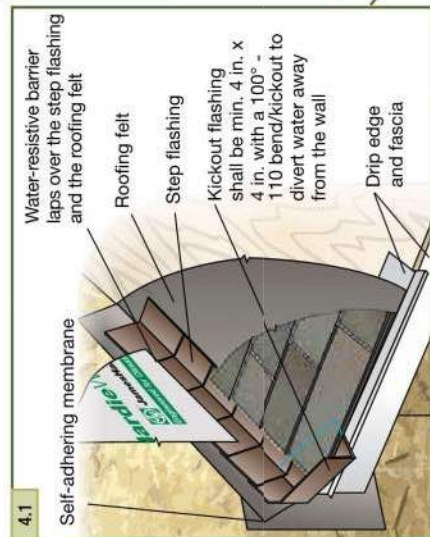
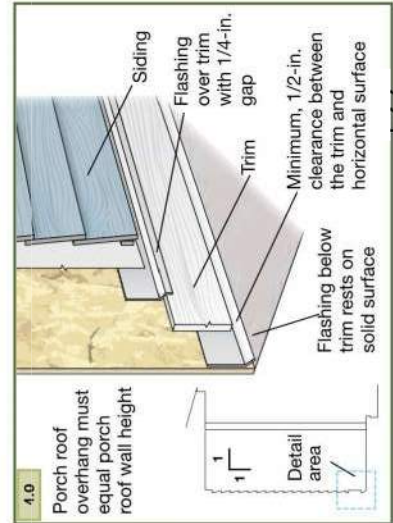
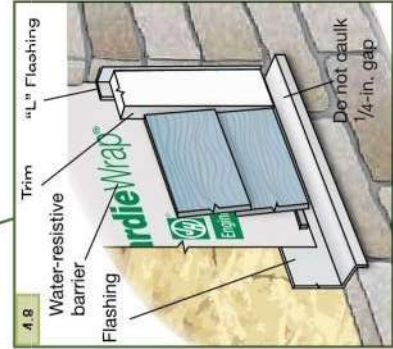
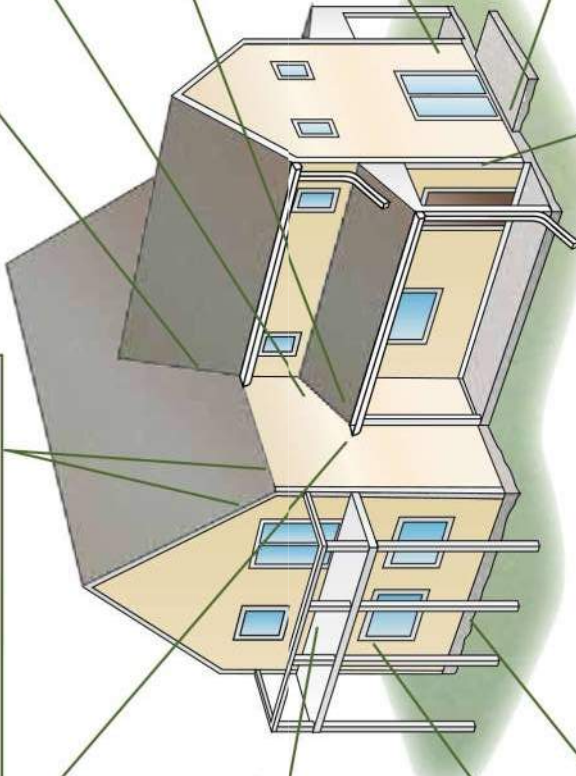
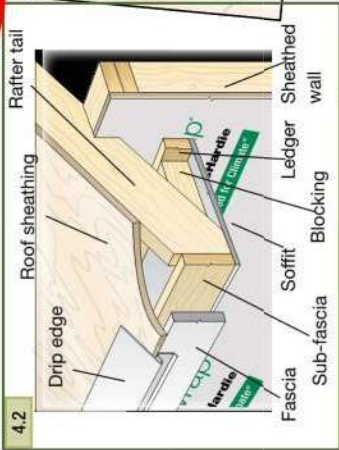
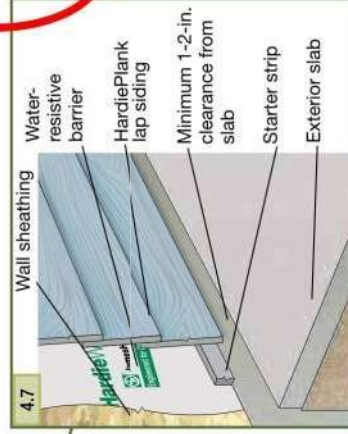
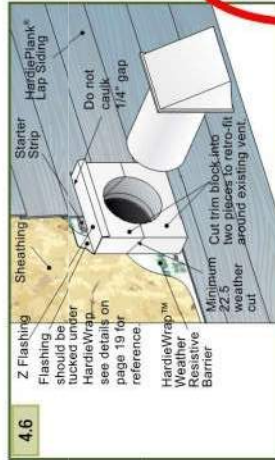
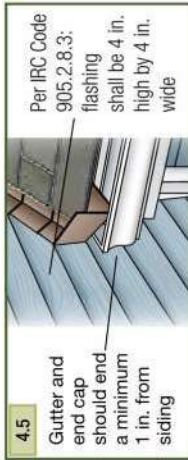
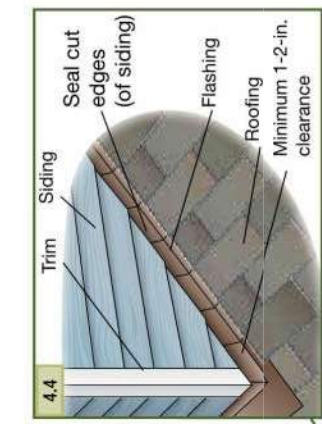
customerfeedback@jameshardie.com

**BY CODE THE MANUFACTURERS'**  
**SYSTEMS ARE TO BE INSTALLED**  
**IN ACCORDANCE WITH THEIR**  
**INSTRUCTIONS**

# General Installation Requirements

Not Done

Not Done

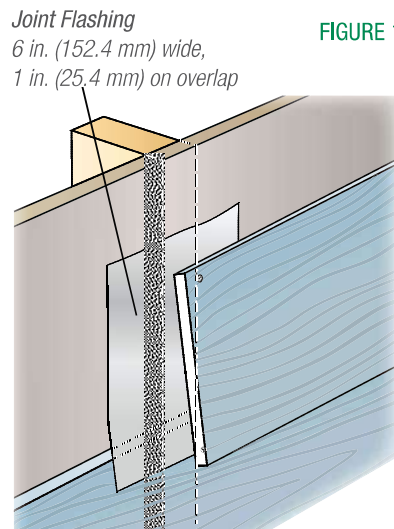


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- General Product Information
- Working Safely
- Tools for Cutting and Fastening
- General Installation Requirements
- General Requirements
- General Fastener Requirements
- Finishing and Maintenance
- HardieWrap® Weather Barrier
- HardieTrim® Boards/Battens
- HardieSoft® Panels
- HardiePlank® Lap Siding
- HardieShingle® Siding
- HardiePanel® Vertical Siding
- Appendix Glossary
- ESP-1844 & Z290 Report

James Hardie recommends 6 inch (152.4 mm) wide joint flashing that overlaps the course below by 1 inch (25.4 mm). See Figure 1. Some local building codes may require different size flashing.



# General Product Information

## JOBSITE STORAGE OF JAMES HARDIE® PRODUCTS

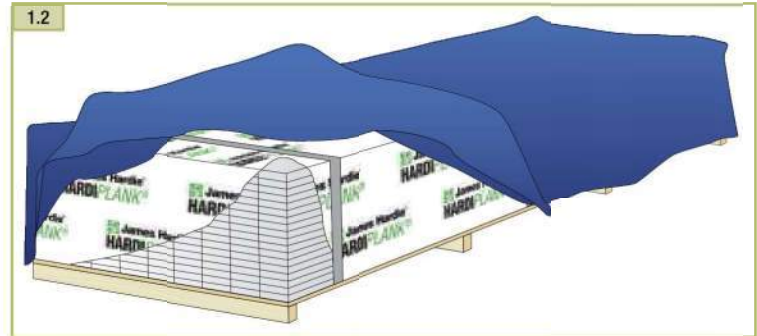
**Not Done**

The James Hardie family of siding and trim products, including James Hardie® products with ColorPlus® Technology, should be stored in their original packaging in a garage, shed, or in some other covered area protected from weather whenever possible. These products must be kept covered on a pallet off of the ground; they must never be stored in direct contact with the ground.



*James Hardie products stored in their original packaging.*

If James Hardie products are stored outside they should be protected with an additional waterproof covering. All scrap siding and trim pieces, cutoffs or material left on scaffolding must be covered and protected from the elements. If James Hardie products become saturated, they must be laid on a flat surface and allowed to dry completely prior to installation.



*If stored outside protect with an additional waterproof covering.*



### WARNING

James Hardie products should not be rolled-off or dumped-off of the truck during delivery to the jobsite. James Hardie recommends using a fork lift to off load material or unloading by hand.

## IMPORTANCE OF KEEPING JAMES HARDIE PRODUCTS DRY

James Hardie siding and trim products must be kept dry at all times prior to installation. If products become saturated before they are installed, the following problems may occur:

### OPEN JOINTS DUE TO SHRINKAGE

If installed wet, joints between planks may open up requiring repair or replacement. Under normal environmental conditions fiber cement has significantly greater dimensional stability than wood or vinyl-based exterior products.

### DIFFICULTY IN HANDLING

Saturation increases the weight and flexibility of fiber-cement products, making them difficult to handle.

### STAINING

Staining is a deposit of soluble salts, usually white in color, which sometimes appears on the surface of masonry or concrete construction.



### WARNING

James Hardie is not responsible for damage due to improper storage and handling of its products.

# Working Safely with James Hardie® Products

## MINIMIZE AND MANAGE SILICA DUST

**Not Done**

Silica (SiO<sub>2</sub>) is the second most common mineral in the earth's crust, and it's a common ingredient in many building products, including James Hardie® fiber-cement materials. Intact, these products do not pose a silica risk. However, when cut, drilled or abraded during installation, the resulting smaller, silica-containing dust can pose a potential health hazard as inhalation of excessive quantities over an extended period can cause silicosis, lung-cancer or other lung-related diseases, potentially leading to death.




To protect workers from potential health effects, OSHA established and enforces a permissible exposure limit (PEL) for respirable silica set effectively at 0.100 mg/m<sup>3</sup>. This PEL is an 8-hr. time-weighted average and is measured with special industrial hygiene equipment. Any exposure above this level requires that the installer take additional protective measures that might include a documented respirator program and medical monitoring.

James Hardie always encourages installers to take every possible precaution to minimize dust exposure levels. In any situation, properly-fitted NIOSH approved respirators (e.g. N95) can be used in conjunction with the proper tools and cutting methods to further limit silica dust exposures and to provide a safer workplace.

If additional concern regarding dust exposure levels exists, if there is concern about exceeding OSHA's PEL, or if the conditions of your jobsite do not allow you to conform to recommended practices, please contact James Hardie at 1-888-JHARDIE (542-7343), or consult with a qualified industrial hygienist (IH). A directory of independent IH consultants can be found at [www.aiha.org](http://www.aiha.org).

## WORK SAFE: FOLLOW JAMES HARDIE PRODUCT CUTTING INSTRUCTIONS

To create and maintain safer jobsites, James Hardie has developed the following “tiered” system to help select the best tools and methods for any given job. **Note:** For maximum protection (i.e. the lowest respirable dust exposures), James Hardie recommends using “Best” cutting methods and tools whenever possible. Please contact James Hardie or consult with a qualified industrial hygienist if unable to adhere to the recommended cutting instructions.

Rating	Tools	Cutting Method	Cutting Volume	Ventilation
Best	 or	Handheld Shears, Platform Shears, Score and Snap	No Limitations	Indoor/Outdoor
Better	 and	Dust-reducing saws with HardieBlade® saw blade coupled with HEPA vacuum extraction	No Limitations	Outdoor
Good	 and	Dust-reducing saws with HardieBlade saw blade	Low to Moderate	Outdoor

### CUTTING STATION SET UP

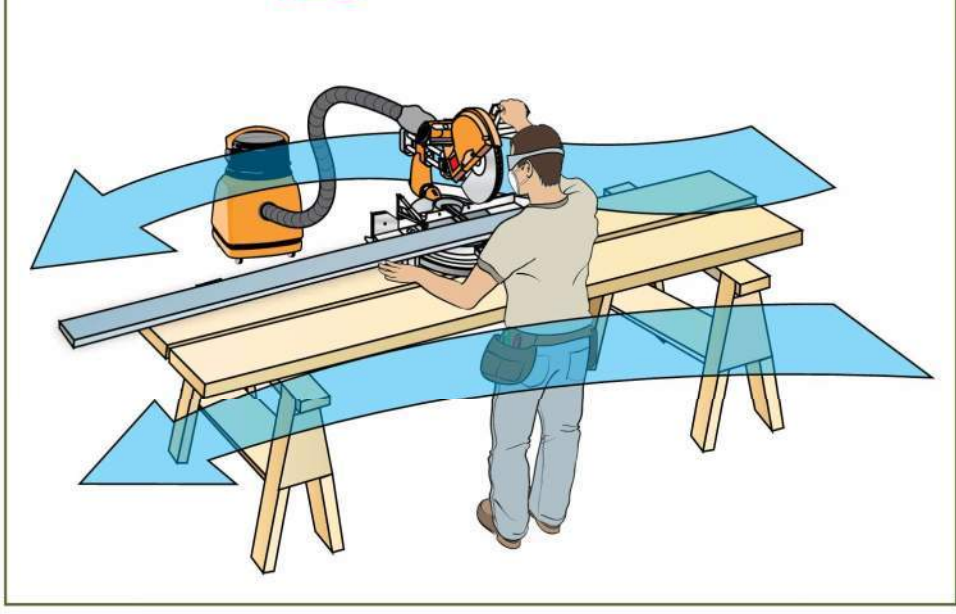
**Not Done**

2.1 Set up cutting station so that the wind carries dust away from the saw operator.

Set up all cutting tables or workstations in well-ventilated outdoor areas so that any generated dust is carried safely away from workers. If an area with adequate ventilation is not available, a NIOSH approved respirator should be used.

#### CLEAN UP AND DISPOSAL OF DEBRIS

When cleaning up dust and debris from cutting James Hardie® products, never use a broom or brush if the debris material is dry. Sweeping dry material may send dust particles into the user's breathing area. Instead, wet down the debris with a fine mist to suppress dust during sweeping or use a HEPA vacuum. Waste pieces of James Hardie siding and trim products can be disposed of in landfills according to local ordinances. No special handling is required.



**TIP:** As with any pre-finished building product, care should be taken when handling and cutting James Hardie ColorPlus products. At the job-site use a soft cloth to gently wipe any residue or construction dust left on the product

**WARNING**

Never use high-speed power tools when cutting James Hardie® products indoors.

**WARNING**

Prior to using any James Hardie® products, all users must read all applicable warnings (including MSDS) and comply with all installation instructions. Failure to do so may result in serious personal injury.

**WARNING: AVOID BREATHING SILICA DUST**

James Hardie® products contain respirable crystalline silica, which is known to the State of California to cause cancer and is considered by IARC and NIOSH to be a cause of cancer from some occupational sources. Breathing excessive amounts of respirable silica dust can also cause a disabling and potentially fatal lung disease called silicosis, and has been linked with other diseases. Some studies suggest smoking may increase these risks. During installation or handling: (1) work in outdoor areas with ample ventilation; (2) use fiber cement shears for cutting or, where not feasible, use a HardieBlade® blade and dust-reducing circular saw attached to a HEPA vacuum; (3) warn others in the immediate area; (4) wear a properly-fitted, NIOSH-approved dust mask or respirator (e.g. N-95) in accordance with applicable government regulations and manufacturer instructions to further limit respirable silica exposures. During clean-up use HEPA vacuums or wet cleanup methods-never dry sweep. For further information, refer to our installation instructions and Material Safety Data Sheet available at [www.jameshardie.com](http://www.jameshardie.com) or by calling 1-800-9HARDIE (1-800-942-7343). FAILURE TO ADHERE TO OUR WARNINGS, MSDS, AND INSTALLATION INSTRUCTIONS MAY LEAD TO SERIOUS PERSONAL INJURY OR DEATH.

SD050905

# General Installation Requirements (continued)

General Product Information

Working Safely

Tools for Cutting and Fastening

General Installation Requirements

General Fastener Requirements

Finishing and Maintenance

HardieWrap® Weather Barrier

HardieTrim® Boards/Battens

HardieSoffit® Panels

HardiePlank® Lap Siding

HardieShingle® Siding

HardiePanel® Vertical Siding

Appendix/Glossary

ESR-1844 & 2290 Report

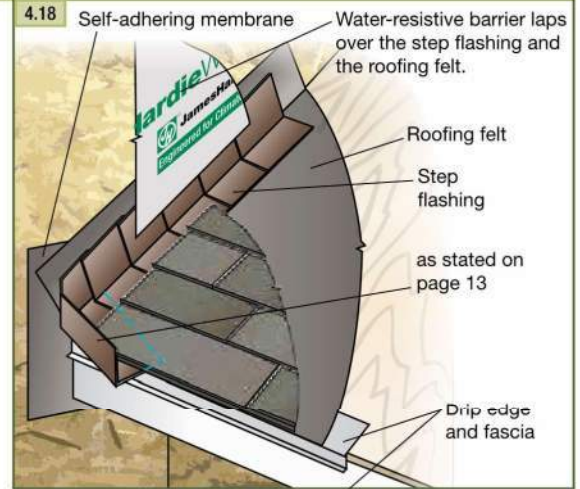
## ROOF-TO-WALL FLASHING

**Not Done**

Due to the volume of water that can run down a sloped roof, one of the most critical flashing details is where a roof intersects with a sidewall. Install a self-healing adhesive-backed membrane along the roof/wall intersection before flashing. The membrane on the wall should extend behind the eaves framing and should be installed before the sub-fascia or trim goes on.

The roof should then be flashed to the wall with step flashing positioned at every shingle course. Where the roof begins at its lowest point, install a kickout flashing to deflect water away from the siding. Kickout flashing can be made by cutting and bending a piece of step flashing at an angle. The water-resistive barrier on the wall should then lap over the step flashing.

There are several companies that sell pre-made kickout flashings that are designed to divert water away from the wall. Below is an example of a preformed polypropylene kickout. Be sure to follow all manufactures installation instructions.



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## WARNING

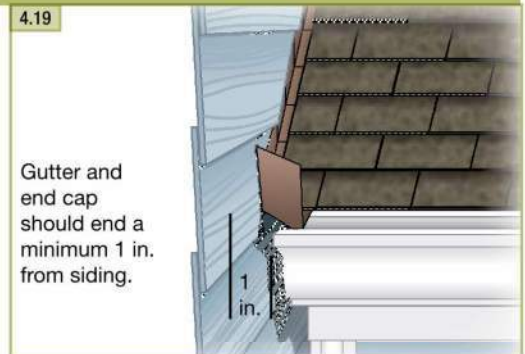
**Caution: The kickout flashing shall be min. 4 in. x 4 in. as required by IRC code R905.2.8.3 and be angled between 100° - 110° to deflect water from dumping behind the siding and the end of the roof intersection**

## GUTTERS

**Not Done**

If gutters are installed, they should not terminate against siding or trim. Maintain a 1-in. clearance between the siding and the gutter end-cap. Kickout flashings should be installed on the roof above to divert roof runoff into the gutters and away from the 1-in. gap.

The amount of water that can be generated from a rain shower or storm can be substantial. Managing the collection and distribution of this water is important over the life of a home.



*Code Reference: "1503.2.1 Locations. Flashing shall be installed at wall and roof intersections, at gutters, wherever there is a change in roof slope or direction and around roof openings..."*

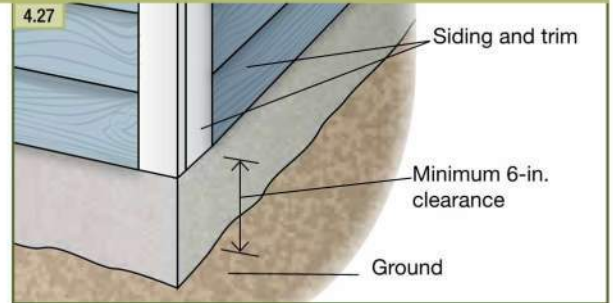
**TIP: James Hardie recommends the use of rain gutters when ever possible.**

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# General Installation Requirements (continued)

## SIDING TO GROUND CLEARANCE

James Hardie products must be installed with a minimum of 6-in. clearance to the ground on the exterior of the building. Clearances greater than 6-in. may be required in accordance with local building codes. Foundations are typically required to extend above the adjacent finished grade a minimum of 6-in. or as required by local building codes.



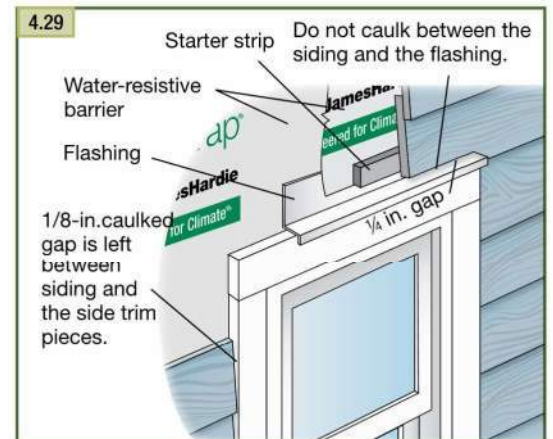
*IBC Code Reference: "1803.3 Site grading. The ground immediately adjacent to the foundation shall be sloped away from the building at a slope of not less than one unit vertical in 20 units horizontal (5-percent slope) for a minimum distance of 10 feet (3048 mm) measured perpendicular to the face of the wall..."*

## SIDING TO FLASHING CLEARANCE

**Not Done**

A 1/4-in. clearance must be maintained between James Hardie siding and trim products and any horizontal flashing.

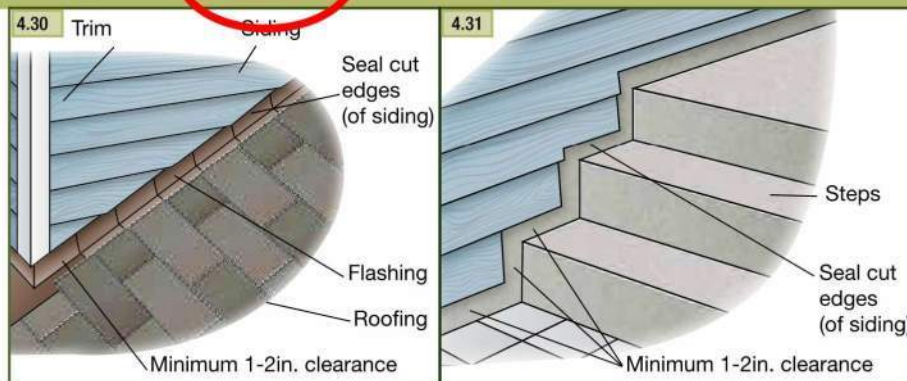
All horizontal flashing should be installed with a positive slope in such a way that it promotes proper drainage and does not allow moisture to pool on top of the flashing.



## SIDING AND TRIM TO SOLID SURFACES

**Not Done**

A clearance of 1 in. to 2 in. must be maintained between James Hardie siding and trim products where they meet roofs, decks, paths, steps, driveways or any other solid surfaces.

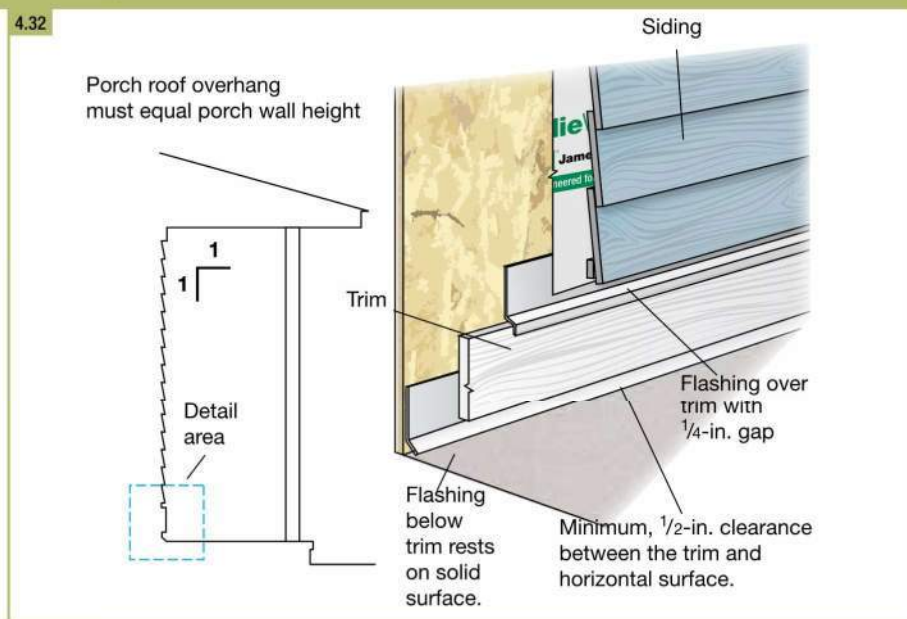


*Code Reference: "1503.2.1 Locations. Flashing shall be installed at wall and roof intersections, at gutters, wherever there is a change in roof slope or direction and around roof openings..."*

*IRC Code Reference: "905.2.8.3 Sidewall flashing. Base flashing shall be continuous or step flashing shall be a minimum of 4 in. in height and 4 in. in width"*

## CLEARANCES FOR SHELTERED AREAS

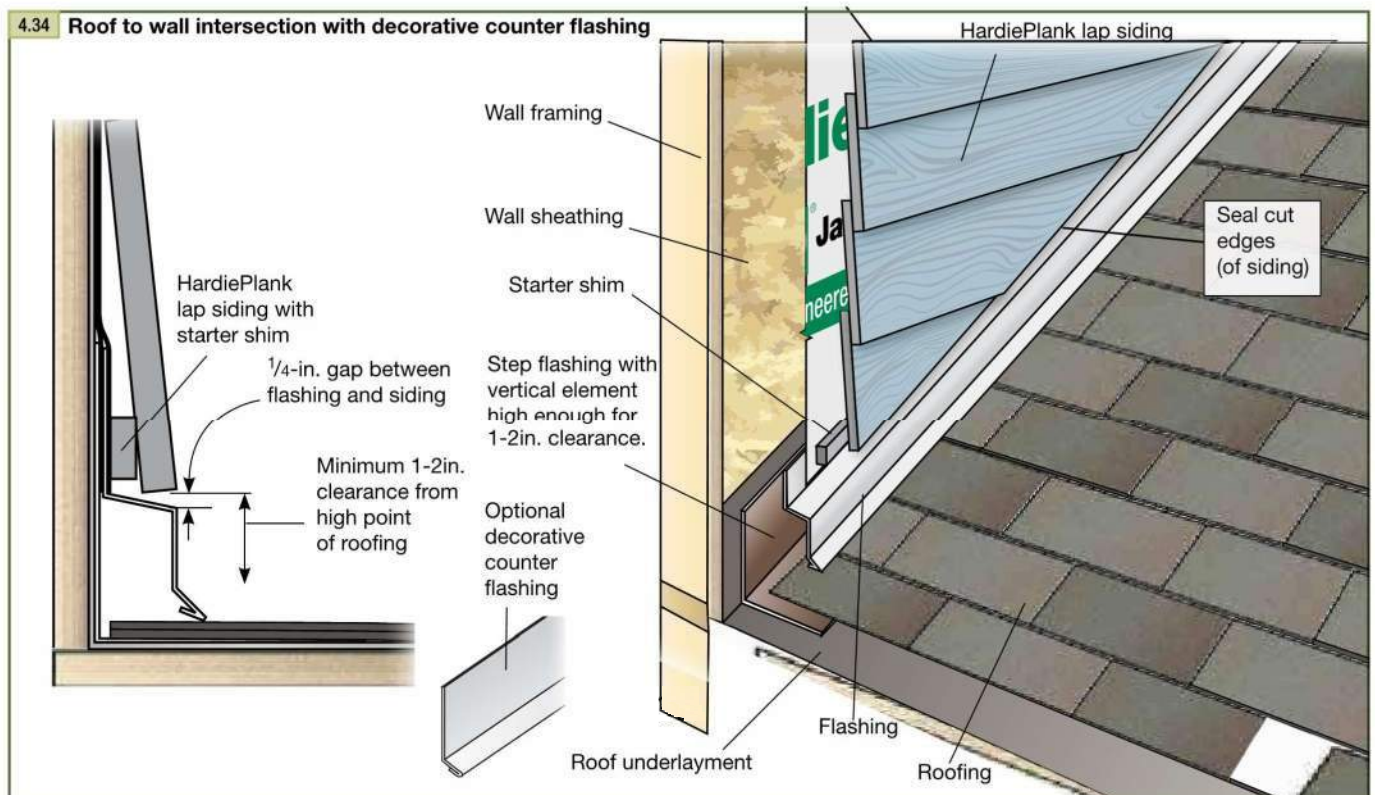
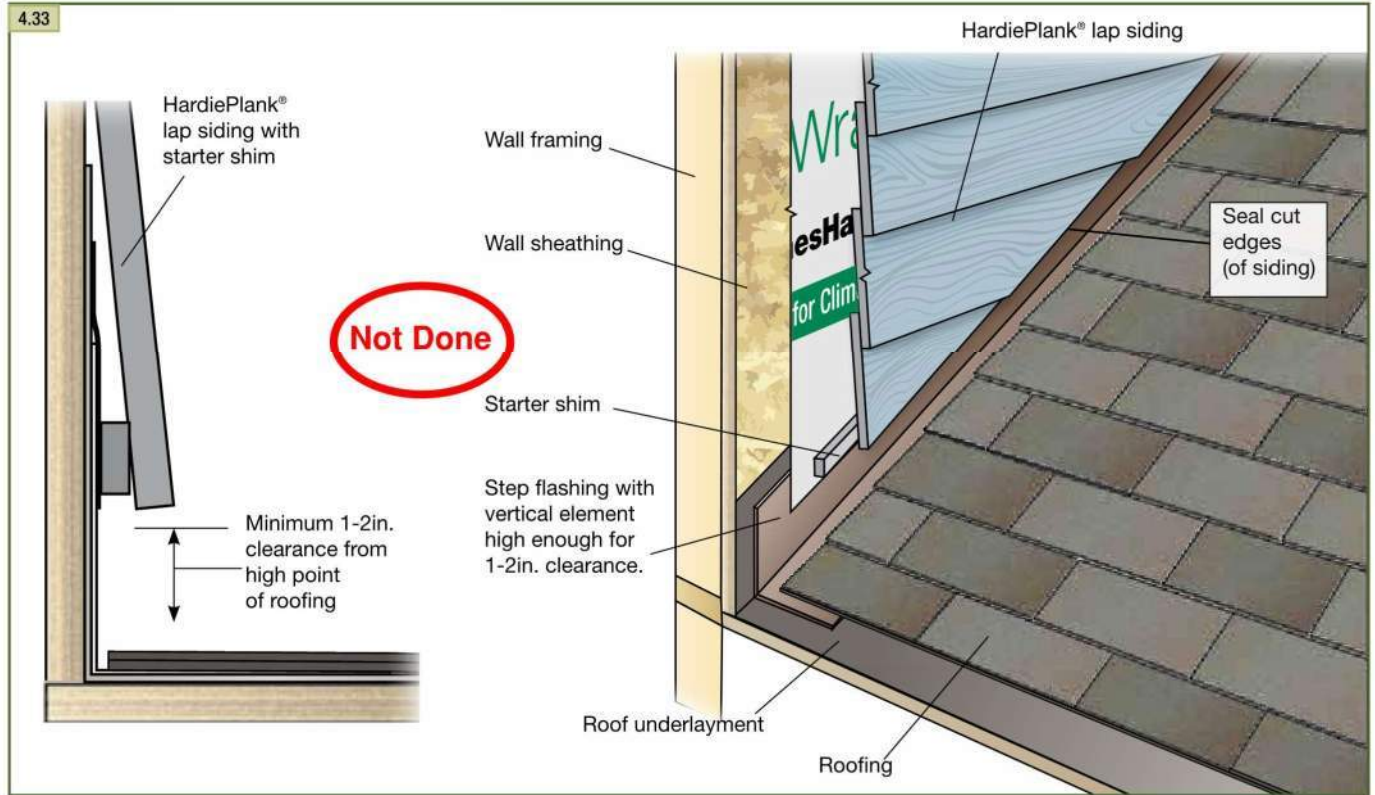
Porches or other structures that maintain a minimum 1:1 ratio of the wall height to the overhang length provide extra protection, which keeps rain and other weather elements away from the siding. These areas may be designated as Sheltered Areas. In these areas, a minimum 1/2-in. clearance is required with appropriate flashing between the bottom of James Hardie trim or siding and solid horizontal surfaces.



**WARNING**  
 James Hardie siding and trim products must not be installed such that they remain in contact with standing water.

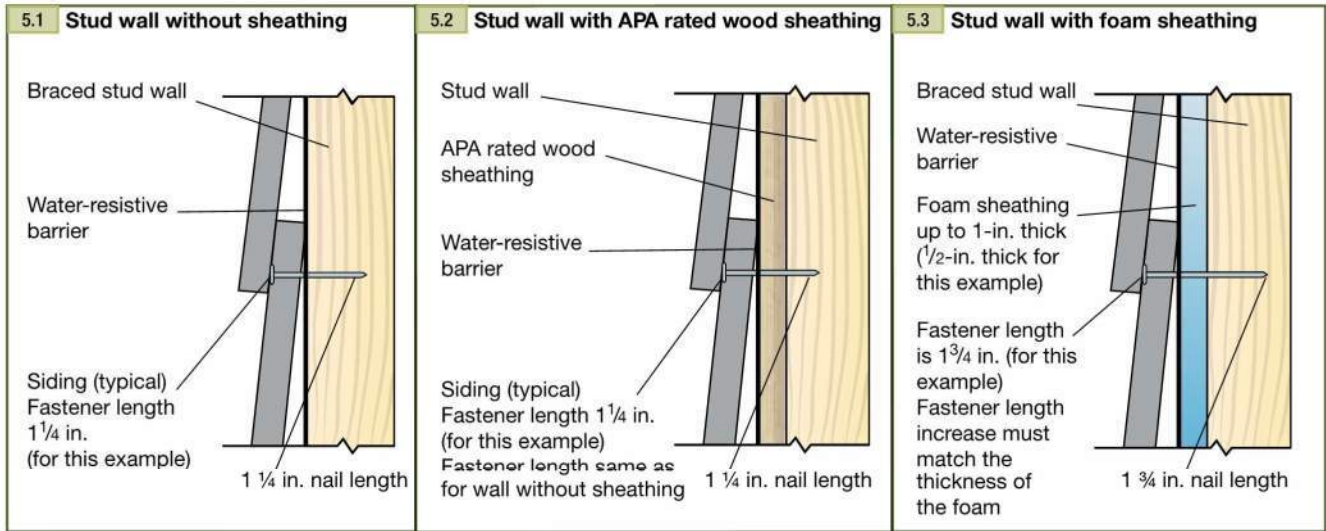
# General Installation Requirements (continued)

Here are examples of details that can help improve the aesthetics of clearance requirements. Check with a design professional and local building officials to ensure that the chosen details are correct for their intended purpose and location.



# General Fastener Requirements

Each product section of the James Hardie Installation Guide contains fastener requirements for that specific product. In general if siding is to be installed over a non-structural sheathing such as foam, gypsum, or builder board, increase the length of the fastener by the thickness of the non-structural sheathing. For example, if a 1 1/4-in. fastener would normally be required for an application, but the siding is being installed over 1/2-in. foam sheathing, increase the fastener length by 1/2-in. to a 1 3/4 fastener length. For siding installation over a framed wall with structural sheathing such as plywood or OSB, the fastener length does not need to be increased.



## WARNING

When installing siding over foam sheathing, care must be taken not to overdrive the nails and compress the foam. The resulting unevenness in the wall could distort the siding and give the wall an unsightly wavy appearance.

## PNEUMATIC FASTENING

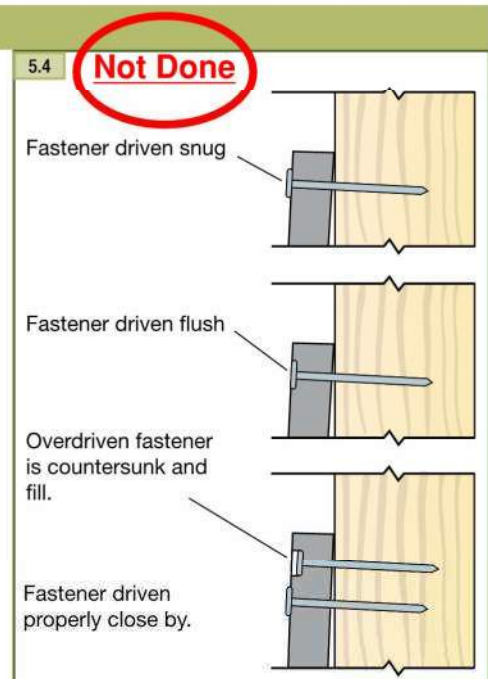
James Hardie® siding and trim products can be hand-nailed or fastened pneumatically. However, fastening with a pneumatic nailer is recommended for speed and consistency. Nails should be driven snug or flush with the surface of the siding.

For pneumatic nailing, set the air pressure so that the nails are driven to the proper depth. A flush mount attachment on the head of the nailer is recommended. If setting the nail depth proves difficult, choose a setting that slightly under-drives the nails. Then drive any under-driven nails snug to the surface with a smooth-faced hammer.

If nails are driven too deep, countersink them with a nail set, and fill, then drive another nail near by to the proper depth. Never use staples to attach James Hardie products.

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**TIP:** Stainless steel fasteners are recommended when installing James Hardie products.



K-25

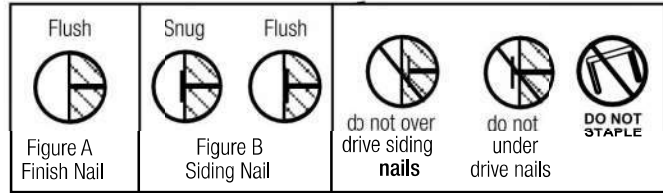
**General Fastening Requirements**

Fasteners must be corrosion resistant, galvanized, or stainless steel. Electro-galvanized are acceptable but may exhibit premature corrosion. James Hardie recommends the use of quality, hot-dipped galvanized nails. James Hardie is not responsible for the corrosion resistance of fasteners. Stainless steel fasteners are recommended when installing James Hardie products near the ocean, large bodies of water, or in very humid climates.

Manufacturers of ACQ and CA preservative-treated wood recommend spacer materials or other physical barriers to prevent direct contact of ACQ or CA preservative-treated wood and aluminum products. Fasteners used to attach HardieTrim Tabs to preservative-treated wood shall be of hot dipped zinc-coated galvanized steel or stainless steel and in accordance to 2009 IRC R317.3 or 2009 IBC 2304.9.5.”

**Pneumatic Fastening**

James Hardie products can be hand nailed or fastened with a pneumatic tool. Pneumatic fastening is highly recommended. Set air pressure so that the fastener is driven snug with the surface of the trim. A flush mount attachment on the pneumatic tool is recommended. This will help control the depth the nail is driven. If setting the nail depth proves difficult, choose a setting that under drives the nail. (Drive under driven nails snug with a smooth faced hammer - Does not apply for installation to steel framing).



**Face Nailing Requirements**

Use 2 in. minimum 16 ga. finish nails to attach HardieTrim boards to wood frame construction. ET&F or equivalent fasteners or screws may be used to attach HardieTrim boards to steel frame construction.

Fastening instructions are similar for all applications. When using finish nails, position nails no closer than 1/2 in. from the edges of the trim and for all other fasteners no closer than 3/4 in. Fasteners must be no closer than 1 in. from ends of trim and spaced a maximum of 16 in. O.C. Ensure trim is adequately fastened.

James Hardie recommends using stainless steel finish nails when installing HardieTrim products.

**Minimum fastener guide for finish nailing:**

	Pre-built corner	Site Built Corners	Other areas (e.g. window trim, and band boards)
4 in.	1 nail every 16 in. to attach boards together + 1 nail every 16 in. each board	2 nails every 16 in.	2 nails every 16 in.
6 in.	1 nail every 16 in. to attach boards together + 2 nails every 16 in. each board		
8 in.	-	3 nails every 16 in.	3 nails every 16 in.
12 in.	-	4 nails every 16 in.	3 nails every 16 in.

Use a 2 in. finish nail to fasten trim together. Longer finish nails may bend.

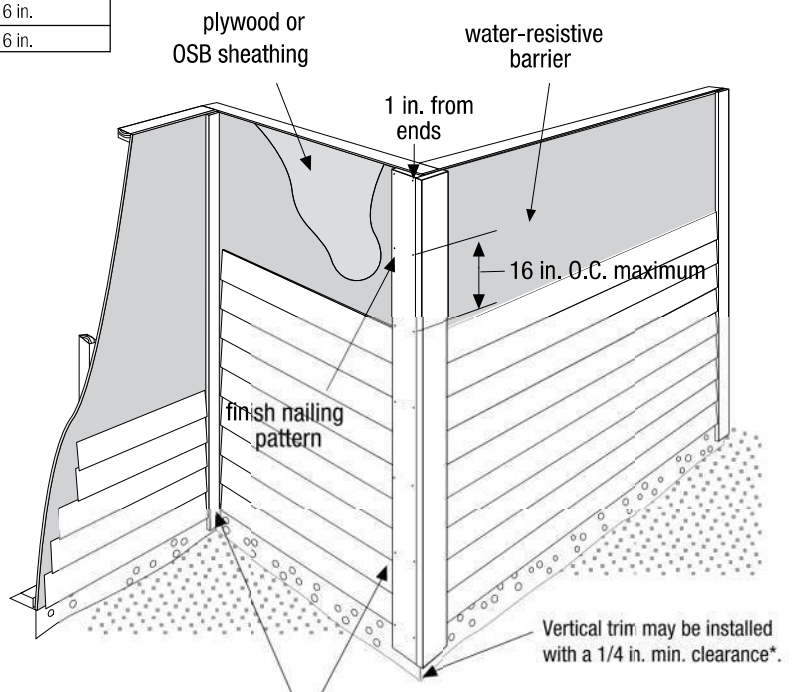


Figure 11

Leave a minimum 1/8 in. gap between the siding and trim, then caulk.



\*Follow all applicable codes when installing HardieTrim boards

# Applying James Hardie® Siding over Continuous Insulation and Non-Nailable Substrates

JANUARY 2018

## TECHNICAL BULLETIN #19



**The guidance and instructions provided in this technical bulletin are valid for and applicable to James Hardie® products only.**

*James Hardie Building Products Inc. makes no warranty or representation with respect the information contained herein for any use other than with James Hardie® products, including but not limited to use with fiber cement siding products made by others or siding products made of other materials.*

**You bear all risk associated with using any of the information contained herein in any way other than with James Hardie products, including in the design or construction of structures with fiber cement siding products made by others or siding products made from other materials.**

**Rainscreen application for panels** - James Hardie requires a 3/8 in. air gap (Rainscreens, Furring, Etc.), when installing HardiePanel on a Multi-Family/ Commercial project. Reference Rainscreen guidelines here: <https://www.jameshardiepros.com/getattachment/e4e7924b-3d85-4ddf-aaa8-ee125dc06ead/exterior-wall-drainage-requirements.pdf>

**Method 1 was not followed!**

### SCOPE

This bulletin summarizes the application of Hardie® Siding by two methods that align with the goal to improve the building's thermal envelope:

- **Method 1** - James Hardie® Siding installed directly over continuous insulation (c.i.) and other non-nailable substrates (e.g. gypsum sheathing) with combined thickness of 1 inch or less
- **Method 2** - James Hardie® Siding installed to furring strips that are attached through the c.i. and other non-nailable substrates (e.g. gypsum sheathing) and to wall framing

Building codes are evolving and require improved building energy efficiency. The Department of Energy (DOE) is working from the code development goals below; these goals directly relate to the building's thermal envelope requirements.

- US Code development goal is 30% energy efficiency improvement in 2012 IECC (relative to 2006)<sup>1</sup>
- US Code development goal is 50% energy efficiency improvement in 2015 IECC (relative to 2006)<sup>1</sup>
- National Energy Code for Housing, in Canada, is to have approximately 25% more efficiency and is to be included as an update to the NBC Part 9 in late 2012.<sup>2</sup>

### CONTENT

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<b>DISCLAIMER</b>	Page 6
<b>Appendix A</b> Reference Material	Page 7
Table 1, James Hardie Product Installation Literature	Page 7
Table 2, Siding Weight	Page 7
Table 3, Softwood Furring Weight	Page 7
Table 4, Design Guidance on Furring Attachment	Page 8
<b>Appendix B</b> Worked Examples	Page 9
<b>Appendix C</b> Background Code Requirements	Page 13

<sup>1</sup> U.S. Department of Energy, Building Technologies Program, 03/05/2012.

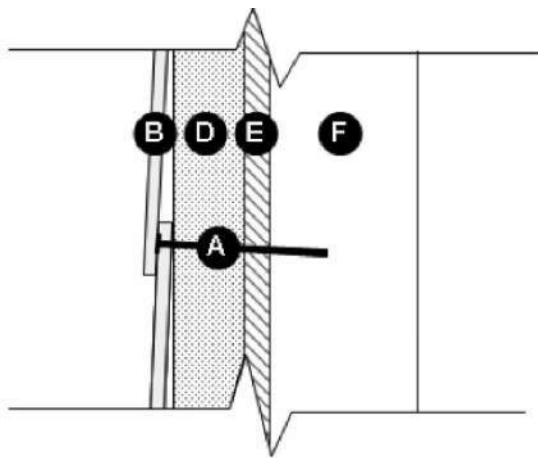
[http://apps1.eere.energy.gov/buildings/publications/pdfs/corporate/ns/webinar\\_residential\\_energycodes\\_20110222.pdf](http://apps1.eere.energy.gov/buildings/publications/pdfs/corporate/ns/webinar_residential_energycodes_20110222.pdf)

<sup>2</sup> National Research Council Canada, 03/05/2012. <http://www.nrc-cnrc.gc.ca/eng/ci/v16n3/1.html>

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**Method 1: Applying Hardie® Siding Directly through C.I. and Non-Nailable Substrates 1 Inches thick and less:**

When applying James Hardie® Siding directly over the combined thickness of foam sheathing (continuous insulation) and other non-nailable substrates (e.g. gypsum sheathing), up to 1 inch thick, the foam sheathing and other non-nailable substrates do not have nail holding capacity. The basic premise of Method 1 is to extend the fastener length by the combined thickness of the non-nailable substrates being used. The fastener length accommodates the thickness of all the non-nailable substrates between the product and the wall framing and maintains the requisite net penetration of the fastener into the framing.

**EXTERIOR WALL COVERING ASSEMBLY**

- A** Siding fastener (nail or screw) (face or blind nail, see relevant installation instructions)
- B** James Hardie Fiber-cement Siding
- D** Thickness of rigid foam sheathing as required
- E** Optional wall sheathing, as required by applicable building code (e.g. gypsum sheathing, WSP, or other)
- F** Wall framing per code (e.g. wood or steel studs)

*Consult water-resistive barrier (WRB) manufacturer for placement of WRB.*

Figure 1: Exterior Wall Assembly for Siding applied directly over foam

**NOTE:** If layer E from Figure 1 above is a non-nailable substrate (e.g. gypsum sheathing), the combined thickness of layers D + E must be 1 inch or less. If greater than 1 inch see Method 2.

**METHOD 1 GUIDANCE**

- Step 1:** Determine the foam sheathing thickness, in inches, needed to meet the code required R-value and wall sheathing wind pressure performance requirements if not used as oversheathing.
- Step 2:** Determine the wind load requirements for the project in accordance with the local building codes.
- Step 3:** Determine the project's wall frame spacing and stud type
- Step 4:** Identify relevant James Hardie Product Literature (see Table 1, page 7).
- Step 5:** Determine the appropriate James Hardie Siding fastener for the project's wind load requirements. Wind pressure ratings information is available in the relevant ICC-ES product evaluation report or technical data sheet and can be found in the "Code Approvals" section of Table 1, page 7.
- Step 6:** Ensure the Fasteners selected are available in the necessary length

**i. For wood studs:**

Add the combined non-nailable substrate thickness to the selected fastener length, in Step 5, and determine the appropriate fastener length needed to apply James Hardie siding directly over max 1 inch non-nailable substrates.

**ii. For metal studs (with screws):**

The length of the minimum #8 screw shall be increased as necessary to ensure it will penetrate through the metal studs, 20 gauge (33 mil) minimum to 16 gauge (54 mil) maximum, by 3 full threads when applying James Hardie siding directly over max 1 inch thick non-nailable substrates; screw head diameter shall be as required from Step 5.

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**iii. For metal studs (with knurled shank hardened pins):**

The length of the pin shall be increased as necessary to ensure it will penetrate through the metal studs, 20 gauge (33 mil) minimum to 16 gauge (54 mil) maximum, by at least ¼ inch when applying James Hardie siding directly over max 1 inch thick non-nailable substrates (pin head diameter shall be as required by Step 5). Refer to fastener/tool manufacturer for fastener installation guidance for use with James Hardie® Siding.

METHOD 1 GUIDANCE (CONTINUED)

Step 7: Install the James Hardie Siding in accordance with the Product Installation Literature (see Table 1).

- Attach the siding to the framing members.
- Caution should be taken as irregularities and unevenness in framing, sheathing, foam and other wall assembly components, including under driven nails, can telegraph through to the finished siding and trim. These irregularities should be corrected before the siding is installed. When using continuous insulation (foam sheathing), avoid over-driving fasteners, which can result in dimpling of the siding due to the compressible nature of the foam sheathing. Extra caution is necessary if power driven fasteners are used for attaching siding over foam sheathing, make sure gun pressures are adequate to prevent overdriving fasteners.

**Note:** *We recommend performing a small siding mockup prior to installation to ensure the fastening practice and/or fastening tools are properly adjusted. Fasteners must be installed in a manner to avoid overdriving, yet snug enough to remove gaps between the connected parts.*

- Foam sheathing shall have a minimum compressive strength of 15 pounds per square inch (psi) in accordance with ASTM C578 or ASTM C1289.
- Transfer the frame layout directly from wall framing to each attachment of the outermost non-nailable substrate or
- Snap vertical chalk lines onto the outermost non-nailable substrate at each stud location after it has been installed (some foam products may be available with pre-marked fastener lines).
- When installing trim on inside corners, outside corners, and around wall penetrations (e.g. windows, doors, vents), extra attention is needed to install the trim and accommodate the wall framing offset that the foam thickness creates.
- If you have questions on trim layout contact James Hardie Technical Services - 1-800-942-7343.



**Method 2: Applying Hardie® Siding to Furring Installed Over Non-Nailable Substrates up to 4 inches thick:**

When applying James Hardie Siding to furring strips, which is applied on foam sheathing or other non-nailable substrates (e.g. gypsum sheathing) with a combined thickness up to 4 inches thick, the foam sheathing and other non-nailable substrates do not have nail holding capacity. For that reason, the designer needs to reestablish the siding's nail holding surface. When applying by this method, the nail holding substrate for the cladding is the furring strips. The basic premise of Method 2 is to reestablish the nail base overtop the foam sheathing by installing a furring that has sufficient thickness to accommodate the James Hardie® Siding fastener.

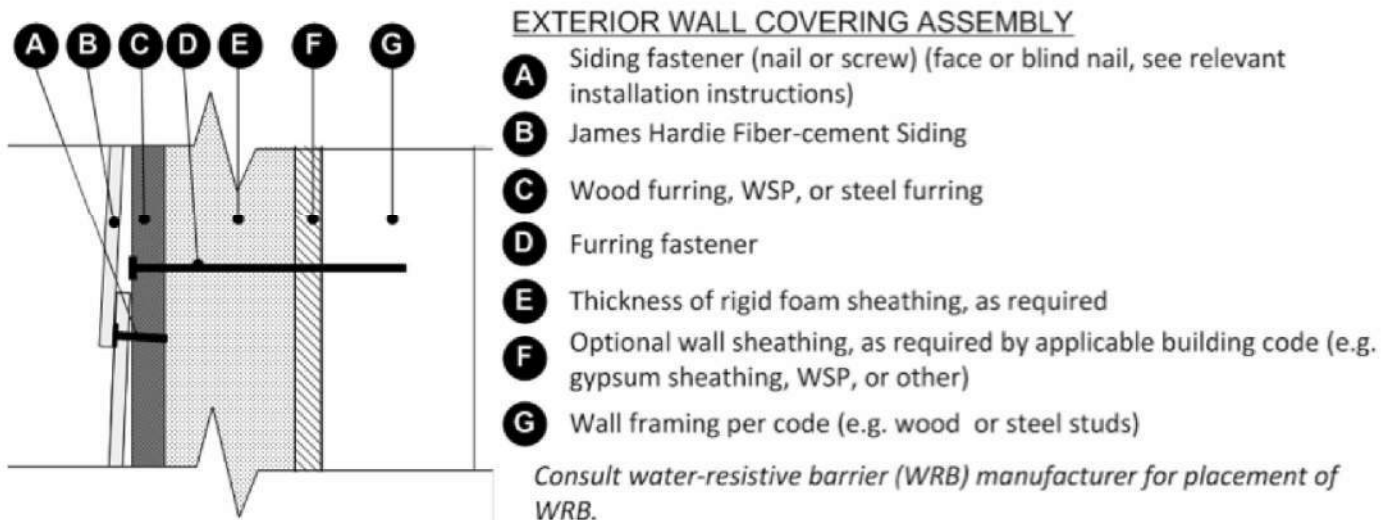


Figure 2: Exterior Wall Assembly for Siding applied to Furring

**NOTE:** If layer F from Figure 2 above is a non-nailable substrate (e.g. gypsum sheathing), the combined thickness of layers E + F must be less than 4 inches.

**METHOD 2 GUIDANCE**

**Step 1:** Determine the foam sheathing thickness, in inches, needed to meet the code required R-value.

**Step 2:** Determine the wind load requirements for the project in accordance with the local building codes.

**Step 3:** Determine the project's wall frame spacing and stud type.

**Step 4:** Identify relevant James Hardie Product Literature (see Table 1).

**Step 5:** Determine the appropriate James Hardie Siding fastener for the project's wind load requirements. Wind pressure ratings information is available in the relevant ICC-ES product evaluation report or technical data sheet and can be found in the "Code Approvals" section of (Table 1).

**NOTE:** The fastener length and stud type will determine the furring thickness and furring type in Step 6.

**Step 6:** Select the appropriate furring material

**NOTE:** the National Building Code (NBC) in Canada may contain furring (strapping) requirements that will take precedence over the guidance below.

- **For metal furring,** The metal furring must be 20 gauge min (33 mil) to 16 gauge max (54 mil), with a dimension that satisfies the installation requirements.
  - NOTE:** When installing steel Z-girts, be sure to fasten close to the Z-girt spine when applying panel fasteners. This helps prevent deflection which can result in incomplete fastening and gaps between the panel and the furring.
- **For wood furring,** the wood furring thickness will be dependent on the fastener selected. The wood furring thickness is equal to the net penetration of the fastener. As a best practice use wood furring that is nominally 4 inches wide. The wood furring specific gravity shall be equivalent to the reference wood stud specific gravity in the James Hardie Installation Literature or Product Evaluation Report.

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**SHINGLE  
INSTALLATION**

Start at either rake and lay in either direction

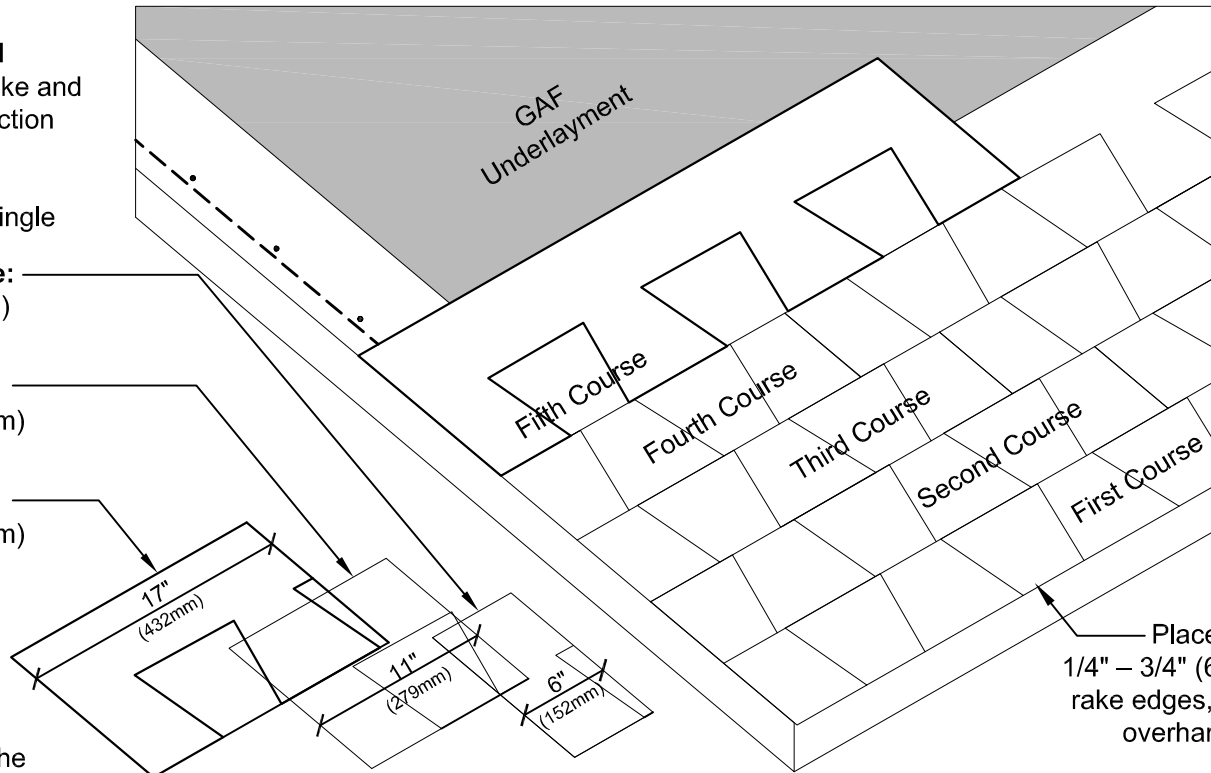
**First Course:**  
Start with full shingle

**Second Course:**  
Trim 6" (152mm)  
off first shingle

**Third Course:**  
Trim 11" (279mm)  
off first shingle

**Fourth Course:**  
Trim 17" (432mm)  
off first shingle

**Remaining  
Courses:**  
Repeat the  
1st - 4th course  
instructions on the  
remaining courses,  
starting the fifth course with a full shingle.



**NOTES:**

1. Continue each course with whole shingles.
2. Strike a chalk line about every 6 courses to check parallel alignment with eaves.

Place first course of shingles 1/4" – 3/4" (6–19mm) over eave and rake edges, covering starter course overhang, to provide drip edge.

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BRAND SERIES

**TIMBERLINE  
SERIES**  
Lifetime Shingles

**SHINGLE INSTALLATION DETAIL**

DETAIL NUMBER

**04**

REVISION DATE

1-01-12

SCALE

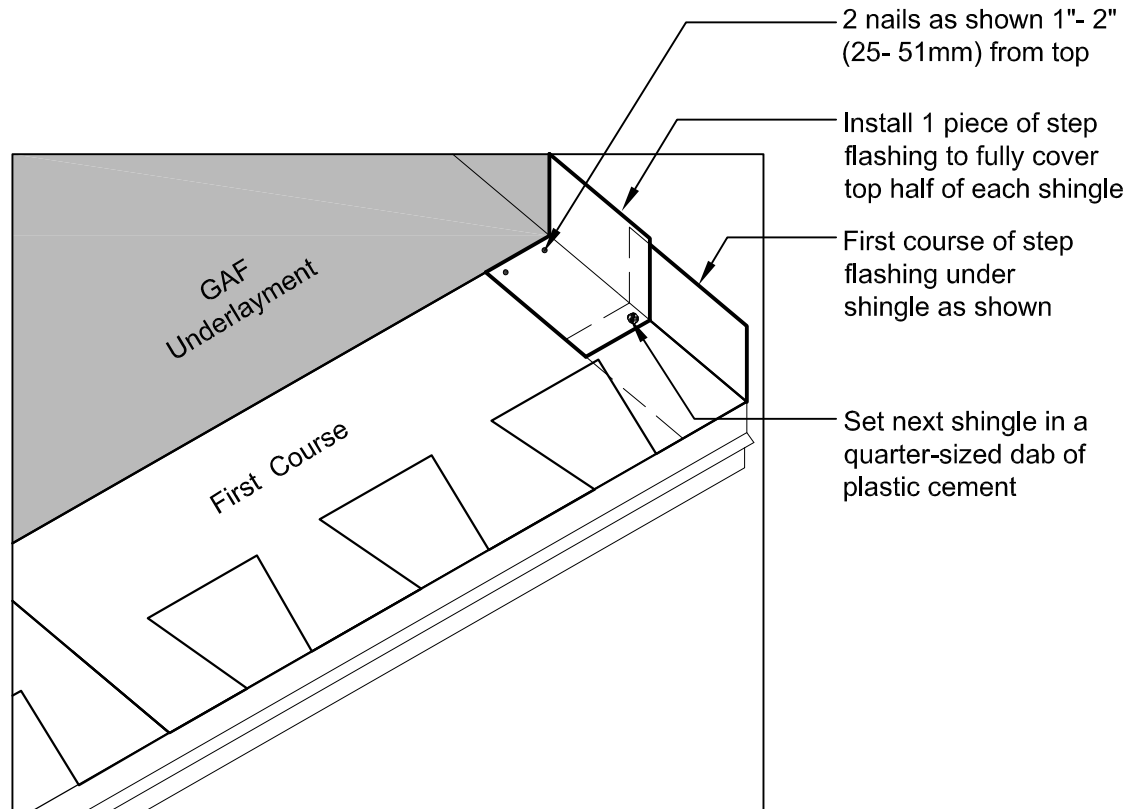
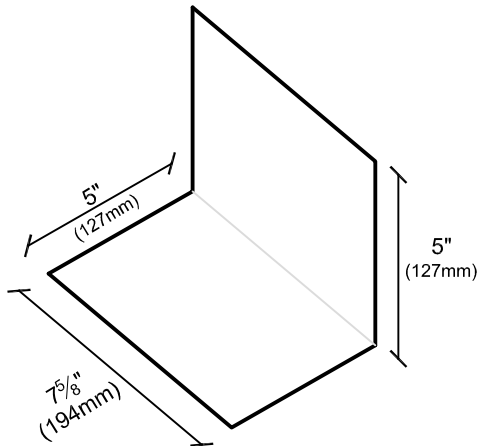
N.T.S

137

DETAIL REFERENCE

**SS-TS**

Step Flashing for Metric Size Shingles 13-1/4" x 39-3/8" (337mm x 1000mm) with 5-5/8" (143mm) Exposure



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1-01-12

SCALE  
N.T.S

# STEP FLASHING DETAIL

138

DETAIL NUMBER

**05**

DETAIL REFERENCE

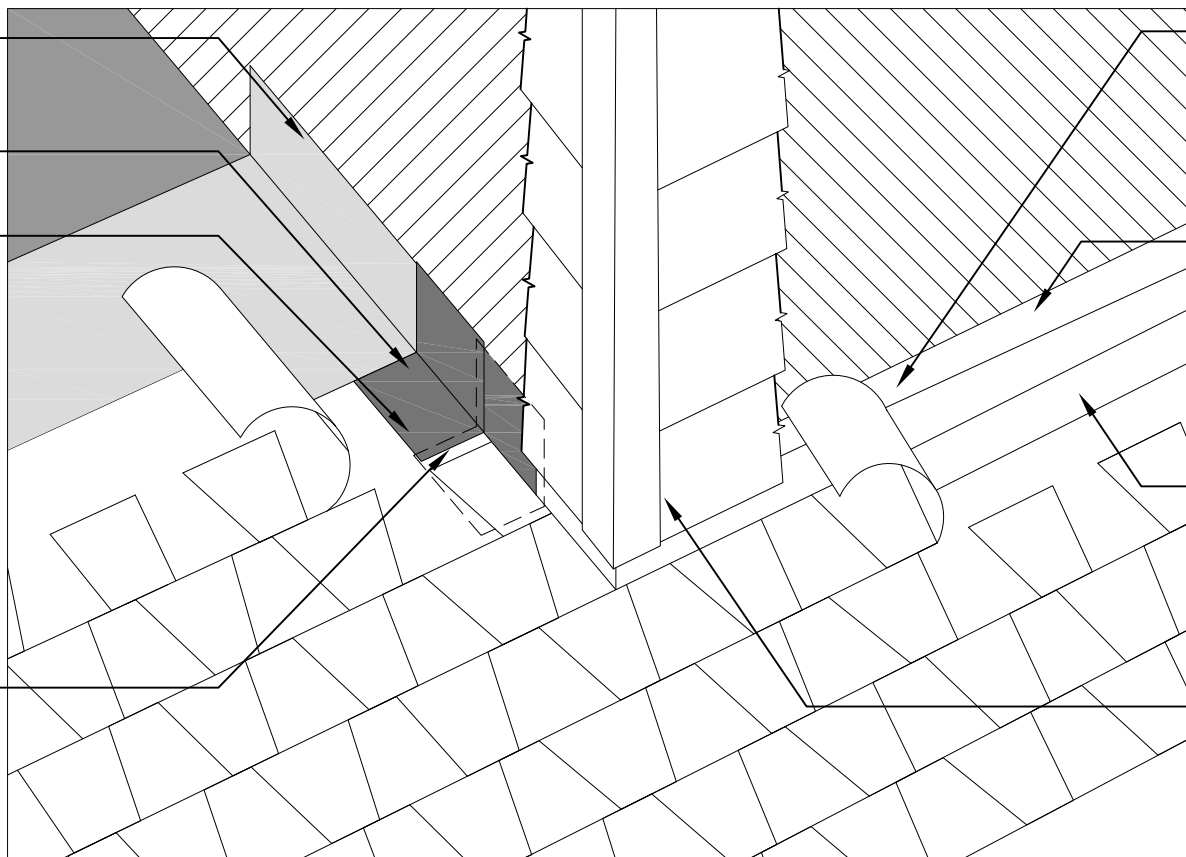
**SS-TS**

Extend GAF leak barrier at least 5" (127mm) up wall.

2 nails per step flashing

Place metal step flashing just upslope from exposed edge of shingle and extend 5" (127mm) over underlying shingle and 5" (127mm) up the vertical wall.

Step flashing pieces overlap each other 2" (51mm)



Cover metal flashing with cut shingle. Do NOT nail shingle, install with asphaltic plastic cement.

Extend GAF leak barrier at least 5" (127mm) up wall

Metal flashing (Nailed to the deck, NOT to the vertical wall) extend up wall at least 5" (127mm)

Siding/cladding must be at least 2" (51mm) above the roof surface and covering flashing at least 2" (51mm).

K-33



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SCALE

N.T.S

## WALL FLASHING DETAIL

139

DETAIL NUMBER

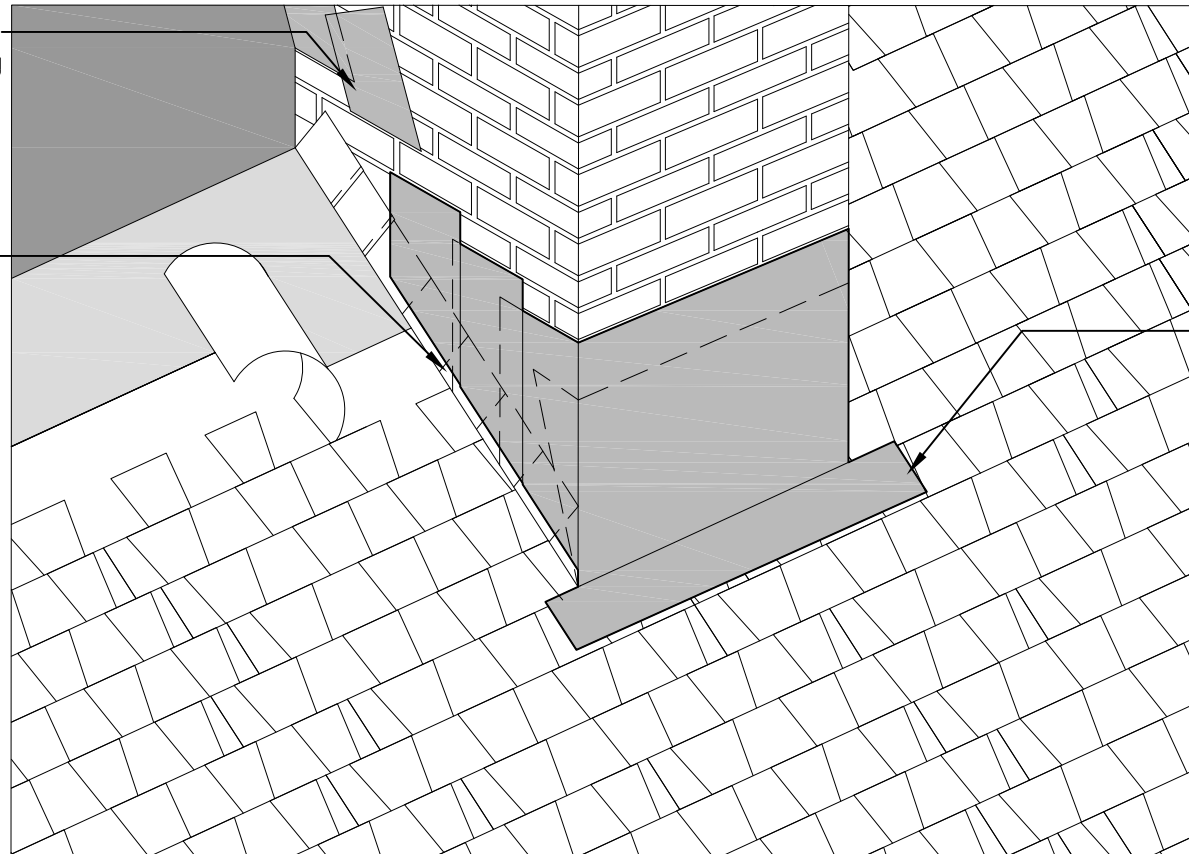
**06**

DETAIL REFERENCE

**SS-TS**

Extend non-corroding metal counter flashing over base flashing.

Use one piece metal non-corroding step flashing for each course. Seal overlying shingles to step flashing with asphalt plastic cement.



At least 4"  
(102mm)

K-34



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SERIES**  
Lifetime Shingles

REVISION DATE

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SCALE

N.T.S

# CHIMNEY FLASHING DETAIL

140

DETAIL NUMBER

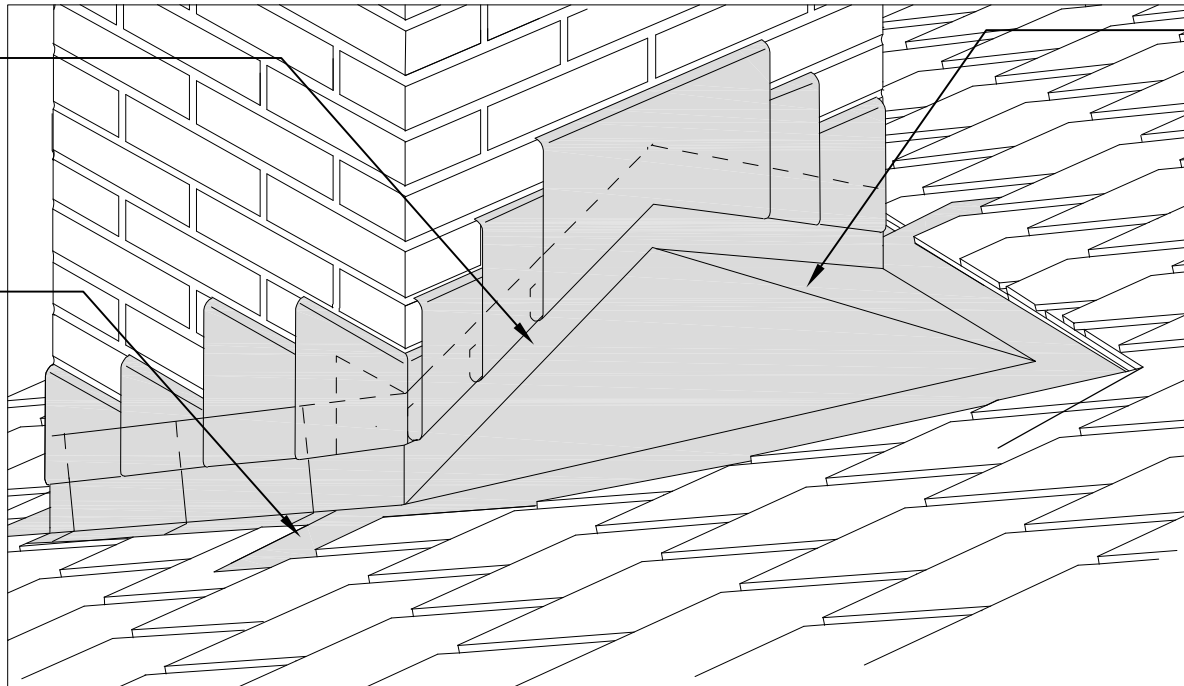
**07**

DETAIL REFERENCE

**SS-TS**

Cricket should extend at least 6" (152 mm) up the back of the chimney.

Seal shingles to metal flange with asphalt plastic cement.



Cricket ridge should be at least 12" (305mm).

Cricket flange should be at least 18" (457mm) up roof deck.

K-35



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SERIES**  
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REVISION DATE

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SCALE

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## CHIMNEY CRICKET FLASHING DETAIL

141

DETAIL NUMBER

**08**

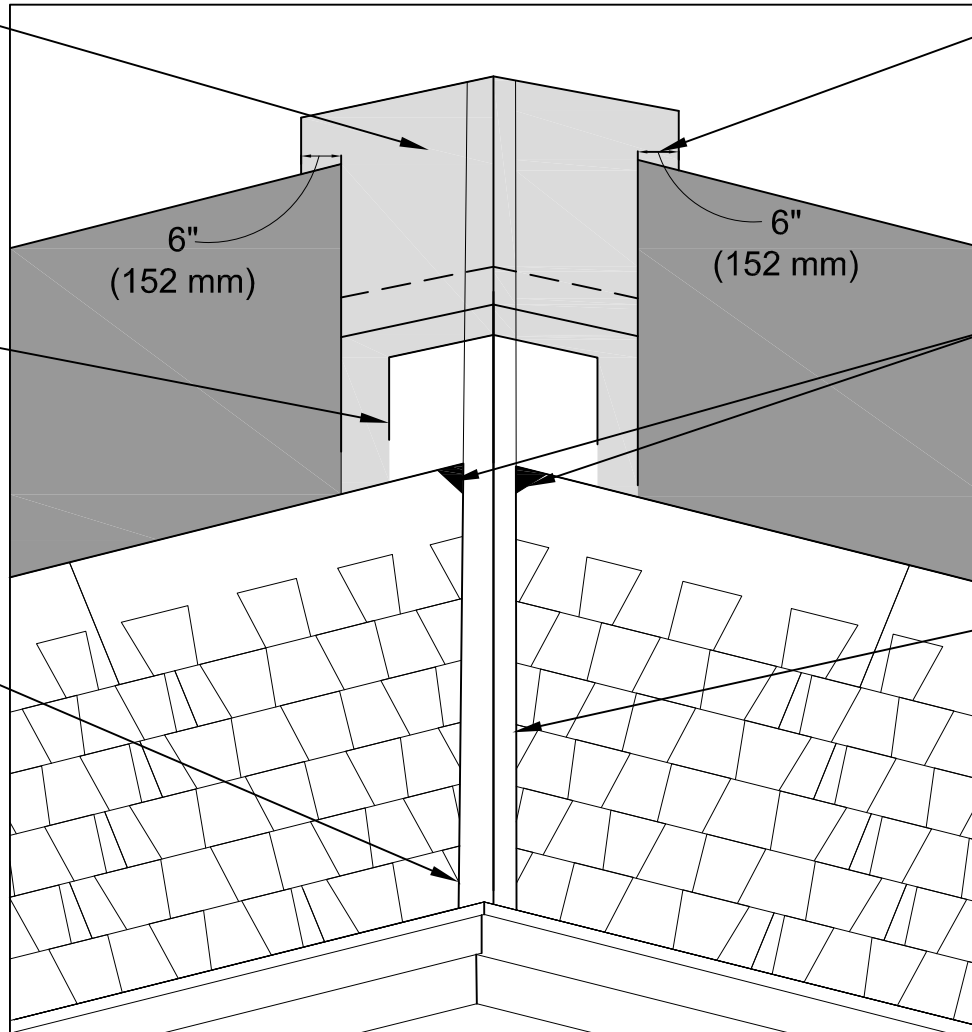
DETAIL REFERENCE

**SS-TS**

Center full width roll of GAF leak barrier. Do not place fasteners within 6" (152mm) of center line. Horizontal laps 6" (152mm) min.

Center valley metal, overlap metal horizontal laps a minimum 12" (305mm) and seal by embedding them in asphalt plastic cement.

Shingles should be separated 6" (152mm) at top of valley. Separation must increase 1/8" (3mm) per foot towards eaves to handle increasing water volume. Snap chalk lines to ensure shingles diverge properly in valley.



Carry GAF underlayment at least 6" (152mm) over GAF leak barrier.

Clip the top corners of shingles 45° to keep water flow toward the valley center.

Overlap shingles at least 4" (102mm) over 20" (508mm) wide valley metal. Embed the shingle ends in asphalt plastic cement to seal the shingles to the metal and keep water from running under them.

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**TIMBERLINE**  
**SERIES**  
Lifetime Shingles

REVISION DATE  
1-01-12

SCALE  
N.T.S

# OPEN VALLEY DETAIL

142

DETAIL NUMBER

**09**

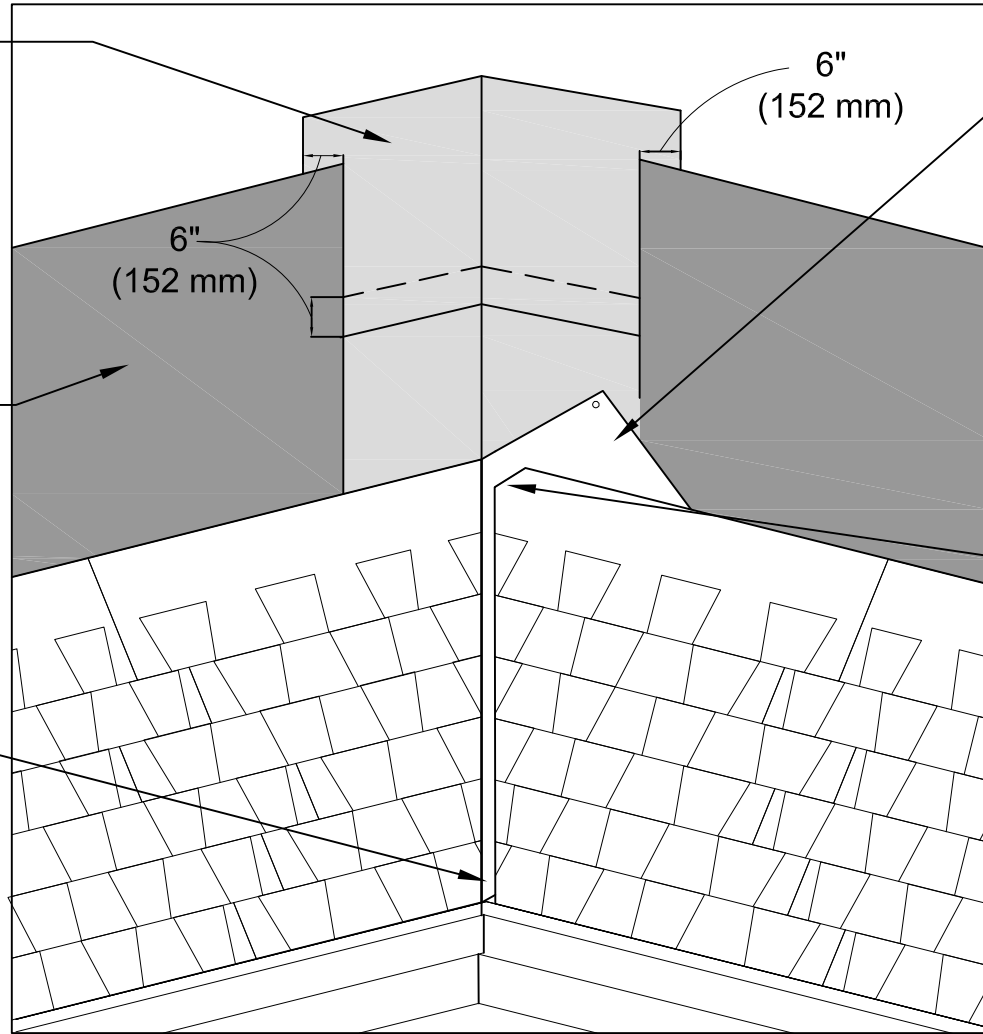
DETAIL REFERENCE

**SS-TS**

Center full width roll of GAF leak barrier. Do not place fasteners within 6" (152mm) of center line. Horizontal laps must be at least 6" (152mm).

Carry GAF underlayment at least 6" (152mm) over GAF leak barrier.

Extend starter strip across valley at least 12" (305mm) and weave with opposite side starter strip shingle.



Extend end of shingle at least 12" (305mm) beyond valley center line. Nail, putting extra fastener in top corner of shingle.

Overlying shingles must be cut so they are 2" (52mm) away from valley center line. Clip shingle corners 45° to keep water flow in the valley center. Seal the valley shingles to each other using asphalt plastic cement.

K-37



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**SERIES**  
Lifetime Shingles

REVISION DATE  
1-01-12

SCALE  
N.T.S

## CLOSED VALLEY DETAIL

143

DETAIL NUMBER

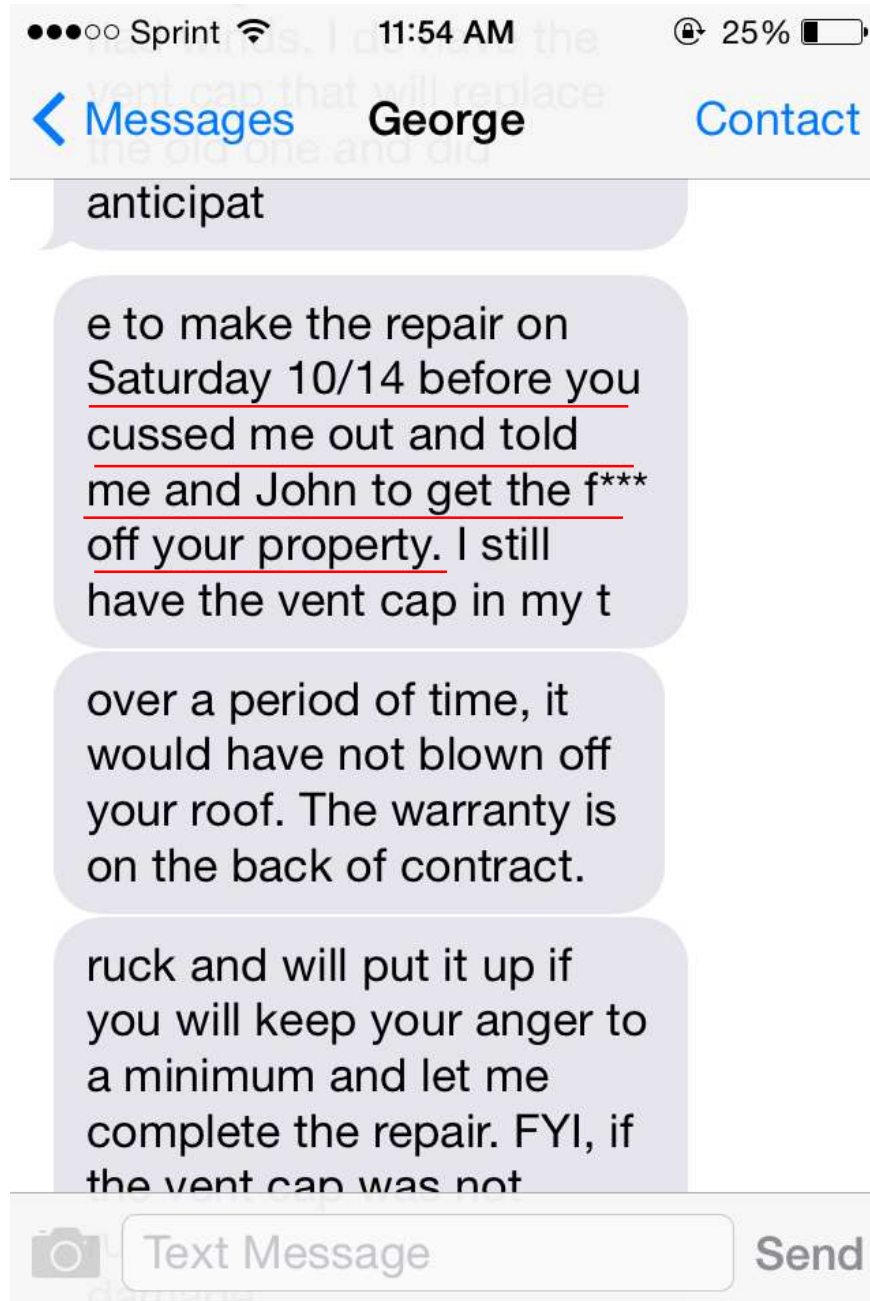
**10**

DETAIL REFERENCE

**SS-TS**

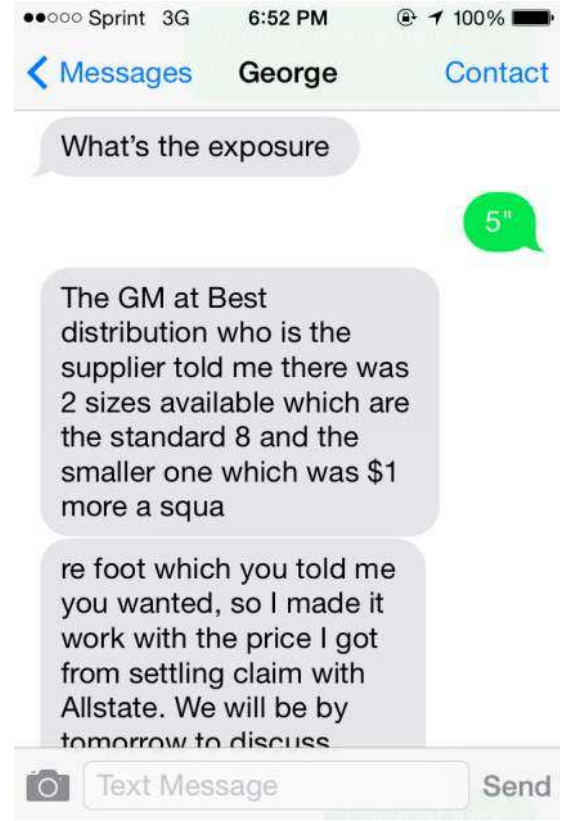
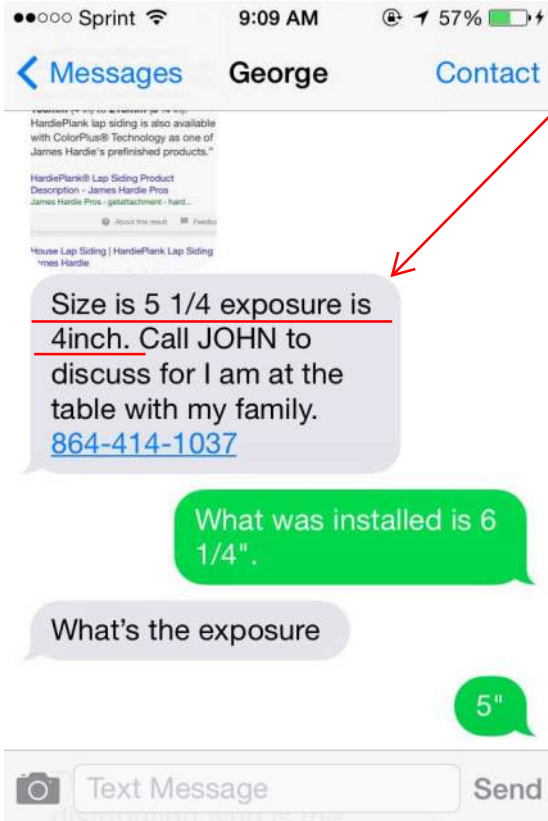
**Exhibit L**  
**Mr. George Huth, et al, Texts**

**PROOF OF WHO AND WHEN  
PLAINTIFF RAN "THEM OFF"**



**IS ATTORNEY RESPONSIBLE FOR LYING?**

**PROOF OF WHAT WAS TO BE INSTALLED  
HORNBECK CHANGED SIZE TO SAVE MONEY**



The following chart shows there are 9 sizes.

**COVERAGE CHART/ESTIMATING GUIDE**

Number of 12 ft. planks, does not include waste

COVERAGE AREA LESS OPENINGS	HARDIEPLANK® LAP SIDING WIDTH										
	SQ (1 SQ = 100 sq.ft.)	(exposure)	5 1/4 4	6 1/4 5	7 1/4 6	7 1/2 6 1/4	8 6 3/4	8 1/4 7	9 1/4 8	9 1/2 8 1/4	12 10 3/4
1			25	20	17	16	15	14	13	13	9
2			50	40	33	32	30	29	25	25	19
3			75	60	50	48	44	43	38	38	28
4			100	80	67	64	59	57	50	50	37
5			125	100	83	80	74	71	63	63	47
6			150	120	100	96	89	86	75	75	56
7			175	140	117	112	104	100	88	88	65
8			200	160	133	128	119	114	100	100	74
9			225	180	150	144	133	129	113	113	84
10			250	200	167	160	148	143	125	125	93
11			275	220	183	176	163	157	138	138	102
12			300	240	200	192	178	171	150	150	112
13			325	260	217	208	193	186	163	163	121
14			350	280	233	224	207	200	175	175	130
15			375	300	250	240	222	214	188	188	140
16			400	320	267	256	237	229	200	200	149
17			425	340	283	272	252	243	213	213	158
18			450	360	300	288	267	257	225	225	167
19			475	380	317	304	281	271	238	238	177
20			500	400	333	320	296	286	250	250	186

This coverage chart is meant as a guide. Actual usage is subject to variables such as building design. James Hardie does not assume responsibility for over or under ordering of product.

Since John Hornbeck has decided not to repair the deficiencies in the siding installation on my house after he said he would on 10/18/17 and asking me to

HORNBECK RENIGED ON HIS PROMISE

"trust him" which I did, I have no choice but to pursue immediate legal action. Please do not contact me. Any contact should be with my attorney Mr. Tra

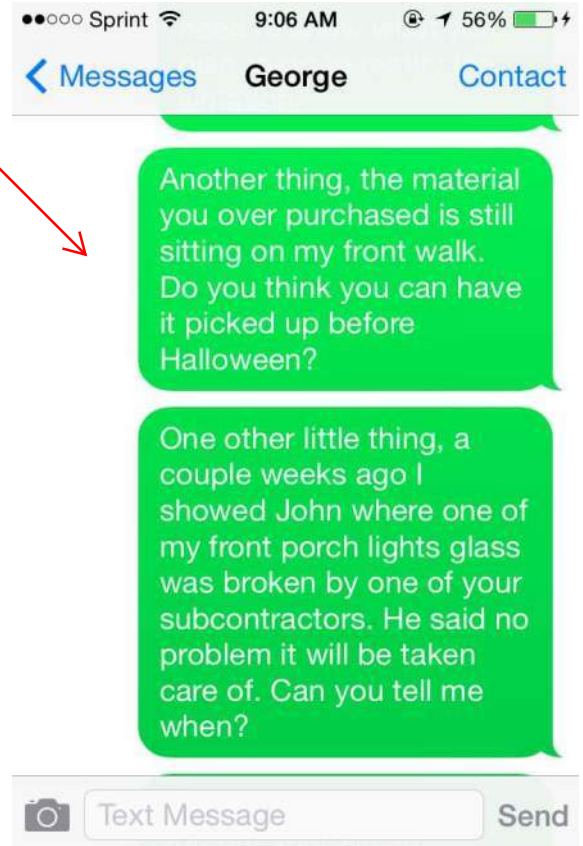
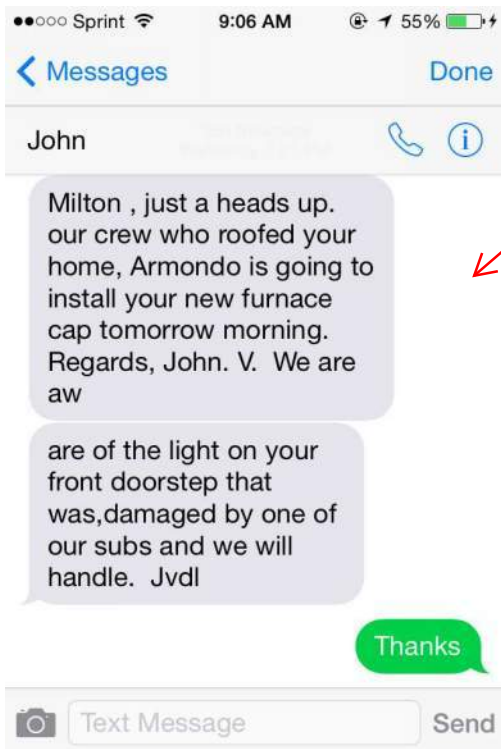
vis Bain at King Law Offices [\(864\) 877-3355](tel:8648773355).



Text Message

Send

NEVER  
DONE



L-5



Wed, Oct 18, 9:51 AM

John

Milton. Please expect a call from John Hornbeck shortly to arrange a time for your meeting tomorrow. Also we will be asking our hardi plank installation crew to be present if any adjustments are needed based on the inspection. Take care, John v

NOT DONE

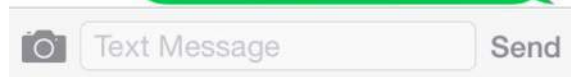


OK



Thu, Oct 26, 3:35 PM

Since John Hornbeck has decided not to repair the deficiencies in the siding installation on my house after he said he would on 10/18/17 and asking me to "trust him" which I did, I have no choice but to pursue immediate legal action. Please do not contact me. Any contact should be with my attorney Mr. Travis Bain at King Law Offices (864) 877-3355.



Sat, Oct 21, 9:12 AM

Milton. Good morning. I was shocked to see how many nails You picked up in your yard. I remember telling you I would use our magnet after Armondo was do

NEVER DONE

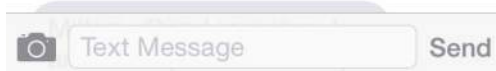


ne roofing and I obviously forget to do it as evidenced by all the nails you collected. I sincerely apologize Milton. Regards John v

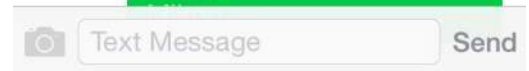
HORNBECK RENIGED ON THIS AS WELL



Sun, Oct 22, 11:25 AM



I think of things at the strangest times. Anyway I want to ask for a favor. The next time you see George let him know I apologize for saying he didn't know what he was doing when he ordered the Hardie Plank. John Hornbeck told me George didn't buy the Hardie Plank he did. I said you mean your company purchased it. He said no, he actually placed the order. So he didn't know what he was doing not George. Please apologize. Thanks



Below Is A Copy Of An Email Sent To John Hornbeck On 10/21/2017.



Milton Gatlin

Sat 10/21/2017, 10:17 PM

johnhornbeck@customcastles.net



john,

Since you want return my phone calls I thought I would try sending an email. Will you please send me a copy of a paid invoice for the amount I paid to you on 10/20/2017 (\$8,200.00). As you know I need the paid invoice to be able to collect from my insurance company. Of course I have already requested this in the voicemails I left you. You can send it by return email or text message.

Another question to you is why have you decided not to make the corrections to the non compliant work performed by Custom Castles on my house that you promised to make when you were at my home on 10/19/2017. You agreed to make the corrections and said you had trusted me so now I should trust you and you asked me to make a payment, which I did on 10/20/2017. Now according to Jeffery (after you cashed my check) you told him on 10/21/2017 you know nothing of the corrections. If you remember, in a follow up phone call (before I gave you the check) I let you know the material manufacturer confirmed the deficiencies we agreed on and I let you know I had a list I could send either by email or text message. You asked me to send it to you by text message so you could forward it to Jeffery. I sent it to you but Jeffrey says you never sent it to him. Why not? I hope this is all a misunderstanding and you don't renege on the promises you made.

Regards,  
Milton Gatlin

Sent from [Mail](#) for Windows 10

**HORNBECK NEVER REPLIED**

## **Exhibit M**

### **Siding Installer's Check**

**CHECK PAID TO SIDING INSTALLERS ON THE DAY**  
**ATTORNEY SAID PLAINTIFFS RAN THEM OFF**

SIDING INSTALLERS STAYED AND WORKED ON  
 PLAINTIFFS' LAWN RECONSTRUCTION AFTER HORNBECK  
 TOLD THEM HE WASN'T PAYING FOR ANY CORRECTIONS  
 IN THE SIDING INSTALLATION

MILTON A GATLIN  
 MARLA S GATLIN  
 105 SILVER PINE CT  
 GREER, SC 29650-3420

1003  
 67-160/532

DATE 10-21-17

PAY TO THE ORDER OF Alejandro Sanchez \$ 400.00  
Four hundred & No/100 DOLLARS

BRANCH BANKING AND TRUST COMPANY  
 1-800-BANK BBT BBT.com

Investor's Deposit Account

FOR Lawn Work Milton A Gatlin

⑆053201607⑆0005225171450⑆01003

Seq: 119  
 Batch: 073639  
 Date: 10/23/17

Cash Check  
 PAS MXXXXXXXXXXXX

10/23/2017 13:48  
 223020982561  
 00004  
 CC 7310300 TR 00004  
 TPS: Atlanta ET  
 125-205 GB Circle BC SC2.523

10/23/17 19 10/23/17  
 6710139 50570139

03/18 03/15  
 \$400.00

Alejandro Sanchez

**Exhibit N**

**Listed Defendants**

# Initial Summons & Complaint Header

## All Three Defendants Were Included

STATE OF SOUTH CAROLINA )	IN THE COURT OF COMMON PLEAS	ONICALLY FILED - 2018 Feb 07 10:38 PM - GREENVILLE
)	THIRTEENTH JUDICIAL CIRCUIT	
COUNTY OF GREENVILLE )	C.A. NO.: 2018-CP-23-	
Milton A. Gatlin and Marla S. )		
Gatlin, )		
Plaintiffs, )		
)		
vs. )	<b>SUMMONS</b>	
)		
John M. Hornbeck III, )		
Custom Castles Roofing and )		
Construction, Inc. and Custom )		
Castles Construction, LLC )		
<u>Defendants.</u> )		

STATE OF SOUTH CAROLINA )	IN THE COURT OF COMMON PLEAS	DAILY FILED - 2018 Feb 07 10:38 PM - GREENVILLE
)	THIRTEENTH JUDICIAL CIRCUIT	
COUNTY OF GREENVILLE )	C.A. NO.: 2018-CP-23-	
Milton A. Gatlin and Marla S. )		
Gatlin, )		
Plaintiffs, )		
)		
vs. )	<b>COMPLAINT</b>	
)		
John Hornbeck, III, )		
Custom Castles Roofing and )		
Construction, Inc. and Custom )		
Castles Construction, LLC )		
<u>Defendants.</u> )		

**Exhibit O**  
**Payments**

**PROOF INSURANCE CHECK WAS NOT RECEIVED  
UNTIL 3 WEEKS AFTER PLAINTIFF'S PAYMENT  
TO DEFENDANT**

**INS. CHECK  
WAS NOT  
ISSUED UNTIL  
11/9/17**

11/09/2017  
MILTON GATLIN,  
ENCLOSED PLEASE FIND PAYMENT IN THE AMOUNT OF \$8,654.78 FOR YOUR WINDSTORM AND HAIL LOSS ON 3/21/2017.  
PLEASE REFERENCE CLAIM DETAILS BELOW.  
CLAIM NUMBER: 049920020  
DATE OF LOSS: 03/21/2017  
INSURED: MILTON GATLIN  
*In payment for Dwelling, Other Structures and Detached Personal Property for Windstorm and Hail Loss for Date of Loss 3/21/2017.*  
  
ALLSTATE INDEMNITY COMPANY  
1-800-255-7828

658002017130900057ZCT01001001002065

**HORNBECK  
CASHED THIS  
CHECK AND PUT  
THE MONEY IN HIS  
POCKET NOT IN  
COMPANY  
ACCOUNT**

MILTON A GATLIN  
MARLA S GATLIN  
105 SILVER PINE CT  
GREER, SC 29650-3420

1002  
67-160/532

10-20-17  
DATE

PAY TO THE ORDER OF Custom Castles \$ 8,200.00  
Eight thousand two hundred & no/100 DOLLARS

FOR Siding Milton A Gatlin  
Investor's Deposit Account

BB&T BRANCH BANKING AND TRUST COMPANY  
1-800-BANK BB&T BB&T.com

⑆05320⑆607⑆0005225⑆7⑆450⑆0⑆002

Amount remaining \$1,767.34 for not completed. Re-install shutters and downspouts, replace broken front porch light, repair damage to kitchen ceiling due to accidentally bursting water line. This is not for correcting roof and siding deficiencies. ETC.

MILTON A GATLIN  
MARLA S GATLIN  
105 SILVER PINE CT  
GREER, SC 29650-3420

1026  
67-160/532

9-21-17  
DATE

PAY TO THE ORDER OF Custom Castles \$ 11,346.61  
Eleven thousand three hundred forty six & 61/100 DOLLARS

FOR Roof Milton A Gatlin  
Investor's Deposit Account

BB&T BRANCH BANKING AND TRUST COMPANY  
1-800-BANK BB&T BB&T.com

⑆05320⑆607⑆0005225⑆7⑆450⑆0⑆026

STATE OF SOUTH CAROLINA	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
	)	
Milton A. Gatlin and Marla S. Gatlin,	)	C/A No. 2022-CP-23-05339
	)	
Plaintiffs,	)	
	)	
vs.	)	<b>ORDER GRANTING DEFENDANTS’</b>
	)	<b>MOTION FOR SUMMARY JUDGMENT</b>
	)	
John M. Hornbeck, III, Custom Castles	)	
Roofing and Construction, Inc., and Custom	)	
Castles Construction, LLC	)	
	)	
Defendants.	)	
	)	

THIS MATTER CAME BEFORE THE COURT, upon motion of Defendants’, John M. Hornbeck, III, Custom Castles Roofing and Construction, Inc., and Custom Castles Construction, LLC (hereinafter collectively referred to as “Defendants”) Motion for Summary Judgment on Plaintiffs’ the causes of action for : (1) Breach of Contract; (2) Quantum Meruit; (3) Breach of Contract Accompanied by a Fraudulent Act; (4) Fraud or Fraud in the Inducement; (5) Negligent Misrepresentation; (6) Negligence; (7) Unfair Trade Practices Act Violation; and (8) Disregard of Corporate Entity. A hearing was conducted on February 22, 2023. Present at the hearing was Wendell L. Hawkins, Esq. on behalf of the Defendants and Milton A. Gatlin appeared *pro se*.

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; *Hansson v. Scalise Builders of South Carolina*, 374 S.C. 352, 650 S.E.2d 68 (2007); *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (2005); *BPS, Inc. v. Worthy*, 362 S.C. 319, 608 S.E.2d 155 (Ct.App.2005). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C.

58, 580 S.E.2d 433 (2003); *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 593 S.E.2d 183 (Ct.App.2004). “[W]hen a party has moved for summary judgment[,] the opposing party may not rest upon the mere allegations or denials of his pleading to defeat it.” *Fowler v. Hunter*, 380 S.C. 121, 125, 668 S.E.2d 803, 805 (Ct. App. 2008). “Rather, the non-moving party must set forth specific facts demonstrating to the court there is a genuine issue for trial.” *Id.*

**a. Breach of Contract**

Plaintiff’s claim of Breach of Contract against one or more of Defendants fails for three reasons: (1) Plaintiff Breached the Contract first; (2) Plaintiff’s anticipatory breach of the Contract excused further performance of Defendants; and (3) Plaintiff prevented CCRC from performing its duties under the contract.

“Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests.” *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct.App.2008) (internal quotation marks omitted). “The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties’ intentions as determined by the contract language.”; *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535, 514 S.E.2d 327, 330 (1999) “When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used.”; *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct.App.2002) “[T]erms in a contract provision must be construed using their plain, ordinary and popular meaning.”; *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003) “The judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous.”

The Contract required that all sums received from the insurance company be paid to CCRC within 7 days of receipt. The Contract further states, “[f]ailure to do so will be a breach of this Contract. Mr. Gatlin testified in his deposition that he has never paid CCRC in full for the siding. Furthermore, Plaintiff did not endorse over the check from its insurance company to

CCRC and therefore breached its Contract with CCRC. “The failure to pay an installment of the contract price as provided in a building or construction contract is a substantial breach of the contract, and gives the contractor the right to consider the contract at an end, to cease work, and to recover the value of work already performed.” *Zemp Constr. Co. v. Harmon Bros. Constr. Co.*, 225 S.C. 361, 366, 82 S.E.2d 531, 533 (1954). (cited in, *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 593, 658 S.E.2d 539, 543 (Ct. App. 2008)).

It is further evident that the Plaintiffs committed an anticipatory breach of the Contract by only partially paying CCRC for the siding and then “running them (CCRC) off.” Mr. Gatlin testified to this in his deposition testimony. “In general, an anticipatory breach of contract is one committed before the time has come when there is a present duty of performance, and is the outcome of words or acts evincing an intention to refuse performance in the future.”. 30 S.C. Jur. Contracts § 66 (1999). Furthermore, Plaintiffs prevented CCRC from performing its statutory right to cure pursuant to the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code of Laws § 40-59-810. The Court of Appeals, in *Champion v. Whaley*, said, “[t]his is simply an instance of the general rule that one who prevents a condition of a contract cannot rely on the other party's resulting nonperformance in an action on the contract.” *Champion v. Whaley*, 280 S.C. 116, 120, 311 S.E.2d 404, 406 (Ct. App. 1984) citing *Farrow v. Martin*, 16 S.C.L. (Harp.) 409 (1824); *Young v. Hunter*, 6 N.Y. (2 Selden) 203 (1852); *Fisher v. Drewett*, (1878) 48 L.J.Q.B. 32. Because of the breach and anticipatory breach of contract, the Defendants were relieved of any further duty under the contract and Defendants are entitled to Summary Judgment.

**b. Quantum Meruit**

Plaintiffs included a Quantum Meruit cause of action in their Amended Complaint.

Defendants argued that Plaintiffs never conferred a benefit upon Defendants.

To prevail on a quantum meruit claim, a plaintiff must establish (1) he conferred a benefit upon the defendant; (2) the defendant realized that benefit; and (3) retention of the benefit by the defendant under the circumstances make it inequitable for the defendant to retain it without paying its value. *Swanson v. Stratos*, 350 S.C. 116, 121, 564 S.E.2d 117, 119 (Ct.App.2002); *see also Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616–17, 703 S.E.2d 221, 225 (2010) (providing the same requirements). *Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 325, 734 S.E.2d 177, 180 (Ct. App. 2012).

Because Defendants supplied materials and labor for which they have not fully been paid, Defendant CCRC was actually the one conferring the benefit upon the Plaintiffs. Plaintiff provided insufficient proof and no law to refute Defendants' presentation to the Court on this issue and the cause of action and the Motion for Summary Judgment on the Quantum Meruit cause of action is granted.

### c. Breach of Contract Accompanied by a Fraudulent Act

With respect to Plaintiffs' cause of action for Breach of Contract Accompanied by a Fraudulent Act, Defendants argued that the damages claimed by the Plaintiffs for this cause of action are the same as under their Breach of Contract cause of action. Plaintiffs have not identified any separate damage specific to this cause of action.

"In order to recover for breach of contract accompanied by a fraudulent act, a plaintiff must establish: (1) a breach of contract; (2) that the breach was accomplished with a fraudulent intention, and (3) that the breach was accompanied by a fraudulent act." *Smith v. Canal Ins. Co.*, 275 S.C. 256, 269 S.E.2d 348 (1980). *Minter v. GOCT, Inc.*, 322 S.C. 525, 529–30, 473 S.E.2d 67, 70 (Ct. App. 1996).

Moreover, in order to support an allegation of fraud, the basis of such claim must be ***plead with particularity*** (emphasis added). Rule 9(b), SCRCF provides the following:

**(b) Fraud, Mistake, Condition of Mind.** In all averments of fraud or mistake, the circumstances constituting fraud or mistake ***shall be stated with particularity***. Malice, intent, knowledge, and other condition of mind of a person may be averred generally (emphasis added).

Plaintiffs' cause of action fails to meet this pleading requirement. No specific facts are alleged.

Plaintiffs cause of action is a mere recitation of the elements.

“Although the cases involving breach of contract accompanied by a fraudulent act do not present an easy formula for defining a “fraudulent act,” it is clear that the fraudulent act alleged must be an act done with the intent to deceive. H. Lightsey, *South Carolina Code Pleading* at 97 (1976); see, e.g., *Lancaster v. Smithco, Inc.*, 238 S.C. 15, 119 S.E.2d 145 (1961). *Donaldson v. Temple*, 96 S.C. 240, 80 S.E. 437 (1913). In this instance, the counterclaim contains no allegation that either of the alleged fraudulent acts accompanying the breach of the agreement was committed with an intent to defraud either Murray or the Partnership.” *Save Charleston Found. v. Murray*, 286 S.C. 170, 181, 333 S.E.2d 60, 67 (Ct. App. 1985)

Plaintiffs' cause of action fails to meet the “particularity” requirements of SCRCP 9(b), fails to allege the fraudulent acts that accompanied the breach and there is no proof that any fraudulent act was intended to deceive the Plaintiffs.

Furthermore, there is a heightened burden of proof for Fraud. Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence. *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). Plaintiffs have asserted fraud, but have failed to provide any evidence which is clear, cogent and convincing to prove such allegations.

Defendants' Motion for Summary Judgment as to Plaintiff's cause of action for Breach of Contract Accompanied by a Fraudulent Act is granted for lack of damages, for noncompliance of pleading requirements and lack of clear, cogent, and convincing evidence to refute the law and evidence presented by Defendants.

#### **d. Fraud or Fraud in the Inducement**

While the Plaintiffs successfully include each element of Fraud in their Complaint, they again fail to plead with any particularity.

“In order to prevail on a claim for Fraud, the Plaintiff must prove the following: A cause of action for fraud requires: (1) a representation of fact; (2) its falsity; (3) its materiality; (4) either knowledge of the falsity of the representation or reckless disregard of its truth or falsity; (5) the intent that the representation be acted on; (6) the hearer's ignorance of the falsity of the representation; (7) the hearer's reliance on the truth of the representation; (8) the hearer's right to rely on the representation; and (9) the hearer's consequent and proximate injury.” *Schnellmann v. Roettger*, 373 S.C. 379, 645 S.E.2d 239 (2007). *Hollman v. Woolfson*, 384 S.C. 571, 579–80, 683 S.E.2d 495, 499 (2009).

Plaintiffs advanced no argument at the hearing that would overcome the Defendants’ arguments for summary judgment on this issue and therefore, the Court grants Defendants’ Motion for Summary Judgment of this issue.

Plaintiffs have not articulated or provided evidence of any specific damages suffered as a result of the Defendants’ misrepresentations. The Plaintiffs in this case rely upon a single allegation that the work performed by CCRC was deficient, nothing more. Also, this cause of action does not include the elements for Fraud in the Inducement.

“In order to prevail on a claim for Fraud in the Inducement, the Plaintiff must prove the following: To establish a claim or defense of fraud in the inducement, a plaintiff must prove the nine elements of fraud as well as the following three elements: “(1) that the alleged fraudfeasor made a false representation relating to a present or preexisting fact; (2) that the alleged fraudfeasor intended to deceive him; and (3) that he had a right to rely on the representation made to him.” *Darby v. Waterboggan of Myrtle Beach, Inc.*, 288 S.C. 579, 584, 344 S.E.2d 153, 155 (Ct.App.1986). *Moseley v. All Things Possible, Inc.*, 388 S.C. 31, 36, 694 S.E.2d 43, 45 (Ct. App. 2010), aff’d, 395 S.C. 492, 719 S.E.2d 656 (2011).

Again, there is a heightened burden of proof for Fraud. Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence. *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). *See also, Hancock*, 381 S.C. at 330–31, 673 S.E.2d at 803 (2009) (stating in cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment). Plaintiffs have asserted fraud, but have provided no proof of that and there is certainly no evidence

which is clear, cogent and convincing to prove such allegations. For these reasons, Defendants' Motion for Summary Judgment as to this cause of action is granted.

#### e. Negligent Misrepresentation

Defendants also seek Summary Judgment as to Plaintiffs cause of action for Negligent Misrepresentation. Again, Plaintiffs have failed to identify any damages specific to this cause of action. Moreover, Plaintiffs have failed to prove how any damages claimed in this case were proximately caused by any alleged representation made by the Defendants.

“To prove a claim for the common law tort of negligent misrepresentation, the following elements must be established:

(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the *proximate result of his reliance on the representation.*” *West v. Gladney*, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct.App.2000) (emphasis added).

“Evidence of a *mere broken promise* is not sufficient to prove negligent misrepresentation.” *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 407, 581 S.E.2d 161, 166 (2003) (quoting *Winburn v. Ins. Co. of N. Am.*, 287 S.C. 435, 443, 339 S.E.2d 142, 147 (Ct.App.1985)). Ordinarily, to be actionable, a statement must relate to a present or preexisting fact, and cannot be predicated on unfulfilled promises or statements as to future events. *Davis v. Upton*, 250 S.C. 288, 291, 157 S.E.2d 567, 568 (1967). *Turner v. Milliman*, 392 S.C. 116, 123, 708 S.E.2d 766, 769–70 (2011) (emphasis added).

Because Plaintiffs have failed to identify any misrepresentations or damages related to this cause of action, Defendants are entitled to Summary Judgment.

#### f. Negligence

Plaintiffs' negligence claim is barred by the Economic Loss Rule. “A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie.” *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 54–55, 463 S.E.2d 85, 88 (1995). In the case at hand, the

Contract sets for the duties of CCRC and the Plaintiff. Plaintiff's sole remedy is under contract law and the Negligence claim is duplicative and barred by the Economic Loss Rule and Defendants are entitled to Summary Judgment on this issue.

**g. Unfair Trade Practices Act Violation**

Plaintiffs' SCUTPA claim fails as a matter of law because it is a private dispute that does not affect the public interest. "Our courts have made it clear that UTPA is not available to redress a private wrong where the public interest is unaffected. UTPA is not an alternative vehicle to pursue an alleged breach of contract. Even an intentional breach of a contract does not rise to the level of a violation of UTPA." *Dove Data Prod., Inc. v. DeVeaux*, 2008 WL 98641167 at (Ct. App. 2008) (internal citations omitted). This matter is a private dispute between a homeowner and contractor for which Plaintiffs cannot seek recovery under the SCUTPA.

Moreover, Plaintiffs failed to properly plead this cause of action.

"To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct.App.2006).

Plaintiffs failed to allege that the unfair or deceptive act affected the public interest. Moreover, Plaintiffs fails to allege that they suffered monetary damage or property loss as a result of the Defendant's unfair or deceptive acts.

Plaintiff has provided no proof or law in this hearing to refute the Defendants' allegations in the motion and therefore Defendants' Motion for Summary Judgment as to Plaintiffs' cause of action for South Carolina Unfair Trade Practice Act Violation is granted.

**h. Disregard of Corporate Entity**

Plaintiffs have brought a cause of action against the Defendants seeking to hold John Hornbeck personally liable for the acts of CCRC.

It is generally recognized that a corporation is an entity that is separate and distinct from, and its debts are not the individual debts of, its officers and stockholders. *Hunting*, 359 S.C. at 223, 597 S.E.2d at 806 (citing *DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co.*, 540 F.2d 681, 683 (4th Cir.1976)). Although the corporate entity may be disregarded in some situations, piercing the corporate veil is not a doctrine to be applied without substantial reflection. *Baker v. Equitable Leasing Corp.*, 275 S.C. 359, 367, 271 S.E.2d 596, 600 (1980) (“However, ‘piercing the corporate veil’ is not a doctrine to be applied without substantial reflection.”). *Mid-S. Mgt. Co. Inc. v. Sherwood Dev. Corp.*, 374 S.C. 588, 597, 649 S.E.2d 135, 140 (Ct. App. 2007).

The only contract at issue in this case is the one between CCRC and Plaintiffs dated July 31, 2017. Moreover, Plaintiff, Milton Gatlin, testified in his deposition that he never even met John Hornbeck until after the siding and roof was replaced by CCRC at his house.

Plaintiffs have submitted no evidence or law at this hearing to support this cause of action. In order to determine whether the corporate formalities were observed under the first prong of the *Sturkie* test, the courts consider eight factors:

- (1) whether the corporation was grossly undercapitalized;
- (2) failure to observe corporate formalities;
- (3) non-payment of dividends;
- (4) insolvency of the debtor corporation at the time;
- (5) siphoning of funds of the corporation by the dominant stockholder;
- (6) non-functioning of other officers or directors;
- (7) absence of corporate records; and
- (8) the fact that the corporation was merely a façade for the operations of the dominant stockholder. *Mid-S. Mgt. Co. Inc. v. Sherwood Dev. Corp.*, 374 S.C. 588, 598, 649 S.E.2d 135, 140–41 (Ct. App. 2007).

During his deposition, Milton Gatlin, admitted to having no personal knowledge about the “Sturkie factors” and Defendant entities. Plaintiffs presented no evidence to pursue this case of action. For this reason, Defendants’ Motion for Summary Judgment on disregarding the corporate entity is granted.

**i. All Tort Actions are Barred by the Economic Loss Rule**

All of Plaintiff's tort claims are barred by the Economic Loss Rule. "A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie." *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 54–55, 463 S.E.2d 85, 88 (1995). In the case at hand, the Contract sets forth the duties of CCRC and the Plaintiff. Plaintiff's sole remedy is under contract law and any tort claim that arises out of the same circumstances, actions and facts are duplicative and barred by the Economic Loss Rule and Defendants' Motion for Summary Judgment on dismissal of the tort actions is granted.

IT IS THEREFORE ADJUDGED ORDERED AND DECREED that the Defendant's Motion for Summary Judgment on all Plaintiff's causes of action are granted.

IT IS SO ORDERED!

**JUDGE'S SIGNATURE PAGE TO FOLLOW**



Greenville Common Pleas

**Case Caption:** Milton A Gatlin , plaintiff, et al vs. John M Hornbeck III , defendant, et al  
**Case Number:** 2022CP2305339  
**Type:** Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2023-03-20 14:03:03 page 11 of 11

29 FEB 21 PM 2:47  
Paul Wickensimer COC GIL SC

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )  
 )  
Milton A. Gatlin and Marla S. Gatlin, )  
 )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
 )  
 )  
John M. Hornbeck, III, Custom Castles )  
Roofing and Construction, Inc. and Custom )  
Castles Construction, LLC, )  
 )  
 )  
Defendants. )  
 )  
 )  
 )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL DISTRICT  
Case No. 2022-CP-23-05339

**MEMORANDUM IN OPPOSITION  
OF DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

Plaintiffs, Milton A. Gatlin and Marla S. Gatlin (hereinafter "Plaintiffs"), present the following Memorandum in Opposition to Defendants' Motion for Summary Judgment. Defendants' Motion for Summary Judgment should be denied, and this matter should proceed to trial.

**FACTUAL BACKGROUND**

The Plaintiffs, Milton A. Gatlin and Marla S. Gatlin, are citizens and residents of Greenville County South Carolina. (Compl. ¶ 1). Defendant Custom Castles Roofing and Construction, Inc. (CCRC), is a corporation formed under the laws of the State of South Carolina with a principal place of business located in Anderson County, South Carolina. (Compl. ¶ 2). Defendant Custom Castles Construction, LLC (CCC) is a limited liability corporation formed under the laws of the State of South Carolina with a principal place of business located in Anderson County, South Carolina. (Compl. ¶ 3).

ENTERED COMPUTER

Defendant John M. Hornbeck, III (Hornbeck), is the owner of Custom Castles Construction, LLC and Custom Castles Roofing and Construction, Inc. and is a citizen and resident of Anderson County, South Carolina. Custom Castles is not a corporation but is located at 1137 Crestview Rd, Anderson South Carolina, Defendant Hornbeck's home address. Custom Castles is assumed to be owned by Defendant Hornbeck. Custom Castles is an amalgamation of Defendant Hornbeck's operations which includes Custom Castles Construction, LLC and Custom Castles Roofing and Construction, Inc. both of which share the same website with Custom Castles, www.customcastles.net. This is confirmed by a copy of a current direct employee of Custom Castles Mike Hovious' business card below. This card shows Custom Castles sharing the same logo and website, www.customcastles.net, with CCC and CCRC.



Defendant CCC was formed on January 19, 2005 with Defendant Hornbeck as its registered agent. Defendant CCRC was incorporated on January 22, 2014. Plaintiffs, a married couple, entered into a written fraudulent contract with Defendant CCRC on July 31, 2017 for roofing work to be performed on their home by the defendant. (Compl. ¶ 8). Defendant Hornbeck obtained the roofing permit for work on Plaintiffs' home on behalf of Defendants John M. Hornbeck, III or CCC or CCRC on October 25, 2017 however the roofing was completed in September of 2017 a month before Defendant

Hornbeck applied for the permit. Defendant CCRC through its agents and employees breached the contract by submitting a fraudulent agreement, undoubtedly developed by Defendant Hornbeck, and repeatedly failing to perform work to industry standards and outright neglecting to perform promised tasks, including but not limited to: removal of hazardous construction materials from the worksite, preservation of worksite landscaping, and failure to follow proper installation instructions of shingles and siding. (Compl. ¶ 12 & 14). Plaintiffs gave the Defendants a chance to rectify the situation and Defendant Hornbeck made representations that he would do so, but later denied having made any such representation which resulted in further damage to Plaintiffs' home.

As of October 25, 2017, Defendant CCC was the only company that had registered Defendant Hornbeck as its licensed contractor. On February 7, 2018, Plaintiffs filed the complaint that started this action which was 96 days after Defendant Hornbeck advised his siding subcontractor he was not paying for any corrections or repairs. Defendant CCC was dissolved on March 14, 2018 and there was a change of information for Defendant CCRC's registered agent (Defendant Hornbeck) on the same date. As of March 22, 2018, Defendant CCRC is the only company that has registered Defendant Hornbeck as its licensed contractor.

Defendants CCC and CCRC have separate Facebook pages that exist concurrently. Both pages also list the same company website as [www.customcastles.net](http://www.customcastles.net). Both Defendant companies made concurrent use of the same graphic logo and substantially similar text trademarks. The Defendant companies were

concurrently engaged in the same type of business activities. The Defendant companies each had their physical address registered with the Department of Labor, Licensing, and Registration as 3300 N Main St., Ste. D-194, Anderson, SC 29621-4128.

Plaintiffs have reason to believe that Defendants CCC and Hornbeck were doing business as Defendant CCRC, see copy of permit application below, and that there is such an amalgamation of the three Defendant parties so as to blur the legal distinction between the entities or that Defendant companies are alter egos of Defendant Hornbeck. Also, that Defendants have engaged in unfair or deceptive trade practices. Therefore, Defendants CCC and Hornbeck are not entitled to dismissal from this action and Plaintiffs' are entitled to Piercing of the Corporate Veil.

Custom Castles was not included on original application. See next page.

A Month After Roofing Was Completed

**Greenville County**  
 Greenville County Square  
 301 University Ridge, Suite 4100, Greenville SC 29601-3686  
 Phone (864) 457-7060  
 permits@greenvillecounty.org

**RESIDENTIAL ADDITION/ALTERATION APPLICATION**  
 APPLICATION MUST BE COMPLETED PRIOR TO REQUESTING PERMIT

Date: 12/25/17 Property Owner's Name: GATLIN MILTON Phone No: \_\_\_\_\_  
 Street Address of Property: 105 SILVER CREEK CT City: GREENVILLE State/Zip: SC 29615  
 Subdivision Name: WILSON GREEN Lot No: \_\_\_\_\_ Tax Parcel No: 20121201000000000000 Mobile No: (864) 271-5000  
 Description of work: RE-ROOF Demo Permit?  In ground or Above? \_\_\_\_\_  
 Project Valuation \$: 11,376.00 Additional Square Footage? \_\_\_\_\_  
 If Solar Panel, provide number of kilo-watts \_\_\_\_\_ If Detrital, provide M-Home Permit # \_\_\_\_\_

PLEASE LIST ANY EXISTING OR ACTIVE PERMIT NUMBERS:

CONTRACTOR Name: <u>JOHN HORNBECK</u> Co. Name: <u>CUSTOM CASTLES</u> License No: <u>19580</u> Exp. Date: <u>5/31/16</u> Mailing Address: <u>3300 N. MAIN ST. D-194</u> City: <u>ANDERSON</u> State/Zip: <u>SC 29621</u> Phone No: <u>(864) 847-0888</u> Mobile No: _____ Email: <u>JOHN.HORNBECK@CUSTOMCASTLES.NET</u>
---

~~MECHANICAL CONTRACTOR~~  
 Name: \_\_\_\_\_ Co. Name: \_\_\_\_\_ License No: \_\_\_\_\_ Exp. Date: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ State/Zip: \_\_\_\_\_  
 Phone No: \_\_\_\_\_ Mobile No: \_\_\_\_\_  
 NEW SERVICE INFORMATION: No. of Amps: \_\_\_\_\_ No. of Breakers: \_\_\_\_\_ Name of Power Company: \_\_\_\_\_  
 Existing Panel  Upgrade No. of Amps being added: \_\_\_\_\_ No. of Breakers being added: \_\_\_\_\_

~~MECHANICAL CONTRACTOR~~  
 Name: \_\_\_\_\_ Co. Name: \_\_\_\_\_ License No: \_\_\_\_\_ Exp. Date: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ State/Zip: \_\_\_\_\_  
 Phone No: \_\_\_\_\_ Mobile No: \_\_\_\_\_  
 No. of Heating & Cooling Units of each type:  Propane  Gas Pack  Gas Furnace  Heat Pump  Wood  
 No. of Water Heaters of each type:  Gas  Electric Name of Gas Company: \_\_\_\_\_  
 No. of Gas Appliances: Gas Logs \_\_\_\_\_ Gas Stove \_\_\_\_\_ Gas Range \_\_\_\_\_ Other, provide description: \_\_\_\_\_  
 No. of Appliances:  Dishwasher  Freezer  Check here if gas line goes to a truck (Prohibit): \_\_\_\_\_

~~PLUMBING CONTRACTOR~~  
 Name: \_\_\_\_\_ Co. Name: \_\_\_\_\_ License No: \_\_\_\_\_ Exp. Date: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ State/Zip: \_\_\_\_\_  
 Phone No: \_\_\_\_\_ Mobile No: \_\_\_\_\_  
 (Including but not limited to: kitchen sink, dishwasher, refrigerator, hot water heater, water, sewer, lavatory, etc., if bathroom fixtures) Septic Tank \_\_\_\_\_ OR Sewer \_\_\_\_\_  
 EXACT DIRECTIONS TO JOB SITE (from a main road): OLD SARTANVILLE RD TO SILVER CREEK RD LEFT ON SILVER CREEK RD LEFT ON SILVER DR  
 For Schedules: <http://www.greenvillecounty.org/CodeEnforcement/landuse/permits.aspx>  
 For information regarding curbs, driveways, or encroachment permits, contact 467-7016 if the property is on a county road or 241-1224 if the property is on a state road.

(The applicant hereby certifies and agrees as follows: 1) That he/she is authorized to make this application; 2) That he/she has read the above information and it is true and correct; 3) That he/she will comply with all County of Greenville ordinances, laws and regulations, all State and Federal Laws and regulations regarding the use of land and structures and the construction of structures; 4) That he/she will perform only the work outlined above as the property indicated above; 5) That he/she grants the right of entry to the property to the Building Official or employees of the County of Greenville for the purpose of inspections, and posting of notices. If any of the information supplied by the owner and/or owner's agent is incorrect, the permit may be revoked.)

**THIS PERMIT WILL BECOME INVALID WITHIN 6 MONTHS FROM DATE OF ISSUE IF: WORK HAS NOT COMMENCED, IF AN INSPECTION HAS NOT BEEN REQUESTED, OR IF WORK HAS BEEN SUSPENDED FOR A PERIOD OF 6 MONTHS.**

This permit is permission to proceed with construction and shall not be construed as an excuse to violate, alter or set aside any of the provisions of the Building Code and any other applicable laws or ordinances, nor shall the issuance of this permit prevent the Building Official from requiring correction of errors in construction documents or violations of the Building Code of the County of Greenville, South Carolina.

DATE: 12/25/17 BY OWNER OR AUTHORIZED AGENT: [Signature]  
 PRINT NAME: JOHN HORNBECK Cost of Permit: \$ 410.00

Look at: Co. Name, Mailing Address and Email Address

17-15569

Although CCRC replaced the roof at 101 Silver Pine Ct (2 doors down from the Gatlin's house) this shows Hornbeck did not get a roofing permit

PERMITS ISSUED

Back to Search

Application	Permit #	Address	Permit Type	Contractor	Subcontractor	Status
2-0204	020000204	110 SILVER PINE CT	ELECTRICAL PERMIT	KENNETH M HALL	KENNETH M HALL	CL
3-589	030000589	110 SILVER PINE CT	BLDG - RESIDENTIAL	OWNER		CL
3-589	030000589	110 SILVER PINE CT	ELECTRICAL PERMIT	OWNER	KENNETH M HALL	CL
3-589	030000589	110 SILVER PINE CT	MECHANICAL PERMIT	OWNER	G S MECHANICAL HTG & A/C INC	CL
4-856	040000856	112 SILVER PINE CT	MECHANICAL PERMIT	CAROLINA DELTA MECHANICAL INC	CAROLINA DELTA MECHANICAL INC	CL
11-1953	1100001953	100 SILVER PINE CT	RE-ROOFING PERMIT	GUY ROOFING LLC	GUY ROOFING LLC	CL
11-8164	1100008164	102 SILVER PINE CT	RE-ROOFING PERMIT	LUTHER V BUIS		CL
14-1226	1400001226	104 SILVER PINE CT	ELECTRICAL PERMIT	STEPHEN B CARSON	STEPHEN B CARSON	CL
14-2099	1400002099	107 SILVER PINE CT	ADD/ALT - RESIDENTIAL	WILLIAM R WILE	WILLIAM R WILE	CL
14-2099	1400002099	107 SILVER PINE CT	ELECTRICAL PERMIT	WILLIAM R WILE	WILLIAM R WILE	CL
14-2099	1400002099	107 SILVER PINE CT	MECHANICAL PERMIT	WILLIAM R WILE	WILLIAM R WILE	CL
15-3911	1500003911	100 SILVER PINE CT	MECHANICAL PERMIT	DAVIS SERVICES INC		AP
16-740	160000740	104 SILVER PINE CT	RE-ROOFING PERMIT	LUCIUS FOWLER III	LUCIUS FOWLER III	CL
17-4012	1700004012	107 SILVER PINE CT	RE-ROOFING PERMIT	LAWRENCE MAXWELL		CL
17-4807	1700004807	100 SILVER PINE CT	RE-ROOFING PERMIT	GUY ROOFING		CL
17-5090	1700005090	106 SILVER PINE CT	RE-ROOFING PERMIT	LAWRENCE MAXWELL		CL
17-8195	1700008195	103 SILVER PINE CT	RE-ROOFING PERMIT	ASPEN CONTRACTING INC		AP
17-11493	1700011493	111 SILVER PINE CT	RE-ROOFING PERMIT	LANIER ROOFING & RESTORATION		CL
17-11518	1700011518	102 SILVER PINE CT	RE-ROOFING PERMIT	JAMES J SLICE		CL
17-12776	1700012776	104 SILVER PINE CT	RE-ROOFING PERMIT	JONATHAN W		CL
17-15569	1700015569	105 SILVER PINE CT	RE-ROOFING PERMIT	JOHN M HORNBECK III		CL
18-4852	1800004852	104 SILVER PINE CT	ELECTRICAL PERMIT	UTILITY PARTNERS OF AMERICA		CL
18-4853	1800004853	103 SILVER PINE CT	ELECTRICAL PERMIT	UTILITY PARTNERS OF AMERICA		CL
18-4865	1800004865	100 SILVER PINE CT	ELECTRICAL PERMIT	UTILITY PARTNERS OF AMERICA		CL
18-6034	1800006034	105 SILVER PINE CT	ADD/ALT - RESIDENTIAL	OWNER		AP
18-6034	1800006034	105 SILVER PINE CT	ELECTRICAL PERMIT	OWNER	OWNER	AP
18-6453	1800006453	105 SILVER PINE CT	RE-ROOFING PERMIT	HOME DEPOT USA INC		CL
19-2475	1900002475	104 SILVER PINE CT	ADD/ALT - RESIDENTIAL	MATTHEW C PENDERGRASS		CL
19-2475	1900002475	104 SILVER PINE CT	ELECTRICAL PERMIT	MATTHEW C PENDERGRASS	SAUL JUAREZ	CL
19-2475	1900002475	104 SILVER PINE CT	MECHANICAL PERMIT	MATTHEW C PENDERGRASS	MATTHEW C PENDERGRASS	CL
19-2475	1900002475	104 SILVER PINE CT	PLUMBING PERMIT	MATTHEW C PENDERGRASS	MATTHEW C PENDERGRASS	CL

Hornbeck accepted liability for the roof not his company

**IT WAS ILLEGAL UNDER SC Code of Laws Section 40-11-200 FOR OFFERING A PROPOSAL AND THIS CONTRACT.**

Not Licensed, Bonded or Insured

George Huth decided he couldn't sign agreement because Allstate might find out

Hornbeck misleading customers  
CCRC is not licensed to do Either

Website

**CUSTOMER AGREEMENT**  
Commercial • Residential  
1-853-777-NAW (2762)

**Custom Castles**  
www.customcastles.net Licensed Bonded Insured  
Not A Direct Employee

SALES ASSOC. Not Licensed

**CUSTOMER AGREEMENT IS SUBJECT TO INSURANCE COMPANY APPROVAL**

FULL NAME: \_\_\_\_\_ (Customer)  
Last First MI Hornbeck knows CCRC is not licensed

Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Ins. Co.: \_\_\_\_\_  
Cell Phone: \_\_\_\_\_ Claim No.: \_\_\_\_\_  
Email: \_\_\_\_\_ Mortgage Co.: \_\_\_\_\_

Insurance Agreed Payment Amount (Prior to any Supplement Request): \$ \_\_\_\_\_  
Upgrades: \_\_\_\_\_  
Additional Upgrade Expense: \$ \_\_\_\_\_

**ROOF SPECIFICATIONS**

Shingle Color: \_\_\_\_\_ Initial \_\_\_\_\_  
Shingle Style: \_\_\_\_\_  
Shingle Grade: \_\_\_\_\_  
Ridge Material: \_\_\_\_\_  
Valley: \_\_\_\_\_  
Vents: \_\_\_\_\_  
Plumbing: \_\_\_\_\_  
Tear Off:  Yes  No  Layers  
Felt: \_\_\_\_\_  
Pitch: \_\_\_\_\_ 2-Story \_\_\_\_\_  
Number of Decking Sheets: \_\_\_\_\_  
Decking Additional Cost: \_\_\_\_\_ (if 0)

**Not Done By CCRC**  
Remove Trash From Roof, Gutters & Yard  
Protected Landscaping Where Applicable  
Rinse Yard With Magnetrol Fertilizer  
Quality Control Inspection

**SPECIAL ATTENTION AREAS**

Crewel Post  Yes  No  
Existing Gutter Damage  Yes  No  
Existing Driveway Damage  Yes  No  
Ice/Water Shield  Yes  No  
Emergency Repair Skylights  Yes  No  
Leaks  Yes  No  
Interior Damage \_\_\_\_\_

**Not done by CCRC**

New ridge vent was not installed. I installed solar powered vents instead.

George Huth & John Von der Lieth had no intention of doing these items

Did not receive credit for these

INSURANCE PAYMENT SCHEDULE			
1ST PAY CK	CK#	DATE	\$
PROGRESS Pymt	CK#	DATE	\$
DEPRECIATION CK	CK#	DATE	\$

**RECOMMENDATIONS-NOTES-UPGRADE DETAILS**

George Huth  
Not done by CCRC

INSURANCE/MORTGAGE COMPANY NOTE: I hereby authorize the insurance company and/or the mortgage company to contact Custom Castles, Inc. for any available policy.

TERMS: By signing this contract, Customer authorizes Custom Castles Roofing and Construction, Inc. (CCRC) to pursue the Customer's best interest for a project involving the installation of a roof system. CCRC will be responsible for any and all costs to the Customer except the cost of materials. When the insurance agreed payment amount is determined it shall be written in the blank provided above. Customer authorizes CCRC to obtain labor and material for the project. The project shall be completed on the date specified on the reverse side hereof or as soon as possible thereafter and shall be subject to the terms and conditions of the contract and any applicable laws and regulations.

**Notice of Cancellation:** You may cancel this Contract at any time before midnight on the fifth business day after you have received written notification from your insurer that all or any part of this claim or Contract is not a covered loss under the insurance policy. This right to cancel is in addition to any other rights of cancellation which may be found in state or federal law or regulation. See attached notice of cancellation form for an explanation of this right.

**Was Not Attached**

Accepted by Customer \_\_\_\_\_ Date \_\_\_\_\_  
The Customer agrees to all of the provisions above.

Custom Castles Construction, Inc. \_\_\_\_\_ Date \_\_\_\_\_

CUSTOMER AGREEMENT

Not A General Contractor Hornbeck misleading customers

In consideration of the value and services contemplated by the work value and... (faded text)

1. Customer understands and agrees that CCRC is its general contractor. As its... (faded text)

2. This Contract is subject to approval of EPA's first department. The CCRC... (faded text)

3. Customer understands that existing permit rules such as... (faded text)

4. CCRC is not and shall not be responsible for construction projects of... (faded text)

5. CCRC is not and shall not be responsible for construction projects of... (faded text)

6. Customer understands that existing permit rules such as... (faded text)

7. CCRC is not and shall not be responsible for construction projects of... (faded text)

8. CCRC is not and shall not be responsible for construction projects of... (faded text)

9. CCRC is not and shall not be responsible for construction projects of... (faded text)

10. CCRC is not and shall not be responsible for construction projects of... (faded text)

11. This Contract shall not be assigned except by written consent of... (faded text)

12. This Contract shall not be assigned except by written consent of... (faded text)

13. CCRC is not and shall not be responsible for construction projects of... (faded text)

14. Customer understands that existing permit rules such as... (faded text)

15. Customer understands that existing permit rules such as... (faded text)

This makes Hornbeck a party to the contract... (faded text)

16. This Contract shall be read and interpreted in accordance with the laws of... (faded text)

17. This Contract and any of its provisions may not be modified, waived, or... (faded text)

18. CCRC is not and shall not be responsible for construction projects of... (faded text)

19. CCRC is not and shall not be responsible for construction projects of... (faded text)

20. If there are any solar panels on Customer's roof, CCRC will not be responsible... (faded text)

21. CCRC is not and shall not be responsible for construction projects of... (faded text)

22. Payment by Customer shall be made as follows: One (1) week payment... (faded text)

23. Any hazard or other condition that requires... (faded text)

24. CCRC may enforce its rights to payment by other means, including but not... (faded text)

25. Customer understands that CCRC is not and shall not be responsible for... (faded text)

26. All notices to CCRC shall be sent via U.S. Mail to its administrative office... (faded text)

27. The Parties agree to cooperate fully and... (faded text)

This is not an office address: UPS Store PO Box

Hornbeck misleading customers

### **STANDARD OF REVIEW**

Summary judgment is only appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCP; *Turner v. Milliman*, 392 S.C. 116, 708 S.E.2d 766 (2011) “The party moving for summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.” *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d. 722, 729 (Ct. App 2005). “In determining whether any triable issues of fact exist, the evidence and all inferences which can reasonably be drawn from the evidence must be viewed in the light most favorable to the nonmoving party.” *Koester v. Carolina Rental Center, Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). Additionally, “[e]ven when there is no dispute as to the evidentiary facts, but only to the conclusions or inferences to be drawn from them, summary judgment should be denied.” *Id.* Moreover, “[s]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Miller* at 200. Finally, since it is a drastic remedy, summary judgment should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Id.*; *Watson v. Southern Ry Co.*, 420 F. Supp. 483 (D.C. S.C. 1975).

### **LEGAL ARGUMENT**

The Defendants’ second Motion for Summary Judgment should be denied. There is a dispute as to the conclusions and inferences to be drawn from the facts. Additionally, there remain

genuine issues of material facts. These are fatal to a Motion for Summary Judgment and Defendants' motion should be denied again.

**I. Conclusions and Inferences Drawn from the Facts.**

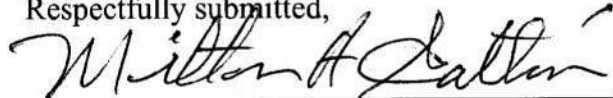
**II. Genuine Issues of Material Fact.**

The Defendants have already presented their arguments to this Court, and this Court in the Order dated April 26, 2019, signed by The Honorable Robin Stillwell found that genuine issues of material fact remained in dispute, and the Motion was denied. See Attachments A

**CONCLUSION**

The Defendants have failed to meet the standard for summary judgment under South Carolina case law and the South Carolina Rules of Civil Procedure. This is evident from this Courts previous ruling on the same Motion which stated that genuine issues of material fact remained; therefore, it seems that these same genuine issues of material fact still remain and the Defendants' Motion for Summary Judgment should be denied again.

Respectfully submitted,



Milton A. Gatlin  
105 Silver Pine Court  
Greer, SC 29650  
Phone: (864) 404-9259  
Email: [milton@dti.us](mailto:milton@dti.us)  
Pro Se

February 21, 2023  
Greer, South Carolina

# ATTACHMENTS A



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE (803) 734-1890  
FAX (803) 734-1839  
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July 16, 2019

ENTERED COMPUTER

The Honorable Paul B. Wickensimer  
Courthouse  
305 E North St  
Greenville SC 29601-2121

FILED CLERK OF COURT  
PAUL B. WICKENSIMER  
2019 JUL 19 AM 10:27

## REMITTITUR

Re: Milton and Marla Gatlin v. John M. Hornbeck and Custom Castles Roofing  
Lower Court Case No. 2018CP2300695  
Appellate Case No. 2019-001035

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

*V. Claire Allen, Deputy*  
CLERK

Enclosure

cc: Wendell Leon Hawkins, Esquire  
Coy David Beale, Jr., Esquire  
Thomas Jefferson Goodwyn, Jr., Esquire  
Aimee Victoria-Ann Leary, Esquire

# The South Carolina Court of Appeals

Milton A. Gatlin and Marla S. Gatlin, Respondents,

v.

John M. Hornbeck, III, Custom Castles Roofing and Construction, Inc. and Custom Castles Construction, LLC, Appellants.

Appellate Case No. 2019-001035

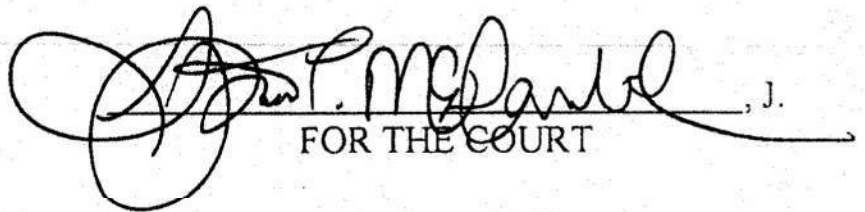
FILED - CLERK OF COURT  
MILTON A. GATLIN  
2019 JUL 19 AM 10:27

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## ORDER

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This appeal arises out of an order of the circuit court denying the appellants' motion to dismiss or stay the proceeding. Because the order on appeal is not final, the appeal is dismissed. *See Levi v. N. Anderson Cty. EMS*, 409 S.C. 374, 382, 762 S.E.2d 44, 48 (Ct. App. 2014) (quoting *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526 n. 2, 443 S.E.2d 539, 540 n. 2 (1994)) ("Like the denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings. Therefore, the denial of a motion to dismiss is not directly appealable. . . ."). The remittitur will be sent pursuant to Rule 221(b) of the South Carolina Appellate Court Rules.

  
FOR THE COURT

Columbia, South Carolina

cc:

Wendell Leon Hawkins, Esquire

Coy David Beale, Jr., Esquire

Thomas Jefferson Goodwyn, Jr., Esquire

Aimee Victoria-Ann Leary, Esquire

**FILED**

June 28, 2019

STATE OF SOUTH CAROLINA  
COUNTY OF Greenville  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2300695

Milton A Gatlin et al  
PLAINTIFF(S)

John M Hornbeck, III et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

See page 2.

**ORDER INFORMATION**

This order  ends  does not end the case.

See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/17/2019 .

Marla S Gatlin for Marla S Gatlin  
Marla S Gatlin for Marla S Gatlin  
Milton A Gatlin for Milton A Gatlin  
Milton A Gatlin for Milton A Gatlin

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

---

This matter comes before the Court upon Defendants' Motion to Reconsider the Order of May 21, 2019 denying the Defendants' Motion to Dismiss or Stay. The Court does not believe that a hearing is necessary for determination of Defendants' Motion.

The first argument presented by Defendants is that the Court applied the wrong standard in denying the Defendants' Motion to Dismiss. The Court considered the matter as a Rule 12(b)(6) motion since it was captioned as a Motion to Dismiss which included a Motion to Stay. The basis of Defendants' Motion is an affirmative defense asserting that the Plaintiffs could not file the suit without complying with S.C. Code §40-59-810, et. seq. The initial Complaint was filed on February 2, 2018 relating to a contract of July 31, 2017 and the Defendants filed their Answer on March 19, 2018 and a Motion to Dismiss on May 11, 2018. At no time did the Defendants raise any issue with the Plaintiffs' failure to comply with §40-59-840. It was not until after the case was statused and placed on a trial roster that the Defendants moved to assert this issue as an affirmative defense. More than 18 months had elapsed since the contract had been executed and the Plaintiffs' claim is partially based on their ongoing damages and thus were required to mitigate their damages by having repairs made to their house. To dismiss or stay the case at this point in light of a late assertion of an affirmative defense would be very prejudicial to the Plaintiffs. Clearly, that is not the intent nor public policy behind §40-59-810, et. seq. Thus the court finds that Defendants' Motion to Dismiss nor Motion to Stay were not timely made.

The second argument presented by Defendants is that the Court improperly found that the provisions of §40-59-840 did not apply to this matter since it was not the construction of a dwelling. The various provisions of this act seem to be contradictory. The definition of "claimant" and "action" covers construction and remodeling, but the notice provision of §40-59-840 clearly states that it applies to actions for "the construction of a dwelling" and "construction" is not defined to include the work being performed under the contract which is the basis of this claim. The contract which is the subject of this action was not for "the construction of a dwelling" as indicated in the original order.

Therefore, the Court finds that there is no basis to alter the previous order and Defendants' Motion is denied.



Greenville Common Pleas

**Case Caption:** Milton A Gatlin , plaintiff, et al vs. John M Hornbeck III , defendant,  
et al  
**Case Number:** 2018CP2300695  
**Type:** Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2019-06-17 11:41:27 page 3 of 3

STATE OF SOUTH CAROLINA  
COUNTY OF Greenville  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2300695

Milton A Gatlin et al  
PLAINTIFF(S)

John M Hornbeck, III et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

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- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
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**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

See Page 2

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

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Marla S Gatlin for Marla S Gatlin  
Marla S Gatlin for Marla S Gatlin  
Milton A Gatlin for Milton A Gatlin  
Milton A Gatlin for Milton A Gatlin

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This matter comes before the Court upon Defendants' Motion to Dismiss or for Stay of Proceedings and was heard on May 20, 2019. Aimee Leary appeared on behalf of the defendants and Milton Gatlin appeared pro se. In its Motion, Defendants assert that the Plaintiffs did not comply with the Notice provisions of S.C. Code Section 40-59-840 and therefore the action should be dismissed or stayed. The Defendants' Motion is denied on several grounds: (1) A motion to dismiss is generally governed by Rule 12, SCRPC, and requires that such a Motion be filed within 30 days after service of the Summons and Complaint on the Defendant. The Defendants filed this Motion on May 3, 2019. The Complaint was filed on February 7, 2018 and served on February 12, 2018. Defendant filed its initial Answer on March 19, 2018 and since that time, both parties have filed amended pleadings, various Motions and engaged in Discovery and at no time did the Defendants assert a defense based on S.C. Code Section 40-59-840. The Court therefore finds that the defense was waived and cannot raise it as a basis for dismissal at this time. (2) The provisions of S.C. Code Section 4-59-840 applies to an action "arising out of the construction of a dwelling" but the claim against defendant relates to the replacement of siding and roofing on an existing residence. Therefore, the Court finds that this Code section does not apply.

Based on the foregoing, the Defendants' Motion is denied.



Greenville Common Pleas

**Case Caption:** Milton A Gatlin , plaintiff, et al vs. John M Hornbeck III , defendant,  
et al  
**Case Number:** 2018CP2300695  
**Type:** Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2019-05-21 13:38:31 page 3 of 3

Milton A Gatlin et al  
PLAINTIFF(S)

John M Hornbeck, III et al  
DEFENDANT(S)

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 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
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- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

This matter comes before the Court pursuant to Defendant's Motion to Alter or Amend. The Motion to Alter or Amend is hereby granted.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/26/2019 .

Marla S Gatlin for Marla S Gatlin  
Marla S Gatlin for Marla S Gatlin  
Milton A Gatlin for Milton A Gatlin  
Milton A Gatlin for Milton A Gatlin

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**Court Reporter:**

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Greenville Common Pleas

**Case Caption:** Milton A Gatlin , plaintiff, et al vs. John M Hornbeck III , defendant,  
et al  
**Case Number:** 2018CP2300695  
**Type:** Order/Electronic Form 4

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2019-04-26 13:15:25 page 3 of 3

STATE OF SOUTH CAROLINA  
COUNTY OF Greenville  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2300695

Milton A Gatlin et al  
PLAINTIFF(S)

John M Hornbeck, III et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

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- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

This matter comes before the Court pursuant to Defendant's Motion for Summary Judgment. This Court finds that genuine issues of material fact remain in dispute. Therefore, the Motion is denied.

**ORDER INFORMATION**

This order  ends  does not end the case.

See Page 2 for additional information.

**For Clerk of Court Office Use Only**

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Marla S Gatlin for Marla S Gatlin  
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Greenville Common Pleas

**Case Caption:** Milton A Gatlin , plaintiff, et al vs. John M Hornbeck III , defendant,  
et al  
**Case Number:** 2018CP2300695  
**Type:** Order/Electronic Form 4

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2019-04-26 13:14:54 page 3 of 3

Milton A Gatlin et al  
PLAINTIFF(S)

John M Hornbeck, III et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

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 Affirmed;  Reversed;  Remanded;  
 Other

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**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

This matter came before the Court on June 26, 2018, for a hearing on the Plaintiff's Motion to Amend the Complaint and on the Defendant's Motion to Dismiss. After hearing arguments and counterarguments from counsel on each side, the Court finds that allowing the Plaintiff to amend his complaint at this early stage in the proceedings would not represent a serious risk of prejudice to the Defendants and therefore the Plaintiff's motion is granted. Consequently, the Defendant's Motion to Dismiss is denied.

**ORDER INFORMATION**

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Greenville Common Pleas

**Case Caption:** Milton A Gatlin , plaintiff. et al vs. John M Hornbeck III , defendant.  
et al  
**Case Number:** 2018CP2300695  
**Type:** Order/Electronic Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2018-06-27 10:13:30 page 3 of 3

# ATTACHMENTS B



**Dolly's Roofing, Inc.**  
7015-D Well's Highway  
Seneca, SC 29678  
864-882-1555

**Date:**

May 14, 2018

**Property Address:**

Milron Gaitlin  
105 Silver Pine Ct.  
Greer, SC 29650

**Findings: Please see accompanying pictures**

Inspected the roof on 5/3/2018.

- Drip edge is missing from the shed.
- Poor ventilation on shed.
- No starter was used on shed.
- No valley treatments or flashing.
- Area where flashing has been cut.
- Paint is peeling on the pipe boots.
- There are angled nails which can cut the shingles.
- High nails on the top roof.
- Uneven nailing patterns.
- Deck is buckling on the top roof.
- Dip in roof that holds water.
- Numerous areas of overlapped shingles.
- Low nails with skirts to cover them.
- Soft uneven wood on the top part of the house.
- Marred shingles due to a hot weather installation.
- Poor work on returns, too few nails.
- No underlayment installed on returns.
- Missing step flashing on wall.
- Areas where nails have "shot" thru shingles.

**Disclaimer:**

Dolly' Roofing is a general contracting firm in the state of South Carolina, not an engineering firm. This assessment is our professional opinion based on a cursory inspection and not an in-depth inspection. If you would like a more in-depth opinion we would suggest that you hire a certified engineer.

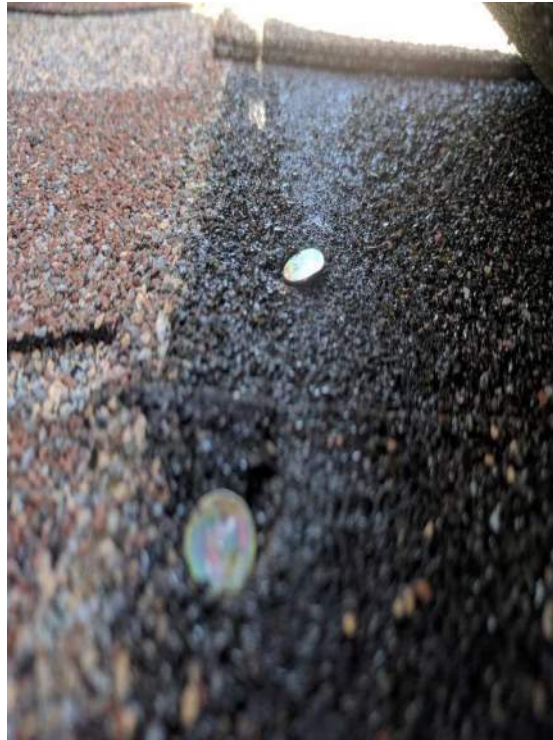
**Inspected by:**

196

Charles P. Dolly – Roofing General Contractor



PAINT PEELING ON BOOTS



ANGLED NAILS CAN CUT THE SHINGLES



HIGH NAIL ON THE TOP ROOF



DECK BUCKLING ON THE TOP ROOF



OVERLAPPED SHINGLES



LOW NAILS



OVERLAPPED SHINGLES



SOFT UNEVEN WOOD ON TOP PART OF HOUSE



MARRED SHINGLES DUE TO A HOT WEATHER  
INSTALLATION



LOW NAILS INSTALLED WITH SKIRT TO COVER



OVERLAPPED SHINGLES



POOR WORK ON RETURNS, FEW NAILS



NO UNDERLAYMENT INSTALLED



CLOSE UP OF RETURN



NO STEP FLASHING ON WALL



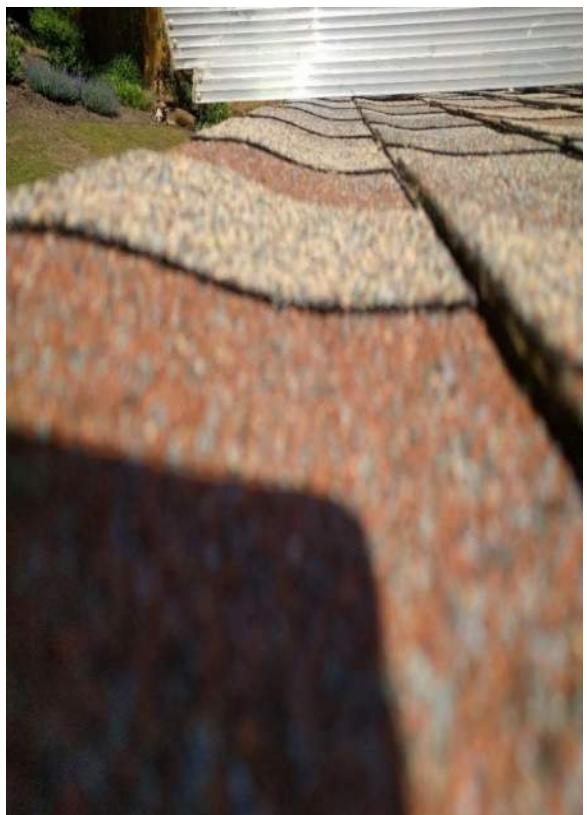
UNEVEN NAILING PATTERN



NAILS HAVE SHOT THROUGH



DIP IN ROOF HOLDS WATER



DIP IN ROOF HOLDS WATER



SHED IS MISSING DRIP EDGE



SHED IS MISSING DRIP EDGE



POOR VENTILATION ON SHED



POOR VENTILATION ON SHED



CUT FLASHING



NO VALLEY TREATMENT OR FLASHING



NO STARTER USED ON SHED



Shingles Installed With A Gutter Effect (GAF Technical Support Advised This Will Eventually Start Leaking)



Standing Water



Cut edges not primed or painted (Typical)

Kick Out Flashing Not Installed

This Is Original Flashing  
New Flashing Was Not Installed

Slit In Flashing  
Allowing Leaks





Shingle Joint Is  
Overlapped As Much  
As 1"  
GAF Said This Is Not  
Acceptable



What Is This



Drip Edge Not Installed At Turn Backs (8)



Starter Shingle Not Installed At Turn Backs



Shingles Curling Under  
Due To Excessive  
Overhang  
Also, Starter Shingle  
Overhang Varies

Overhang At Eave And  
Rake Approx. 2"  
(GAF Said It Needs To Be  
3/4" To 1" To Prevent  
Curling)





I Replaced Undersized Vent Cap With A Properly Sized One (This Was A Life Safety Issue)

I Repaired Hole In Vent Flashing

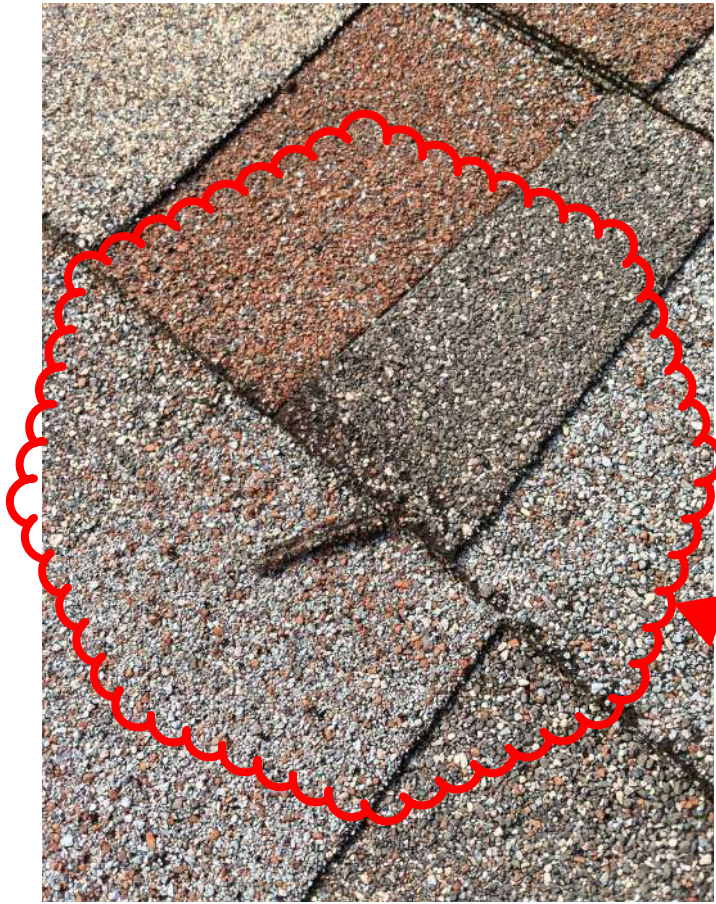
Hole In Vent Flashing





Step Flashing  
Not Installed

Kick Out  
Flashing Not  
Installed



Damage To Shingles  
During Installation  
(Typical)



## Siding Replacement

105 Silver Pine Ct.  
Greer, SC 29650

The need for work on mine and my wife's house came about due to the tremendous hail storm we had on March 21, 2017. My wife and I met with George Huth and John Von der Lieth the end of July and gave them a copy of our insurance company's latest estimate which included roofing, siding, inside and outside painting, gutters and downspouts, window screens, misc repairs and damage to personal property. My wife and I told them if agreements could be reached we would hire Custom Castles for the roofing and siding and that I would handle the other work.

On July 31, 2017 I signed an agreement with Custom Castles which was also signed by John Von der Lieth (who is a contract employee) to replace the roof on my house but we did not sign an agreement on the siding replacement. I told them if possible I would like to install Hardie Plank as a replacement for the aluminum siding on the house as aluminum siding is no longer available. I also told them I wanted siding with a 4" exposure because the aluminum siding had a 4" exposure and when I added a screened porch in the rear of the house the contractor installed siding with a 4" exposure.

They (George Huth and John Von der Lieth) told my wife and I they had a lot of experience installing Hardie Plank and before they could commit to a price they would need to check with the supplier to see how the price compared with our insurance company's (Allstate's) cost estimate. They said that in the past Hardie Plank was about a dollar higher per square foot than what the insurance companies would pay. We also agreed it would be less expensive if primed Hardie Plank was installed and then painted in lieu of installing prefinished Hardie Plank.

George Huth let us know he had been an Allstate appraiser for 15 years and he new how to get additional money from the insurance company in the form of a supplement but he couldn't let them know it was him doing it. Some of the items he mentioned were additional overhead and profit, additional money for heavier gauge aluminum than the insurance company allowed for and additional money for the siding on the left end of my house the insurance company had not allowed. He did in fact get a large supplement all of which was to be paid to Custom Castles.

After several days I received calls from both George and John saying it looked like the Hardie Plank was going to be \$4.00 or \$5.00 higher per square foot not \$1.00 higher per square foot. I let John know I would not pay \$4.00 or \$5.00 more and that I would have to drop back to vinyl siding. John asked me to give them a little more time to see what they could do. In a few days both George and John called back and said they had worked out a deal with the supplier and we could get the siding for the original \$1.00 more price. I told them to go ahead. George said he would come over and make a final take off and get the material on order which he did. Several days later I was told the siding was ready for delivery and was asked where the supplier could unload it. I told them to put it on the front sidewalk.

A couple days later Custom Castles' subcontractor started installing the siding and completed the work in about 4 or 5 days. After the work was completed I was in my back yard and noticed something didn't look right. I decided to measure the siding and found out my old siding had an exposure of 4" but the siding installed by Custom Castles had an exposure of 5". I immediately called George Huth and let him know what I found and that something had to be done. He advised the siding was 5 1/4" wide which would provide the 4" exposure (see text message below). When I let him know the siding was 6 1/4" wide everything started to fall apart (see text messages).

**Responses to questions asked to Mark with Hardie Technical Support that John Hornbeck said he would correct.**

Mark was advised that the house is wood framed 2 x 4s on 16-inch centers and that the sheathing is plywood on the corners and fiberboard in between.

---

Mark advised that butt joints must be made at studs because the joint needs to be at a structural member. Custom Castles did not do this. It's not okay to make butt joints between studs where the sheathing is fiber board. But that is what Custom Castles did. One nail is required in each board of a butt joint. Custom Castles used the wrong kind of nails and placement in most cases. The distance between butt joints in adjacent rows needs to be a minimum of 32". Custom Castles did not do this.

There needs to be a 1" clearance between the Hardy Plank and the roof shingles where the roof shingles and wall meet. Custom Castles did not do this.

Starter strips must be installed under the first row of plank to provide the correct plank angle. Custom Castles did not do this.

Horizontal metal flashing is required at the top of windows where the top of the window is exposed to weather. Custom Castles did not do this. A starter strip is only required if when you push on the Hardy Plank it flexes. The starter strip does not have to be continuous. It can be a short piece in the middle or at 2 or 3 places across the top of the window. No starter strip is required at the bottom of the window. Where the roof overhang is close to the top of the window no flashing is required. I would like to see an 1/8" gap at the top of the window to allow for proper caulking.

Starter strips should be 1/4" to 5/16" thick and 1 1/4 inch wide. Starter strip material can be any material such as treated wood, vinyl, Hardie Plank, etc. that is rot resistant. Custom Castles did not do this.

The maximum fastener spacing for Hardie Plank is 24". Therefore, for studs on 16" centers fasteners are required in every stud so they hit a structural member (stud) at less than 24". Custom Castles did not do this in all cases.

When installing Hardie Plank the back and edges do not need to be primed or painted because it comes pre-primed. When Hardie board is cut the cut edges must be caulked, primed or painted. Custom Castles did not do this. The exposed edges have to be sealed. Starter strip does not need to be primed or painted.

Where Hardie Plank meets trim at corners, windows, etc. there needs to be an 1/8" gap. This will allow for proper sealing when caulked. Custom Castles did not do this.

**The items below were not originally discussed with Mark with technical support but were agreed to by John Hornbeck and myself on 10/19/2017.**

Custom Castles will have the starter strips installed that were not installed when the siding was first put up. Custom Castles has not done this work.

The Hardie Plank exposure was to be 4". Custom Castles purchased a 6.25" wide plank which would normally be installed with a 5" exposure (which is what the subcontractor did since he was not instructed otherwise). John Hornbeck suggested he could have the planks reinstalled with a 4.5" exposure and at that time I accepted the compromise. Custom Castles did not do this work. Later when discussing this with Hardie Technical Support I was told by Mark that Hardie did not recommend removing and reinstalling Hardie Plank. He said their engineers have found that when Hardie Plank is removed a lot of it is visibly damaged but more importantly there is a lot of internal damage that can not be seen which compromises the structural integrity of the plank. He also said if the exposure is changed it will affect the system aesthetics and there may be problems at windows and trim. The one plank removed by the subcontractor on Oct 21st. was totally destroyed and would not have been able to be reused. For these reasons I told Custom Castles I could not now accept reinstalling the 6 1/4" plank with a 4 1/2" exposure.

#### **Additional Items**

A kick out flashing should have been installed where the roof edge meets a wall. Custom Castles did not do this (Roofer nor Siding installer).

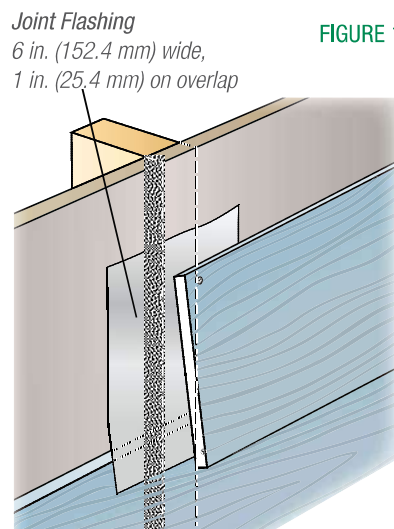
When the one plank was removed on Oct 21st it exposed the hidden nails supporting the plank below it. By exposing these nails it was found that all of them had been countersunk which is not acceptable due to the reduction in structural strength. The countersunk nails should have been caulked and a new nail installed. Custom Castles did not caulk the countersunk nails. In some cases a second nail was installed but it was the wrong kind. It should have been a nail with a head but a finish nail was installed instead.

One of the front porch lights' glass was broken and needs to be repaired. John Von der Lieth said it would be taken care of but has not been.

During installation of the siding the installer accidentally hit a water line which caused a leak. The installer repaired the leak but water damaged the kitchen ceiling so it needs to be repaired. The damage was shown to John Hornbeck and he just shrugged it off. In addition the repair was not done by a plumber nor was the repair soldered. When the siding is removed the repair needs to be checked to make sure it is a permanent repair and that any insulation disturbed was replaced so the line won't freeze in the future.

Custom Castles should pay for the painter to re-caulk the siding after the installation is corrected.

James Hardie recommends 6 inch (152.4 mm) wide joint flashing that overlaps the course below by 1 inch (25.4 mm). See Figure 1. Some local building codes may require different size flashing.



# General Product Information

## JOBSITE STORAGE OF JAMES HARDIE® PRODUCTS

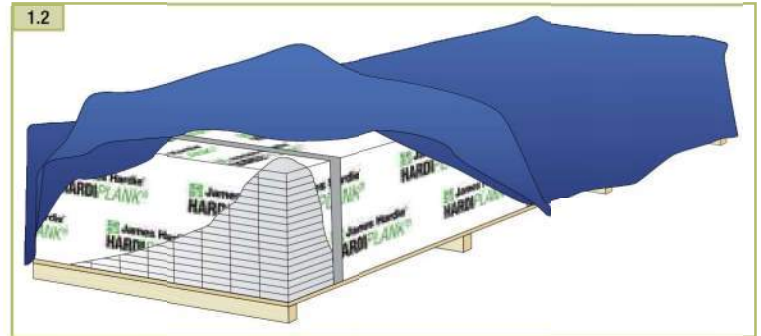
### Not Done

The James Hardie family of siding and trim products, including James Hardie® products with ColorPlus® Technology, should be stored in their original packaging in a garage, shed, or in some other covered area protected from weather whenever possible. These products must be kept covered on a pallet off of the ground; they must never be stored in direct contact with the ground.

If James Hardie products are stored outside they should be protected with an additional waterproof covering. All scrap siding and trim pieces, cutoffs or material left on scaffolding must be covered and protected from the elements. If James Hardie products become saturated, they must be laid on a flat surface and allowed to dry completely prior to installation.



*James Hardie products stored in their original packaging.*



*If stored outside protect with an additional waterproof covering.*

**WARNING**  
James Hardie products should not be rolled-off or dumped-off of the truck during delivery to the jobsite. James Hardie recommends using a fork lift to off load material or unloading by hand.

## IMPORTANCE OF KEEPING JAMES HARDIE PRODUCTS DRY

James Hardie siding and trim products must be kept dry at all times prior to installation. If products become saturated before they are installed, the following problems may occur:

### OPEN JOINTS DUE TO SHRINKAGE

If installed wet, joints between planks may open up requiring repair or replacement. Under normal environmental conditions fiber cement has significantly greater dimensional stability than wood or vinyl-based exterior products.

### DIFFICULTY IN HANDLING

Saturation increases the weight and flexibility of fiber-cement products, making them difficult to handle.

### STAINING

Staining is a deposit of soluble salts, usually white in color, which sometimes appears on the surface of masonry or concrete construction.

**WARNING**  
James Hardie is not responsible for damage due to improper storage and handling of its products.

# Working Safely with James Hardie® Products

General Product Information

Working Safely

Tools for Cutting and Fastening

General Installation Requirements

General Fastener Requirements

Finishing and Maintenance

HardieWrap® Weather Barrier

HardieTrim® Boards/Battens

HardieSoffit® Panels

HardiePlank® Lap Siding

HardieShingle® Siding

HardiePanel® Vertical Siding

Appendix/ Glossary

ESR-1844 & 2290 Report

## MINIMIZE AND MANAGE SILICA DUST

**Not Done**

Silica (SiO<sub>2</sub>) is the second most common mineral in the earth's crust, and it's a common ingredient in many building products, including James Hardie® fiber-cement materials. Intact, these products do not pose a silica risk. However, when cut, drilled or abraded during installation, the resulting smaller, silica-containing dust can pose a potential health hazard as inhalation of excessive quantities over an extended period can cause silicosis, lung-cancer or other lung-related diseases, potentially leading to death.




To protect workers from potential health effects, OSHA established and enforces a permissible exposure limit (PEL) for respirable silica set effectively at 0.100 mg/m<sup>3</sup>. This PEL is an 8-hr. time-weighted average and is measured with special industrial hygiene equipment. Any exposure above this level requires that the installer take additional protective measures that might include a documented respirator program and medical monitoring.

James Hardie always encourages installers to take every possible precaution to minimize dust exposure levels. In any situation, properly-fitted NIOSH approved respirators (e.g. N95) can be used in conjunction with the proper tools and cutting methods to further limit silica dust exposures and to provide a safer workplace.

If additional concern regarding dust exposure levels exists, if there is concern about exceeding OSHA's PEL, or if the conditions of your jobsite do not allow you to conform to recommended practices, please contact James Hardie at 1-888-JHARDIE (542-7343), or consult with a qualified industrial hygienist (IH). A directory of independent IH consultants can be found at [www.aiha.org](http://www.aiha.org).

## WORK SAFE: FOLLOW JAMES HARDIE PRODUCT CUTTING INSTRUCTIONS

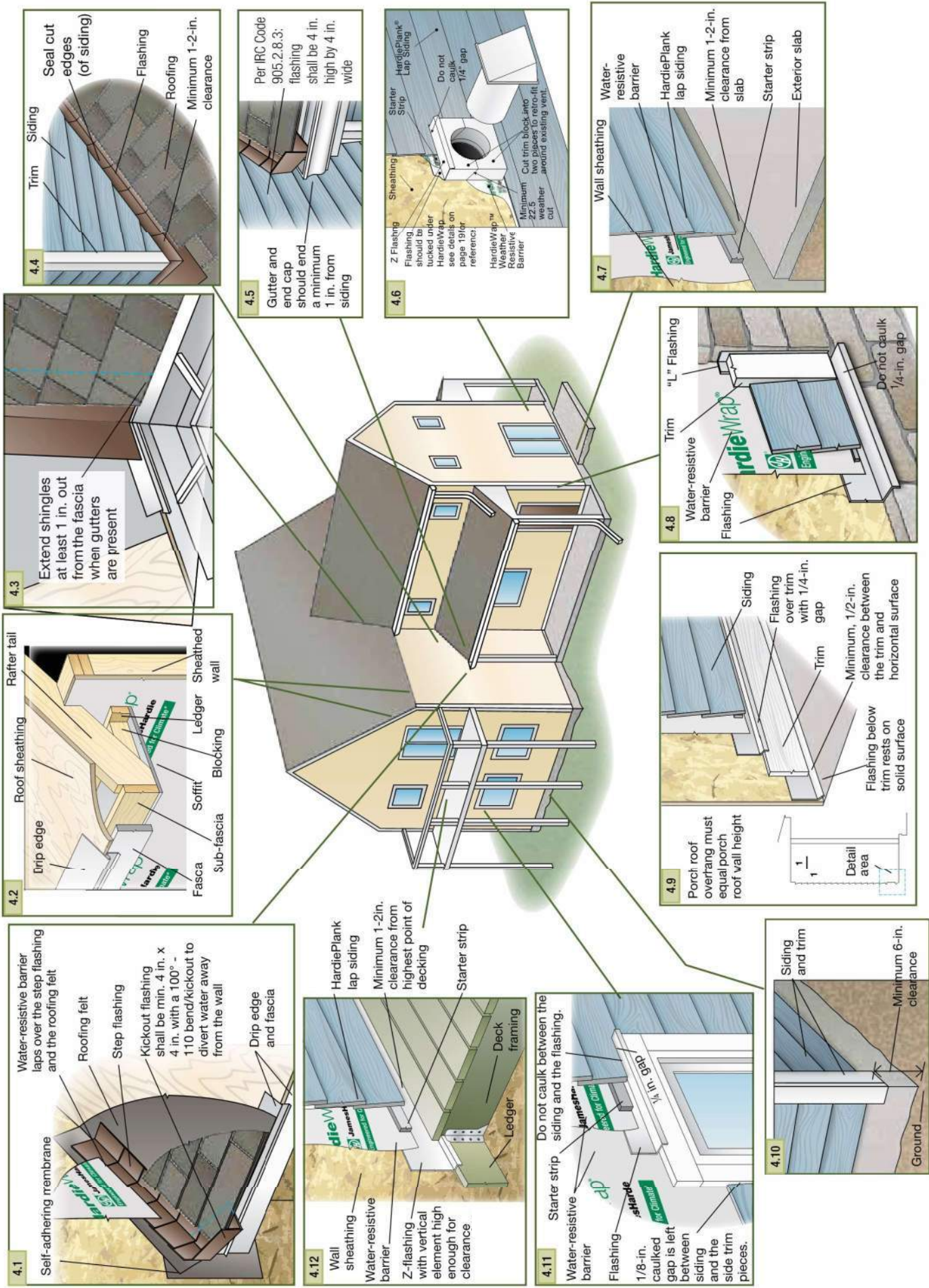
To create and maintain safer jobsites, James Hardie has developed the following “tiered” system to help select the best tools and methods for any given job. **Note:** For maximum protection (i.e. the lowest respirable dust exposures), James Hardie recommends using “Best” cutting methods and tools whenever possible. Please contact James Hardie or consult with a qualified industrial hygienist if unable to adhere to the recommended cutting instructions.

Rating	Tools	Cutting Method	Cutting Volume	Ventilation
Best	 or	Handheld Shears, Platform Shears, Score and Snap	No Limitations	Indoor/Outdoor
Better	 and	Dust-reducing saws with HardieBlade® saw blade coupled with HEPA vacuum extraction	No Limitations	Outdoor
Good	 and	Dust-reducing saws with HardieBlade saw blade	Low to Moderate	Outdoor

# General Installation Requirements

**Not Done**

**Not Done**



**4.1** Water-resistive barrier laps over the step flashing and the roofing felt. Self-adhering membrane. Roofing felt. Step flashing. Kickout flashing shall be min. 4 in. x 4 in. with a 100° - 110 bend/kickout to divert water away from the wall. Drip edge and fascia.

**4.2** Rafter tail. Roof sheathing. Drip edge. Fascia. Sub-fascia. Soffit. Blocking. Ledger. Sheathed wall.

**4.3** Extend shingles at least 1 in. out from the fascia when gutters are present.

**4.4** Siding. Trim. Seal cut edges (of siding). Flashing. Roofing. Minimum 1-2-in. clearance.

**4.5** Gutter and end cap should end a minimum 1 in. from siding. Per IRC Code 905.2.8.3; flashing shall be 4 in. high by 4 in. wide.

**4.6** HardiePlank® Lap Siding. Starter Strip. Sheathing. Flashing should be tucked under HardieWrap™ see details on page 19 for reference. HardieWrap™ Weather Resistive Barrier. Minimum 22.5 in. weather around existing vent. Do not caulk 1/4" gap. Cut trim block into two pieces to retro-fit around existing vent.

**4.7** Wall sheathing. Water-resistive barrier. HardiePlank lap siding. Minimum 1-2-in. clearance from slab. Starter strip. Exterior slab.

**4.8** "L" Flashing. Trim. Water-resistive barrier. Flashing. Do not caulk 1/4-in. gap.

**4.9** Porch roof must overhang equal porch roof wall height. Siding. Flashing over trim with 1/4-in. gap. Trim. Minimum, 1/2-in. clearance between the trim and horizontal surface. Flashing below trim rests on solid surface. Detail area.

**4.10** Siding and trim. Minimum 6-in. clearance. Ground.

**4.12** Wall sheathing. Water-resistive barrier. Z-flashing with vertical element high enough for clearance. HardiePlank lap siding. Minimum 1-2-in. clearance from highest point of decking. Starter strip. Deck framing. Ledger.

**4.11** Do not caulk between the siding and the flashing. Starter strip. Water-resistive barrier. Flashing. 1/8-in. caulked gap is left between siding and the side trim pieces.

General Product Information	Working Safety	Tools for Cutting and Fastening	General Installation Requirements	General Fastener Requirements	Finishing and Maintenance	HardieWrap® Weather Barrier	HardieTrim® Boards/Battens	HardieSoft® Panels	HardiePlank® Lap Siding	HardieShingle® Siding	HardiePanel® Vertical Siding	Appendix/Glossary	ESR-1844 & 2290 Report
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Below Is A Copy Of An Email Sent To John Hornbeck On 10/21/2017.



Milton Gatlin

Sat 10/21/2017, 10:17 PM

johnhornbeck@customcastles.net

I had not been paid by the Insurance Company at the time I paid him.

John,

Since you want return my phone calls I thought I would try sending an email. Will you please send me a copy of a paid invoice for the amount I paid to you on 10/20/2017 (\$8,200.00). As you know I need the paid invoice to be able to collect from my insurance company. Of course I have already requested this in the voicemails I left you. You can send it by return email or text message.

Another question to you is why have you decided not to make the corrections to the non compliant work performed by Custom Castles on my house that you promised to make when you were at my home on 10/19/2017. You agreed to make the corrections and said you had trusted me so now I should trust you and you asked me to make a payment, which I did on 10/20/2017. Now according to Jeffery (after you cashed my check) you told him on 10/21/2017 you know nothing of the corrections. If you remember, in a follow up phone call (before I gave you the check) I let you know the material manufacturer confirmed the deficiencies we agreed on and I let you know I had a list I could send either by email or text message. You asked me to send it to you by text message so you could forward it to Jeffery. I sent it to you but Jeffrey says you never sent it to him. Why not? I hope this is all a misunderstanding and you don't renege on the promises you made.

Regards,  
Milton Gatlin

Sent from Mail for Windows 10

STATE OF SOUTH CAROLINA	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
	)	
Milton A. Gatlin and Marla S. Gatlin	)	C/A No. 2022-CP-23-05339
	)	
Plaintiffs,	)	
	)	
vs.	)	<b>MEMORANDUM IN SUPPORT OF</b>
	)	<b>DEFENDANTS’ MOTION FOR</b>
	)	<b>SUMMARY JUDGMENT</b>
	)	
John M. Hornbeck, III, Custom Castles	)	
Roofing and Construction, Inc. and Custom	)	
Castles Construction, LLC,	)	
	)	
Defendants.	)	
_____	)	

Defendants, John M. Hornbeck, III, Custom Castles Roofing and Construction, Inc. and Custom Castles Construction, LLC (hereinafter “Defendants”), present the following Memorandum in Support of Defendants’ Motion for Summary Judgment as to Plaintiff’s causes of action for Disregard of Corporate Entity, Quantum Meruit, Unfair Trade Practices Act Violation, Breach of Contract Accompanied by a Fraudulent Act, Fraud or Fraud in the Inducement and Negligent Misrepresentation.

**BACKGROUND**

On or about July 31, 2017, Plaintiffs entered into a contract with Custom Castles Roofing and Construction, Inc. (hereinafter “CCRC”) to perform restoration work at their home located at 105 Silver Pine Court Greer, South Carolina 29650 (the “Property”) following damage sustained as a result of a hail storm. (The “Contract”; **Exhibit. A**). After CCRC performed the roof and siding replacement, Plaintiffs paid CCRC \$19,546.64, a portion of the sum due under the contract. The damage sustained to the Property was covered by a Windstorm and Hail policy of insurance through Nationwide Insurance Company.

Milton Gatlin admitted in his deposition that he has not paid CCRC in full.

Q. So is it your testimony that you provided a partial payment to Custom Castles at that time?

A. That's right.

(Gatlin Dep., p. 41, line 16 - p. 41, line 18; **Exhibit B**)

Plaintiffs' payment to CCRC was paid out of insurance proceeds received as a result of hail and wind damage. After the work was completed, Plaintiff, Milton Gatlin, raised several complaints to CCRC. In response, CCRC agreed to repair several items and arranged for the work to be performed. On the date the work was to be performed, Plaintiffs refused to allow CCRC to complete the work and ordered CCRC off of Plaintiff's property.

Plaintiffs filed their Original Complaint on or about February 7, 2018 bearing Case Number 2018-CP-23-00695. Plaintiffs filed an Amended Complaint on June 28, 2018. Case Number 2018-CP-23-00695 which was dismissed pursuant to SCRCP, Rule 40(j). The Amended Complaint alleges the following causes of action: (1) Breach of Contract; (2) Quantum Meruit; (3) Breach of Contract Accompanied by a Fraudulent Act; (4) Fraud or Fraud in the Inducement; (5) Negligent Misrepresentation; (6) Negligence; (8)(sic) Unfair Trade Practices Act Violation; and (9)(sic) Disregard of Corporate Entity. Plaintiffs also named another entity owned by John Hornbeck, Custom Castles Construction, LLC as well as John Hornbeck, personally. The case was taken off the active docket pursuant to SCRCP, Rule 40(j) on September 20, 2021 and restored to the active docket by Order filed September 26, 2022 and bears the above captioned Case Number.

This memorandum is based on the South Carolina Rules of Civil Procedure, statutory and common law of South Carolina, the pleadings, discovery, depositions, motions, memoranda and or other materials filed or presented to the court prior to or at the hearing on these motions.

## DISCUSSION

### I. MOTION FOR SUMMARY JUDGMENT

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; *Hansson v. Scalise Builders of South Carolina*, 374 S.C. 352, 650 S.E.2d 68 (2007); *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (2005); *BPS, Inc. v. Worthy*, 362 S.C. 319, 608 S.E.2d 155 (Ct.App.2005).

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 593 S.E.2d 183 (Ct.App.2004).

#### a. Breach of Contract

Plaintiff's claim of Breach of Contract against one or more of Defendants fails for three reasons: (1) Plaintiff Breached the Contract first; (2) Plaintiff's anticipatory breach of the Contract excused further performance of Defendants; and (3) Plaintiff prevented CCRC from performing its duties under the contract.

“Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests.” *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct.App.2008) (internal quotation marks omitted). “The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language.”; *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535, 514 S.E.2d 327, 330 (1999) “When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the

parties have used.”; *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct.App.2002) “[T]erms in a contract provision must be construed using their plain, ordinary and popular meaning.”; *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003) “The judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous.”

The Contract required that all sums received from the insurance company be paid to CCRC within 7 days of receipt. (Contract, Exhibit A; ¶ 21 (sic)). The Contract further states, “[f]ailure to do so will be a breach of this Contract. (**Exhibit A**, the Contract, ¶ 21(sic)<sup>1</sup>). Mr. Gatlin testified in his deposition that he has never paid CCRC in full for the siding.

Q. Have you paid Custom Castles in full for the roof replacement and siding replacement?

A. No.

(Gatlin Dep. p.24 line 15-17; **Exhibit B**)

Plaintiff did not endorse over the check from its insurance company to CCRC and therefore breached its Contract with CCRC. Plaintiff obviously deposited the check into his account and was paying whatever he wanted to from his own checking account. (See, **Exhibit A**; Contract, para. 21). In *Zemp Constr Co. v. Harmon Bros*, the court held, “[t]he failure to pay an installment of the contract price as provided in a building or construction contract is a substantial breach of the contract, and gives the contractor the right to consider the contract at an end, to cease work, and to recover the value of work already performed.” *Zemp Constr. Co. v. Harmon Bros. Constr. Co.*, 225 S.C. 361, 366, 82 S.E.2d 531, 533 (1954). (*cited in, Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 593, 658 S.E.2d 539, 543 (Ct. App. 2008)).

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1. The contract has two paragraph 21's. The relevant paragraph 21 is the second in the series.

It is further evident that the Plaintiffs committed an anticipatory breach of the Contract by only partially paying CCRC for the siding and then “running them (CCRC) off.” Mr. Gatlin testified as follows:

Q. Mr. Gatlin, I'm going to hand you a document that has been marked as Defendant's Exhibit Number 7 and ask if you recognize it.

A. I do.

Q. And what is Defendant's Exhibit Number 7?

A. It's a copy of the check I wrote to Custom Castles for \$8200 for the siding work.

Q. Does that bring your payment to Custom Castles current, or do you still owe Custom Castles money under this invoice?

A. At the time I wrote this check, the siding work was not complete. So I didn't feel like or comfortable paying for something that hadn't been done.

Q. So is it your testimony that you provided a partial payment to Custom Castles at that time?

A. That's right.

(Gatlin Dep. p. 41, line 3-17, **Exhibit B**)

So, anyway, they came to the house. We got in an argument and I ran them off.

Q. What do you mean by ran them off?

A. I told them to leave my property, and I used some expletives that I can't say in front of you.

(Gatlin Dep. p. 43, line 15-20, **Exhibit B**).

“In general, an anticipatory breach of contract is one committed before the time has come when there is a present duty of performance, and is the outcome of words or acts evincing an intention to refuse performance in the future.”. 30 S.C. Jur. Contracts § 66 (1999). Furthermore, Plaintiffs prevented CCRC from performing it’s statutory right to cure pursuant to the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code of Laws § 40-59-810. The Court of Appeals, in *Champion v. Whaley*, said, “[t]his is simply an instance of the general rule that one who prevents a condition of a contract cannot rely on the other party's resulting nonperformance in an action on the contract.” *Champion v. Whaley*, 280 S.C. 116, 120, 311 S.E.2d 404, 406 (Ct. App. 1984) citing *Farrow v. Martin*, 16 S.C.L. (Harp.) 409 (1824); *Young v. Hunter*, 6 N.Y. (2 Selden) 203 (1852); *Fisher v. Drewett*, (1878) 48 L.J.Q.B. 32. Because of the breach and anticipatory breach of contract, the Defendants were relieved of any further duty under the contract and Defendants are entitled to Summary Judgment.

#### **b. Quantum Meruit**

Plaintiffs include a Quantum Meruit cause of action in their Amended Complaint. Defendants aver that this cause of action is misplaced. Quantum Meruit presupposes that someone “confers a benefit upon another” and does not receive payment. However, in this case, the Plaintiffs aver that the work CCRC performed was deficient.

To prevail on a quantum meruit claim, a plaintiff must establish (1) he conferred a benefit upon the defendant; (2) the defendant realized that benefit; and (3) retention of the benefit by the defendant under the circumstances make it inequitable for the defendant to retain it without paying its value. *Swanson v. Stratos*, 350 S.C. 116, 121, 564 S.E.2d 117, 119 (Ct.App.2002); see also *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616–17, 703 S.E.2d 221, 225 (2010) (providing the same requirements). *Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 325, 734 S.E.2d 177, 180 (Ct. App. 2012).

Plaintiff’s Amended Complaint states,

- 29) The Plaintiff conferred a benefit upon the defendant.
- 30) The Defendant realized the benefit.

31) The Defendant retained the benefit under conditions that make it unjust to retain without paying its value.

(Amended Complaint, ¶¶ 29- 31, **Exhibit C**)

Because Defendants supplied materials and labor for which they have not fully been paid, Defendants aver that CCRC was actually the one conferring the benefit upon the Plaintiffs. Defendants aver that this cause of action is misplaced and Defendants' Motion for Summary Judgment as to Plaintiff's cause of action for Quantum Meruit should be granted.

**c. Breach of Contract Accompanied by a Fraudulent Act**

Plaintiffs have also plead a Breach of Contract Accompanied by a Fraudulent Act cause of action. Defendants aver that the damages claimed by the Plaintiffs for this cause of action are the same as under their Breach of Contract cause of action. Plaintiffs have not identified any separate damage specific to this cause of action.

“In order to recover for breach of contract accompanied by a fraudulent act, a plaintiff must establish: (1) a breach of contract; (2) that the breach was accomplished with a fraudulent intention, and (3) that the breach was accompanied by a fraudulent act.” *Smith v. Canal Ins. Co.*, 275 S.C. 256, 269 S.E.2d 348 (1980). *Minter v. GOCT, Inc.*, 322 S.C. 525, 529–30, 473 S.E.2d 67, 70 (Ct. App. 1996).

Moreover, in order to support an allegation of fraud, the basis of such claim must be *plead with particularity* (emphasis added). Rule 9(b), SCRCP provides the following:

**(b) Fraud, Mistake, Condition of Mind.** In all averments of fraud or mistake, the circumstances constituting fraud or mistake *shall be stated with particularity*. Malice, intent, knowledge, and other condition of mind of a person may be averred generally (emphasis added).

Plaintiffs' cause of action fails to meet this pleading requirement. Plaintiff's cause of action for Breach of Contract Accompanied by a Fraudulent Act contains the following:

32) The allegations set forth in the preceding paragraphs are re-alleged and incorporated by reference as if fully set forth herein.

33) The parties entered into a valid contract

- 34) The contract was breached by the Defendants;
- 35) The Defendants' breach was accomplished with a fraudulent intention;
- 36) The Defendants' breach was accompanied by a fraudulent act.

(Amended Complaint ¶¶ 32-36, **Exhibit C**)

No specific facts are alleged. Plaintiffs cause of action is a mere recitation of the elements.

“Although the cases involving breach of contract accompanied by a fraudulent act do not present an easy formula for defining a “fraudulent act,” it is clear that the fraudulent act alleged must be an act done with the intent to deceive. H. Lightsey, *South Carolina Code Pleading* at 97 (1976); see, e.g., *Lancaster v. Smithco, Inc.*, 238 S.C. 15, 119 S.E.2d 145 (1961). *Donaldson v. Temple*, 96 S.C. 240, 80 S.E. 437 (1913). In this instance, the counterclaim contains no allegation that either of the alleged fraudulent acts accompanying the breach of the agreement was committed with an intent to defraud either Murray or the Partnership.” *Save Charleston Found. v. Murray*, 286 S.C. 170, 181, 333 S.E.2d 60, 67 (Ct. App. 1985)

Plaintiffs' cause of action fails to meet the “particularity” requirements of SCRCP 9(b), fails to allege the fraudulent acts that accompanied the breach and there is no proof that any fraudulent act was intended to deceive the Plaintiffs.

Furthermore, there is a heightened burden of proof for Fraud. Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence. *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). Plaintiffs have asserted fraud, but there is certainly no evidence which is clear, cogent and convincing to prove such allegations.

For the aforementioned reasons, Defendants' Motion for Summary Judgment as to Plaintiff's cause of action for Breach of Contract Accompanied by a Fraudulent Act should be granted for lack of damages, for noncompliance of pleading requirements and lack of clear, cogent, and convincing evidence.

#### **d. Fraud or Fraud in the Inducement**

While the Plaintiffs successfully include each element of Fraud, they again fail to plead with ANY particularity.

“In order to prevail on a claim for Fraud, the Plaintiff must prove the following: A cause of action for fraud requires: (1) a representation of fact; (2) its falsity; (3) its materiality; (4) either knowledge of the falsity of the representation or reckless disregard of its truth or falsity; (5) the intent that the representation be acted on; (6) the hearer's ignorance of the falsity of the representation; (7) the hearer's reliance on the truth of the representation; (8) the hearer's right to rely on the representation; and (9) the hearer's consequent and proximate injury.” *Schnellmann v. Roettger*, 373 S.C. 379, 645 S.E.2d 239 (2007). *Hollman v. Woolfson*, 384 S.C. 571, 579–80, 683 S.E.2d 495, 499 (2009).

The Plaintiffs’ Fraud or Fraud in the Inducement cause of action contains the following:

- 37) The allegations set forth in the preceding paragraphs are re-alleged and incorporated by reference as if fully set forth herein.
- 38) The Defendants’ made representations to the Plaintiff.
- 39) The representations were false.
- 40) The representations were material to the Plaintiffs decision to enter into the contract.
- 41) The Defendants had knowledge of the representations’ falsity or exhibited a reckless disregard of its truth or falsity.
- 42) It as the Defendants’ intent that the representations’ be acted upon by the Plaintiff.
- 43) The Plaintiff was ignorant of its falsity.
- 44) The Plaintiff relied on the representations’ truth.
- 45) The Plaintiff had a right to rely on the truth of the representations.
- 46) Damage was suffered by the Plaintiff as a direct and proximate result of the Defendants’ misrepresentation.

(Amended Complaint ¶¶ 37-46, **Exhibit C**)

Plaintiff’s have not articulated or provided evidence of any specific damages suffered as a result of the Defendants’ misrepresentations. The Plaintiffs in this case rely upon a single allegation that the work performed by CCRC was deficient, nothing more. Also, this cause of action does not include the elements for Fraud in the Inducement.

“In order to prevail on a claim for Fraud in the Inducement, the Plaintiff must prove the following: To establish a claim or defense of fraud in the inducement, a plaintiff must prove the nine elements of fraud as well as the following three elements: “(1) that the alleged fraudfeasor made a false representation relating to a present or preexisting fact; (2) that the alleged fraudfeasor intended to deceive him; and (3) that he had a right to rely on the representation made to him.” *Darby v. Waterboggan of Myrtle Beach, Inc.*, 288 S.C. 579, 584, 344 S.E.2d 153, 155 (Ct.App.1986). *Moseley v. All Things Possible, Inc.*, 388 S.C. 31, 36, 694 S.E.2d 43, 45 (Ct. App. 2010), aff’d, 395 S.C. 492, 719 S.E.2d 656 (2011).

Again, there is a heightened burden of proof for Fraud. Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence. *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). *See also, Hancock*, 381 S.C. at 330–31, 673 S.E.2d at 803 (2009) (stating in cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment). Plaintiffs have asserted fraud, but there is certainly no evidence which is clear, cogent and convincing to prove such allegations.

For these reasons, Defendants' Motion for Summary Judgment should be granted as to this cause of action.

#### **e. Negligent Misrepresentation**

Defendants also seek Summary Judgment as to Plaintiffs cause of action for Negligent Misrepresentation. Again, Plaintiffs have failed to identify any damages specific to this cause of action. Moreover, Plaintiffs have failed to prove how any damages claimed in this case were proximately caused by any alleged representation made by the Defendants. In this cause of action, Plaintiffs plead as follows:

- 48) The Defendants has made the following false misrepresentations to the Plaintiff:
- g. That he was a general contractor accustomed to performing the nature, scope, and type of work which he was hired to perform.
  - h. That Defendant was the owner of the company, and the individuals performing the work on the Plaintiff's home were under the Defendant's direct scope and authority.
  - i. That the Defendant and his other agents would perform the work on the Plaintiff's home to the exact specifications required by the Plaintiff.
  - j. That the Defendant's would be using the materials requested by the Plaintiff, to their manufacturing specifications.
  - k. That the Defendant would repair the deficiencies in the siding of the Plaintiff's home.

(Amended Complaint, ¶ 48, §§ (g)-(k), **Exhibit C**)

“To prove a claim for the common law tort of negligent misrepresentation, the following elements must be established:

(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the *proximate result of his reliance on the representation.*” *West v. Gladney*, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct.App.2000) (emphasis added).

Plaintiffs have failed to identify any damages which were proximately caused by Plaintiffs’ reliance upon any alleged misrepresentations. Notwithstanding the fact that Defendants aver that any “misrepresentations” are rather conclusions and inferences the Plaintiffs have identified through the transaction as a whole rather than specific statements made by any Defendant in this lawsuit.

“Evidence of a *mere broken promise* is not sufficient to prove negligent misrepresentation.” *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 407, 581 S.E.2d 161, 166 (2003) (quoting *Winburn v. Ins. Co. of N. Am.*, 287 S.C. 435, 443, 339 S.E.2d 142, 147 (Ct.App.1985)). Ordinarily, to be actionable, a statement must relate to a present or preexisting fact, and cannot be predicated on unfulfilled promises or statements as to future events. *Davis v. Upton*, 250 S.C. 288, 291, 157 S.E.2d 567, 568 (1967). *Turner v. Milliman*, 392 S.C. 116, 123, 708 S.E.2d 766, 769–70 (2011) (emphasis added).

Because Plaintiffs have failed to identify any misrepresentations or damages related to this cause of action, Defendants are entitled to Summary Judgment.

#### f. Negligence

Plaintiffs’ negligence claim is barred by the Economic Loss Rule. “A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie.” *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 54–55, 463 S.E.2d 85, 88 (1995). In the case at hand, the Contract sets for the duties of CCRC and the Plaintiff. Plaintiff’s sole remedy is under contract

law and the Negligence claim is duplicative and barred by the Economic Loss Rule and Defendants are entitled to Summary Judgment on this issue.

**g. Unfair Trade Practices Act Violation**

Plaintiffs' SCUTPA claim fails as a matter of law because it is a private dispute that does not affect the public interest. "Our courts have made it clear that UTPA is not available to redress a private wrong where the public interest is unaffected. UTPA is not an alternative vehicle to pursue an alleged breach of contract. Even an intentional breach of a contract does not rise to the level of a violation of UTPA." *Dove Data Prod., Inc. v. DeVeaux*, 2008 WL 98641167 at (Ct. App. 2008) (internal citations omitted). This matter is a private dispute between a homeowner and contractor for which Plaintiffs cannot seek recovery under the SCUTPA.

Moreover, Plaintiffs failed to properly plead this cause of action.

"To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct.App.2006).

Plaintiffs failed to allege that the unfair or deceptive act affected the public interest. Moreover, Plaintiffs fails to allege that they suffered monetary damage or property loss as a result of the Defendant's unfair or deceptive acts. Defendants are unaware of any damages claimed by the Plaintiffs that are specific to their SCUTPA claim. *See* paragraphs 58 through 61 of the Amended Complaint. (**Exhibit C**)

58) The Defendant is in violation of S.C. Code Ann. § 39-5-20, which states, "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

59) The Defendant has taken actions, and made false representations to, and, against the Plaintiff in the conducting of his trade and business.

60) The Defendant has intentionally misrepresented to the Plaintiff the location of the business, having represented to Plaintiff that his business operates in locations that it does not.

61) The Defendant, has made assertions to Plaintiff that he & his agents obtained the required licensure and permitting to perform the specified work.

For the reasons stated herein, Defendants' Motion for Summary Judgment as to Plaintiffs' cause of action for South Carolina Unfair Trade Practice Act Violation should be granted.

#### **h. Disregard of Corporate Entity**

Plaintiffs have brought a cause of action against the Defendants seeking to hold John Hornbeck personally liable for the acts of CCRC.

It is generally recognized that a corporation is an entity that is separate and distinct from, and its debts are not the individual debts of, its officers and stockholders. *Hunting*, 359 S.C. at 223, 597 S.E.2d at 806 (citing *DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co.*, 540 F.2d 681, 683 (4th Cir.1976)). Although the corporate entity may be disregarded in some situations, piercing the corporate veil is not a doctrine to be applied without substantial reflection. *Baker v. Equitable Leasing Corp.*, 275 S.C. 359, 367, 271 S.E.2d 596, 600 (1980) ("However, 'piercing the corporate veil' is not a doctrine to be applied without substantial reflection."). *Mid-S. Mgt. Co. Inc. v. Sherwood Dev. Corp.*, 374 S.C. 588, 597, 649 S.E.2d 135, 140 (Ct. App. 2007).

The only contract at issue in this case is the one between CCRC and Plaintiffs dated July 31, 2017. Moreover, Plaintiff, Milton Gatlin, testified in his deposition that he never even met John Hornbeck until after the siding and roof was replaced by CCRC at his house.

A. Yeah, but we first met a couple days before that. He came by and picked this check up on the 20<sup>th</sup> [of October].

Q. So when you say we met on the 18th, who did you meet with on the 18th?

A. John Hornbeck.

Q. And then who did you meet with on the 20th?

A. It wasn't a meeting. John Hornbeck came and picked this check up at my house.

Q. Okay. What was the resolution of your discussions with John Hornbeck?

A. That he would repair the deficiencies in the siding.

(Gatlin Depo., p. 44, line 13-23; **Exhibit B**)

To date, Plaintiffs have submitted no evidence to support this cause of action. In order to determine whether the corporate formalities were observed under the first prong of the *Sturkie* test, the courts consider eight factors:

- (1) whether the corporation was grossly undercapitalized;
- (2) failure to observe corporate formalities;
- (3) non-payment of dividends;
- (4) insolvency of the debtor corporation at the time;
- (5) siphoning of funds of the corporation by the dominant stockholder;
- (6) non-functioning of other officers or directors;
- (7) absence of corporate records; and
- (8) the fact that the corporation was merely a façade for the operations of the dominant stockholder. *Mid-S. Mgt. Co. Inc. v. Sherwood Dev. Corp.*, 374 S.C. 588, 598, 649 S.E.2d 135, 140–41 (Ct. App. 2007).

During his deposition, Milton Gatlin, admitted to having no personal knowledge about the Defendant entities.

Q. Do you have any personal knowledge concerning the corporate structure of Custom Castles Roofing and Construction, Inc.?

A. Only what I've been able to find out on the Internet.  
(Gatlin Depo., p. 79, line 24 - p. 80, line 2; **Exhibit B**)

Q. What personal knowledge do you have concerning the structure of the ownership of Custom Castles Roofing and Construction, Inc.?

A. Only the understanding in talking with contract people associated with Custom Castles that there's only one employee, John Hornbeck.

Q. Okay, but I'm asking about the corporate structure right now. Have you ever seen a copy of the Articles of Incorporation for that company?

A. No. You know I haven't.

Q. Have you ever seen a copy of the bylaws?

A. No.

Q. Has anyone ever told you who actually has a shareholder interest in that company?

A. No.

Q. Are you aware if there are any other shareholders other than John Hornbeck?

A. No.

(Gatlin Depo., p. 80, line 8 - p.81, line 4; **Exhibit B**)

Q. Do you have any personal knowledge concerning the structure of Custom Castles Construction, LLC?

A. Nothing other than when all this happened John Hornbeck closed it down.  
(Gatlin Depo., p. 81, line 5-8; **Exhibit B**)

Q. Okay. Do you have any personal knowledge that these two companies share bank accounts?

A. No.

Q. Do you have any personal knowledge concerning these companies' filing status for their tax returns?

A. No.

Q. Are you aware that these companies file separate tax returns and have separate tax ID numbers?

A. No.

Q. Do you have any personal knowledge that one or both of these companies are grossly undercapitalized?

A. No.

(Gatlin Depo., p. 84, line 8-19; **Exhibit B**)

Plaintiff admitted in his deposition that the contract does not include either additional party.

A. Yeah, I don't know that it says Custom Castles Construction on this contract anywhere.

(Gatlin Depo., p. 26 line 21-22; **Exhibit B**).

Q. Is there any place on this contract that identifies John Hornbeck personally?

A. Not by name...

(Gatlin Depo., p. 25, line 18-20; **Exhibit B**)

Prior to discovery being exchanged in this case, and without notice to the named Defendants, Plaintiffs paid to have the entire roof and siding of the home replaced.

Q. Did you or your attorney provide me or the defendants in this case notice prior to you replacing all the siding and the roof?

A. No, not that I'm aware of, no.

(Gatlin Depo., p. 70, line 9 -12; **Exhibit B**)

Plaintiffs have no evidence to pursue this case of action. For this reason, Defendants pray that John Hornbeck and Custom Castles Construction, LLC be removed as parties in this lawsuit.

**i. All Tort Actions are Barred by the Economic Loss Rule**

All of Plaintiff's tort claims are barred by the Economic Loss Rule. "A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie." *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 54-55, 463 S.E.2d 85, 88 (1995). In the case at hand, the Contract sets forth the duties of CCRC and the Plaintiff. Plaintiff's sole remedy is under contract law and any tort claim that arises out of the same circumstances, actions and facts are duplicative

and barred by the Economic Loss Rule and Defendants are entitled to Summary Judgment on this issue.

**CONCLUSION**

For the reasons stated herein, Defendants pray that the Court grant Defendants' Motion for Summary Judgment on all of the Plaintiffs' causes of action.

Respectfully submitted,

/s/ Wendell L. Hawkins, Esq.

Wendell L. Hawkins (S.C. Bar #: 13583)

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Attorney for the Defendants

February 13, 2023  
Greer, South Carolina

# EXHIBIT A

ELECTRONICALLY FILED - 2019 Feb 27 1:53 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2300695

## CUSTOMER AGREEMENT

Commercial • Residential  
1-855-777-HAIL (4245)



www.customcastles.net Licensed. Bonded. Insured

SALES ASSOC. John Vander Linn

CUSTOMER AGREEMENT IS SUBJECT TO INSURANCE COMPANY APPROVAL

Full Name Gatlin Milton ("Customer")  
Last First M.I.

Address 105 Silver Pine Ct  
Greer, SC 29645

Home Phone 864-404-9259 Ins. Co. Allstate  
Cell Phone \_\_\_\_\_ Claim No. 449926020  
Email \_\_\_\_\_ Mortgage Co. \_\_\_\_\_

Insurance Agreed Payment Amount (Prior to any Supplement Request) - \$ \_\_\_\_\_  
Upgrades \_\_\_\_\_  
Additional Upgrade Expense - \$ \_\_\_\_\_

### ROOF SPECIFICATIONS

Shingle Color \_\_\_\_\_ Initial \_\_\_\_\_  Remove Trash From Roof, Gutters & Yard  
Shingle Style GAF  Protected Landscaping Where Applicable  
Shingle Grade GAF HD  Roll Yard With Magnetics Roller  
Ridge Material Shallow Ridge  Quality Control Inspection  
Valley Ice + Water  
Vents Plumbing  
Plumbing Stacks \_\_\_\_\_  
Tear Off  Yes  No No. of Layers 2  
Felt Synthetic  
Pitch 9/12 2-Story yes  
Number of Decking Sheets \_\_\_\_\_  
Decking Additional Cost 25 Initial \_\_\_\_\_

### SPECIAL ATTENTION AREAS

Cover Pool  Yes  No  
Existing Gutter Damage  Yes  No  
Existing Driveway Damage  Yes  No  
Ice/Water Shield  Yes  No  
Emergency Repair  Yes  No  
Skylights No  
Leaks yes  
Interior Damage yes

### INSURANCE PAYMENT SCHEDULE

1ST INS. CK	CHK# _____	DATE _____	\$ _____
PROGRESS PYMT	CHK# _____	DATE _____	\$ _____
DEPRECIATION CK	CHK# _____	DATE _____	\$ _____

### RECOMMENDATIONS-NOTES-UPGRADE DETAILS

Shingle upgrade - \$1000  
Ridge vent

INSURANCE/MORTGAGE COMPANY NOTE: I hereby authorize the insurance company and/or the mortgage company to make any checks payable jointly.

TERMS: By signing this contract, Customer authorizes Custom Castles Roofing and Construction, Inc. "CCRC" to pursue the Customer's best interest for a project replacement and/or repair at the "insurance agreed payment amount" to Customer's insurance company and CCRC with no additional costs to the Customer except the deductible. When the "insurance agreed payment amount" is determined it shall be written in the blank provided above. Customer authorizes CCRC to obtain labor and material in accordance with the "insurance agreed payment amount" and the specifications and terms set forth herein and on the reverse side hereof to accomplish the replacement and/or repair.

**Notice of Cancellation:** You may cancel this Contract at any time before midnight on the fifth business day after you have received written notification from your insurer that all or any part of this claim or Contract is not a covered loss under the insurance policy. This right to cancel is in addition to any other rights of cancellation which may be found in state or federal law or regulation. See attached notice of cancellation form for an explanation of this right.

Accepted by Customer Milton Gatlin Date 7/31/17  
The Customer agrees to all of the provisions above.

Custom Castles Construction Rep [Signature] Date 7/31/17

## CUSTOMER AGREEMENT

In consideration of good and valuable consideration, the receipt, value, and sufficiency of which are hereby acknowledged, Customer and CCRC (hereinafter from time to time collectively referred to as the "Parties") agree as follows:

1. Customer acknowledges and appoints CCRC as its general contractor. As its compensation, CCRC will be entitled to ten percent (10%) as overhead and ten percent (10%) as profit, for a total of twenty percent (20%) from the amount received by Customer from insurance, as allowed by insurance industry standards to be paid to CCRC, plus expenses or charges for bond insurance premiums or costs beyond normal insurance coverage. Any such additional expenses, premiums, or costs shall be added to the amount of the Contract (for example, performance bonds or maintenance bonds). Replacement of deteriorated decking, fascia boards, roof jacks, ventilators, flashing, or other materials, unless otherwise stated in this Contract, are not included and will be charged as extra charges for work and materials.
2. This Contract is subject to approval of CCRC's credit department. The CCRC representative executing this Contract must obtain the approval of the officer of CCRC for this Contract to be effective. If the Contract is not approved, CCRC will notify Customer.
3. **BUYER'S RIGHT TO CANCEL:** If you decide you do not want the goods or services, you may cancel this Contract by mailing notice to CCRC. The notice must say that you do not want the goods or services and must be sent "certified mail" before midnight of the third business day after you sign this Contract. The notice must be sent to: Custom Castles Roofing & Construction, Inc. at 3300 N. Main St. Ste. D-184 Anderson, SC 29621. If cancellation is made after CCRC has met your adjuster, charges for travel, time, and estimating will be billed in accordance with line 14.
4. Upon full RCV payment, CCRC grants Customer a warranty for five (5) years on roof replacement and (2) years on siding replacement, and one (1) year on gutter repairs. There is no warranty on temporary roof repairs. Extended service warranties are available for an additional charge, which must be in writing signed by both Parties.
5. CCRC is not and shall not be responsible for construction problems of Customer's home.
6. Customer understands that existing framing issues such as uneven rafters and bowed sheathing are not the responsibility of CCRC to fix and will only be repaired if needed and on a time and material basis to be agreed upon in writing by both Parties.
7. CCRC shall have no responsibility for damages from rain, fire, tornado, windstorm, or other perils as is normally contemplated to be covered by home owner's insurance or business risk insurance.
8. After ninety (90) days, CCRC reserves the right to revise its prices in accordance with costs in effect at the time. (For example, increases in material costs).
9. CCRC shall not be liable for failures or failure to performance due to labor controversies, strikes, fires, weather, inability to obtain materials from usual sources, or any other circumstances beyond the control of CCRC, whether of a similar or dissimilar nature.
10. CCRC is not responsible for any damage due to leaks by excessive wind, driven rain, ice, or hail during the period of warranty. (Excessive wind is 65 m.p.h.)
11. If material has to be reordered or restocked because of a cancellation by the Customer there will be a restocking fee equal to fifteen percent (15%) of the Contract price.
12. This Contract shall not be assigned except by or with the written permission of CCRC.
13. CCRC is not and shall not be responsible for any mold or interior damage resulting from mold.
14. If for any reason Customer does not permit CCRC to complete performance under this Contract other than by canceling the Contract within five (5) business days after Customer has received written notification from its insurer that all or any part of its claim on this Contract is not a covered loss under the insurance policy, Customer shall pay CCRC for its inspection services, estimating, meeting with Customer, travel time, and working with adjuster at the rate of \$100.00 per hour worked, plus all expenses spent on the job. If CCRC is required to collect any amounts owed under this Contract from Customer, it shall be entitled to recover from Customer its expenses, including its reasonable attorneys' fees, costs, and interest at eighteen percent (18%) per annum on all amounts owed. If Customer cancels this Contract in compliance with the Notice of Cancellation on the first page of this Contract, the Customer shall only be required to pay CCRC for its services and expenses that were acknowledged in writing by the Customer to have been necessary to prevent damage to the premises, i.e. emergency services and expenses.
15. This Contract shall be construed and interpreted in accordance with the laws of the State in which it was signed, without regard to its choice of law rules. Should any provision of this Contract require interpretation, the Parties agree that the individual, entity, or court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one Party by reason of the rule of construction that a document is to be more strictly construed against the Party who itself or through its agents prepared the same. In the event that any of the provisions of this Contract (including any provision within a single section or sentence) is held by a court to be invalid, void, or otherwise unenforceable, the remaining provisions are covenants and shall remain enforceable to the full extent permitted by law.
16. This Contract represents the complete understanding among the Parties and supersedes and replaces any and all prior agreements and representations regarding the subject matter of the Contract. No prior or contemporaneous statements, representations, inducements, promises, or agreements, oral or otherwise between or among the Parties, not embodied herein shall have any force and effect.
17. This Contract and any of its provisions may not be modified, waived, or amended except by a subsequent writing executed by both Parties and making specific reference hereto. This Contract shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each Party hereto.
18. CCRC's maximum liability to Customer for any claimed negligence, default, or breach of this Contract by CCRC or for CCRC's negligence shall be an amount equal to the original cost of labor and materials for the repairs and/or replacement contemplated by this Contract.
19. During the duration of the work the Customer's homeowner's insurance will be responsible for any interior damage as long as CCRC has taken reasonable action to protect the roof during the repair of the roof.
20. If there are any solar panels on Customer's roof, CCRC will not be responsible for any damage during repairs and/or replacement. Customer agrees to have solar panel company take the appropriate action to protect it, if necessary.
21. CCRC is not responsible for any damage on or below the roof due to leaks from skylights unless CCRC completed the skylight replacement.
21. Payments by Customer are to be made as follows: One third down payment at the time this Contract is signed by Customer or receipt of the first insurance check, whichever is greater. CCRC reserves the right to bill proportionately based on percentage of work complete. Further, Customer agrees to endorse and turn over to CCRC any check received from an insurance company or third party within seven (7) days receipt thereof. Failure to do so will be a breach of this Contract. Customer hereby authorizes the insurance company and/or the mortgage company to make any checks payable jointly to Customer and CCRC. Customer agrees to pay in full at the time of the completion of Contract and/or change order(s).
22. Any hidden conditions or building code related issues which result in additional labor and/or material costs will require a change order signed by both Parties to proceed. Customer understands that CCRC may issue a stop work order if change order is not accepted. (For example, rotten decking, fascia, gas vents, HVAC lines or coils, etc.) CCRC is not responsible for damages to any of the foregoing.
23. Customer understands all insurance proceeds are to be paid to CCRC for insurance approved repairs unless noted in writing in this Contract or in a change order.
24. CCRC may enforce its right to payment by other means, including, but not limited to, filing of a lien against the property of Customer, reporting to appropriate credit reporting agencies, and any other legal remedies available at law or in equity.
25. Customer understands that CCRC subcontracts all dumpster work and such other work as CCC may in its sole discretion determine. Any flat tires due to nails left under the dumpster, driveway, or garage are the responsibility of the contracted dumpster company, not CCRC.
26. All notices to CCRC shall be sent via U.S. Mail to its administrative office addressed to: Custom Castles Roofing and Construction, Inc., 3300 N. Main St. Ste. D-184 Anderson, SC 29621.
27. The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Contract.

EXHIBIT B

DEPOSITION OF MILTON GATLIN

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
COUNTY OF GREENVILLE ) C.A. NO. 2018-CP-23-00695

Milton A. Gatlin and Marla S. Gatlin, )  
 )  
Plaintiffs, )  
 )  
Versus )  
 )  
John M. Hornbeck, III, Custom Castles )  
 )  
Roofing and Construction, Inc., and )  
 )  
Custom Castles Construction, LLC, )  
 )  
Defendants. )

\*\*\*\*\*  
DEPOSITION OF  
MILTON ANDREW GATLIN, SR.  
\*\*\*\*\*

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, the deposition of MILTON ANDREW GATLIN, SR. was taken on the 13th day of November, 2018, commencing at the hour of 10:07 a.m., in the offices of Wendell L. Hawkins, P.A., Attorneys at Law, Greer, South Carolina.

REPORTED BY: Rosalind Poole Walters, CVR-M

LEGAL EAGLE  
Post Office Box 5682  
Greenville, South Carolina 29606  
(864) 298-0082 or (864) 467-1373  
depos@legaleagleinc.com

APPEARANCES:

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WENDELL L. HAWKINS, P.A.  
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Attorney for Defendant.

Also attending: Mr. John Hornbeck, Mr. George Huth

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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH  
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 STIPULATIONS:

2 It is agreed by and between the counsel for the parties as  
3 follows:

- 4 1. That this deposition is being taken pursuant to Rule 30  
5 of the South Carolina Rules of Civil Procedure;  
6 2. That the deponent reserves the right to read and sign  
7 the deposition transcript.

8 \*\*\*\*\*

9 MILTON ANDREW GATLIN, SR., being duly sworn to tell the  
10 truth, the whole truth, and nothing but the truth of his own  
11 knowledge concerning the matter herein, testified as  
12 follows:

13 \*\*\*\*\*

14 EXAMINATION BY MS. LEARY:

15 Q. Good morning, Mr. Gatlin. My name is Aimee Leary. You  
16 and I met at your home a couple of weeks ago.

17 A. Right.

18 Q. It's good to see you again.

19 A. You too.

20 Q. The reason why we are here today is to find out what  
21 your testimony will be in the event that this case goes  
22 to trial. Do you understand that?

23 A. I do.

24 Q. Throughout the deposition today I will do my best to  
25 ask clear and thoughtful questions, but in the event

1 that I do not and you do not understand what I'm  
2 asking, please go ahead and ask me to rephrase the  
3 question and let me know that you don't understand.

4 A. Okay.

5 Q. If you answer a question that I ask, is it fair for us  
6 to assume that you understood the question asked?

7 A. Well, I can't guarantee that, but I hope that I  
8 understand the question.

9 Q. Well, if you don't understand the question, I would ask  
10 that you inform me that you do not understand it, and I  
11 will do my best to rephrase or re-ask the question. It  
12 is not my intent to mislead or confuse you.

13 A. Right.

14 Q. I just would like the record to stand saying that in  
15 the event that you answer a question, it's going to be  
16 assumed that you understood what was asked since you  
17 answered it.

18 A. Okay.

19 Q. Okay? You're doing a good job thus far, but if you can  
20 be mindful, rather than using nods of your head or  
21 affirmative or negative responses such as uh-huh, uh-  
22 uh, if you can say yes or no. The court reporter is  
23 here to take down the testimony today, and it will be a  
24 lot more helpful to her to answer that way.

25 A. What about maybe?

## Deposition of Milton Andrew Gatlin, Sr.

- 1 Q. Maybe is fine. I will accept that. I know that I  
2 mentioned prior to the deposition, but in the event  
3 that you need to take a break, get a sip of water,  
4 please let me know, and I'll be glad to give you that  
5 time. All that I will ask of you during those breaks  
6 is you do not consult or speak with your attorney about  
7 anything about this case or your testimony. During  
8 this deposition if you do have any questions, I would  
9 ask that they be referred to me only.
- 10 A. Okay.
- 11 Q. Okay? Could you please provide your full name for the  
12 record?
- 13 A. Milton Andrew Gatlin, Sr.
- 14 Q. Mr. Gatlin, when were you born?
- 15 A. June 21, 1947.
- 16 Q. And what is your current home address?
- 17 A. 105 Silver Pine Court, Greer, South Carolina, 29650.
- 18 Q. Is that in the Sugar Creek subdivision?
- 19 A. Yes.
- 20 Q. How long have you lived at Silver Pine Court?
- 21 A. Since 1974. No, wait a minute. Since 1976. I'm  
22 sorry.
- 23 Q. Who do you reside at Silver Pine Court with?
- 24 A. My wife, my son, my daughter, and my granddaughter.
- 25 Q. What is your son's name?

## Deposition of Milton Andrew Gatlin, Sr.

1 A. Milton Andrew Gatlin, Jr.

2 Q. And your daughter's name?

3 A. Miranda Leigh Gatlin.

4 Q. Your granddaughter is under the age of 18. Is that  
5 correct?

6 A. That's right.

7 Q. Do you have any other children other than Milton and  
8 Miranda?

9 A. Yes. I have a son, Edward Sanders Gatlin.

10 Q. Where does Edward live?

11 A. He lives in Sugar Creek. I can't remember the street  
12 address.

13 Q. That's fine. The reason why I'm asking is when we are  
14 potentially picking a jury in this case, I would just  
15 like to know what family you have. Is Edward married?

16 A. Yes.

17 Q. What is his wife's name?

18 A. Mandy. Amanda Gatlin. Amanda Schaffstall Gatlin.

19 Q. And is your son Milton married?

20 A. No. He's handicapped.

21 Q. And then what about Miranda, is she married?

22 A. Yes, but she's separated.

23 Q. What is her current spouse's name?

24 A. Virgil Akwara, A-k-w-a-r-a.

25 Q. Do you have any other family living in Greenville

Deposition of Milton Andrew Gatlin, Sr.

1 County over the age of 18?

2 A. No.

3 Q. Where were you born, Mr. Gatlin?

4 A. Mercy Hospital in Charlotte, North Carolina.

5 Q. Have you ever testified in a deposition before?

6 A. No.

7 Q. Have you ever been involved in a lawsuit before?

8 A. No.

9 Q. What did you do to prepare for today?

10 A. Nothing.

11 Q. I'm not asking what you spoke about, but did you speak  
12 with your attorney about your deposition today?

13 A. Yeah, just briefly.

14 Q. Did you speak with your wife about your deposition?

15 A. Again, just briefly.

16 Q. What was the nature of that conversation? What did you  
17 discuss?

18 A. I told her that more than likely all the questions that  
19 you would ask me would pretty much cover anything that  
20 you would want to ask her and so you wouldn't have to  
21 ask the same question twice.

22 Q. Did you review any documents to prepare for today?

23 A. No.

24 Q. Did you bring anything with you today related to this  
25 case?

## Deposition of Milton Andrew Gatlin, Sr.

1 A. No.

2 Q. When did you move to Greenville?

3 A. Let's see. I moved to Greenville originally in 1969.  
4 I was drafted and went in service during Vietnam, and  
5 after Vietnam I came back to Greenville in -- wait a  
6 minute. Let's see. Came back in, I don't know, 1972  
7 or something like that.

8 Q. That's close enough. Did you attend a university after  
9 that?

10 A. Prior to then I attended Clemson.

11 Q. So prior to your service in Vietnam you attended  
12 Clemson?

13 A. Now, I didn't go to Vietnam.

14 Q. Oh, I'm sorry.

15 A. I lucked out. I didn't have to go.

16 Q. Well, that's certainly a blessing.

17 A. Yeah. I attended Clemson from 1965 to 1969, graduated  
18 with a BS in Mechanical Engineering.

19 Q. Has your professional career encompassed some sort of  
20 mechanical engineering? Have you always done work in  
21 engineering?

22 A. Engineering and construction.

23 Q. And construction, okay. Do you currently hold any  
24 certifications, licenses, professional degrees?

25 A. The only license that is current is my South Carolina

1 engineering license.

2 Q. And what type of engineering license is that?

3 A. In South Carolina it is an engineering license. Okay?  
4 I don't have to be specific about mechanical,  
5 electrical, or whatever. In South Carolina you can  
6 practice engineering if you're -- if you're licensed,  
7 if you -- you know, if you passed the exam, then you  
8 can practice engineering in any field that you are  
9 competent in. And I have -- I have primarily practiced  
10 mechanical engineering.

11 Q. Okay. What is your current status of employment?

12 A. I'm retired, but I do -- now I am currently doing some  
13 work for Fairfield County School District.

14 Q. Prior to your retirement where did you work last?

15 A. I worked at Divtech, LLC, which was owned by my wife.

16 Q. What did Divtech, LLC do?

17 A. Engineering primarily for educational facilities.

18 Q. So did you design the facilities?

19 A. During that time, we were doing renovations to  
20 facilities, renovations and additions to the  
21 facilities.

22 Q. The scope of your engineering, was that more civil  
23 engineering at that point in time?

24 A. No, I don't do structural design.

25 Q. Okay, understood. How long did you work with Divtech,

1 LLC?

2 A. Must have been -- let's see. This is a guess. Okay?

3 Q. That's fine.

4 A. But I'm thinking roughly four, four or five years.

5 Q. And so when would have been the last year in which you  
6 worked for Divtech, LLC?

7 A. Let's see. Let's see. I'm 71. I think I retired when  
8 I was 65, and so that would have been -- what's that?  
9 Six years ago.

10 Q. 2012?

11 A. Or '11, something like that. But, again, I continued  
12 private consulting work with past clients.

13 Q. Where did you work prior to Divtech, LLC?

14 A. I worked at a company that I was a co-owner in,  
15 Diversified Technology, Incorporated.

16 Q. What was the focus of that company?

17 A. Architecture, engineering, and construction.

18 Q. How long did you co-own and/or work for that company?

19 A. Again, 19 or 20 years.

20 Q. So you would have started the company in the early 90s?  
21 Does that sound about right?

22 A. I started the company when my son, my handicapped son  
23 graduated or when he ran out of being able to go to  
24 school. I believe it was '91.

25 Q. Those milestones always help recreate the history.

1 where did you work prior to Diversified Technology?

2 A. I worked at Fluor Daniel, which is now just Fluor.  
3 when I went to work there it was just Daniel. They  
4 merged with Fluor and became Fluor Daniel, and now it's  
5 just Fluor.

6 Q. How long did you work for---

7 A. About seven years.

8 Q. what was your focus when you worked there?

9 A. well, I started out as a design engineer, and I worked  
10 up to a project director, which means I was in charge  
11 of both engineering and construction. I guess the last  
12 job I had I was a division manager.

13 Q. At Fluor Daniel?

14 A. Yes.

15 Q. Okay, thank you. Do you intend to qualify as an expert  
16 and give expert testimony in this case?

17 A. Absolutely.

18 Q. Have you produced everything in your possession  
19 relating to this case to date?

20 A. As far as I know, y'all have everything that I got.

21 Q. So I received a couple of quotes from the spring of  
22 this past year for the replacement of your roof and  
23 siding.

24 A. Right.

25 Q. And I received those yesterday.

1 A. Right.

2 Q. Is that the last of everything that you believe you  
3 have?

4 A. I think it is, yeah.

5 Q. Okay. I'm going to shift gears a bit and start  
6 focusing more on the subject matter of the case that  
7 you brought against my clients. What type of damage  
8 occurred to your home causing you to seek repair? What  
9 happened?

10 A. Well, both the roof and the siding installation was  
11 faulty.

12 Q. Sorry. Once I asked my question, let me back up a bit.  
13 What caused the original roof and siding, the aluminum  
14 siding and the roof that you had---

15 A. Okay, hail damage.

16 Q. So it was hail damage. Do you recall when that hail  
17 damage happened?

18 A. Oh, shoot, it was, what, March of -- March of '17 or  
19 '16. I can't remember which.

20 Q. Does March of 2017 sound about right?

21 A. I think so.

22 Q. We'll take a look at the breakdowns from your insurance  
23 company, and I believe that they're going to show a  
24 date of March 2017. Okay?

25 A. (Witness nods head).

1 Q. what type of damage did your property sustain as a  
2 result of the hailstorm?

3 A. well, there was anything from a damaged mailbox to roof  
4 and siding damage as well as automobiles. I have four  
5 automobiles, and all four of them were damaged. I had  
6 personal items or personal property in the yard that  
7 was damaged. My granddaughter's swing set was damaged.  
8 The gas grill was damaged, all that kind of stuff.  
9 So...

10 Q. As I recall, it was a pretty bad hailstorm.

11 A. It was.

12 Q. what did you do first with respect to the damage that  
13 you sustained? what was your first step after the  
14 hailstorm?

15 A. I notified Allstate, and, matter of fact, I called them  
16 and told them that it was hailing at the time I was  
17 talking to them and that water was pouring into my  
18 house.

19 Q. where was water pouring into your house?

20 A. Into the den.

21 Q. Is that immediately off your garage?

22 A. It's -- yeah. Yeah, it is. That's right.

23 Q. Did Allstate come out and view the property damage, or  
24 what did they do next?

25 A. well, the next thing they did was evaluate the

1           automobiles first. Okay? And then after that they  
2           sent a representative to evaluate the house and  
3           personal property damage.

4       (Defendant's Exhibit 1 marked)

5       EXAMINATION RESUMED BY MS. LEARY:

6       Q.    Mr. Gatlin, I'm going to hand you a document that has  
7           been marked as Defendant's Exhibit Number 1.

8       A.    I got to get my reading glasses out here.

9       Q.    I understand. You can take your time and review that  
10          document and let me know if you recognize that  
11          document.

12      A.    I do.

13      Q.    What is Defendant's Exhibit Number 1?

14      A.    You're asking me?

15      Q.    Yes.

16      A.    Well, it's a report from Bill Tom, who was I believe  
17          the first inspector that came, and it includes, I  
18          think, the estimate, the first estimate that was  
19          prepared.

20      Q.    Defendant's Exhibit 1 consists of several documents  
21          that are stapled together. Is that correct?  
22          Consisting of the single first report? At the bottom  
23          it's going to be identified as CCRC 39, and it's going  
24          to go through 52. Do you see that?

25      A.    Excuse me. I thought I had that thing turned off, but

1 it's trying to make noise. Yeah, I've been looking to  
2 make sure the date was right on all of these, and I  
3 just noticed the last page doesn't include the date,  
4 not that there's anything wrong with it. It just  
5 doesn't have the date.

6 Q. And I do see that.

7 A. But it is from Bill Tom. So it should be -- you know,  
8 it is the original.

9 Q. The original estimate that you received from Allstate?

10 A. Yeah.

11 Q. If you'll look to the first page of this document, do  
12 you see that you are identified as the insured, Milton  
13 Gatlin? Do you see that?

14 A. Yes.

15 Q. And then is that your property address, 105 Silver Pine  
16 Court?

17 A. Yes.

18 Q. And then do you see where it says Date of Loss, March  
19 21, 2017?

20 A. Yes.

21 Q. Does that sound about right?

22 A. Yeah.

23 Q. So the date of this estimate completed, Defendant's  
24 Exhibit Number 1 shows March 29, 2017. Do you see  
25 that?

1 A. I do.

2 Q. So does that sound about right to you that you received  
3 this initial report pretty close after the hailstorm?

4 A. Yes.

5 Q. Were you satisfied by the amounts that Allstate was  
6 offering to you at that time?

7 A. No.

8 Q. Can you turn to the page that is identified as CCRC 50?

9 A. Okay.

10 Q. What I would like to do, Mr. Gatlin, is review the  
11 coverage that they offered in this initial report.  
12 CCRC 50 is identified as a Summary for AA Dwelling. Do  
13 you see that?

14 A. I do.

15 Q. Do you see the line identified as Replacement Cost  
16 value?

17 A. I do.

18 Q. Can you read into the record the value that Allstate  
19 attributed to your dwelling as the replacement cost  
20 value of this March 29, 2017 report?

21 A. \$21,797.34.

22 Q. And then will you flip to the next page?

23 A. Okay.

24 Q. This page is identified as CCRC 51, and it is entitled  
25 Summary for BB Other Structures. What would be the

1 other structures that this report is referring to?

2 A. A storage building in my yard.

3 Q. Can you identify the replacement cost value that your  
4 insurance company attributed to the storage building in  
5 this initial report?

6 A. \$879.63.

7 Q. And then Mr. Gatlin, if you can turn to the last page  
8 of Defendant's Exhibit Number 1. This is identified as  
9 Summary for CC Unscheduled Personal Property. Do you  
10 see that?

11 A. I do.

12 Q. And is this the estimate that the insurance company was  
13 attributing to the damage to your personal property?

14 A. Yes.

15 Q. And can you read into the record the replacement cost  
16 value they were allocating for your personal property?

17 A. \$1174.38.

18 Q. Did you attempt to negotiate with Allstate on your own  
19 to get these amounts increased?

20 A. Yes.

21 Q. Did you have any luck with that?

22 A. Yes.

23 Q. Did they come back out and do an additional inspection,  
24 or how did that work?

25 A. They did an additional inspection, and then later on

1 they did some phone negotiations, if you want to call  
2 it that, and some of the items were increased.

3 Q. Were those phone negotiations between you and Allstate  
4 directly?

5 A. Yes.

6 Q. When did those negotiations take place?

7 A. Shortly after this first.

8 Q. So it was sometime probably in the spring of 2017. Is  
9 that correct?

10 A. Right.

11 Q. What efforts did you undertake to find someone to  
12 replace the siding and roof of your home?

13 A. Well, I made several contacts, and I had a couple  
14 different people to stop by that chase hailstorms, and  
15 so, you know, I had -- I talked to two or three  
16 different people.

17 Q. How did you find Custom Castles? And let me stop you  
18 for one moment. During the deposition when I say  
19 Custom Castles, I'm going to be referring to Custom  
20 Castles Roofing and Construction, Inc. I'm just going  
21 to shorten it for the sake of my breath. If I mean to  
22 refer to Custom Castles Construction, LLC, I will  
23 separately identify them.

24 A. Okay.

25 Q. By no means am I trying to confuse you; just trying to

1 shorten the record. Is that understood?

2 A. Sure.

3 Q. So how did you find Custom Castles?

4 A. Well, I had -- the people that I had previously talked  
5 with were not going to work out, and so one day when I  
6 was coming home I saw that they were doing work, Custom  
7 Castles was doing work on my neighbor's house. So I  
8 stopped and asked them if they were interested in  
9 giving me estimates on repairing my house.

10 Q. When you say the other individuals who provided  
11 estimates were not going to work out, what do you mean  
12 by that?

13 Q. They just weren't going anywhere. Well, example, I was  
14 real close to doing business with one, and the next  
15 thing I knew they told me he had left and gone back to  
16 Colorado. Okay?

17 Q. That would be problematic, wouldn't it?

18 A. Yeah.

19 Q. Was Custom Castles performing work on Larry Bowden's  
20 house?

21 A. That's right, yes.

22 Q. Is that the neighbor that you saw them performing work  
23 on?

24 A. Yes. I think that's 101 --

25 Q. Yes, sir.

1 A. -- Silver Pine Court?

2 Q. Yes, sir. Did a representative or employee of Custom  
3 Castles come to your property after that?

4 A. Yes.

5 Q. Or how did you initially meet?

6 A. Yes. They told me that they would be -- I don't  
7 remember exactly. They said that they could meet with  
8 me the next day or in the next day or two or that kind  
9 of thing, and they did.

10 Q. Who did you meet with Custom Castles?

11 A. The reason that I'm hesitating is that I thought they  
12 were Custom Castles, but as it turned out the people I  
13 met with were not direct employees of Custom Castles.  
14 I met with George Huth and John Vonder Lieth, I  
15 believe. Okay? And even though John had a card, he  
16 wasn't a Custom Castles employee I found out later,  
17 direct employee.

18 Q. What did you discuss at that time whenever you first  
19 met?

20 A. We discussed the damages, the roof and the siding. And  
21 the other damages, like the interior damages, I told  
22 them I would take care of myself, like where we had  
23 ceiling problems where he had leaks and that kind of  
24 thing, and anything else outside except for the shed,  
25 and that shed, even though it had some hail damage to

1 the siding, that I didn't want to replace that siding,  
2 but I did want to replace that roof.

3 Q. What was the scope of Custom Castles' work on your  
4 home? You mentioned the siding on your residence. Is  
5 that correct?

6 A. That's correct.

7 Q. Were they to remove the existing aluminum siding and  
8 did you all agree to replace that with hardieboard?

9 A. Yes.

10 Q. And then were they to replace the roof of your  
11 residence and the second structure in your yard?

12 A. Yes.

13 Q. Did you all agree for them to do any other work?

14 A. No.

15 Q. When did you first receive a copy of the contract that  
16 you signed with Custom Castles?

17 A. I can't remember, but it seems like it was the same day  
18 that we originally met. I can't---

19 Q. Did they have -- I'm sorry. Go ahead.

20 A. I can't remember. We met in my dining room. Okay?  
21 And I can't remember whether we met twice in my dining  
22 room or once, but I gave them a copy of the current  
23 Allstate estimate. Okay? And they prepared the  
24 contract.

25 Q. Did you sign the contract that same day, or did they

1           come back?

2       A.    I signed it the day they presented it to me, yes.

3       (Defendant's Exhibit 2 marked)

4       EXAMINATION RESUMED BY MS. LEARY:

5       Q.    Mr. Gatlin, I'm going to hand you a document that's  
6            been marked as Defendant's Exhibit 2. Do you recognize  
7            this document?

8       A.    Yes.

9       Q.    What is this document?

10      A.    It's a customer agreement or a contract for originally  
11            the roof work.

12      Q.    Does this contract consist of two pages?

13      A.    It's a front-and-back original, and it's two pages  
14            here.

15      Q.    And you're correct. I didn't make it a front-and-back.  
16            I kept it as two separate pages for ease of review.  
17            These two pages consist of the contract that you  
18            signed. Is that correct?

19      A.    That's correct.

20      Q.    Okay. There is a claim number identified on the  
21            contract. Do you see that?

22      A.    I do.

23      Q.    Can you pick up Defendant's Exhibit Number 1? On the  
24            first page there is a claim number. Can you compare  
25            those two and let me know if they match?

1 A. Yes. The leading zero is left off, but that's okay.

2 Q. Is that your signature at the bottom of the first page  
3 of Defendant's Exhibit 2?

4 A. It is.

5 Q. Did you sign this document on July 31, 2017?

6 A. Yes.

7 Q. What was the agreement that you came to with Custom  
8 Castles regarding their payment of the roof replacement  
9 and siding replacement?

10 A. I really don't remember exactly what it was, but I can  
11 tell you this. When they presented me an invoice, I  
12 paid it that day for the roofing. And then until I was  
13 presented an invoice for the siding, I had not paid any  
14 of it because I didn't have an invoice.

15 Q. Have you paid Custom Castles in full for the roof  
16 replacement and siding replacement?

17 A. No.

18 Q. Did Custom Castles agree to undertake negotiations with  
19 Allstate on your behalf to increase the available  
20 coverage?

21 A. Yes. George Huth did, and he indicated that he had 15  
22 years' experience as an Allstate -- what you call it?

23 Q. Adjuster?

24 A. Adjuster. That's it. And if you'll notice on the  
25 contract, you see where that top sales associate is

1 struck out or scratched out?

2 Q. Yes, sir.

3 A. And then John Vonder Lieth is on there? George's name  
4 was on there, and, matter of fact, you can read George,  
5 but he said he had to take that off because he didn't  
6 want Allstate to know that he was the one that was  
7 doing this negotiation.

8 Q. Negotiating on your behalf to get increased insurance  
9 coverage?

10 A. That's right.

11 Q. Okay. Towards the bottom of this page, Mr. Gatlin,  
12 there is a paragraph that is identified as Terms. Do  
13 you see that?

14 A. I do.

15 Q. Who is the company identified on this contract under  
16 Terms?

17 A. Custom Castles Roofing and Construction, Incorporated.

18 Q. Is there any place on this contract that identifies  
19 John Hornbeck personally?

20 A. Not by name, but on the second page, paragraph two, it  
21 says, "This contract is subject to approval of CCRC's  
22 credit department. The CCRC representative executing  
23 this contract must obtain the approval of the officer  
24 of CCRC for this contract to be effective. If the  
25 contract is not approved, CCRC will notify customer."

1 well, since John is the only employee of CCRC and the  
2 only officer, then yeah, it refers to John Hornbeck.

3 Q. Does paragraph two on page 2 of this contract indicate  
4 that it is to obtain the approval of the officer in his  
5 personal capacity?

6 A. No.

7 Q. Because, I mean, a CEO of a company can make a decision  
8 for a company in the capacity as the CEO for that  
9 company. Is that correct?

10 A. I think so.

11 Q. Is there any place in this contract that identifies  
12 Custom Castles Construction, LLC?

13 A. Not that I remember, but, you know, you have a markup  
14 from me of this contract where I point out all the  
15 fallacies in this contract.

16 Q. And that is correct, Mr. Gatlin, and I've reviewed that  
17 at length, and I did not see any place in your markup  
18 or on this document here that says Custom Castles  
19 Construction, LLC. I'm glad to give you some  
20 additional time to review the contract.

21 A. Yeah, I don't know that it says Custom Castles  
22 Construction on this contract anywhere.

23 Q. Okay. Who was responsible for painting the  
24 hardieboard?

25 A. I want to say Alonzo's Painting.

1 Q. Angelo's Painting?

2 A. Angelo's Painting.

3 Q. I know a lot of names. I understand.

4 A. Right.

5 Q. You were hiring him independent --

6 A. That's right.

7 Q. -- to handle the painting. Correct?

8 A. That's right.

9 Q. After the installation of the hardieboard by Custom  
10 Castles, did Angelo's ever paint the siding that was  
11 installed?

12 A. No, but they did the caulking for the siding.

13 Q. But never the final painting?

14 A. I can't -- I don't think they -- no. No.

15 Q. The reason why I'm asking is I'm jumping ahead a bit,  
16 but you had a gentleman, Mr. Gaines, come out and look  
17 at your property in the spring of this year. The  
18 photos that he took showed the siding of a yellow color  
19 which appeared to me to be the primer?

20 A. That's right. That's what it is.

21 Q. Okay. That's why I was asking.

22 A. That's the way the siding came from the factory.

23 Q. And you previously testified that you agreed with  
24 Custom Castles that you were going to be responsible  
25 for the interior work to your home. Is that correct?

1 A. That's correct, except for the damage that was caused  
2 by Custom Castles.

3 Q. Understood. What did you all agree to regarding the  
4 gutter work? Was that something that you were going to  
5 be responsible for, as well?

6 A. Yes, except they removed the downspouts, not the  
7 gutters, but the downspouts when they removed the  
8 aluminum siding, and they never put the downspouts back  
9 up.

10 Q. Did you obtain replacement downspouts?

11 A. No.

12 Q. Was that part of the scope of the Allstate report?

13 A. The gutters were.

14 Q. What about the downspouts?

15 A. I think some of them were.

16 Q. Did you ever get those replaced?

17 A. Didn't need to. We painted them.

18 Q. After the contract was signed between you and Custom  
19 Castles, did they end up contacting Allstate on your  
20 behalf?

21 A. They did.

22 (Defendant's Exhibit 3 marked)

23 EXAMINATION RESUMED BY MS. LEARY:

24 Q. Mr. Gatlin, I'm going to hand you a document that we  
25 have marked as Defendant's Exhibit Number 3. Can you

1 take a moment to review this document and let me know  
2 if you recognize it?

3 A. I do.

4 Q. Again, this is going to be a stapled collection of  
5 documents making up the revised Allstate scope. Is  
6 that correct?

7 A. The final revised Allstate scope. It was revised two  
8 or three times prior to this last one.

9 Q. But this is the final Allstate scope. Is that correct?

10 A. That's correct.

11 Q. And this is the scope that was received after Custom  
12 Castles negotiated with Allstate. Is that correct?

13 A. I think that's right. I think that's right, yeah.

14 Q. Does page 1 of Defendant's Exhibit Number 3 identify  
15 the date completed, date estimate completed of August  
16 31, 2017?

17 A. Yes.

18 Q. And you entered into a contract with Custom Castles in  
19 July, July 31, 2017?

20 A. That's right.

21 Q. So does this sound about right that this was---

22 A. Yes.

23 Q. Okay. Can you turn to the second page of this document  
24 that is identified as CCRC 54, please?

25 A. Okay.

1 Q. This page is entitled Payment worksheet for AA  
2 Dwelling. Do you see that?

3 A. I do.

4 Q. The left column, there is a line for replacement cost.  
5 Do you see that?

6 A. I do.

7 Q. Can you please read into the record the value allocated  
8 to the dwelling for replacement cost on this report?

9 A. \$31,102.62.

10 Q. Can you go ahead and pull Defendant's Exhibit Number 1,  
11 Mr. Gatlin? That's the original report. And turn to  
12 page 50 of that report, please.

13 A. Okay.

14 Q. Do you see the increase in the replacement cost value  
15 from the initial report to this final scope in August  
16 of 2017?

17 A. I do, but, just like I said, there were a couple more  
18 of these between this one and this one.

19 Q. Is it your testimony that Custom Castles did not obtain  
20 an additional allocation of overhead and profit?

21 A. No, they did. They did.

22 Q. If you can take a look at Defendant's Exhibit Number 3,  
23 I believe this page identifies the overhead and profit  
24 that Custom Castles obtained for your property.

25 A. Where?

1 Q. It's the second line under---

2 A. Yeah. Yeah, I see that.

3 Q. Is that amount over \$5000?

4 A. \$5183.90.

5 Q. I will not ask you to do quick math. I've gone ahead  
6 and done this for you. But the difference between the  
7 initial scope and the final scope is just over \$9000.

8 A. Okay. But I don't know that all of that can we  
9 attribute to Custom Castles' negotiations for me.

10 Q. At a minimum on this specific line item, they obtained  
11 at least an additional \$5000. Is that correct?

12 A. Correct.

13 Q. Okay. If you can turn to page 51 of Defendant's  
14 Exhibit 1, please.

15 A. Okay.

16 Q. And page 62 of Defendant's Exhibit 3.

17 A. 62?

18 Q. Yes, sir.

19 A. Okay.

20 Q. On Defendant's Exhibit 3, page 62, can you identify the  
21 replacement cost value for the BB Other Structures?

22 A. \$1129.46.

23 Q. Can you compare that to the original estimate on  
24 Exhibit Number 1?

25 A. I can.

1 Q. Does that look to be an increase of just under \$250?

2 A. If you say so. It is an increase of a couple hundred  
3 dollars.

4 Q. Okay. And then if you can please turn to page 64 of  
5 Defendant's Exhibit 3.

6 A. Okay.

7 Q. Can you identify the total replacement cost for the  
8 unscheduled personal property identified on Exhibit  
9 Number 3?

10 A. \$1242.22.

11 Q. And is that an increase from page 52 on Defendant's  
12 Exhibit Number 1?

13 A. Yeah, but not much. But that's personal property, and  
14 I'm the one that negotiated that. I'm also the one  
15 that negotiated the shed increase, the one that was  
16 like \$200 or whatever it was. I'm the one that did  
17 that.

18 Q. That's fine, and I do have a copy of the interim  
19 reports. I just think the first and the last was  
20 easiest to compare. And notwithstanding, I mean, it is  
21 your testimony that Custom Castles obtained an increase  
22 of insurance coverage?

23 A. Absolutely they did.

24 Q. Okay, fantastic.

25 A. The amount we have to be sure of, but yes, they did.

1 Q. Okay. What work did Custom Castles perform first on  
2 your home?

3 A. I guess the roofing was done first. Yeah, I know for  
4 sure the roofing was first.

5 Q. Do you recall when the roof was installed?

6 A. No. It should be in some of the documentation that  
7 I've provided.

8 Q. Did you take issue at all with the roof installation at  
9 the time it was done?

10 A. No, I did not.

11 Q. Were you present during the roof installation?

12 A. Yes, but I was not on the roof. I wasn't inspecting  
13 the roof at that time.

14 Q. Did you tip the roof installation workers?

15 A. I did. I sure did. I felt sorry for them, because I  
16 knew they were probably not even being paid minimum  
17 wage, and so I paid each one of them an extra \$50.

18 Q. Do you have any personal knowledge that the roof  
19 installation workers were being paid minimum wage?

20 A. No. They were all family members, and they worked  
21 hard. I didn't -- I didn't ever say they didn't work  
22 hard. That's why I paid them, because they worked hard  
23 even though it took them about three times as long as  
24 it did the second roofer to do the same work.

25 Q. Who is the second worker you're referring to?

1 A. Home Depot.

2 Q. Did you use the individuals who installed your roof for  
3 any additional work on your home?

4 A. No. Now, you're talking about the second roofer, the  
5 first roofer, the second roofer?

6 Q. I'm talking---

7 A. I didn't use either one of the roofers for any  
8 additional work on my home.

9 Q. Okay. When did Custom Castles start the siding work?  
10 Do you recall?

11 A. No. It was -- it was about in between when the roofing  
12 started and the roofing finished that they started the  
13 siding, to my -- best as I can remember. All I know is  
14 that George Huth, the project manager, was not there  
15 the whole week the siding was being installed. He was  
16 in Colorado or somewhere like that on a hunting or  
17 fishing trip. So there was no Custom Castles  
18 inspections going on.

19 Q. Were you present onsite the entire time that the siding  
20 was installed?

21 A. Yes, I was.

22 Q. Were you outside?

23 A. Yeah, sometime, outside with my granddaughter.

24 Q. But you weren't outside the entire time the siding was  
25 being installed.

1 A. No.

2 Q. Is it possible that someone showed up at the property  
3 that you were unaware of?

4 A. No. As a matter of fact, the only time that anybody  
5 showed up when the siding was being installed was when  
6 the siding installer broke the water line and John  
7 Vonder Lieth came over and saw about that.

8 Q. What was your agreement with Custom Castles concerning  
9 the change from your existing aluminum siding to the  
10 hardieboard?

11 A. I don't -- I don't understand that question.

12 Q. Did you approach Custom Castles and say instead of the  
13 aluminum siding that Allstate was quoting me for  
14 replacement I would like to get hardieboard instead?

15 A. Well, the statement wasn't like that. The statement  
16 was that aluminum siding is not available, and so I  
17 wanted to consider hardieplank.

18 Q. Did you specifically request a certain type of  
19 hardieplank?

20 A. I did.

21 Q. And what was that?

22 A. Primed hardieplank with a four-inch exposure.

23 Q. Did you request that in writing?

24 A. No.

25 Q. Who did you present that request to?

1 A. To George Huth and John Vonder Lieth.

2 Q. When did you ask for that?

3 A. The day they were in my dining room that we negotiated  
4 the whole thing.

5 Q. So the day that you signed the contract or around that  
6 time in July of 2017?

7 A. That's right.

8 Q. And you said I want primed hardieplank with a four-inch  
9 exposure?

10 A. No, I didn't say I wanted primed. I told them I did  
11 not want prefinished. Okay? That I wanted just plain  
12 hardieplank and that I would have it painted, because  
13 the prefinished hardieplank did not match the color  
14 scheme that my wife wanted for the house.

15 Q. After you made that request to Custom Castles, did they  
16 come back to you with several options of hardieplank in  
17 terms of exposure?

18 A. No. They came back and said we're having trouble  
19 meeting the price or something to that effect, and I  
20 said, well, if it's going to be two or three or four  
21 dollars more per square foot, I'll go back with vinyl  
22 siding. Then I received notification by phone that  
23 they had worked out a deal with the distributor and  
24 they could provide the hardieplank.

25 Q. Was that a telephone call or a text message?

1 A. Telephone call.

2 Q. And who made that call to you?

3 A. George Huth.

4 Q. What type of hardieplank did he represent to you that  
5 he had found at a price acceptable for this job?

6 A. He called it in his terms the small, but at that time  
7 he didn't think there was anything but two  
8 hardieplanks. There's nine actual widths of  
9 hardieplank, and he didn't know any better. He just  
10 called it the small.

11 Q. At that time, what was his understanding that the small  
12 was?

13 A. Five-and-a-quarter.

14 Q. Five-and-a-quarter exposure?

15 A. No. Five-and-a-quarter-inch plank, which provides a  
16 four-inch exposure.

17 Q. What, in your opinion, was his understanding of what  
18 the large was at that point?

19 A. Twelve-inch.

20 Q. When was the first time that you paid Custom Castles?

21 A. When the roof was finished.

22 (Defendant's Exhibit 4 marked)

23 EXAMINATION RESUMED BY MS. LEARY:

24 Q. Mr. Gatlin, I'm going to hand you a document that's  
25 been marked as Defendant's Exhibit 4 and ask if you

1 recognize it.

2 A. I do.

3 Q. what is this document?

4 A. It's a copy of the check that I paid Custom Castles for  
5 the roofing work.

6 Q. what is the date of this check?

7 A. 9/21/17.

8 Q. Is that your signature on there?

9 A. It is.

10 Q. what is the amount of the payment?

11 A. \$11,346.61.

12 (Plaintiff's Exhibit 5 marked)

13 EXAMINATION RESUMED BY MS. LEARY:

14 Q. Mr. Gatlin, I'm going to hand you a document that's  
15 been marked Defendant's Exhibit Number 5 and ask if you  
16 recognize it.

17 A. Not in this -- this may be a reprint, but this is not  
18 identical to the copy that I received when I -- I  
19 didn't receive an invoice when I paid them. George  
20 Huth told me how much to pay him, and that's what I  
21 did. I didn't receive this or something similar to it  
22 until it was presented by John Hornbeck.

23 Q. when did he present that to you?

24 A. when he visited my house like October.

25 Q. The content of Defendant's Exhibit Number 5, is that

1 different from what you received, or are you saying it  
2 was in a different type of paper?

3 A. No, the amount -- the amount for the roof is the same.

4 Q. What is---

5 A. Nothing wrong with that.

6 Q. What is different from what you received and what's  
7 marked as Defendant's Exhibit Number 5? What's the  
8 difference?

9 A. I would have to compare it before I could say there are  
10 any differences. You should have a copy of the -- of  
11 the original one, and it probably isn't any different,  
12 but I'm just saying it's not -- it's not the same.

13 Excuse me just a minute. We may need to stop a second,  
14 and, Rusty, you may need to go and see if my wife is  
15 out there. Okay?

16 Q. We can take a break. That's fine.

17 (Off the Record; 11:09 -- 11:11 AM)

18 (Defendant's Exhibit 6 marked)

19 EXAMINATION RESUMED BY MS. LEARY:

20 Q. Mr. Gatlin, prior to going off the record you had  
21 represented to me that the document I handed you marked  
22 as Defendant's Number 5 was not identical to the one  
23 that you produced in this case, and that is an accurate  
24 representation. That is a document that my client  
25 produced in this case. I have marked it as Defendant's

1 Exhibit Number 6 to provide you with a copy of the  
2 document that you produced in this case.

3 A. Okay.

4 Q. Prior to discussing Defendant's Exhibit Number 6, can  
5 you please compare Defendant's Exhibit Number 5 and  
6 Number 6 to confirm that these are identical documents,  
7 they contain identical information?

8 A. They do.

9 Q. So moving forward with your testimony, we'll go ahead  
10 and refer to Defendant's Exhibit Number 6 if that's  
11 fine with you.

12 A. That's good.

13 Q. Okay. When did you first receive this invoice?

14 A. On October 18, I think it is.

15 Q. Who provided this invoice to you?

16 A. John Hornbeck.

17 Q. Does this invoice contain the total amounts that you  
18 were to pay Custom Castles for the roofing and siding  
19 work of your home?

20 A. Yes.

21 Q. After you received a copy of this invoice did you make  
22 an additional payment to Custom Castles?

23 A. The following day I did, yes. I believe it was the  
24 following day. You'd have to look at the check and you  
25 can tell.

1 (Defendant's Exhibit 7 marked)

2 EXAMINATION RESUMED BY MS. LEARY:

3 Q. Mr. Gatlin, I'm going to hand you a document that has  
4 been marked as Defendant's Exhibit Number 7 and ask if  
5 you recognize it.

6 A. I do.

7 Q. And what is Defendant's Exhibit Number 7?

8 A. It's a copy of the check I wrote to Custom Castles for  
9 \$8200 for the siding work.

10 Q. Does that bring your payment to Custom Castles current,  
11 or do you still owe Custom Castles money under this  
12 invoice?

13 A. At the time I wrote this check, the siding work was not  
14 complete. So I didn't feel like or comfortable paying  
15 for something that hadn't been done.

16 Q. So is it your testimony that you provided a partial  
17 payment to Custom Castles at that time?

18 A. That's right.

19 Q. At what point did you become dissatisfied with the work  
20 that Custom Castles had done for you?

21 A. I'm not sure exactly at what time I noticed that the  
22 siding exposure was wrong, but I noticed that the  
23 exposure was five-inch and not four-inch. Along the  
24 same time, the roofer had knocked the vent cap off of  
25 my furnace, and it was to be replaced. George Huth

1 indicated that it would be replaced, and it was finally  
2 replaced, and when it was, I looked at it and I could  
3 tell that it was way too small, which is a life safety  
4 issue. Okay? I called the Greenville inspector. He  
5 said you need to change that vent cap right away. So I  
6 climbed out my window and changed that vent cap. Well,  
7 when I did, it put me directly in contact with the roof  
8 and adjacent to the siding. I started seeing all the  
9 deficiencies.

10 Q. Do you have any personal knowledge that an individual  
11 installing the roof physically knocked off that vent  
12 cap?

13 A. The only thing I can say is it was on before they  
14 started the roof and it was laying in my yard after  
15 they finished the roof, but I didn't see them knock it  
16 off, no.

17 Q. Did you contact anyone at Custom Castles about the  
18 deficiencies that you identified?

19 A. I did.

20 Q. And who did you contact?

21 A. I contacted everybody, I guess. I contacted George. I  
22 contacted John, both Johns.

23 Q. Let's sort of start from the beginning and progress  
24 towards a later date. Who did you contact first?

25 A. George.

1 Q. Did you call him on the phone?

2 A. I did.

3 Q. Did he come meet you at the property? What happened?

4 A. Well, we sent text messages back and forth that day,  
5 which you have copies of, where I indicated that the  
6 wrong exposure was installed, and he said no, that the  
7 five-and-a-quarter-inch plank is what was provided, and  
8 I said no, it wasn't, and that the plank that was  
9 provided was six-and-a-quarter, which provided a five-  
10 inch exposure. And later they said they would come to  
11 my house, he and John Vonder Lieth would come to my  
12 house and show me where he had written six-and-a-  
13 quarter on the outside of his manila folder. And I  
14 said, Fine, George, but you've already said that you  
15 thought it was five-and-a-quarter. So, anyway, they  
16 came to the house. We got in an argument and I ran  
17 them off.

18 Q. What do you mean by ran them off?

19 A. I told them to leave my property, and I used some  
20 expletives that I can't say in front of you.

21 Q. And why did you do that?

22 A. Because they were there to try to make me the one at  
23 fault.

24 Q. What happened after that?

25 A. John -- well, George bowed out. He said he wasn't

1 going to be involved anymore, that his boss, big John,  
2 would be the man, and John Vonder Lieth also said that  
3 he wanted to try to work out the problems.

4 Q. Did you meet with John Vonder Lieth or John Hornbeck at  
5 that point?

6 A. I did, both of them.

7 Q. Did you meet at your property?

8 A. I did.

9 Q. Do you recall when you met with them?

10 A. It was October 18 or 19, something in that range. That  
11 was -- that was when I wrote this check.

12 Q. That's dated October 20?

13 A. Yeah, but we first met a couple days before that. He  
14 came by and picked this check up on the 20th.

15 Q. So when you say we met on the 18th, who did you meet  
16 with on the 18th?

17 A. John Hornbeck.

18 Q. And then who did you meet with on the 20th?

19 A. It wasn't a meeting. John Hornbeck came and picked  
20 this check up at my house.

21 Q. Okay. What was the resolution of your discussions with  
22 John Hornbeck?

23 A. That he would repair the deficiencies in the siding.

24 Q. Can you specifically identify what deficiencies he was  
25 willing to or offering to repair?

- 1 A. They're all in the documentation that I provided to  
2 you. I can't -- I can't give a list of them off the  
3 top of my head, but they're all in there. And we did  
4 talk about the fact that the five-inch was provided in  
5 lieu of the four-inch. And I had checked with Hardie  
6 about changing the spacing on the six-and-a-quarter to  
7 provide four-inch exposure, and they recommended  
8 against it. John Hornbeck indicated that he had talked  
9 with the distributor and the distributor said that's  
10 right, you don't want to change the exposure using six-  
11 and-a-quarter to four-inch, but you can change it to  
12 four-and-a-half. John indicated he would be willing to  
13 do that standing in my living room, and I agreed to it.  
14 Later, I decided after talking with Hardie that you  
15 can't do that, that that wouldn't work, mainly because  
16 you tear it up trying to remove it and reinstall it.
- 17 Q. So you no longer wanted them to adjust the hardieplank;  
18 you just wanted them to repair the deficiencies?
- 19 A. I wanted it replaced with five-and-a-quarter-inch  
20 hardieplank. You know, I decided that I didn't -- I  
21 wouldn't accept changing the six-and-a-quarter to  
22 provide a four-and-a-half-inch exposure, but John  
23 Hornbeck decided he wasn't going to do that anyway.  
24 After I -- after I handed him this check I phoned him.  
25 I texted him. I e-mailed him. He did not respond to

1 any of my communications.

2 Q. Did individuals on behalf of Custom Castles come out to  
3 your property after your October 20 payment to make  
4 repairs to the siding and roof?

5 A. They did. His siding contractor came out. Let's see.  
6 what is -- the 20th, was that a Friday or a Thursday?  
7 Anyway, the siding subcontractor came out on that  
8 following Saturday and started removing one of the  
9 boards. And I went out and I said, Did John give you a  
10 copy of the deficiency list that I sent to him? And he  
11 said no. And I said, well, let me give you a copy. So  
12 I did. When he saw the list, he said, I don't know  
13 about all this. And I said, well, you better call John  
14 Hornbeck. He did. John Hornbeck told him that he  
15 wasn't doing any of that, and so the siding contractor  
16 left my house with the board that he had taken off  
17 laying in the yard, and that was the -- that was the  
18 extent of the repairs that were done.

19 Q. Is it not the case that they offered to make repairs  
20 and you did not allow them to make repairs unless they  
21 did all of the repairs that you were requesting?

22 A. I can't answer that question. You're going to have to  
23 rephrase it. They came -- John Vonder Lieth only, not  
24 John Hornbeck and not George Huth. John Vonder Lieth  
25 was doing his best to get a resolution to the siding.

1 We tried two or three times to get the siding  
2 contractor there. Finally we did. Okay? And then  
3 John was -- John was not totally aware of all of the  
4 deficiencies, and I said, John, I'm not going to accept  
5 it unless it's right.

6 Q. Unless all the deficiencies you identified were  
7 completed?

8 A. Essentially, yes. Can we stop just a second? I need a  
9 piece of candy.

10 Q. That's fine.

11 (Off the Record; 11:26 -- 11:27 AM)

12 EXAMINATION RESUMED BY MS. LEARY:

13 Q. Prior to going off the record, Mr. Gatlin, you  
14 referenced a deficiency list that you provided to  
15 Custom Castles. What did that deficiency list look  
16 like?

17 A. It was a -- let me stop you right there and tell you  
18 that it ended up being two deficiency lists. The first  
19 deficiency list is the one that I discussed with John  
20 Hornbeck. After that additional deficiencies were  
21 found, and so I ended up with a second deficiency list,  
22 and I think it included the original deficiencies, as  
23 well.

24 Q. When were the additional deficiencies identified?

25 A. Along the same time. It was after I met with John

1 Hornbeck at my house. Okay? But it was before John  
2 Vonder Lieth came. I think it was before John Vonder  
3 Lieth came to try to resolve the situation.

4 Q. And you believe that the additional deficiencies list  
5 encompasses the original as well as the---

6 A. I think so, but, again, I would have to go back to my  
7 documentation to be sure. It's identified -- the  
8 additional deficiencies are identified, because they  
9 were identified back when I provided them to Custom  
10 Castles.

11 Q. Let me take a break so I can make a copy.

12 (Off the Record; 11:29 -- 11:31 AM)

13 (Defendant's Exhibit 8 marked)

14 EXAMINATION RESUMED BY MS. LEARY:

15 Q. Mr. Gatlin, I'm going to hand you a document that I  
16 have marked as Defendant's Exhibit Number 8 and ask if  
17 you can identify it.

18 A. Yeah, this looks like it.

19 Q. So does Defendant's Exhibit Number 8 encompass all  
20 issues that you had with the work that Custom Castles  
21 performed on your roof and siding?

22 A. No.

23 Q. Then what does Defendant's Exhibit Number 8 identify?

24 A. I'm sorry. Say that again. I was reading.

25 Q. The question was are these all of the issues that you

1 had with the siding and roof installation that Custom  
2 Castles did for you.

3 A. I can't -- I can't say. I originally e-mailed John  
4 Hornbeck a list of the deficiencies at that time.  
5 Okay? We would have to get a copy of that list and  
6 compare it to this one.

7 Q. Did you produce a copy of that e-mail?

8 A. I did. It's in the information you have.

9 Q. Okay. Have you reviewed the Complaint and the Amended  
10 Complaint that have been filed against my clients in  
11 this case?

12 A. I have.

13 Q. Are you aware that there are numerous deficiencies  
14 identified in those pleadings?

15 A. Yes.

16 Q. If I provided you a copy of the Amended Complaint, it  
17 would be your testimony that that document encompasses  
18 all deficiencies that you take issue with?

19 A. I can't say that without having time to study both  
20 documents and all the documents. I would assume that  
21 it does, but I can't say yes or no.

22 Q. Did you review the Complaint and the Amended Complaint  
23 prior to their filing?

24 A. Yes.

25 Q. Did you submit any requests for changes to your

1 attorney? And I am not asking for details of that.

2 A. Maybe a few typos, but other than that I don't remember  
3 anything major.

4 (Defendant's Exhibit 9 marked)

5 EXAMINATION RESUMED BY MS. LEARY:

6 Q. Mr. Gatlin, I'm going to hand you a document that has  
7 been marked as Defendant's Exhibit 9 and ask if you  
8 recognize it.

9 A. Yes.

10 Q. What is Defendant's Exhibit 9?

11 A. It's the Amended Complaint.

12 Q. And I'll represent to you that I pulled this version  
13 off of the judicial website this morning. This is the  
14 version that your attorney filed with the court. Okay?  
15 Can you turn -- the document is not numbered, but can  
16 you turn first to page 2 of the Amended Complaint?

17 A. (Witness complies).

18 Q. You previously testified this morning that you have not  
19 paid Custom Castles in full for the invoice they  
20 submitted to you. Is that correct?

21 A. That's correct.

22 Q. Can you please review paragraph nine of the Amended  
23 Complaint?

24 A. Yes. And I did have a markup on that that I indicated  
25 to my attorney that I had paid for all the work that

1 had been done, but not -- not the total amount. It's a  
2 -- you know, you're only talking about \$1000 or  
3 something like that.

4 Q. I understand. So is it your testimony that paragraph  
5 nine is inconsistent with your testimony in this case?

6 A. Yes.

7 Q. I'm just clarifying for the record. If you can turn to  
8 the next page, please, to paragraph 14, which is at the  
9 bottom?

10 A. Okay.

11 Q. Paragraph 14 states that plaintiff found there to be  
12 several deficiencies with the work Defendant had  
13 performed, including but not limited to the following.  
14 Do you see that?

15 A. Yes.

16 Q. When you turn to the next page, it starts with  
17 paragraph 14 subparagraph A. Do you see that?

18 A. Right.

19 Q. I would like to go through some of these deficiencies  
20 that were identified, if that's all right with you.

21 A. Okay.

22 Q. Can you please identify what deficiency is stated in  
23 subsection A?

24 A. Remove trash from the roof, gutters, and yard as the  
25 contract required.

1 Q. Was it not your prior testimony today that Custom  
2 Castles was not responsible for the gutter work on this  
3 property?

4 A. They were responsible for the trash that they put in my  
5 gutters.

6 Q. But they were not responsible for any gutter work.  
7 Correct?

8 A. Gutter repairs, no.

9 Q. Subparagraph D of paragraph 14 states that the  
10 defendants did not perform a quality control inspection  
11 as the contract required. What personal knowledge do  
12 you have that a quality control inspection was not  
13 performed?

14 A. I was not presented with a quality control report. I  
15 was in construction for 40 years. When you do a  
16 quality control report for a client, you present them  
17 with the report.

18 Q. Is there anywhere in your contract with Custom Castles  
19 that states that they must present you with a quality  
20 control report?

21 A. No. They are the one that said they did a quality  
22 control inspection.

23 Q. Correct, but is there any place that obligates them to  
24 provide you with a quality control report?

25 A. If they said they did a quality control inspection, I

1 would expect to be provided a report.

2 Q. That is an expectation and an assumption that you are  
3 making. Correct?

4 A. Based on 40 years in the business, yes.

5 Q. Understood. Did anyone from Custom Castles tell you  
6 that a quality control inspection was not performed?

7 A. No. But I still haven't seen a quality control report.

8 Q. In subparagraph F of paragraph 14 of the Amended  
9 Complaint, do you see where it states the defendants  
10 did not install step flashing in areas where it is  
11 required?

12 A. Yes.

13 Q. Are you aware if the installation of step flashing was  
14 within the scope of work for Custom Castles?

15 A. Yes.

16 Q. Can you please pull Defendant's Exhibit Number 3 to the  
17 front for you to review?

18 A. Which one was 3?

19 Q. That is the revised scope from Allstate.

20 A. Okay. Well, it doesn't matter whether they say step  
21 flashing or not. Greenville County requires step  
22 flashing on a roof replacement.

23 Q. Who presented that information to you?

24 A. The roofing inspector.

25 Q. Do you have his name?

1 A. I've got it, but I don't have it.

2 Q. Have you produced his name through discovery?

3 A. No. I think I did say that I had the roofing inspected  
4 after Custom Castles refused to have the roof inspected  
5 by Greenville County as required, that I had the roof  
6 inspected by Greenville County. And I've got his name.  
7 I just don't have it with me, but it says in my  
8 documentation that I did have the roofing inspection  
9 done.

10 Q. Can you provide the name of the inspector who came out  
11 from Greenville County to your attorney to give to me,  
12 please?

13 A. Sure.

14 Q. So it is your testimony it doesn't matter if the  
15 Allstate scope states that my client was responsible  
16 for step flashing or not?

17 A. Do you understand how estimates are done?

18 Q. I do.

19 A. They're -- they are not a detailed estimate. When they  
20 say roofing, okay, that -- that doesn't mean that it's  
21 only the shingles. I'm just using that as an example.  
22 But these estimates are not detailed estimates.

23 Q. What is your definition of a detailed estimate?

24 A. The line item detailed estimate. And I used to be an  
25 estimator on multimillion dollar jobs, and so I know

1 what a line item estimate is.

2 Q. Was that in a commercial or residential capacity?

3 A. Commercial and industrial.

4 Q. But not residential. Is that correct?

5 A. That's correct.

6 Q. Can you please pull before you Defendant's Exhibit  
7 Number 3?

8 A. I know it probably doesn't say step flashing on there.

9 Q. I'm not asking that question.

10 A. Okay.

11 Q. Can you please pull Defendant's Exhibit Number 3?

12 A. Okay.

13 Q. Can you please turn to page CCRC 57?

14 A. Okay.

15 Q. Do you see the highlighted subsection entitled Sketch  
16 One Main Level Roof One?

17 A. Well, it's not highlighted.

18 Q. It's bold?

19 A. Sketch One Main Level Roof One?

20 Q. Yes, sir.

21 A. Mm-hmm.

22 Q. Is it your testimony that the items underneath that  
23 title which fall on to page 58, as well, are not line  
24 items identified for the roof?

25 A. You talking about item 21, 22, 106, 107, and 19?

1 Q. 20, 108, 109A, 109B. Is this not a detailed scope from  
2 Allstate?

3 A. It's a semi-detailed. Okay?

4 Q. We can splice words as much as we want, but the work  
5 identified on Defendant's Exhibit Number 3, the detail  
6 identified, excuse me, is the scope which my client  
7 performed. Is there anything within Defendant's  
8 Exhibit Number 3 that states that my client is required  
9 to install step flashing?

10 A. The contract implies that they were licensed, and so  
11 they had to do the work in accordance with the code,  
12 and the code requires step flashing.

13 Q. That is an implication and assumption that you are  
14 making.

15 A. It's not an implication. It's a -- it's a fact.

16 Q. It's a fact that the contract states that my client is  
17 obligated to---

18 A. Do the work in accordance with the building code? Yes,  
19 I think so.

20 Q. What building code has my client failed to follow?

21 A. I think it's the International Residential Code 2015 or  
22 something like that. I got the exact one that the  
23 state of South Carolina is under at this time, but I  
24 can't tell you, you know, for sure the number, but the  
25 Residential Building Code.

1 Q. Do you intend---

2 A. And any modifications by Greenville County.

3 Q. Do you intend to testify at trial in this case that the  
4 International Building Code requires my client to  
5 install step flashing?

6 A. No.

7 Q. Is there someone else that you intend to have testify  
8 to that fact?

9 A. I've already told you it's required by Greenville  
10 County.

11 Q. Do you intend to testify at trial that Greenville  
12 County requires the installation of step flashing?

13 A. Yes.

14 Q. Can you please turn to paragraph 14, subsection P of  
15 your Amended Complaint?

16 A. Say it again?

17 Q. Subsection P as in Paul.

18 A. Okay.

19 Q. Subsection P states that the defendants did not install  
20 siding starter strips in areas where they are required.

21 A. Correct.

22 Q. Is that still your position?

23 A. Yes.

24 Q. Where are starter strips required? What areas of the  
25 property were they not installed where they were

1 required?

2 A. Well, they're required in more than one area, but  
3 primarily at the start of the siding. When the siding  
4 is started, the first row of siding is supposed to have  
5 a starter strip under it, and they were not provided  
6 anywhere around the house.

7 Q. Is it your testimony that starter strips are always  
8 required?

9 A. If you want to install it in accordance with the  
10 manufacturer's instructions, yes.

11 (Defendant's Exhibit 10 marked)

12 EXAMINATION RESUMED BY MS. LEARY:

13 Q. Mr. Gatlin, I'm going to hand you what's been marked as  
14 Defendant's Exhibit Number 10 and ask if you recognize  
15 it.

16 A. Yes.

17 Q. I will represent to you that I recently received this  
18 document through your attorney as I was unable to  
19 previously read copies of text messages that you  
20 produced.

21 A. Okay.

22 Q. There are a set of six cell phone screenshot text  
23 messages on this page. Is that correct?

24 A. Yes.

25 Q. On the top row, the farthest to the right, do you see -

1 - let me back up a bit. I'm sorry. What are these  
2 text message conversations? Who is talking via text?

3 A. Those are my -- that's my text message to John  
4 Hornbeck.

5 Q. The top left text message shows a date of Friday,  
6 October 20. Sounds about consistent with when you were  
7 working with him?

8 A. Right.

9 Q. If you can skip to the top right text message block, do  
10 you see where you wrote to John Hornbeck, "A starter  
11 strip is only required if you push on the hardy plank  
12 and it flexes"?

13 A. Let me find it. And that had to do with windows. Yes,  
14 I see that. And if you'll notice above that, we're  
15 talking about the windows.

16 Q. Who is going to testify at the trial in this case that  
17 starter strips are required to be installed?

18 A. Installed where?

19 Q. In areas where they are required.

20 A. By the manufacturer's installation instructions.

21 Q. It does not say that in your Complaint. Who is going  
22 to testify at trial that the defendants didn't install  
23 starter strips in areas where they are required?

24 A. I will, and I will show you the installation  
25 instructions that say so.

1 Q. Have you ever worked personally with hardieplank?

2 A. No, but I bet you I know a whole lot more now than most  
3 people do about hardieplank.

4 Q. Let's move on---

5 A. Even though John Hornbeck says he knows more than  
6 Hardieplank does.

7 Q. Well, I wasn't asking about Mr. Hornbeck's knowledge.  
8 If you can go down to subsection Q of your Amended  
9 Complaint, it states the defendants did not install  
10 flashing over windows.

11 A. We need to back up just a second about the starter  
12 strips.

13 Q. Yes, sir.

14 A. The Hardie representative was onsite and indicated yes,  
15 they should have been installed.

16 Q. And what is the name of that representative?

17 A. I don't know his name, but---

18 Q. Well, is he going to testify at trial in this case?

19 A. I don't necessarily need him to, but---

20 Q. Then what is the purpose of---

21 A. The reason I'm telling you that is that he agreed with  
22 me that the starter strips should have been installed.

23 Q. Okay. If we can move on to subsection Q, the  
24 defendants did not install flashing over windows?

25 A. That's right.

1 Q. Do you see on Defendant's Exhibit Number 10 where you  
2 text John Hornbeck, the bottom left text message  
3 states, "where the roof overhand is close to the top of  
4 the window no flashing is required"?

5 A. That's right, and I stand by that, but on the windows  
6 that are not close to the roof overhang, they were not  
7 installed there either. And the siding installer when  
8 I asked him about it, he said, I installed what they  
9 provided me and they didn't provide me any --

10 Q. window flashing?

11 A. -- flashing, yeah.

12 Q. Okay. When we met at your house a couple of weeks ago,  
13 you pointed out some step cracking on your brick on the  
14 left exposure of your property?

15 A. Yeah. I haven't included that in the Complaint. I  
16 just said that Mr. Gaines indicated that when asked  
17 that it was a possibility that it was caused due to the  
18 downspouts not being reinstalled causing water to cause  
19 the foundation to settle.

20 Q. You are not claiming any damages attributable to that  
21 in this case. Is that correct?

22 A. That's right. Not at this time.

23 Q. Do you or do you not intend to claim the potential step  
24 cracking of your brick on the left exposure in this  
25 case as damage?

1 A. I'm still investigating that.

2 Q. Have you hired anyone except for Mr. Gaines to inspect  
3 the cracking?

4 A. No.

5 Q. Is it your testimony at this point you're not sure if  
6 you're going to? You may or may not hire someone else?

7 A. If you'll look at the documentation provided by Mr.  
8 Gaines, it shows that the foundation crack in the wall,  
9 crack in whatever would be covered under a separate  
10 letter. He never did that, and what that amounted to  
11 is he was going to provide me with the name of the best  
12 foundation repair man that he knew at the best price  
13 and knew the most about it, and he never has done that.  
14 I plan to still call him and say you never did give me  
15 the name of the foundation man you were going to  
16 recommend.

17 Q. Okay.

18 A. So after that, after I talk with whoever that person  
19 is, then I'll decide whether I should or shouldn't  
20 include that in the Complaint.

21 Q. Okay.

22 (Defendant's Exhibit 11 marked)

23 EXAMINATION RESUMED BY MS. LEARY:

24 Q. Mr. Gatlin, I'm going to hand you what's been marked as  
25 Defendant's Exhibit Number 11 and ask if you recognize

1 it.

2 A. I do.

3 Q. What is Defendant's Exhibit Number 11?

4 A. Photographs of a lot of deficiencies.

5 Q. Are these photographs that you produced in this case?

6 A. That's correct.

7 Q. Who took these pictures?

8 A. I did.

9 Q. Did you take them on a camera?

10 A. I think I took them all on my cell phone.

11 Q. Do you know when these photos were taken?

12 A. I can't tell you exactly, but, for example, like on  
13 like the fourth page where it shows that piece of  
14 siding missing, that had to be on the 21st, I think, or  
15 22nd. It had to be after the 21st, the 21st or later  
16 of October.

17 Q. Throughout your discovery production there are a lot  
18 comments in red, arrows, bubbles, opinions presented.  
19 Who prepared these documents?

20 A. I prepared these, and they are my comments.

21 Q. So these are conclusions and representations that you  
22 prepared. Is that correct?

23 A. That's correct.

24 Q. When we previously discussed your employment  
25 background, I do not recall you mentioning any

1 experience in residential. Have you ever  
2 professionally worked on residential properties?

3 A. No, but it's construction, and I worked on just about  
4 every type of construction conceivable.

5 Q. Except for residential homes?

6 A. And I'm trying to remember if I've ever done any actual  
7 residential, okay, or not, and I don't think so, but  
8 that's -- that's immaterial. I can read installation  
9 instructions. Okay? And I can -- and I can check. I  
10 can do a report. This is basically the report that was  
11 never done by Custom Castles that I did for them.

12 Q. Do you still have copies or do you still have the  
13 digital photographs?

14 A. I do.

15 Q. Can you please provide copies of those digital  
16 photographs to your attorney?

17 A. Sure.

18 Q. And what I'm asking, I'm not asking specifically just  
19 for the ones identified in Defendant's Exhibit Number  
20 11 but all of the photographs that you have produced in  
21 this case that you took.

22 A. Well, they were presented to you when y'all first asked  
23 for all of that. I don't know what you made copies of  
24 and what you didn't, but I'll do it again.

25 Q. I'm asking for the digital copies, not photographs in a

1 completed .pdf. Does that make sense?

2 A. Yes.

3 Q. So in a .jpeg version as separate attachments.

4 A. Right.

5 Q. Okay. Thank you very much.

6 A. You know, this is just a few. I've got hundreds.

7 These are just samples.

8 Q. Okay. I appreciate you clarifying that.

9 A. So I can't do it overnight. It will take a while for  
10 me to pull them all together.

11 Q. That's fine. I understand. Who is going to testify at  
12 trial in this case that the work Custom Castles  
13 performed was not in compliance with the International  
14 Residential Code?

15 A. I will. I checked the code, and all you got to do is  
16 say they didn't follow the manufacturer's installation  
17 instructions, and that's a requirement of the  
18 International Code.

19 Q. Is Mr. Gaines going to testify to that?

20 A. Not unless you call him. I hadn't planned on calling  
21 him. I reserve that. I may or may not, but right now  
22 I don't plan on calling him.

23 Q. I understand. Who is going to testify at trial that  
24 the work Custom Castles performed is below accepted  
25 industry and commercial standards?

1 A. I am, and if I need to, there's a number of people that  
2 looked at the work that agreed that it was shoddy work  
3 and did not comply with the installation instructions  
4 of the manufacturer.

5 Q. What are the names of those individuals?

6 A. I think I've given you most of them. I don't know if I  
7 have or not.

8 Q. Let me just clarify, Mr. Gatlin. You've provided an  
9 array of names, and we can go through them in a couple  
10 of minutes if that would be easier for you rather than  
11 on the spot asking. You provided, you know, a list of  
12 names. I don't know what they're going to testify to  
13 or what interaction you've had with them. So, you  
14 know, I'm sure you may find it a silly question that  
15 I'm asking, but I just don't know the answer to it. So  
16 when I get to that point, we'll go through the names  
17 that you've identified and maybe you can give me a bit  
18 more information of what your interaction was with  
19 those individuals.

20 A. I'll try to.

21 Q. Okay, thank you. Have you presented anything to date  
22 in order to prove that you've had increased heating and  
23 cooling costs as a result of the work performed by  
24 Custom Castles?

25 A. No.

1 Q. What evidence do you have to support that conclusion?

2 A. That I have not had any?

3 Q. That you have had increased heating and cooling costs.

4 A. I said no, that I haven't had any.

5 Q. You have not had any increased heating and cooling  
6 costs?

7 A. There's no way that I can prove that one way or the  
8 other.

9 Q. Okay. What evidence---

10 A. The main thing I was concerned with was carbon  
11 monoxide, and I took care of that problem myself.

12 Q. I understand. The reason why I'm asking, Mr. Gatlin,  
13 is in one of your interrogatory responses, that was an  
14 element of damage. So I'm just trying to go through  
15 and understand, because I haven't seen anything that  
16 you produced to prove that. So if that's not an  
17 element of your damage, then that's fine, but that's  
18 where I'm pulling that from.

19 A. Okay. I don't -- I don't know that I said that my  
20 heating and cooling costs were increased.

21 Q. And that's fine. You know, that's why we're here  
22 today, is to go through everything and for you to give  
23 your testimony. What evidence do you have to prove  
24 that you have mold problems in your crawlspace  
25 attributable to the work performed by Custom Castles?

1 A. I haven't said I had mold problems in the crawlspace.  
2 I did have my crawlspace inspected, and there were no  
3 mold problems.

4 Q. Okay. Can you give me some background about the damage  
5 to your kitchen ceiling?

6 A. Yes. Well, the siding man hit the water line in the  
7 wall which caused a leak, and they immediately told me  
8 about it. We turned the water off as quick as we  
9 could, and they repaired the damage to the water line.

10 Q. Who is "they"?

11 A. The siding contractor. And then -- and after --  
12 basically, at the same time, I saw the damage to the  
13 ceiling, which amounted to water stains in the kitchen  
14 at the location of the water leak.

15 Q. Are you aware of whether or not the water heater was  
16 too close to an exterior wall?

17 A. No, I'm not. Are you?

18 Q. I am, actually. Have you reviewed the International  
19 Residential Code to see if there is any requirement  
20 that water heaters not be within a particular --

21 A. Water line?

22 Q. -- clearance? Water line. Excuse me. Water line  
23 within a particular clearance of an exterior wall?

24 A. No. I've been told that it shouldn't be, you know,  
25 that it needs to be, I don't know exactly where,

1 located where in an exterior wall, but I will tell you  
2 this. Had they been putting the nails in the studs  
3 like they were supposed to, they wouldn't have hit the  
4 water line.

5 Q. Do you have any actual knowledge of that?

6 A. No. It's just common sense.

7 Q. You have no actual knowledge of that?

8 A. No.

9 Q. When did you---

10 A. All I can tell you is when I had the siding replaced,  
11 the new siding contractor inspected the damage to the  
12 water line, and they told me how it had been repaired,  
13 and I said okay, that's acceptable.

14 Q. Did the new siding installer tell you that if the nails  
15 had been put into the studs that it wouldn't have been  
16 pierced?

17 A. No.

18 Q. Okay, just clarifying. When did you hire Bryan Gaines?

19 A. The information that you've got should show that.

20 Q. How did you find Mr. Gaines?

21 A. By making a whole lot of phone calls.

22 Q. Did someone make a recommendation of him to you?

23 A. I can't remember how I came up with him, but he is a  
24 licensed engineer, and so I felt that, you know, he was  
25 acceptable to do the inspection after talking with him,

1 and so I hired him.

2 Q. When he inspected your property, was this prior to you  
3 having the roof and the siding work that my client did  
4 removed and replaced?

5 A. Yes.

6 Q. So he inspected the property prior to you replacing the  
7 siding and the roof?

8 A. Yes.

9 Q. Did you or your attorney provide me or the defendants  
10 in this case notice prior to you replacing all the  
11 siding and the roof?

12 A. No, not that I'm aware of, no. (To Mr. Duncan) You  
13 didn't, did you?

14 Q. You're going to have to direct questions to me. I'm  
15 sorry. So you're not aware of any notice that you  
16 provided me or my clients that you were replacing the  
17 roof or the siding?

18 A. No, but they had already indicated that they weren't  
19 going to do it.

20 Q. Whenever Mr. Gaines came out to the property, did he  
21 thereafter prepare a report?

22 A. Yes.

23 (Defendant's Exhibit 12 marked)

24 EXAMINATION RESUMED BY MS. LEARY:

25 Q. Is that the report that I've handed you that's been

1 marked as Defendant's Exhibit Number 12?

2 A. Yes.

3 Q. Can you take a moment to review Defendant's Exhibit  
4 Number 12 and let me know if that encompasses the  
5 report that Mr. Gaines prepared?

6 A. Yes.

7 Q. The top of page 1, the reference shows inspection of  
8 105 Silver Pine Court in Greer. That's your property.  
9 Correct?

10 A. Correct. It's got the date there, too.

11 Q. And that was the date that he inspected the property?

12 A. Yes.

13 Q. What is the date of the report?

14 A. June 26 of 2018.

15 Q. Can you please turn to page 2 of Defendant's Exhibit  
16 Number 12? Do you see the heading in the middle of the  
17 page Summary of Inspection Findings and  
18 Recommendations?

19 A. Yes.

20 Q. Subsection A, as you can review, and feel free to do  
21 so, provides inspection and evaluation of the existing  
22 roof installation main residence structure. So that's  
23 the roof of your home. Correct?

24 A. That's correct.

25 Q. What Mr. Gaines did in his this report is he separately

1 provided recommendations for the roof of your home, the  
2 roof of the outbuilding second structure, and then  
3 discussed siding. Is that correct?

4 A. That's correct.

5 Q. So in subsection A, we are just talking about the roof  
6 of your home?

7 A. Yeah, but let me mention that you don't have his  
8 pictures attached.

9 Q. That is correct. I'm just referring to his written  
10 report.

11 A. Okay, but you can't take the report like this without  
12 the pictures, in my opinion. It's got to be all  
13 together or nothing.

14 Q. And that's fine, and at trial you are more than welcome  
15 to include those pictures, but---

16 A. I just wanted to let you know that, that his pictures  
17 are an important part of his report.

18 Q. In the event that I refer to a section and ask you to  
19 discuss it that refers to a photograph, I'll pull that  
20 out and we can make copies and add it. Does that work?

21 A. I'm not sure what you said, but okay.

22 Q. I'm not going to ask you questions about something  
23 that's not in front of you.

24 A. Okay.

25 Q. Okay. Under subsection A there is a further subsection

1 3. Do you see that?

2 A. I do.

3 Q. Are these the recommendations that your expert in this  
4 case made regarding the roof installation?

5 A. I'm sorry. Say that again.

6 Q. Is subsection A, then subparagraph 3, is this paragraph  
7 the recommendations that your expert makes regarding  
8 the roof of your home?

9 A. Yes.

10 Q. Can you please read that section into the record

11 A. "To correct the issues noted, the undersigned Engineer  
12 recommends that the services of a licensed roofing  
13 contractor be retained in order to examine the existing  
14 roof installation and to address all installation  
15 irregularities and problems thus found."

16 Q. Have you done that?

17 A. Yes.

18 Q. Who did you hire?

19 A. I can't think of his first name, but Mr. Dolly.

20 Q. With Dolly's Roofing?

21 A. Yes.

22 Q. So, in essence, Mr. Gaines inspected your roof and  
23 essentially told you you need to contact a licensed  
24 roofer to figure out what needs to be done. Is that  
25 correct?

1 A. That's correct.

2 Q. Can you turn to page 3 of Mr. Gaines' report, please?  
3 The top of page 3, do you see the subparagraph B which  
4 provides inspection and evaluation of existing roof  
5 installation, rear outbuilding structure?

6 A. Yes.

7 Q. And that's talking about the shed in the backyard. Is  
8 that correct?

9 A. That's the shed, yes.

10 Q. Can you please read into the record the subparagraph 3  
11 of section B?

12 A. Paragraph 3? "To correct the issues noted, the  
13 undersigned Engineer recommends that the services of a  
14 licensed roofing contractor be retained in order to  
15 examine existing roof installation and to address all  
16 installation irregularities and problems thus found."

17 Q. So, again, he inspects the outbuilding roof and  
18 recommends that you get a licensed roofer. Is that  
19 correct?

20 A. That's correct.

21 Q. So subsection C of Mr. Gaines' report---

22 A. Which I did, by the way.

23 Q. And that's Dolly again. Correct?

24 A. Again Dolly, that's right.

25 Q. And we'll get to that report. I've just got to go in

1 order of, you know, what you did here. So subsection C  
2 of this page, subparagraph 2 says, Inspection of the  
3 existing residence siding installation. Do you see  
4 that?

5 A. Yes.

6 Q. Can you please read subsection 3 into the record  
7 regarding the siding installation?

8 A. "To correct the issues noted, the undersigned Engineer  
9 recommends that the services of a licensed siding  
10 contractor be retained in order to examine the existing  
11 siding installation and to address all installation  
12 irregularities and problems thus found."

13 Q. Have you done that?

14 A. I did.

15 Q. Who have you hired?

16 A. I didn't hire anybody. I told you that the Hardie  
17 representative came to my house with a licensed siding  
18 contractor.

19 Q. What is the name of the licensed siding contractor that  
20 has been to your house?

21 A. C&W's the ones that did the siding replacement.

22 Q. Has C&W prepared a report for this case?

23 A. No.

24 Q. Do they intend to testify as an expert in this case?

25 A. I don't guess so. They may be called, but right now,

1 no.

2 Q. Okay. Where in Mr. Gaines' report does it recommend or  
3 require that you remove all of the siding and replace  
4 it?

5 A. I don't guess it's in there, but you can't -- you can't  
6 get the proper exposure without removing it, and you  
7 can't use it -- you can't use the same siding to -- to  
8 put -- you can't put the same siding back up again.

9 Q. Who is the individual from Hardie that brought C&W out  
10 to your property?

11 A. Other way around. C&W brought the Hardie  
12 representative.

13 Q. Okay. What is the name of the Hardie representative?

14 A. I've got it, but I'll have to provide it to you.

15 Q. Have you provided it to date?

16 A. I thought we did, but maybe we haven't. I'm not sure.

17 (Defendant's Exhibit 13 marked)

18 EXAMINATION RESUMED BY MS. LEARY:

19 Q. Mr. Gatlin, I'm going to hand you a document that's  
20 been marked as Defendant's Number 3 and ask if you  
21 recognize it.

22 A. Defendant's Exhibit 13?

23 Q. 13. I'm sorry. Yes, sir.

24 A. Yes, I do.

25 Q. Is this the report that---

1 A. Yes, but it doesn't have the pictures.

2 Q. Is this the report that Dolly's Roofing prepared in  
3 response to the recommendation from Mr. Gaines that you  
4 hire a licensed roofer?

5 A. Yes.

6 Q. Can you explain to me why then Dolly's Roofing  
7 inspected the roof on May 3 of 2018 and Mr. Gaines only  
8 inspected the roof on June 11 of 2018, nearly a month  
9 later?

10 A. Because I had a hard time ever getting Mr. Gaines to  
11 come do his work.

12 Q. Correct, but your prior testimony was that in response  
13 to the report prepared by Mr. Gaines you hired a  
14 licensed roofer, but, in reality, you had already had  
15 someone come out to the property. Is that correct?

16 A. Well, I had a couple others but hired Mr. Dolly, and  
17 guess where I got Mr. Dolly's name.

18 Q. Where?

19 A. Mr. Gaines.

20 Q. Okay.

21 A. He recommended Dolly's Roofing do an inspection.

22 Q. Okay. Where on Mr. Dolly's report does it state that  
23 you need to replace the entire roof?

24 A. I don't know that it says that, but because of all  
25 these problems -- and Mr. Dolly's not the only roofer

1 that inspected my roof. All of the roofers -- I had  
2 two others to inspect it. They're not included, but  
3 all of them said you can't make these repairs without  
4 replacing the roof.

5 Q. where does it say that say on this report?

6 A. I said it probably doesn't say that.

7 Q. when you referred to other individuals who came out and  
8 inspected the roof, did they prepare a report, as well?

9 A. No.

10 Q. Are they going to testify as experts in this case?

11 A. No.

12 Q. Are they going to testify as witnesses in this case?

13 A. No.

14 Q. Is Mr. Dolly going to testify as an expert in this  
15 case?

16 A. I haven't asked him to. He doesn't need to. If you  
17 look at his report along with the pictures, that's all  
18 you need.

19 Q. Okay.

20 A. And along with my pictures.

21 Q. Did you pay Mr. Dolly \$200 separate in order to prepare  
22 that inspection report?

23 A. I did.

24 Q. In your discovery you produced a lot of instruction  
25 manuals and documents from James Hardie.

1 A. Yes.

2 Q. Where did you obtain those?

3 A. The Internet.

4 Q. Did you obtain them from the James Hardie website or---

5 A. Yes.

6 Q. Were any of them obtained through a third-party  
7 website?

8 A. No. Well, I've got some stuff that I obtained from a  
9 third-party website, but I don't think that any of them  
10 were included in what was presented.

11 Q. What was the purpose for you producing those documents?

12 A. To show that the installation was faulty and that the  
13 contractor did not install the siding in accordance  
14 with the manufacturer's instructions, and the  
15 manufacturer's instructions all show on the wrapper  
16 that the hardieplank comes in.

17 Q. Did Mr. Gaines consult that paperwork when inspecting  
18 your property? Did you provide him a copy of those  
19 instructions?

20 A. I don't remember. I may have or I may -- I may not. I  
21 don't remember. I don't know. He may have -- he may  
22 have looked on the Hardie website himself. I don't  
23 know.

24 Q. Do you have any personal knowledge concerning the  
25 corporate structure of Custom Castles Roofing and

1 Construction, Inc.?

2 A. Only what I've been able to find out on the Internet.

3 Q. And what were you able to find out on the Internet?

4 A. Well, I found out things like the addresses for offices  
5 are not correct.

6 Q. How are they not correct?

7 A. They don't exist.

8 Q. What personal knowledge do you have concerning the  
9 structure of the ownership of Custom Castles Roofing  
10 and Construction, Inc.?

11 A. Only the understanding in talking with contract people  
12 associated with Custom Castles that there's only one  
13 employee, John Hornbeck.

14 Q. Is that common in a small business?

15 A. To some degree, but not when you claim to have  
16 insurance and you don't, when you claim to have a  
17 license and you don't. Okay? That's not common.

18 Q. Okay, but I'm asking about the corporate structure  
19 right now. Have you ever seen a copy of the Articles  
20 of Incorporation for that company?

21 A. No. You know I haven't.

22 Q. Have you ever seen a copy of the bylaws?

23 A. No.

24 Q. Has anyone ever told you who actually has a shareholder  
25 interest in that company?

1 A. No.

2 Q. Are you aware if there are any other shareholders other  
3 than John Hornbeck?

4 A. No.

5 Q. Do you have any personal knowledge concerning the  
6 structure of Custom Castles Construction, LLC?

7 A. Nothing other than when all this happened John Hornbeck  
8 closed it down.

9 Q. Are you aware if that was an active business at the  
10 time?

11 A. We all know what it was. Okay?

12 Q. And what is that?

13 A. What do you think it was?

14 Q. I'm here to ask the questions --

15 A. I don't have a---

16 Q. -- Mr. Gatlin.

17 A. No answer.

18 Q. Okay, that's fine. Have you ever seen a copy of the  
19 Articles of Organization for that company?

20 A. No.

21 Q. What about the operating agreement?

22 A. No.

23 Q. Do you know if the LLC has an operating agreement?

24 A. No.

25 Q. Has anyone ever told you who owns that company and at

1 what percentage?

2 A. No, but when I was asked -- when I asked about  
3 meetings, I said since these offices don't exist, I  
4 said, where do you have meetings, and I was told that  
5 the meetings are held at John Hornbeck's house on a  
6 regular basis with contract employees.

7 Q. And why is that an issue for you?

8 A. It's deception.

9 Q. Deception in what regard?

10 A. No answer.

11 Q. You are telling me that what my client has done is  
12 deceptive, and you can't tell me why it's deceptive and  
13 how that has harmed you? What is it---

14 A. We've already -- we've already shown that, and so I  
15 have no further comment.

16 Q. I'm entitled to ask additional questions concerning it.  
17 What damage have you sustained as a result of my client  
18 holding meetings in a location other than a location  
19 identified on their website?

20 A. None, but the contract says that they have insurance,  
21 and I am still liable at this time for any workman's  
22 comp claims that may come up due to work done at my  
23 house. And you say, well, nobody was hurt. Well, when  
24 I told John Hornbeck that he wasn't installing the  
25 siding in accordance with the -- with OSHA which

1 requires certain things be done, he said he didn't  
2 care. If some of their employees come down with cancer  
3 because of that, I am potentially liable.

4 Q. Are you a licensed attorney in this state?

5 A. I don't have to be. I was told by the South Carolina  
6 Insurance Department that's the case.

7 Q. Do you have any---

8 A. And I've got the name---

9 Q. Mr. Gatlin---

10 A. And I've got the name of the lady I talked to.

11 Q. Then can you provide that name to your attorney as well  
12 as the date on which you spoke and the content of that  
13 conversation?

14 A. I just told you the content.

15 Q. I will ask for it in writing as well through  
16 supplemental discovery, Mr. Gatlin. What personal  
17 knowledge do you have that these two companies, Custom  
18 Castles Construction, LLC and Custom Castles Roofing  
19 and Construction, Incorporated, are under the same  
20 corporate umbrella?

21 A. No comment. No answer.

22 Q. Mr. Gatlin, you're required to provide an affirmative  
23 or negative response to my questions today.

24 A. Say that again.

25 Q. "No answer" is not an option for your testimony today.

1 A. No, no. Ask me again.

2 Q. What personal knowledge do you have to assert that both  
3 companies, Custom Castles Construction, LLC and Custom  
4 Castles Roofing and Construction, Incorporated, are  
5 related under the same corporate umbrella?

6 A. Only that they both show up on the same Internet  
7 website as being the same outfit.

8 Q. Okay. Do you have any personal knowledge that these  
9 two companies share bank accounts?

10 A. No.

11 Q. Do you have any personal knowledge concerning these  
12 companies' filing status for their tax returns?

13 A. No.

14 Q. Are you aware that these companies file separate tax  
15 returns and have separate tax ID numbers?

16 A. No.

17 Q. Do you have any personal knowledge that one or both of  
18 these companies are grossly undercapitalized?

19 A. No.

20 Q. Mr. Gatlin, who is Benjamin Redling?

21 A. Benjamin Redling?

22 Q. I believe you've identified him -- and I will help you  
23 through this. These are individuals you have  
24 identified to me as witnesses in your case. I believe  
25 that you told me that he is a James Hardie rep.

1 A. Okay. That must be the guy who came to my house. I'm  
2 not sure of that.

3 Q. Do you know the name of the gentleman who came to your  
4 house?

5 A. I told you I do, but I don't have it on the tip of my  
6 tongue. I've got his business card.

7 Q. Regarding the individual that came to your property on  
8 behalf of James Hardie, do you have any written notes  
9 concerning your conversation?

10 A. No.

11 Q. What was the scope of your conversation?

12 A. Things like, but not limited to, the fact that the  
13 starter strips were not installed. Things like the  
14 fact that cutting of hardieplank requires special  
15 consideration.

16 Q. Do you know what Mr. Redling's background is  
17 professionally?

18 A. No.

19 Q. Do you know what capacity he's in, you know, in terms  
20 of degrees, certifications in order to make those  
21 conclusions?

22 A. No, but on his business card he is listed, I think --  
23 and I may not be right, but he's listed as an  
24 installation specialist, and his business card is James  
25 Hardie.

1 Q. In the event that you have not produced that business  
2 card to date, because I do not recognize it, can you  
3 please produce that to your attorney?

4 A. Sure.

5 Q. When did he come out to your property to inspect it?

6 A. I don't remember the date.

7 Q. Was it prior to you replacing the roof and the siding?

8 A. Yes.

9 Q. Who is Mark?

10 A. He's with -- he is a guy on the other end of the  
11 telephone in California when I called Hardieplank a  
12 number of times.

13 Q. Do you know what his position is?

14 A. No, I don't, but he's customer service.

15 Q. Do you know if he has any professional capacity to make  
16 conclusions concerning the installation methods --

17 A. He must---

18 Q. -- of hardieboard?

19 A. He must have, because Hardie has him answering  
20 questions.

21 Q. That's a conclusion that you're making. Is that  
22 correct?

23 A. No. I'm saying that Hardie has him answering technical  
24 questions, and so he must have.

25 Q. Do you have any personal knowledge concerning Mark from

1 James Hardie's professional background?

2 A. From James Hardie's professional background?

3 Q. Mark from James Hardie. I don't have Mark's last name.

4 A. I don't either. James Hardie Company?

5 Q. Where does Mark work?

6 A. James Hardie.

7 Q. Okay. What professional background does Mark have?

8 A. I'm not aware of his professional background, but he  
9 was the person that I was directed to to answer  
10 technical questions.

11 Q. Are you aware of any degrees or certifications that he  
12 holds?

13 A. No.

14 Q. Do you have his phone number?

15 A. I do.

16 Q. Can you please provide Mark's phone number to your  
17 attorney?

18 A. I can.

19 Q. Thank you. Do you intend to call Mark as a witness in  
20 this case?

21 A. Not from California.

22 Q. How did you find C&W Roofing?

23 A. I found them in talking with James Hardie Corporation  
24 or Company and asked them if they had certified  
25 installers and if they knew anything about Custom

1 Castles, and they never heard of Custom Castles, and  
2 they did give me the name of C&W and the other outfit  
3 that I got a price from.

4 Q. Who recommended -- when you say "they," is it Mark from  
5 California or---

6 A. No. Somebody else from California. This was a  
7 different person. I wasn't asking technical questions.  
8 I was asking for who they -- if they had a  
9 certification program and if they had contractors in  
10 this area that they could provide names to me of, and  
11 that's how I came up with C&W.

12 Q. Have you ever met Brett White?

13 A. Oh, yeah.

14 Q. Has he been to your house?

15 A. Oh, yeah.

16 Q. Did you hire him to perform any inspections?

17 A. No.

18 Q. Did you hire him to prepare any sort of professional  
19 report?

20 A. No.

21 Q. What was the scope of their hiring?

22 A. To replace the siding.

23 Q. How is Mr. White a witness in this case?

24 A. Only that he's the contractor that replaced the siding.

25 Q. Is there any specific testimony that you intend for him

1 to give?

2 A. No. I don't know -- I don't know that we'll even call  
3 him as a witness. We might or might not.

4 Q. Okay. Who is Wes Dickerson?

5 A. He is the second vendor or contractor that I asked to  
6 provide a quote on replacing the siding.

7 Q. Have they provided a quote to you?

8 A. Yes.

9 Q. Did they ever perform any work on your behalf?

10 A. No.

11 Q. Did you ever pay them anything?

12 A. No.

13 Q. Do you intend to call them as a witness in this case?

14 A. Not at this time.

15 Q. What work did A Perfectionist's Touch, LLC perform for  
16 you?

17 A. Painting.

18 Q. Painting of what?

19 A. Painting of the back of the hardieplank siding before  
20 it was installed.

21 Q. Before it was installed by Custom Castles?

22 A. Yes.

23 Q. If you can clarify this for me, because I was a little  
24 confused. So was Angelo's supposed to paint the  
25 exterior once it was installed and A Perfectionist's

1 Touch painted the back end before it was installed?

2 A. No. I originally had A Perfectionist's Touch to do the  
3 work, and they started on the work, and then Custom  
4 Castles hired them to do some work at another job site,  
5 and they didn't show up and didn't show up. So I went  
6 to my neighbor. My neighbor said, hey, I got a great  
7 painter, and that's how I changed painters.

8 Q. Did a Perfectionist's Touch ever do any additional work  
9 for you other than painting the back of the original  
10 hardieboard?

11 A. For years he was my painter on interior and exterior  
12 work.

13 Q. But concerning this case --

14 A. No.

15 Q. -- that's the only painting they did?

16 A. No.

17 Q. So when you had the siding replaced, they didn't  
18 perform any paint work?

19 A. No.

20 Q. Who is CPJ?

21 A. CPJ?

22 Q. You identified CPJ at 200 Tanner Drive?

23 A. Yes.

24 Q. Who is that?

25 A. I think that's one of the two contractors that John

1 vonder Lieth told me about when we were trying to set  
2 up a schedule to meet to work out the siding problems  
3 on my house. And the reason that he told me about them  
4 was that he said they had a big roofing job with them,  
5 another company out there on Tanner Drive.

6 Q. Have you ever spoken with anyone from CPJ?

7 A. Yeah.

8 Q. who did you speak with?

9 A. I don't remember his name.

10 Q. when did you speak with someone from there?

11 A. when I realized that they were doing that work  
12 illegally.

13 Q. when you realized who was doing what work illegally?

14 A. Custom Castles.

15 Q. was doing what work?

16 A. Roofing.

17 Q. what did you speak to the unknown person at CPJ about?

18 A. I asked them about it, and they didn't confirm or deny,  
19 and so he kind of disappeared.

20 Q. So were you reaching out to them to see if they had any  
21 information on my clients?

22 A. I was.

23 Q. And they just didn't provide you anything?

24 A. That's right.

25 Q. Do you intend to call a representative or individual

1 with CPJ at the trial of this case?

2 A. Not at this time. I might later, but not at this time.

3 Q. Okay. What work has Angelo's Painting done for you for  
4 the original siding work done by Custom Castles? Did  
5 they do any painting for that project?

6 A. I think I told you in the beginning that they had not  
7 done any painting but they had done all the caulking.

8 Q. I'm just confirming. I'm sorry.

9 A. And, see, it was anticipated that Custom Castles would  
10 do the caulking, but they said no, they weren't doing  
11 the caulking even though the caulking was provided to  
12 the siding contractor by Customs Castles for them to do  
13 the caulking. And so I had to hire my painting  
14 contractor to do the caulking.

15 Q. Did Angelo's perform any work when you had the siding  
16 replaced by C&W?

17 A. Yeah.

18 Q. What work did they do?

19 A. They did the caulking and the painting.

20 Q. So C&W didn't do the caulking either?

21 A. No. That was part of the agreement to begin with.

22 Q. Who is Alcon Roofing?

23 A. They're a roofing contractor, a local roofing  
24 contractor.

25 Q. Did they ever perform any work for you?

1 A. No.

2 Q. Did you ever pay them for any report or---

3 A. No.

4 Q. Did they ever provide an estimate to you?

5 A. No.

6 Q. Why is Snyder Tree Care a witness in this case?

7 A. Because they're also located on Tanner Road, which is  
8 the second job that Custom Castles was doing illegally.

9 Q. Did they give you any insider information?

10 A. No.

11 Q. Do you know the name of the person you spoke to?

12 A. Mr. Snyder.

13 Q. Do you intend to call him as a witness in this case?

14 A. Not at this time.

15 Q. Who is David England with James Hardie?

16 A. You got me. You got me with too many names here.

17 Q. Your attorney gave me his business card yesterday.

18 A. All right. That's the guy that came to my house. He's  
19 the one that came. And look at his card, and I think  
20 it says inspection or installation specialist.

21 Q. Then who is Benjamin Redling?

22 A. I don't know. I'll have to try to figure it out.

23 Q. Can you maybe work with your attorney to figure out who  
24 these folks are?

25 A. But I -- but I listed him as Hardie?

1 Q. Yes, sir. It says Hardie rep or something like that,  
2 Benjamin Redling, Hardie rep.

3 A. I'll have to go back and look at my documentation.

4 Q. That's fine. So David England is who came to your  
5 house, and that's whose business---

6 A. The one that you got the business card.

7 Q. Yesterday.

8 A. Right.

9 Q. Okay. What work have you had done on your property  
10 since my clients last did work in the fall of 2017?

11 A. The roof and the siding and some yard work and a little  
12 of this and that.

13 Q. General upkeep?

14 A. Right.

15 Q. Could we go off the record, please?

16 A. And the painting.

17 Q. Can we go off the record, take a break for a minute?

18 (Off the Record; 12:42 -- 12:53 PM)

19 (Defendant's Exhibit 14 marked)

20 EXAMINATION RESUMED BY MS. LEARY:

21 Q. Mr. Gatlin, I just have a few more questions for you.  
22 I'm going to hand you a document that's been marked as  
23 Defendant's Exhibit 14 and ask if you recognize it.

24 A. I do.

25 Q. What was the purpose of producing this document in this

1 case?

2 A. I talked with Angelo about doing a lot of work for me,  
3 not only the work associated with the repairs but work  
4 associated with that my wife wanted done in addition.  
5 Okay?

6 Q. Sure.

7 A. This is one of the estimates that came along with the  
8 other estimates that didn't have anything to do with  
9 this case, and he put this one here to give me the  
10 price for re-caulking the siding, which he did and  
11 which I paid for, and it shows up on his handwritten  
12 invoice that you've got a copy of.

13 Q. Yes, sir.

14 A. And then the second one is the \$240 that's for the  
15 stain spot on the kitchen ceiling, to repair that stain  
16 spot, and what he basically says is he'll kilz it,  
17 he'll repaint the whole ceiling for \$240.

18 Q. So are these the damages, the \$240, that you're  
19 claiming for the water spot?

20 A. Water line, yeah.

21 Q. Are you claiming any other damages concerning the  
22 pierced water line?

23 A. No. I think at one point I had -- I had put something  
24 in there that I didn't know what type of repair was  
25 done, so I didn't know if anything additional needed to

1 be done. But when my siding contractor exposed where  
2 that work had been done, it was found to be acceptable.  
3 The repairs were found to be acceptable. So, and  
4 another thing that goes along with this kitchen ceiling  
5 price, the \$240, you asked me was there anything in the  
6 code about where a water line had to be located, and  
7 when the house was built, no.

8 (Defendant's Exhibit 15 marked)

9 EXAMINATION RESUMED BY MS. LEARY:

10 Q. Mr. Gatlin, I'm going to hand you an exhibit that I've  
11 marked as Defendant's Exhibit Number 15. I've gone  
12 ahead and compiled a couple of receipts and invoices  
13 into one exhibit. Can you let me know if you can  
14 identify the two receipts on pages 1 and 2 and the  
15 invoice on page 3, please?

16 A. Yeah. I don't know why you got this receipt, Home  
17 Depot for \$6.51 where I bought a pilot drill, you know.  
18 I don't know why you got that.

19 Q. So---

20 A. Oh, yeah, I do. Because of the roof cement. When I  
21 fixed the -- the vent cap that was wrong, I also found  
22 a hole in the flashing of the vent.

23 Q. So are you claiming the \$2.17 plus tax as damage in  
24 this case?

25 A. Yeah.

1 Q. what about the Ace Hardware receipt you submitted?  
2 what was purchased on this receipt?

3 A. I think that the only thing was the -- where it says  
4 seal roof black whatever was like a caulking.

5 Q. For the \$5.59?

6 A. No, the \$4.99.

7 Q. Oh, I see that. I'm sorry.

8 A. The Great Stuff, that's expanding foam that is not part  
9 of it. And the threaded rod is not. The nuts and  
10 bolts are not.

11 Q. So the \$4.99 plus tax you're claiming as damage?

12 A. Right.

13 Q. And then what about this invoice on page 3 of  
14 Defendant's Exhibit---

15 A. That's for the new vent cap and storm collar that I  
16 bought and replaced the one that was undersized that  
17 was put on.

18 (Defendant's Exhibit 16 marked)

19 EXAMINATION RESUMED BY MS. LEARY:

20 Q. Mr. Gatlin, I'm going to hand you what's been marked as  
21 Defendant's Exhibit Number 16 and ask if you recognize  
22 it.

23 A. I do.

24 Q. What is Defendant's Exhibit Number 16?

25 A. You said what is it?

1 Q. Yes, sir.

2 A. It is a quotation for replacing a roof.

3 Q. What is the date of this quote?

4 A. May 15.

5 Q. Again, was that prior to Mr. Gaines coming out to your  
6 property to inspect it?

7 A. It must have been based on what dates Mr. Gaines has on  
8 his report. I want to -- I do want to say that Mr.  
9 Gaines came out, and it took him forever to ever get me  
10 that report. It looks like there's only two weeks  
11 between when he came and when he provided the report.  
12 It was lot longer than that. I had to call him several  
13 times to get the report.

14 Q. Do you know the actual date on which Mr. Gaines  
15 inspected the property?

16 A. No. No, I don't. I'm just saying those dates are  
17 probably off by a little.

18 Q. Did you ever hire Dolly's Roofing to do your roof work?

19 A. No.

20 Q. Why did you not use them?

21 A. The price was too high.

22 Q. Fair enough.

23 (Defendant's Exhibit 17 marked)

24 EXAMINATION RESUMED BY MS. LEARY:

25 Q. Mr. Gatlin, I'm going to hand you what's been marked as

1 Defendant's Exhibit Number 17 and ask if you recognize  
2 it.

3 A. I do.

4 Q. And what is Defendant's Exhibit Number 17?

5 A. It's a quotation from -- I can't remember -- Exterior  
6 Specialists for replacing the siding.

7 Q. And they provided this estimate on May 4, 2018?

8 A. If that's the date, that's right.

9 Q. It shows estimate date -- please take your time. I  
10 don't mean to rush you.

11 A. It says May 4. So I guess that's right.

12 Q. Did you hire Exterior Specialists to do the siding  
13 work?

14 A. No.

15 Q. And why was that?

16 A. Well, their price was pretty good. It was about the  
17 same as C&W, but their terms and conditions were not  
18 acceptable. Plus before -- before I would hire them I  
19 asked them several questions that they never answered.

20 (Defendant's Exhibit 18 marked)

21 EXAMINATION RESUMED BY MS. LEARY:

22 Q. Mr. Gatlin, I'm going to hand you what's been marked as  
23 Defendant's Number 18 and ask if you recognize this  
24 document.

25 A. I do.

1 Q. what is this document?

2 A. It's the quote from C&W for replacing the siding.

3 Q. when did C&W first come out to your property?

4 A. To replace the siding or to do the estimate?

5 Q. whichever came first.

6 A. well, they came out and took a look at it first and  
7 provided the estimate. Okay? And then I asked a few  
8 questions. They responded to that. we finally agreed  
9 on it, and then when I said go, they said okay, but the  
10 guy you want to do it, they -- they brought the  
11 installer, and I said he's the one I want to do the  
12 work, and by the time all the shuffling and all that  
13 got done, he was in the middle of another job, and so  
14 it was a while before he actually came and did the  
15 work.

16 Q. Did you first have them out at the property on November  
17 1, 2017?

18 A. Yeah, probably so. Probably so. well, maybe.

19 Q. I mean, take your time. It's just on page 1 of  
20 Defendant's Exhibit Number 18 it says Date of  
21 Acceptance, November 1, 2017.

22 A. Oh, that's just a typo.

23 Q. Okay. Because you were still working with Custom  
24 Castles in October of 2017?

25 A. That's right.

1 Q. Do you know approximately when you first contacted C&W?

2 A. Well, again, Hardieplank gave me their name along with  
3 Exterior Specialists, and I contacted both of them  
4 about the same time. And whatever date I give you is  
5 probably going to be wrong, but it was, I guess -- I  
6 guess it was last spring, sometime last -- this past  
7 spring.

8 Q. Around the time when you obtained the other estimates.  
9 Is that---

10 A. Yeah. If you look at this estimate from Exterior  
11 Specialists, they both came about the same time. His  
12 is May 4. So C&W was --

13 Q. Around that same time?

14 A. -- around the same time, yeah.

15 Q. I was trying to understand why it was November of the  
16 prior year, but I---

17 A. They just---

18 Q. That's fine. It didn't make much sense to me either.  
19 Mr. Gatlin, how much did you pay C&W Siding to replace  
20 the siding of your home?

21 A. Well, the check says \$14,360.

22 Q. Have they been paid in full?

23 A. Yes. And the second part of this exhibit shows a paid  
24 invoice for that amount.

25 Q. Yes, sir.

1 (Defendant's Exhibit 19 marked)

2 EXAMINATION RESUMED BY MS. LEARY:

3 Q. Mr. Gatlin, I'm going to hand you what has been marked  
4 as Defendant's Exhibit Number 19 and ask if you  
5 recognize it.

6 A. Yes.

7 Q. What is Defendant's Exhibit Number 19?

8 A. This is the paperwork from Home Depot for replacing the  
9 roof.

10 Q. Is Home Depot who replaced your roof?

11 A. Yes.

12 Q. How much did you pay Home Depot to replace the roof?

13 A. The check should be there, two checks or two payments,  
14 and they do it a little different. I wrote them a  
15 check, which they ended up getting the check passed  
16 through the bank and handed me the check back, I think,  
17 but this -- this came off of my bank account, and it  
18 shows the payment on 6/15 and 8/14 for the two amounts,  
19 which totaled \$12,159.50, and that's about 9 or 10  
20 cents different than the amount that shows up on the  
21 paperwork, but that's what they billed me and that's  
22 what I paid them.

23 Q. I noticed it was about 18 cents less.

24 A. Okay.

25 Q. I guess you came out on top.

1 A. Yeah.

2 Q. And so the breakdown that you're referring to is the  
3 last page of Defendant's Exhibit Number 19. Is that  
4 correct?

5 A. That's correct.

6 Q. Mr. Gatlin, do you recall when---

7 A. And you see -- let me mention one other thing.

8 Q. Yes, sir.

9 A. You see there's a big difference between 6/15 and 8/14.

10 Q. Yes, sir.

11 A. Almost two months.

12 Q. Yes, sir.

13 A. Again, that was caused by the subcontractor they  
14 brought to my house who I said he's the man I want to  
15 do the work, and by the time all the paperwork was done  
16 and everything else, he was finished -- he was working  
17 on finishing up another job or two, and it took him  
18 that long. And he got here, and they actually did the  
19 work in just a couple days.

20 Q. Okay. And that leads to my next question, so I  
21 appreciate the clarification. When approximately did  
22 Home Depot replace your roof?

23 A. They finished on 8/14, because as soon as they finished  
24 he came to me in my garage and said can you pay this  
25 9000, or whatever, and I said, yeah, what you want me

1 to do. He said write a check. I wrote the check.

2 Then he got on the phone, and they went over the

3 information, and they said good. That was it.

4 Q. And when did C&W replace the siding of your home? And  
5 if you want to refer back to Defendant's Exhibit Number  
6 18, that may help refresh your memory.

7 A. It was before -- let's see. Yeah, it was before the  
8 roof -- I mean the siding was done after the roof was  
9 replaced. No, no, no, no. The siding was done before  
10 the roof was replaced.

11 Q. Yes, sir.

12 A. Because they found that leak in the roof, and they had  
13 to take off some of the new siding to get to it,  
14 because it wasn't flashed and it was -- water was going  
15 into my house, and they found it, and so they took care  
16 of repairing that when -- when the roof was done.

17 Q. Do you know approximately when C&W Siding did the  
18 siding replacement?

19 A. It's going to be close to when this invoice, paid  
20 invoice and check is dated.

21 Q. So around July 19?

22 A. Yeah.

23 Q. Of 2018?

24 A. Yeah.

25 Q. Mr. Gatlin, what are the damages that you are claiming

1 in this case?

2 A. I can't tell you off the top of my head, but a lot now.

3 Q. Well, I need for you to do your best to identify what -  
4 - you don't have to give me exact numbers. You know,  
5 you can refer to an invoice. But I need to know what  
6 damages you're claiming in this case.

7 A. Total damages?

8 Q. However you'd like to present it to me.

9 A. Total damages are in the neighborhood of \$60,000.

10 Q. And what does that \$60,000 consist of?

11 A. All of the actual costs that I incurred.

12 Q. Including?

13 A. I don't have the list in front of me. It included the  
14 front porch light, and it included the kitchen ceiling,  
15 included the roof, included the siding, included the  
16 outbuilding that was screwed up that had to be redone,  
17 just on and on like that.

18 Q. Are you claiming the full replacement cost of the  
19 siding in this case?

20 A. Yes.

21 Q. Are you claiming the full replacement cost of the roof  
22 in this case?

23 A. Yes. Because it would not have cost me as much to have  
24 the siding and roof replaced had they not had to do  
25 extra work due to the deficiencies that Custom Castles

1 did. For example, all of the sheathing had to be  
2 replaced on the house that would not have been had --  
3 would not have had to be replaced if C&W had replaced  
4 the siding to start with.

5 Q. In addition to your physical out-of-pocket costs, are  
6 you asking or do you intend to ask the jury for any  
7 additional damages in this case?

8 A. I don't have -- I don't have any at this point.

9 Q. So are you requesting any sort of---

10 A. Pain and suffering?

11 Q. Yes, sir.

12 A. Got a big question mark on my estimate for that.  
13 There's nothing included in my estimate in that  
14 \$60,000.

15 Q. What about damage to your marriage as you've claimed in  
16 your discovery responses?

17 A. No, but I should.

18 Q. Are you claiming that or---

19 A. I said no, but I should.

20 Q. So is damage to your marriage an element of your damage  
21 in this case, sir?

22 A. Not in dollars. It's not shown. It's not a part of  
23 the \$60,000.

24 Q. Do you intend to ask a jury for any sum of money in  
25 exchange for the damage to your marriage as a result of

1 this case?

2 A. Not at this time.

3 Q. what will influence that decision?

4 A. I don't know right now.

5 Q. You understand that you've presented to me through  
6 discovery that that is an element of damage?

7 A. It is an element of damage, but I said it has not been  
8 included, and I don't plan to include it at this point;  
9 however, I may include it at some point in the future.

10 Q. How do you intend to prove that as an element of your  
11 damage?

12 A. I can show you the receipts where I was kicked out of  
13 the house.

14 Q. Okay. Anything else?

15 A. I've got witnesses.

16 Q. And I'm sorry to be personal. It's just this is  
17 information you've presented to me. So I'm just asking  
18 questions. Okay? Any other damages that you're  
19 claiming in this case?

20 A. No.

21 Q. Have you missed any work as a result of this case?

22 A. No. My wife has, and she will today, and she'll be in  
23 trouble today because of it. And we won't be seeking  
24 damages for it, but she is in trouble today.

25 Q. well, you understand that you've brought this case and

1           you're required to appear for deposition testimony as  
2           part of the Rules of Civil Procedure, which is why  
3           she's required to be here today?

4       A.    That's right.  I understand.

5       Q.    Okay.  I have no further questions, Mr. Gatlin.  If  
6           your attorney has any questions, you're welcome to  
7           answer them at this time.

8       MR. DUNCAN:

9           I don't think I have any questions.

10          (There being no further questions, this deposition concluded  
11          at 1:15 p.m.)

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CERTIFICATE OF REPORTER

I, ROSALIND POOLE WALTERS, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 108 pages represents a true and accurate transcript of the deposition of MILTON ANDREW GATLIN, SR., which was taken by me on the 13th day of November, 2018.

That the witness was first duly sworn to tell the truth, the whole truth and nothing but the truth of his own knowledge concerning this matter.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

\_\_\_\_\_  
Rosalind Poole Walters, CVR-M  
Notary Public for South Carolina  
Commission Expires: 4-29-26

EXHIBIT C  
AMENDED COMPLAINT

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT  
C.A. NO.: 2018-CP-23-00695

Milton A. Gatlin and Marla S. )  
Gatlin, )  
Plaintiffs, )

vs. )  
 )

**SUMMONS**

John M. Hornbeck III, )  
Custom Castles Roofing and )  
Construction, Inc. and Custom )  
Castles Construction, LLC )  
Defendants. )

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

King Law Offices, PLLC

s/Rustin B. Duncan

\_\_\_\_\_  
by Rustin B. Duncan  
SC Bar # 81465  
Attorney for Defendants  
1320 West Poinsett Street  
Greer, SC 29650  
(864) 877-3355  
(828) 286-1110 (fax)

June 28, 2018  
Greenville, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT  
C.A. NO.: 2018-CP-23-00695

Milton A. Gatlin and Marla S. )  
Gatlin, )  
Plaintiffs, )

vs. )

**AMENDED COMPLAINT**

John M. Hornbeck, III, )  
Custom Castles Roofing and )  
Construction, Inc. and Custom )  
Castles Construction, LLC )  
Defendants. )

NOW COMES the Plaintiff, by and through counsel of record, Rustin B. Duncan, of King Law Offices, PLLC, complaining of Defendants, alleges and states as follows:

- 1) That Plaintiffs are citizens and residents of Greenville County, South Carolina.
- 2) That Defendant Custom Castles Roofing and Construction, Inc. is a corporation formed under the laws of the State of South Carolina with a principal place of business located in Anderson County, South Carolina.
- 3) That Defendant Custom Castles Construction, LLC is a corporation formed under the laws of the State of South Carolina with a principal place of business located in Anderson County, South Carolina

- 4) Upon information and belief, both Defendants are related under the same corporate umbrella and are both jointly and severally liable for the causes of action herein.
- 5) The Plaintiff contracted with Defendants for the Defendants to perform work on the Plaintiff's home in Greenville County, South Carolina and work under the contract was in fact performed work in Greenville County.
- 6) That this Honorable Court has jurisdiction of the parties and the subject matter herein set forth.
- 7) The Plaintiffs are a married couple owning real property in Greer, South Carolina.
- 8) The Plaintiffs entered into a contract with Defendant on July 31, 2017 for work to be performed on Plaintiff's home by Defendant.
- 9) The Plaintiffs have fully complied with all terms of the contract and have paid in full for all amounts they have been invoiced.
- 10) Upon information and belief, Defendant Hornbeck has his contractor's license under Defendant Custom Castles Construction, LLC but purports to do contracting business under Defendant Custom Castles Roofing and Construction, Inc.
- 11) Upon contacting the Plaintiff, the Defendant and his agents, indicated to Plaintiff that he was a general contractor in the business of doing roofing and siding work and that the work be done to the specifications of the Plaintiff,

and that they would personally go behind the workers to ensure that it was done per the Plaintiffs request.

12) However, the Defendant and his agents, repeatedly failed to uphold their promises made to the Plaintiff, which resulted in the presence of nails and other hazardous items being left about the Plaintiff's property.

13) After having given the Plaintiff cause for concern as to the reliability of their word as to their workmanship, the Plaintiff then sought to look into the licensing background of the Defendant. Upon further review the Plaintiff discovered the following:

- a. The Defendant was not licensed as a general contractor and his roofing subcontractor was not licensed or registered to perform the type of work which he was to perform upon the Plaintiff's home. That in order to perform the work that he was hired to, subcontractor needed to have secured a bond for \$5,000, and the appropriate licensing/registration.
- b. That the Defendant John M. Hornbeck, III had obtained a roofing permit for the work on the Plaintiff's home under Custom Castles Construction, LLC, and not the name of his company Custom Castles Roofing and Construction, Inc.
- c. That the Defendant John M. Hornbeck did not obtain the re-roofing permit for the work on the Plaintiffs' home until after it was completed.

14) Plaintiff also found there to be several deficiencies with the work the Defendant had performed, including but not limited to the following:

- a. The Defendants did not remove trash from roof, gutters and yard as the contract required;
- b. The Defendants did not protect the landscaping as the contract required;
- c. The Defendants did not roll the yard with a magnetics roller as the contract required;
- d. The Defendants did not perform a quality control inspection as the contract required;
- e. The Defendants installed shingles with a “gutter effect” that causes standing water on the roof that leads to leaking;
- f. The Defendants did not install step flashing in areas where it is required;
- g. The Defendants did not install kick out flashing in areas where it is required;
- h. The Defendants did not install new flashing and left holes in the flashing that allows leaks;
- i. The Defendants installed shingle joints as much as 1 inch in violation of installation standards;
- j. The Defendants did not install drip edges at turn backs;
- k. The Defendants did not install starter shingles at turn backs;
- l. The Defendants improperly installed shingles at over hang areas;
- m. The Defendants installed an undersized vent cap causing a life safety issue;
- n. The Defendants left a hole in the vent flashing;

- o. The Defendants left the home in a condition where the downspouts were not and could not be reinstalled causing water problems in crawl spaces leading to mold problems;
- p. The Defendants did not install siding starter strips in areas where they are required;
- q. The Defendants did not install flashing over windows;
- r. The Defendants did not allow appropriate clearance between wall and roof;
- s. The Defendants did not nail siding butt joints properly in areas;
- t. The Defendants destroyed exterior sheathing during siding installation;
- u. The Defendants did not follow the manufacturers installation requirements;
- v. The Defendants improperly installed the shingles with an excessive overhang, causing curling;
- w. The Defendants improperly installed the starter shingles as the overhangs vary;
- x. The Defendants damaged some shingles during installation;
- y. The Defendants incorrectly installed some valley shingles;
- z. The Defendants did not correctly nail the chimney flashing;
- aa. The Defendants did not provide the required clearance between the walls and roof;
- bb. The Defendants did not provide the correct siding exposure to match the existing and original siding;

- cc. The Defendants did not prime, caulk or paint the cut edges of the siding;
  - dd. The Defendants installed the wrong type of nails on some siding butt joints;
  - ee. The Defendants failed to install any nails on some siding butt joints;
  - ff. The Defendants did not install butt joints over studs and the butt joints are not properly spaced;
  - gg. The Defendants used mainly countersunk nails which require caulking and a second nail to be installed- the Defendants failed to do so;
  - hh. The Defendants either did not install siding support nails or the nails missed the stud in multiple places;
  - ii. The Defendants removed at least one siding plank that they never reinstalled;
  - jj. The Defendants did not provide the required siding clearance around windows and trim;
  - kk. The Defendants did not install the recommended width joint flashing at butt joints;
  - ll. The Defendants failed to repair the kitchen ceiling damaged by a water leak caused by the Defendants;
  - mm. The Defendants damaged an outdoor wall light and failed to replace it;
  - nn. Other deficiencies to be shown at trial.
- 15) The Defendant has made negligent misrepresentations to the Plaintiff in the following;

- a. That he was a general contractor accustomed to performing the nature, scope, and type of work which he was hired to perform.
  - b. That Defendant was the owner of the company, and the individuals performing the work on the Plaintiff's home were under the Defendant's direct scope and authority.
  - c. That the Defendant and his other agents would perform the work on the Plaintiff's home to the exact specifications required by the Plaintiff.
  - d. That the Defendant's would be using the materials requested by the Plaintiff, to their manufacturing specifications.
  - e. That the Defendant would repair the deficiencies in the siding of the Plaintiff's home.
  - f. That the Defendant had obtained the requisite re-roofing permit prior to starting work on the Plaintiff's home.
- 16) Defendant Hornbeck intentionally, knowingly, and with fraudulent intent performed work on the home of the Plaintiff in a manner which was below accepted industry and commercial standards, not in compliance with the 2015 IRC, and above his professional ability to perform.
- 17) As a result of the Defendant's poor performance the Plaintiff is now required to have the work on the roof and siding stripped and re-done to correct the Defendant's multiple errors.

- 18) The Defendants' representation that they were a licensed general contractor doing residential and commercial roofing and siding work was material to the Plaintiff's entering into the contract.
- 19) The Defendants' knew that representation was false when they made it.
- 20) The Plaintiff justifiably relied upon that representation.
- 21) The Defendant as a result of their fraudulent misrepresentation was unjustly enriched at the expense of the Plaintiff.
- 22) Upon information and belief, Defendants Custom Castles Construction, LLC and Custom Castles Roofing and Construction, Inc. are merely a façade for the operations of Defendant John M. Hornbeck as indicated by:
  - a. Defendant Custom Castles Construction, LLC regularly does business as Defendant Custom Castles Roofing and Construction, Inc.;
  - b. Defendant Custom Castles Roofing and Construction regularly made use of Defendant Custom Castles Construction, LLC's contracting license for its own projects;
  - c. The only general contracting license registered to Defendant Custom Castles Construction, LLC was that of Defendant John M. Hornbeck;
  - d. Defendant companies have the same physical address registered with the Department of Labor, Licensing, and Registration, 3300 N Main St., Ste. D-194, Anderson, SC 29621-4128.

- e. Defendant John M. Hornbeck runs a Facebook page for each Defendant company concurrently where each Defendant company advertises that it provides roofing services; a link to a company website, [www.customcastles.com](http://www.customcastles.com), is listed on both pages; and both Facebook pages show that the Defendant companies make use of the same graphic logo;
- f. Defendant John M. Hornbeck personally used his contracting license to apply for a re-roofing permit to be used toward satisfying Defendant Custom Castles Roofing and Construction, Inc.'s contract with Plaintiffs even though he knew that license was only registered to Defendant Custom Castles Construction, LLC;
- g. Upon information and belief, Defendant John M. Hornbeck is solely responsible for making these decisions as the only officer and majority shareholder of the Defendant companies;
- h. Defendants are aware of Plaintiffs' claims against them and after being notified of such claims Defendant John M. Hornbeck dissolved Defendant Custom Castles Construction, LLC;
- i. Prior to Defendant Custom Castles Construction, LLC's dissolution Defendant John M. Hornbeck served as the registered agent for both Defendant companies; and
- j. Other factors to be shown at trial.

23) The plaintiff is informed and believes they are entitled to an award of attorney's fees and other costs to be paid by the Defendants.

**FOR A FIRST CAUSE OF ACTION**  
(BREACH OF CONTRACT)

- 24) The allegations set forth in the preceding paragraphs are re-alleged and incorporated by reference as if fully set forth herein.
- 25) A binding contract was entered into by the parties.
- 26) The Defendant breached or unjustifiably failed to perform under the contract.
- 27) Damage was suffered by the Plaintiff as a direct and proximate result of the breach.

**FOR A SECOND CAUSE OF ACTION**  
(QUANTUM MERUIT)

- 28) The allegations set forth in the preceding paragraphs are re-alleged and incorporated by reference as if fully set forth herein
- 29) The Plaintiff conferred a benefit upon the defendant.
- 30) The Defendant realized the benefit.
- 31) The Defendant retained the benefit under conditions that make it unjust to retain without paying its value.

**FOR A THIRD CAUSE OF ACTION**  
(BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT  
ACT)

- 32) The allegations set forth in the preceding paragraphs are re-alleged and incorporated by reference as if fully set forth herein.
- 33) The parties entered into a valid contract
- 34) The contract was breached by the Defendants;
- 35) The Defendants' breach was accomplished with a fraudulent intention;
- 36) The Defendants' breach was accompanied by a fraudulent act.

**FOR A FOURTH CAUSE OF ACTION**  
(FRAUD OR FRAUD IN THE INDUCEMENT)

- 37) The allegations set forth in the preceding paragraphs are re-alleged and incorporated by reference as if fully set forth herein.
- 38) The Defendants' made representations to the Plaintiff.
- 39) The representations were false.
- 40) The representations were material to the Plaintiffs decision to enter into the contract.
- 41) The Defendants had knowledge of the representations' falsity or exhibited a reckless disregard of its truth or falsity.
- 42) It as the Defendants' intent that the representations' be acted upon by the Plaintiff.
- 43) The Plaintiff was ignorant of its falsity.
- 44) The Plaintiff relied on the representations' truth.
- 45) The Plaintiff had a right to rely on the truth of the representations.

46) Damage was suffered by the Plaintiff as a direct and proximate result of the Defendants' misrepresentation.

**FOR A FIFTH CAUSE OF ACTION**  
**(NEGLIGENT MISREPRESENTATION)**

47) The allegations set forth in the preceding paragraphs are re-alleged and incorporated by reference as if fully set forth herein.

48) The Defendants has made the following false misrepresentations to the Plaintiff:

- g. That he was a general contractor accustomed to performing the nature, scope, and type of work which he was hired to perform.
- h. That Defendant was the owner of the company, and the individuals performing the work on the Plaintiff's home were under the Defendant's direct scope and authority.
- i. That the Defendant and his other agents would perform the work on the Plaintiff's home to the exact specifications required by the Plaintiff.
- j. That the Defendant's would be using the materials requested by the Plaintiff, to their manufacturing specifications.
- k. That the Defendant would repair the deficiencies in the siding of the Plaintiff's home.

49) The Defendants had a pecuniary interest in making the representations.

- 50) The Defendants owed a duty of care to see that they communicated truthful information to the Plaintiff.
- 51) The Defendants breached that duty by failing to exercise due care.
- 52) The Plaintiff justifiably relied on the representation.
- 53) The plaintiff suffered a pecuniary loss and damages as the proximate result of his reliance on the representation.

**FOR A SIXTH CAUSE OF ACTION**  
(NEGLIGENCE)

- 54) The allegations set forth in the preceding paragraphs are re-alleged and incorporated by reference as if fully set forth herein.
- 55) The Defendants owed a duty to the Plaintiffs to provide quality workmanship in accordance with the standards of roofing, siding and construction industry.
- 56) The Defendants breached those duties by doing the following:
  - a. The Defendant was not licensed as a general contractor and his roofing subcontractor was not licensed or registered to perform the type of work which he was to perform upon the Plaintiff's home. That in order to perform the work that he was hired to, subcontractor needed to have secured a bond for \$5,000, and the appropriate licensing/registration.
  - b. That the Defendant had obtained a roofing permit for the work on the Plaintiff's home in his name, and not the name of his company Custom Castles Construction.

- c. The Defendants did not remove trash from roof, gutters and yard as the contract required;
- d. The Defendants did not protect the landscaping around the home;
- e. The Defendants did not roll the yard with a magnetics roller;
- f. The Defendants did not perform a quality control inspection;
- g. The Defendants installed shingles with a “gutter effect” that causes standing water on the roof that leads to leaking;
- h. The Defendants did not install step flashing in areas where it is required;
- i. The Defendants did not install kick out flashing in areas where it is required;
- j. The Defendants did not install new flashing and left holes in the flashing that allows leaks;
- k. The Defendants installed shingle joints as much as 1 inch in violation of installation standards;
- l. The Defendants did not install drip edges at turn backs;
- m. The Defendants did not install starter shingles at turn backs;
- n. The Defendants improperly installed shingles at over hang areas;
- o. The Defendants installed an undersized vent cap causing a life safety issue;
- p. The Defendants left a hole in the vent flashing;
- q. The Defendants left the home in a condition where the downspouts were not and could not be reinstalled causing water problems in crawl spaces leading to mold problems;

- r. The Defendants did not install siding starter strips in areas where they are required;
- s. The Defendants did not install flashing over windows;
- t. The Defendants did not allow appropriate clearance between wall and roof;
- u. The Defendants did not nail butt joints properly;
- v. The Defendants destroyed exterior sheathing during siding installation;
- w. The Defendants did not follow the manufacturers installation requirements;
- x. The Defendants improperly installed the shingles with an excessive overhang, causing curling;
- y. The Defendants improperly installed the starter shingles as the overhangs vary;
- z. The Defendants damaged some shingles during installation;
- aa. The Defendants incorrectly installed some valley shingles;
- bb. The Defendants did not correctly nail the chimney flashing;
- cc. The Defendants did not provide the required clearance between the walls and roof;
- dd. The Defendants did not provide the correct siding exposure to match the existing and original siding;
- ee. The Defendants did not prime, caulk or paint the cut edges of the siding;
- ff. The Defendants installed the wrong type of nails on some siding butt joints;
- gg. The Defendants failed to install any nails on some siding butt joints;

- hh. The Defendants did not install butt joints over studs and the butt joints are not properly spaced;
  - ii. The Defendants used mainly countersunk nails which require caulking and a second nail to be installed- the Defendants failed to do so;
  - jj. The Defendants either did not install siding support nails or the nails missed the stud in multiple places;
  - kk. The Defendants removed at least one siding plank that they never reinstalled;
  - ll. The Defendants did not provide the required siding clearance around windows and trim;
  - mm. The Defendants did not install the recommended width joint flashing at butt joints;
  - nn. The Defendants failed to repair the kitchen ceiling damaged by a water leak caused by the Defendants;
  - oo. The Defendants damaged an outdoor wall light and failed to replace it
  - pp. Other breaches that may be learned in discovery and to be shown at trial.
- 57) The Plaintiffs were damaged as a direct and proximate cause of the Defendants' breaches.

**FOR A EIGHTH CAUSE OF ACTION**  
(UNFAIR TRADE PRACTICES ACT VIOLATION)

- 58) The Defendant is in violation of S.C. Code Ann. § 39-5-20, which states, “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”
- 59) The Defendant has taken actions, and made false representations to, and, against the Plaintiff in the conducting of his trade and business.
- 60) The Defendant has intentionally misrepresented to the Plaintiff the location of the business, having represented to Plaintiff that his business operates in locations that it does not.
- 61) The Defendant, has made assertions to Plaintiff that he & his agents obtained the required licensure and permitting to perform the specified work.

**FOR A NINTH CAUSE OF ACTION**  
**(DISREGARD OF CORPORATE ENTITY)**

- 62) The allegations set forth in the preceding paragraphs are re-alleged and incorporated by reference as if fully set forth herein.
- 63) The Plaintiff is informed and believes that the corporate veil of Defendants Custom Castles Construction, LLC and Custom Castles Roofing and Construction, Inc. should be pierced and allow personal liability against Defendant John M. Hornbeck, III based upon the following:
  - a. Plaintiff is unaware of any other shareholders or employees of Defendants Custom Castles Construction, LLC and Custom Castles Roofing and Construction, Inc.;

- b. Upon information and belief, the Defendants Custom Castles Construction, LLC and Custom Castles Roofing and Construction, Inc. failed to observe corporate formalities;
  - c. Upon information and belief, Defendants Custom Castles Construction, LLC and Custom Castles Roofing and Construction, Inc. are merely facades for the operations of the Defendant John M. Hornbeck, III, the dominant stockholder;
  - d. Upon information and belief, there is such an amalgamation of interests, entities, and activities so as to blur the legal distinction between the Defendants and their activities;
  - e. Other factors to be shown at trial.
- 64) Upon information and belief, injustice or fundamental unfairness will result if the corporative veil is not pierced and Defendant John M. Hornbeck, III is not held individually liable.

WHEREFORE, the Plaintiff prays:

1. For a judgment of this Court awarding them all funds owed, compensating them for their damages, as well as treble damages and attorney fees and costs;
2. For the Defendants be found liable for breach of contract and liable for damages caused to the Plaintiff;
3. For the Defendants to be found to be unjustly enriched by the benefit conferred upon them by the Plaintiff;

4. For the Defendants to be found liable for breach of contract accompanied by fraudulent intent.
5. For the Defendants to be found liable for fraud or fraud in the inducement.
6. For the Defendants to be found liable for negligent misrepresentation.
7. For the Defendants to be found liable for negligence.
8. For the Defendants to be found in violation of the Unfair Trade Practices Act.
9. For the corporate veil of Defendants Custom Castles Construction, LLC and Custom Castles Roofing and Construction, Inc. to be pierced and allow personal liability against Defendant John M. Hornbeck, III.
10. That this matter be tried by jury.
11. For such other and further relief as the Court may deem just and proper.

King Law Offices, PLLC

s/ Rustin B. Duncan

---

by Rustin B. Duncan  
SC Bar # 81465  
Attorney for Plaintiff  
1320 West Poinsett Street  
Greer, SC 29650  
(864) 877-3355  
(828) 286-1110 (fax)

June 28, 2018  
Greenville, South Carolina

**RECEIVED**

**Jul 09 2025**

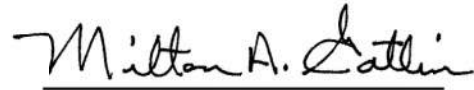
**SC Court of Appeals**

CERTIFICATION

The undersigned hereby certifies this Record On Appeal contains all material proposed to be included by any of the parties and not any other material.

May 14, 2025

Corrected July 9, 2025



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