



LEWIS GLASSER

wjarceneaux@lewisglasser.com

February 14, 2018

Honorable Joanna I. Tabit, Judge
Circuit Court of Kanawha County
Judicial Annex
111 Court Street
Charleston, WV 25301

Re: *Soaring Eagle Lodge Master Association, Inc., et al. v. Soaring Eagle
Development Company, LLC, et al.*
Civil Action No. 15-C-2202

Dear Judge Tabit:

Enclosed please find an *Agreed Order Vacating Default Judgment Order* in the above-captioned matter. If the Order meets with your approval, please execute and forward it to the Clerk for entry.

Thank you for your attention in this matter.

Very truly yours,

Webster J. Arceneaux, III

WJA/kle

Enc.

cc: All Counsel of Record

LEWIS GLASSER PLLC

300 Summers Street BB&T Square, Suite 700 Post Office Box 1746 Charleston, WV 25326

304.345.2000

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

BUSINESS COURT DIVISION

SOARING EAGLE LODGE MASTER ASSOCIATION, INC., a West Virginia non-profit corporation; and SOARING EAGLE LODGE ASSOCIATION, INC., a West Virginia non-profit corporation,

Plaintiffs,

v.

CIVIL ACTION NO.: 15-C-2202

Presiding Judge: Tabit

Resolution Judge: Matish

SOARING EAGLE DEVELOPMENT COMPANY, LLC, a West Virginia limited liability company; GBBN ARCHITECTS, INC., an Ohio corporation; and BRANCH & ASSOCIATES, INC., a Virginia corporation,

Defendants,

and

SOARING EAGLE DEVELOPMENT COMPANY, LLC, a West Virginia limited liability company; and BRANCH & ASSOCIATES, INC., a Virginia corporation,

Third-Party Plaintiffs,

v.

TRI-STATE ROOFING & SHEET METAL COMPANY OF WEST VIRGINIA, a/k/a TRI-STATE ROOFING & SHEET METAL CO., a West Virginia corporation; APPLIED MECHANICAL SYSTEMS, INC., an Ohio corporation; RICHARDSON AND MARCH CARPENTRY, LLC, a West Virginia limited liability company; and EASTCOAST SIDING, INC., a Maryland corporation,

Third-Party Defendants,

and

**BRANCH & ASSOCIATES, INC., a
Virginia corporation,**

Third-Party Plaintiffs,

v.

**O.C. CLUSS LUMBER COMPANY, a
Pennsylvania corporation, and GAF
MATERIALS CORPORATION, a New
Jersey corporation; QUALITY STONE
VENEER, INC.; MODERN LIGHTNING
PROTECTION, INC.; JAMES HARDIE
BUILDING PRODUCTS, INC.; and
FIBERON, LLC.,**

Third-Party Defendants,

and

**O.C. CLUSS LUMBER COMPANY, a
Pennsylvania corporation,**

Fourth-Party Plaintiff,

v.

**GAF MATERIALS CORPORATION, a
New Jersey corporation, and FIBERON,
LLC, a North Carolina Limited Liability
Company,**

Fourth-Party Defendants,

and

**SOARING EAGLE DEVELOPMENT
COMPANY, LLC, a West Virginia limited
liability company,**

Third-Party Plaintiff,

v.

**THE TRAVELERS INDEMNITY
COMPANY OF AMERICA, a Connecticut
corporation and Travelers Property and
Casualty Company of America,**

Third-Party Defendant.

AGREED ORDER VACATING DEFAULT JUDGMENT ORDER

This day came O.C. Cluss Lumber Company, fourth-party plaintiff (“O.C. Cluss”) and Fiberon, LLC, fourth-party defendant (“Fiberon”), by counsel, and the Court hereby enters the following **ORDER**:

1. On January 2, 2018, this Court entered an Order granting Default Judgment in favor of O.C. Cluss against Fiberon (“Default Judgment Order”).
2. Defendant Fiberon engaged counsel in this matter on or about February 6, 2018.
3. Counsel advised Fiberon that it has meritorious defenses and grounds to seek to set aside the Default Judgment order on the basis of excusable neglect.
4. Fiberon has since been served with a Third-Party Complaint in this civil action filed by Branch & Associates, Inc., and has been attempting informally to interact with various counsel and come up to speed on events that have taken place since the filing of the original Complaint.
5. O.C. Cluss has agreed to vacate and set aside the Default Judgment Order and allow all claims against Fiberon to proceed on the merits.
6. The foregoing constitutes good cause under Rule 55(c) of the West Virginia Rules of Civil Procedure, which provides that “[f]or good cause shown the court may set aside an entry

of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).” W. Va. R. Civ. P. 55(c).

7. The Court further finds, consistent with *Hardwood Group v. Larocco* 219 W. Va. 56, 631 S.E.2d 614 (2006), that: (1) given the procedural posture of the civil action coupled with the recent entry of the Default Judgment Order, there will be no prejudice to O.C. Cluss in vacating and setting aside the default judgment; (2) Fiberon asserts that there are material issues of fact and meritorious defenses to the claims alleged by O.C. Cluss; (3) given the number of parties, competing claims and value of the damages alleged by Plaintiff, Soaring Eagle Lodge Master Association, Inc., that there are significant interests at stake; (4) that the degree of intransigence on the part of Fiberon is nominal under the circumstances; and (5) that Fiberon’s failure to answer was a result of excusable neglect as contemplated under Rule 60(b) of the West Virginia Rules of Civil Procedure.

It accordingly **ORDERED** that the Court’s Default Judgment Order, granting default judgment to O.C. Cluss against Fiberon, is hereby **VACATED** and set aside for good cause as contemplated under Rules 55(c) and 60(b) of the West Virginia Rules of Civil Procedure. Fiberon shall have 20 days from entry of this Order to file an answer or other responsive pleading to O.C. Cluss’ Fourth-Party Complaint.

The Clerk of this Court is further **ORDERED** to forward certified copies of this Order to all counsel of record addressed as follows:

ENTER this _____ day of _____, 2018.

Honorable Joanna I. Tabit

PREPARED BY:



Webster J. Arceneaux, III, WWSB 155
LEWIS GLASSER PLLC
P.O. Box 1746
Charleston, WV 25326
Phone: 304-345-2000
Counsel For Fiberon, LLC

APPROVED BY:



Randall L. Trautwein, WWSB 3791
Lamp Bartram Levy Trautwein & Perry, PLLC
720 Fourth Avenue
P.O. Box 2488
Huntington, WV 25726
Counsel for O.C. Cluss Lumber Company