

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS FOR
THE FOURTEENTH JUDICIAL CIRCUIT
Civil Action Number: 2002 CP 07 1377

John Cardamone and his wife Sally)
Cardamone and Benjamin T. Clark and his)
wife, Diane M. Clark, and Ramona Gianni,)
and Nathan W. Gordon, and his wife, Jill)
C. Gordan, individually and on behalf of)
others similarly situated in the State of)
South Carolina,)

**DRYVIT SYSTEMS, INC.'S MOTION TO
DISMISS**

Plaintiffs,)

vs.)

Dryvit Systems, Inc., Estate Builders, Inc.,)
and American Way Applicators of South)
Carolina, Inc.,)

Defendants.)

NOW COMES Defendant Dryvit Systems, Inc. (hereinafter "Dryvit"), and hereby moves the Court for an Order dismissing Dryvit from this action on the grounds that Plaintiffs are members of a certified class of homeowners in the case of *Bobby Posey and wife Sabrina Posey, and Dale Teague, on behalf of themselves and all similarly situated v. Dryvit Systems, Inc.*; Civil Action No. 17,1715-IV (Jefferson County, TN), a class action presently pending in Tennessee state court.

The basis for this Motion is as follows: In this action, Plaintiffs assert claims against Dryvit for alleged damage to their respective homes. Plaintiffs claim that Dryvit's EIFS product that was installed on their homes is defective. Plaintiffs' claims against Dryvit in this case are identical to the claims that were settled in a related class action pending in the state courts of Tennessee, *Bobby Posey and wife Sabrina Posey, and Dale Teague, on behalf of themselves and all similarly situated v. Dryvit Systems, Inc.*; Civil Action No. 17,1715-IV (Jefferson County, TN). Plaintiffs' claims against Dryvit are barred by virtue of the final order and judgment that approved the nationwide class action settlement in *Posey*. Plaintiffs are members of the settlement class in *Posey*. The final order and judgment approving the

settlement – which is entitled to Full Faith and Credit by this Court – bars Plaintiffs’ claims against Dryvit under the doctrines of *res judicata* and settlement and release.

This Motion is based upon the affidavits and documents filed herewith in a binder entitled Dryvit Systems Inc.’s Evidence in Support of Motion to Enforce Settlement and Dismiss, the pleadings filed in this case, memorandum in support filed herewith, and the common and statutory law of the State of South Carolina.

This the 22nd day of September, 2005.

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC



Hugh M. Claytor (S.C. Bar No. 11299)
Womble Carlyle Sandridge & Rice,
a Professional Limited Liability Company
104 S. Main Street, Suite 700
P.O. Box 10208
Greenville, S.C. 29603-0208
864/255-5417

Attorney for Defendant Dryvit Systems, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of September, 2005, (s)he served the foregoing **DEFENDANT DRYVIT SYSTEMS, INC.'S MOTION TO DISMISS** by placing said copy in a postpaid envelope and addressed to the persons hereinafter named, at the places and addresses stated below, which are the last known addresses, and by depositing said envelope and its contents in the United States mail.

Michael S. Seekings, Esquire
George E. Mullen, Esquire
Mullin, Wylie & Seekings, L.L.C.
134 Meeting Street, Suite 500 Charleston, South
Carolina 29401-1544

W. Jefferson Leath, Jr., Esquire
Timothy W. Bouch, Esquire
Leath, Bouch & Crawford, L.L.P.
Post Office Box 59
Charleston, South Carolina 29402

Francis E. Grimball, Esquire
P.O. Box 21849
Charleston, SC 29938

William Dixon Robertson, Esquire
P.O. Box 11401
Columbia, SC 29211-1401

William M. Bowen, Esquire
William M. Bowen, PA
P.O. Box 6128
Hilton Head Island, SC 29938

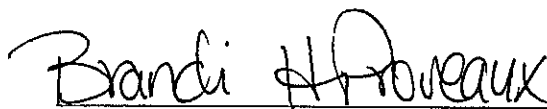
Jonathan J. Anderson, Esquire
Anderson & Segui, LLC
P.O. Box 87
Charleston, SC 29402

Robert B. "Sam" Phillips, Esquire
Finkel and Altman, LLC
P.O. Box 1799
Columbia, SC 29202

Gregory M. Alford, Esquire
P.O. Drawer 8008
Hilton Head Island, SC 29938

Thomas J. Finn, Esquire
The Finn Law Firm
P.O. Box 23243
Hilton Head Island, SC 29926

Donald E. Jonas, Esquire
Cotty & Jonas
1328 Blanding Street
Columbia, SC 29202



Brandi H. Proveaux
Legal Secretary to Hugh M. Claytor