

GOODSTEIN LAW FIRM, LLC
POST OFFICE BOX 2350
SUMMERVILLE, SOUTH CAROLINA 29484
Agoodstein@Goodsteinfirm.com

January 14, 2015

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: *Diane S. Goodstein v. Sealoflex, Inc. and Latitude Construction Services, LLC*,
Appellate Case No.: 2014-001918

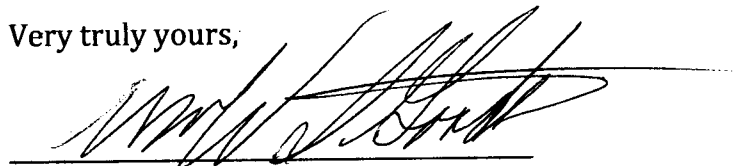
Dear Ms. Kitchings:

In regard to Appellate Case No.: 2014-001918, I am enclosing an original and one (1) Copy of the Initial Brief of Respondent and the original and one (1) copy of Respondent's Designation of Matter to be Included in Record on Appeal for filing, together with the Certificates of Service for each document.

Kindly return a copy of the Brief and the Designation in the enclosed self-addressed stamped envelope.

Thank you for your consideration in this matter, and with kindest regards, I remain

Very truly yours,



Arnold S. Goodstein

Enclosure

cc: Suzanne C. Ulmer, Esquire

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SC Court of Appeals

COPY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
)
 DIANE S. GOODSTEIN)
)
)
 Plaintiff,)
)
)
 vs.)
)
)
 SEAL-O-FLEX, INC. AND)
)
)
 LATITUDE CONSTRUCTION)
)
)
 SERVICES, LLC.)
)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case Number: 2012-CP-18-1647

**ORDER GRANTING PLAINTIFF'S
MOTION FOR ORDER OF DEFAULT
AS TO DEFENDANT
SEAL-O-FLEX, INC.**

Cheryl Williams
 2013 NOV 21 AM 8:45
 CERTIFIED COPY
 2013 AUG 30 PM 3:49
 FD-RECORDED
 CLERK OF COURT
 DORCHESTER COUNTY

This matter came before The Court upon Plaintiff, Diane S Goodstein's Motion for Order of Default against the Defendant Seal-O-Flex, Inc.


It appears from the Affidavit of Default filed by counsel for the Plaintiff that the Summons and Complaint were properly served upon Defendant Seal-O-Flex, Inc. and that no answer, motion, notice of appearance or other responsive pleading has been filed with the Court or served on Plaintiff by Defendant Seal-O-Flex, Inc. within the time prescribed by law.

It further appears, and the Court so finds that Defendant Seal-O-Flex, Inc. is in Default. The Court further finds that the Plaintiff is therefore entitled to the determination of Default against the Defendant Seal-O-Flex, Inc. Because the damages against this Defendant are not liquidated and consequential and because other damages are alleged as a direct result of the breach and other actions of the Defendant Seal-O-Flex, Inc., a damages hearing against Seal-O-Flex, Inc. shall be set in this matter

AND IT IS SO ORDERED:

August 26, 2013

Walterboro, South Carolina


 Judge, First Judicial Circuit

The Honorable Perry Becker 14th Judicial Circuit

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 Diane S. Goodstein,)
)
 Plaintiff)
)
 v.)
)
 Seal-O-Flex, Inc., et. al.,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 Civil Action No. 2012-CP-18-1647

CERTIFIED COPY
 2013 DEC 19 AM 11:45
 CLERK OF COURT
 DORCHESTER COUNTY
Christina [Signature]

ORDER FOR JUDGMENT

This matter comes before the Court upon a hearing for damages on Plaintiff's claim for breach of contract against Defendant Seal-O-Flex. On August 26, 2013, the Court signed an Order of Default, the effect of which was to make an entry of default against Defendant Seal-O-Flex, Inc. This hearing was subsequently scheduled and held on December 6, 2013 in Dorchester County to determined damages.

#1
 Pmb


Present at this hearing was Arnold Goodstein on behalf of the Plaintiff. Neither Defendant Seal-O-Flex nor counsel on Defendant Seal-O-Flex's behalf was present. Pursuant to the Affidavit of Service filed by the Plaintiff, on November 22, 2013, Defendant Seal-O-Flex was sent a certified copy of the Order of Default and given notice of the time, place, and date of the hearing.

At the hearing, counsel for the Plaintiff called Matthew J. Halter to testify. Mr. Halter testified that he is a licensed civil engineer, land surveyor, and general contractor; that he was familiar with roofs and roof construction; that he had previously examined the roof at issue in the instant case from both ground and roof levels; that during the course of his examination, he had found a number of places showing moderate to extreme blistering of the sealant on the roof; that the remedial action necessary to repair the roof is the replacement of the entire roof; and that, based on the costs of materials, costs of labor, square footage of the roof, and the unknown leakage damage to the roof, the cost of replacement would be \$130,000.

Based upon the testimony of Plaintiff's witness and the applicable law, the Court finds that damages should be awarded for the Plaintiff's claim for breach of contract in the amount of \$130,000.

IT IS THEREFORE ORDERED that judgment is entered for the Plaintiff against the Defendant Seal-O-Flex in the amount of \$130,000.

AND IT IS SO ORDERED.



Perry M. Buckner
Presiding Judge, Fourteenth Judicial Circuit

Walterboro, South Carolina

December 6, 2013

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF DORCHESTER)	CIVIL ACTION NO.: 2013-CP-18-01647
)	
DIANE S. GOODSTEIN,)	
)	
PLAINTIFF,)	
)	MEMORANDUM IN OPPOSITION TO
VS.)	DEFENDANT SEAL-O-FLEX, INC.'S
)	MOTION TO SET ASIDE DEFAULT
SEAL-O-FLEX, INC.,)	JUDGMENT
)	
DEFENDANT.)	

Throughout its presentation to this court regarding this matter the one argument that defendant does not make is that it lacked actual notice of the filing of the summons and complaint, the entry of the default, and the hearing before this court regarding damages. The defendant simply cannot sustain a position that it lacked knowledge of all of these events. It simply comes before this Court for a redo because this Court has entered an appropriate judgment against this defendant. This defendant simply thought it could manufacture a "gotcha" and avoid the consequences of its intentional disregard for this Court and its rules. Not only does Plaintiff request that this Court dismiss the defendant's motion but also grant to her attorney's fees and costs for the defense of this motion.

The basis of the defendant's motion is that although Wanda Gumbs represented to the United States Postal Service that she was the agent for the receipt of certified mail, restricted delivery for Robert Kauffmann, she really wasn't and therefore this Court should reverse its grant of Judgment in Plaintiff's favor. (Ex. 1) It is important to note that the language of SCRCPC 4(d)(8) does not state as defendant argues that all defendant must show is that Ms. Gumbs was unauthorized to accept service of a summons and complaint which is NOT the correct inquiry. The correct question is whether Ms. Gumbs was someone authorized to receive certified or

registered mail. The correct answer to this question is she was and did accept registered or certified mail. (See rule 4.)

Defendant attempts to depict Ms. Gumbs as a receptionist who failed to have the authority to accept the mailing which she in fact not only accepted on behalf of Mr. Kauffmann but made representations that she had the authority to do so and in fact has accepted legal documents previously and has done so repeatedly in this litigation. It is further fact that although defendant tells this court Ms. Gumbs is a receptionist, it describes her in trade documents as "Customer Service". (Ex. 2).

The core question is whether the Summons and Complaint was properly served by certified mail, restricted delivery upon defendant in compliance with South Carolina Rule of Civil Procedure 4(d)(8). The proper response is absolutely. In allowing service in this format no doubt the drafters had an appreciation for the Federal regulations that surround the mailing of a document through the United States Postal Service certified mail, restricted delivery. A review of these regulations is instructive regarding why such service is inherently reliable.

39 CFR Chapter III Part 3001 Subpart C Appendix A at 946.11 states: "Restricted Delivery Service is a service that provides a means by which a mailer may direct that delivery will be made ONLY to the addressee or to someone authorized by THE ADDRESSEE to receive such mail [emphasis added]. On the face of the return, Ms. Gumbs has executed the return receipt and checked that she is the AGENT for Mr. Kauffmann. (Ex.1) Without her representation, the regulations of the United States Postal Service would not have allowed for the mailing to be left with her. Of course the name Goodstein Law Firm is predominate on the return receipt signed by Ms. Gumbs. If the court allows for the position taken by defendant to be successful, the ability to serve by certified mail, restricted delivery will be vitiated. Just as in this instance it would allow for defendants to shield receipt by addressees by misrepresenting agency relationships to the postal service and then changing their position and denying the

authority to accept the mailing to the Court. Such action would nefariously defeat service by certified mail, restricted delivery.

The United States Postal Service expects individuals to make proper representations regarding their ability to accept mail. In fact it is a criminal offense pursuant to 39 CFR part 233.2 to obstruct or retard the passage of mail. If Ms. Gumbs represented that she was the agent for Mr. Kauffmann as is indicated on the return receipt and now takes a different position it could be argued that she has violated the federal criminal law as it regards the obstruction and passage of mail. Plaintiff does not believe she violated the law; rather Plaintiff submits Ms. Gumbs was in fact an agent for Mr. Kauffmann just as she indicates and properly accepted the mailing as his agent. At a minimum she had the apparent authority to accept the mailing.

Defendant's witnesses are disingenuous regarding whether Ms. Gumbs is someone who accepts written communications from attorneys. In this case Ms. Gumbs accepted a previously mailed certified letter from Plaintiff's counsel. Again, it was completely clear that the correspondence was from the Goodstein Law Firm. Despite the representations of affiant, Ms Gumbs accepted and signed for the certified mailing from the law firm which was then answered by Ms. Ellington. (Ex.3)

In addition, despite being timely served by a process server with the default order and notice of damages hearing, the defendant continued to ignore the litigation and made no appearance at the damages hearing nor move to set aside the default prior to the court entering Judgment. (Ex.4)

Further, this defendant absolutely fails to have a meritorious defense. Attached to this memorandum are emails where this defendant admits its responsibility for the problems with the roof and states it will be responsible for its repair. Defendant simply refused to warrant its work even in the face of its admission. (please see Ex 5).

This defendant has been deleterious in responding to the Court and to the Plaintiff. The prejudice to the Plaintiff is the continued deterioration and worsening of the roof and roof systems and damage to the house.

For the foregoing reasons, the Plaintiff urges this court deny the defendant's motion and grant her attorneys fees and costs.

ARNOLD S. GOODSTEIN

S/

GOODSTEIN LAW FIRM, LLC
Post Office Box 2350
Summerville, SC 29484
(843) 871-1000 office
(843) 873-5319 fax
agoodstein@goodsteinlawfirm.com

Dated: _____, 2014

Summerville, South Carolina

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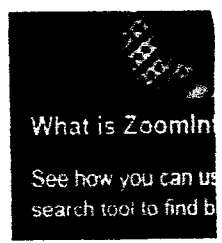
SC Court of Appeals

from the ~~ZoomInfo community~~.
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Charleston, South Carolina 29405
United States

EX 2

Company Description: Sealoflex® offers you industry-leading waterproofing systems for virtually any building surface: roofs, walls, decks, below-grade and Green Roof applications. Our... [more](#)



Background

Employment History

- [Sales Quote](#)

[Sealoflex Inc](#)

[Other People with this Name \(627\)](#)

Other People with the name "Gumbs":

[Alexis Gumbs](#)

Mobile Homecoming Project

[Jessica Gumbs](#)

Premier Commercial RE LLC

[Keir Gumbs](#)

Covington & Burling LLP

[Violet Gumbs](#)

Cap Juluca

[Kevin Gumbs](#)

Seneca College

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Ex2

- Customers
 - Our Customers
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 - Sales
 - Recruiting
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 - Partners
 - Case Studies
- Products
 - ZoomInfo Pro
 - ZoomInfo Data Services
 - ZoomInfo Community Edition
 - ZoomInfo Connect
 - ZoomInfo API
 - Pricing
- Resources
 - Lead Generation
 - Email Marketing
 - Email Deliverability
 - Marketing ROI
 - Content Marketing
 - ZoomInfo Blog
 - Whitepapers
 - Webinars
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 - News and Press
 - Partners
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- People
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Enter Person's Name

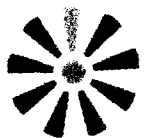
Need more? Try our [Advanced Search \(20+ criteria\)](#) »

Wanda K. Gumbs

[Wrong Wanda K. Gumbs?](#)

Customer Service

Phone: (843) ***-**** HQ Phone
 Email: r***@***.com
 y3pphQT6-c7ExZncQw0rYA



Share This Profile
 Share this profile on Facebook.
 Link to this profile on LinkedIn.
 Tweet this profile on Twitter.

EX3

7008 1140 0001 0815 9

For sender information visit our website at www.usps.com

OFFICIAL USE		
Postage	\$ 0.44	0465
Certified Fee	\$2.85	07
Return Receipt Fee (Endorsement Required)	\$2.30	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.59	08/17/2011

Sent To
 Bill Young, TEC. MGR. APPLICATIONS + WARRANTIES
 Street, Apt. No. or PO Box No. SEALOFLEX, INC, 2520 OSCAR JOHNSON DR
 City, State, ZIP+4 CHARLESTON, SC 29405

PS Form 3811, August 2004 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature <input checked="" type="checkbox"/> <i>Wanda</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Wanda</i> C. Date of Delivery <i>8/18/11</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>1. Article Addressed to: BILL YOUNG TECHNICAL MANAGER APPLICATIONS + WARRANTIES SEALOFLEX, INC 2520 OSCAR JOHNSON DRIVE CHARLESTON, SC 29405</p>		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input checked="" type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Transfer from service label) 7008 1140 0001 0815 9087</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1549

UNITED STATES POSTAL SERVICE
 CHARLESTON SC 29405
 18 AUG 2011 PM 3:44
 Postage Meter
 PSN
 Permit No. G-19

• Sender: Please print your name, address, and ZIP+4 in this box •

GOODSTEIN LAW FIRM LLC
 PO Box 2350
 SUMMERVILLE, SC 29484



EX3

GOODSTEIN LAW FIRM, LLC

POST OFFICE BOX 2350
SUMMERVILLE, SOUTH CAROLINA 29484
Agoodstein@Goodsteinfirm.com

COPY

August 16, 2011

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Bill Young
Technical Manager
Applications & Warranties
Sealoflex, Inc.
2520 Oscar Johnson Drive
Charleston, S.C. 29405

Scott L Blackmon
Latitude Construction Services LLC.
182 Jupiter Lane
Summerville, S.C. 29483

Re: 208 Sumter Avenue, Summerville S.C.

Gentleman:

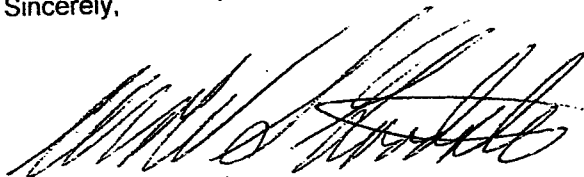
Please be advised that I represent Diane S. Goodstein, the owner of the above referenced residence. As you are both are aware the application of sealoflex on the home has failed. This failure has caused extensive water damage to this home and we are concerned that the water intrusion has caused the growth of mold and affecting the health of the occupants.

This failure of the product and or application has continued too long. Ms. Goodstein has been patient and given you ample opportunity to remedy the situation. As you are aware your efforts have not been successful.

In order to avoid immediate litigation we need to receive a plan for remediation within 15 days.

If you do not intend to remedy this problem I suggest you turn this letter over to your attorney and insurance carrier.

Sincerely,



Arnold S. Goodstein.
Goodstein Law Firm LLC.
P.O. Box 2350
Summerville, S.C. 29484

EX3

information which is proprietary , privileged , confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (843-871-1000) or reply to this e-mail and delete all copies of this message.

On Aug 31, 2011, at 4:02 PM, "Anne Ellington" <AEllington@sealoflex.com> wrote:

Dear Mr. Goodstein,

Please accept this as acknowledgement of the receipt of your letter dated August 16, 2011. I am in council with my attorney and insurance carrier.

Upon response from them, I will contact you.

Regards,

Anne K. Ellington

Sealoflex, Inc.

Vice President / General Manager
2520 Oscar Johnson Drive
Charleston, SC 29405

843-554-6466
843-554-6458 FAX
www.sealoflex.com

<image001.png>
<image002.jpg>

CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by or on behalf of Sealoflex and is intended exclusively for the individual or entity to which it is addressed. This message may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain copy or disseminate this communication or any part of it. If you have received this communication in error, please delete all copies of this message and notify the sender immediately either by phone (843) 554-6466 or (800) 770-6466 or by reply to this e-mail.
Thank you.
Sealoflex Waterproofing Systems, Inc.

<Roof 208 Sumter.pdf>

EX-4

DIANE GOODSTEIN
Plaintiff,

CASE NO.: 2012-CP-18-1647

vs.

SEAL-O-FLEX INC. and
LATITUDE CONSTRUCTION LLC.
Defendant(s).

AFFIDAVIT OF SERVICE

CERTIFIED COPY
2013 DEC - 6 AM 9:07
CLERK OF COURT
DORCHESTER COUNTY

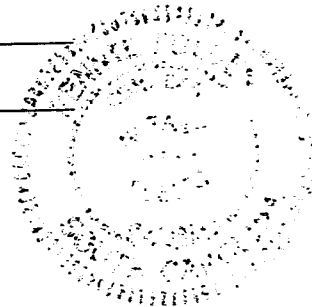
PERSONALLY APPEARED BEFORE ME, Patrick Murphy who being duly sworn, deposes and says that he is not a party to these proceedings and has no interest therein; that on the 22nd of November 2013, he served by hand delivery a filed copy of a **CERTIFIED COPY OF THE ORDER OF DEFAULT and NOTICE OF DAMAGES HEARING (DECEMBER 6TH 2013 @ 10:00AM)**, to the defendant Robert F Kauffman-Registered Agent for Seal-O-Flex Inc.- in the above captioned manner.

Service was completed at the following location:

*2520 Oscar Johnson Dr.
Charleston, S.C. 29405
@ 11:26 am*

Sworn & subscribed to before me on
this 20th day of NOV., 2013.

Pennie Tolder
Notary Public for South Carolina
My Commission Expires: 2-4-21



Patrick Murphy
Patrick Murphy
Palmetto State Process Services LLC.

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EX 5

Print - Close Window

Subject:FW: 208 Sumter
From: Scott Blackmon (latitudeconstruction@sc.rr.com)
To: joefflorescio@yahoo.com;
Date: Fri, 14 Aug 2009 11:24:21

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Joe,

Here is the e-mail confirming the warranty.

Thanks

Scott L. Blackmon
Latitude Construction Services, LLC
182 Jupiter Lane
Summerville, SC 29483
843-532-2051

From: Bill Young [mailto:byoung@sealoflex.com]
Sent: Friday, August 14, 2009 10:58 AM
To: Scott Blackmon
Cc: Skip Elliott
Subject: RE: 208 Sumter

Scott,

Please use this email to confirm our approval to warranty this project. Skip showed me the photos and a sample blister. It appears the delaminating is between the original aluminum coating and the metal. Our products are bonding very well to the aluminum coating. Our products will provide a tough coating that will perform well. The blisters are cosmetic issues not functional issues.

If you have any other questions, please call or email.

8/9/2011 3:26 PM

From: Bill Young <byoung@sealoflex.com>
To: Joe Florencio <joeflorencio@yahoo.com>
Cc: Patrick Lowe <plowe@sealoflex.com>
Sent: Wednesday, July 13, 2011 9:32 AM
Subject: RE: Goodstein Roof

Joe,

We are going to repair as many blisters as possible, however, that may not be 100%. We are prepared to work with you to make the repairs that are necessary. Please understand, in our industry, a blister is not necessarily a failure (the term you and the Goodstein's have used) We have applied the same product on other metal roofs in an attempt to duplicate the problem, we have not identified any blisters on any of the other test areas.

Even though we continue to believe and identify that something unusual is occurring on your project, we have continued to assist with the repairs. It is our intention to provide a satisfactory final product to you.

Bill Young
Technical Manager
Applications & Warranties
Sealoflex, Inc.
843-534-6466

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