

IN THE SUPERIOR COURT OF CHATHAM COUNTY  
STATE OF GEORGIA

ROBERT DOWSE AND URSULA DOWSE )  
 )  
 Plaintiffs, )  
 v. ) CIVIL ACTION NUMBER:  
 ) CV99-0302-BA  
 )  
 SOUTHERN GUARANTY INSURANCE )  
 COMPANY )  
 )  
 Defendant, )  
 )

COMPLAINT

COME NOW Plaintiffs named above and file this, their Complaint against the Defendant, Southern Guaranty Insurance Company and shows this Honorable Court the following:

1. Plaintiffs are citizens and residents of Chatham County, Georgia and are the owners of a home located at 103 Steeplechase Road, Southbridge Subdivision, Savannah, Chatham County, Georgia.
2. Southern Guaranty Insurance Company is a foreign corporation with a registered agent in DeKalb County and can be served through its Registered Agent, William G. Bell, 1922 Northlake Parkway, Tucker, Georgia 30084.
3. This Court has jurisdiction over all parties and matters in this action and venue properly rests in Chatham County, Georgia.

STATEMENT OF FACTS

4. In February 1994, Mr. and Mrs. Dowse contracted with C. Robert Dobson Builders, Inc. to construct their home located at 103 Steeplechase Road,

Southbridge Subdivision, Savannah, Chatham County, Georgia. Ulysses Cutter, Sr. Plaster and All Texture Stucco Co., Inc., [“Cutter”] was retained as the subcontractor responsible for the application of an Exterior Insulation and Finishing System [“EIFS”]. The Pre-Occupancy Inspection was conducted on August, 30, 1994 and the closing took place in November of 1994.

5. On about February 23, 1999, Mr. and Mrs. Dowse filed a complaint in Chatham County Superior Court against the builder for property damages to their home. On September 13, 2000, the Dowses filed an amended complaint against Ulysses Cutter, Sr. Plaster and All Texture Stucco Co., Inc. alleging negligence, breach of warranty and bad faith. Specifically, the Seventh Cause of Action in the complaint alleged that “[a]s a result of the negligence of Defendant Cutter, moisture has entered the EIFS and caused substantial wood rot to the underlying wooden structure of the Plaintiffs’ house which requires removal of the EIFS and repair of the wood substrate and wooden framing.”

6. Southern Guaranty Insurance Company insured the subcontractor, Ulysses Cutter, Sr. Plaster and All Texture Stucco Co., Inc. (hereinafter “Cutter”) during the time that Cutter installed the EIFS on the home and the time that Plaintiffs purchased the house.

7. By letter dated October 11, 2000, Southern Guaranty notified Ulysses Cutter that it was denying coverage of the claim and failed to provide a defense for Cutter to the lawsuit.

8. Subsequent to this denial, on October 16, 2000, Mr. and Mrs. Dowse

entered into a settlement agreement with Cutter whereby Cutter assigned all rights under the Southern Guaranty Insurance Company Policy, number 00CPP13492, [“Policy”] to the Dowses.

9. On January 26, 2001, Mr. and Mrs. Dowse presented evidence at a hearing in open court and obtained a judgment against Cutter in the sum of \$83,040.29.

10. Plaintiffs have brought this action against Southern Guaranty to recover on the Judgment obtained against Cutter, for expenses of litigation, attorneys fees, and for punitive damages.

#### FIRST CAUSE OF ACTION

(Breach of Contract of Southern Guaranty Insurance Company)

11. Plaintiffs incorporate paragraphs 1 through 10 of the Complaint as if fully set forth herein

12. The Defendant, Southern Guaranty Insurance Company entered into a contract with Cutter for a commercial general insurance policy covering Cutter for property damages.

13. The Plaintiffs’ filed a complaint against Cutter for alleging negligence, breach of warranty and bad faith alleging that “[a]s a result of the negligence of Defendant Cutter, moisture has entered the EIFS and caused substantial wood rot to the underlying wooden structure of the Plaintiffs’ house which requires removal of the EIFS and repair of the wood substrate and wooden framing.”

14. Defendant Southern Guaranty denied Cutter’s coverage without a entering a pretrial reservation of rights and failed to pursue a declaratory judgment

action to determine coverage.

15. Defendant Southern Guaranty failed and refused to provide a defense for Cutter and failed to file an Answer to the complaint, breaching its duty to defend with Cutter.

16. Defendant Southern Guaranty breached its contract with Cutter in failing to provide coverage for liability for negligent construction and property damages which Cutter reasonably expected the policy to cover.

17. As a result of the breach of contract by Defendant Southern Guaranty, the Plaintiffs have suffered damages, expenses of litigation and attorneys fees.

18. Plaintiffs, as Assignees of Cutter, are entitled to recover damages, expenses of litigation and attorneys fees from Defendant Southern Guaranty for its breach of contract.

## SECOND CAUSE OF ACTION

(Negligence of Southern Guaranty Insurance Company)

19. Plaintiffs incorporate paragraphs 1 through 18 by reference as if fully set forth herein.

20. Defendant Southern Guaranty was negligent in denying Cutter's coverage without a entering a pretrial reservation of rights and failing to pursue a declaratory judgment action to determine coverage.

21. Defendant Southern Guaranty was negligent in failing and refusing to provide a defense for Cutter and failing to file an Answer to the complaint.

22. Defendant Southern Guaranty was negligent in failing to provide

coverage for liability for negligent construction and property damages which Cutter reasonably expected the policy to cover.

23. Because of the negligence of Southern Guaranty, the Plaintiffs have sustained damages, litigation expenses and attorneys fees.

24. Plaintiffs, as Assignees of Cutter, are entitled to recover damages, expenses of litigation and attorneys fees from Defendant Southern Guaranty for its negligence.

### THIRD CAUSE OF ACTION

(Fraud of Southern Guaranty Insurance Company)

25. Plaintiffs incorporate paragraphs 1 through 24 by reference as if fully set forth herein.

26. Ulysses Cutter Sr. Plaster and All Texture Stucco Co., Inc. at all times relevant to the incidents complained of in the complaint filed against him by the Plaintiffs herein, was in the business of applying exterior finishes to homes.

27. Southern Guaranty Insurance Company represented and sold to Cutter a General Commercial Liability Insurance Policy to cover liability for property damages caused to homes as a result of his workmanship through his business undertakings of application of exteriors to homes.

28. Ulysses Cutter, as a layman, would reasonably expect the policy purchased from Southern Guaranty to provide liability coverage for his workmanship through his business undertakings.

29. Southern Guaranty had a fiduciary relationship with Cutter under its

insurance contract to provide coverage and defense to Cutter. Southern Guaranty fraudulently misrepresented the liability coverage under the policy sold to Cutter and fraudulently denied Cutter coverage and defense.

30. Southern Guaranty has committed deceptive trade practices in deceptively misrepresenting the coverage afforded to Cutter and breached its fiduciary duty with Cutter in failing to provide a defense and coverage under the insurance policy for claims against him for property damages to homes as a result of his application of exteriors.

31. Because of the breach of fiduciary duty, fraud and deceptive trade practices of Southern Guaranty, Plaintiffs have sustained damages, expenses of litigation and attorneys fees.

32. Plaintiffs, as Assignees of Cutter, are entitled to recover damages, expenses of litigation and attorneys fees from Defendant Southern Guaranty for its fraudulent behavior.

#### FOURTH CAUSE OF ACTION

(Unconscionability of Exclusions By Southern Guaranty Insurance Company)

33. Plaintiffs incorporate paragraphs 1 through 32 by reference as if fully set forth herein.

34. Exclusions raised by Southern Guaranty after Cutter submitted the claim were unobvious and unclear in the policy provisions provided to Cutter.

35. The unconscionability of exclusions by Southern Guaranty raise unfair business practices arising from contract provisions which are unlawful by reason of

their unconscionable nature.

36. Because of the unconscionable exclusions raised by Southern Guaranty and denial of its coverage based thereon, Plaintiffs have sustained damages, expenses of litigation and attorneys fees.

37. Plaintiffs, as Assignees of Cutter, are entitled to recover damages, expenses of litigation and attorneys fees from Defendant Southern Guaranty.

#### FIFTH CAUSE OF ACTION

(Bad Faith of Southern Guaranty Insurance Company)

38. Plaintiffs incorporate paragraphs 1 through 37 by reference as if fully set forth herein.

39. In bad faith, Defendant Southern Guaranty denied Cutter's coverage without a entering a pretrial reservation of rights and failed to pursue a declaratory judgment action to determine coverage.

40. In bad faith, Defendant Southern Guaranty wrongly failed and refused to provide a defense for Cutter and failed to file an Answer to the complaint.

41. In bad faith, Defendant Southern Guaranty wrongly failed to provide coverage for liability for negligent construction and property damages which Cutter reasonably expected the policy to cover.

42. In bad faith, Defendant Southern Guaranty raised unconscionable exclusions for coverage under the insurance policy purchased by Cutter.

43. Because of the bad faith of Defendant Southern Guaranty, Plaintiffs have sustained damages, expenses of litigation and attorneys fees.

44. Plaintiffs, as Assignees of Cutter, are entitled to recover damages, expenses of litigation and attorneys fees from Defendant Southern Guaranty for its breach of the implied covenant of good faith and fair dealing in the insurance contract.

#### SIXTH CAUSE OF ACTION

(Violation of Georgia Racketeer Influenced and Corrupt Organizations Act by Southern Guaranty Insurance Company)

45. Plaintiffs incorporate paragraphs 1 through 44 by reference as if fully set forth herein.

46. Ulysses Cutter Sr. Plaster and All Texture Stucco Co., Inc. at all times relevant to the incidents complained of in the complaint filed against him by the Plaintiffs herein, was in the business of applying exterior finishes to homes.

47. Southern Guaranty Insurance Company represented and sold to Cutter a General Commercial Liability Insurance Policy to cover liability for property damages caused to homes as a result of his workmanship through his business undertakings of application of exteriors to homes.

48. Ulysses Cutter, as a layman, would reasonably expect the policy purchased from Southern Guaranty to provide liability coverage for his workmanship through his business undertakings.

49. Southern Guaranty had a fiduciary relationship with Cutter under its insurance contract to provide coverage and defense to Cutter for claims against him for property damages to homes as a result of his application of exteriors. Southern Guaranty fraudulently misrepresented the liability coverage under the policy sold to

Cutter and fraudulently denied Cutter coverage and defense.

50. Southern Guaranty has committed deceptive trade practices in deceptively misrepresenting the coverage afforded to Cutter and breached its fiduciary duty with Cutter in failing to provide a defense and coverage under the insurance policy.

51. These fraudulent acts effectively denied Cutter any insurance coverage for which the policy was intended and for which he paid. As a consequence, during litigation, a money judgment was rendered against Cutter, individually, in favor of the Plaintiffs herein. Southern Guaranty has denied payment on this judgment

52. The acts as set forth herein rise to a pattern of racketeering activity of an insurance fraud scheme by Southern Guaranty to illegally acquire and maintain insurance premium monies paid by Cutter and deny coverage for the very damages for which he paid his premiums.

52. Southern Guaranty has developed a pattern of this racketeering activity by refusing to provide Cutter with any representation or coverage for other lawsuits brought against him as a result of his application of exteriors to homes, including but not limited to Albrecht v. Ulysses Cutter, Sr. Plaster and All Texture Stucco Co., Inc., Chatham County \_\_\_\_\_; Palace and Samello Richardson-Stepps v. Ulysses Cutter, d/b/a Plaster and All Texture Stucco, et al, Chatham County \_\_\_\_\_, Criag M. Sachofer v. Ulysses Cutter, Sr. Plaster and All Texture Stucco, et al, Paul and Wendy Price v. Ulysses Cutter, Sr. Plaster and All Texture Stucco, et al, Chatham County \_\_\_\_\_; John M. Power, et al vs. Ulysses Cutter, Sr. Plaster and

All Texture Stucco, et al, Chatham County \_\_\_\_\_ and Patel vs. Ulysses Cutter, Sr. Plaster and All Texture Stucco, et al.

53. Southern Guaranty is the direct beneficiary of the pattern of racketeering activity by illegally obtaining insurance premiums and providing no coverage under the policy which arises to criminal fraud and theft by deception.

54. The criminal acts of Southern Guaranty are the proximate cause of the judgments obtained against Cutter by Plaintiffs in this action and in the actions listed in allegation number 52 here.

55. The criminal acts of Southern Guaranty are the proximate cause for losses of money damages, costs of litigation and attorneys fees for litigation claimed by the Plaintiffs herein pursuant to that Assignment of Rights by Ulysses Cutter, Sr. Plaster and All Texture Stucco Co., Inc.

#### SEVENTH CAUSE OF ACTION

(Punitive Damages Against Southern Guaranty Insurance Company)

56. Plaintiffs incorporate paragraphs 1 through 55 by reference as if fully set forth herein.

57. Southern Guaranty Insurance Company has exhibited bad faith in its conduct and dealings with its insured, Ulysses Cutter Sr. Plaster and All Texture Stucco Co., Inc. in its breach of fiduciary duty in failing to provide a defense to Cutter, failing to provide coverage expected by Cutter under the policy, raising unconscionable exclusions under the policy, exhibiting unfair trade practices, fraud, and bad faith which actions raise the presumption of malicious, intentional, fraudulent and gross negligent

conduct on the part of Southern Guaranty entitling punitive damages against Defendant Southern Guaranty.

58. Plaintiffs, as Assignees of Cutter, are entitled to recover punitive damages against Defendant Southern Guaranty, in an amount in excess of \$1,000,000.00.

WHEREFORE, Plaintiffs demand a trial by jury and prays for judgment against the Defendant for damages to the Plaintiffs as described above, including but not limited to special damages, general damages, and punitive damages in an amount to be set by the jury and, furthermore, for attorney fees, expenses of litigation and costs, and other remedies allowed by this Court.

THIS, the \_\_\_\_ day of \_\_\_\_\_, 2003.

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