

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FILE NO:

FS, LLC d/b/a RAMJACK,

Plaintiff,

v.

CALVIN FLORENCE d/b/a ALLPRO
HOME SOLUTIONS, d/b/a ALLPRO
CRAWLSPACE REPAIR & STABILIZING,

Defendant.

COMPLAINT

(JURY TRIAL DEMANDED)

COMPLAINT FOR PATENT INFRINGEMENT

NOW COMES Plaintiff, FS, LLC d/b/a RAM JACK and alleges the following:

JURISDICTION AND VENUE

1. This is a civil action for patent infringement arising under Title 35 of the United States Code, and in particular 35 U.S.C. §§ 271, 282, 283, 284, and 285.
2. This Court has subject matter jurisdiction over this patent infringement action under 28 U.S.C. §§ 1331 and 1338(a).
3. This Court has personal jurisdiction over Defendant Calvin Florence because he is a citizen and resident of New Hanover County, North Carolina in this judicial district and because he has committed acts of infringement in this judicial district.
4. Venue lies in this judicial district under 28 U.S.C. § 1400(b).

PARTIES

5. Plaintiff, FS, LLC is a limited liability company organized and existing under the laws of North Carolina with its principal place of business in Durham, North Carolina.
6. “FS” stands for “Foundation Solutions.” Plaintiff provides expert foundation

repair services, including services to repair interior floors that have been damaged by foundation settlement or foundation failure.

7. Plaintiff was formerly called Ram Jack, LLC. Ram Jack, LLC changed its name to FS, LLC in March 2015 by amending its Articles of Organization with the North Carolina Secretary of State Corporations Division.

8. Ram Jack, LLC was founded by Richard D. Sykes (“Sykes”) in June 2003.

9. Plaintiff is the holder of U.S. Patent No. 7,182,316 (“the ‘316 Patent”) for an adjustable bracket. A copy of the ‘316 patent is attached as Exhibit A.

10. Sykes is the inventor of the adjustable bracket described in the ‘316 Patent.

11. Plaintiff uses its patented adjustable bracket to lift, stabilize, and support sinking or sagging interior floors at load points in order to correct damage caused by foundation settlement or foundation failure.

12. Once installed under flooring, the bracket can be adjusted to counteract further settling or foundation issues.

13. A diagrammed description of how Plaintiff’s adjustable bracket works is attached as Exhibit B.

14. Defendant Calvin Florence (“Defendant”) is a citizen and resident of New Hanover County, North Carolina.

15. Upon information and belief, Defendant is currently doing business as an unincorporated entity under the trade names “Allpro Home Solutions” or “Allpro Crawlspace Repair & Stabilizing.”

16. Defendant was an independent contractor for Plaintiff and worked with Plaintiff on multiple projects that required the use of Plaintiff’s patented adjustable bracket.

17. Defendant has been offering foundation and flooring repair services with the use of adjustable brackets since at least January 2019.

INFRINGEMENT OF U.S. PATENT NO. 7,182,316

18. On February 27, 2007, the United States Patent Office duly and legally issued United States Patent No. 7,182,316 entitled “Adjustable Support Bracket” to Plaintiff at the time that Plaintiff was known as Ram Jack, LLC.

19. The ‘316 Patent is for an adjustable support bracket which can be used in combination with a support pier or post to support a lateral girder which is subject to weights or loads.

20. Upon information and belief, Defendant has had knowledge of ‘316 Patent and of Plaintiff’s rights therein.

21. Defendant has had actual knowledge that his activities constitute infringement of the ‘316 Patent no later than March 7, 2019 when counsel for Plaintiff contacted Defendant and advised Defendant that Defendant’s activities infringed on the ‘316 Patent.

22. In addition, and in the alternative, Defendant has had actual knowledge that his activities constitute infringement of the ‘316 Patent no later than the date of the filing of this Complaint.

23. Defendant has directly infringed the ‘316 Patent in violation of 35 U.S.C. § 271(a) by unlawfully and wrongfully making and using adjustable brackets embodying one or more of the inventions claimed in the ‘316 Patent in the United States without permission or license from Plaintiff, and will continue to do so unless enjoined by this Court.

24. Defendant’s making and use of adjustable brackets directly infringes on at least Claims 1, 9, and 13 of the ‘316 Patent.

25. Defendant's adjustable brackets that directly infringe the '316 patent are depicted below:



26. The images included in this Complaint accurately show the features of the brackets.

27. Defendant has posted pictures and videos showing these and other adjustable brackets on the Facebook page for his business, "Allpro Crawlspace Repair & Stabilizing" available at: <https://www.facebook.com/allprocrawlspacerepairandstabilizing>.

28. Defendant advertises on this Facebook page that he provides crawlspace repair and stabilizing services with the use of adjustable brackets, specifically using the hashtag

“#adjustablebrackets” to attract customers.

29. Defendant posted a photo on this Facebook page depicting his use of an infringing adjustable bracket as late as May 15, 2019.

The image is a screenshot of a Facebook post from the page "Allpro Crawlspace Repair & Stabilizing". The page's profile picture shows a crawlspace with wooden joists. The page name is "Allpro Crawlspace Repair & Stabilizing" with the handle "@allprocrawlspacerepairandstabilizing". The post is dated "May 15" and features a red circle around the date. The post text includes several hashtags: #crawlspacerepairnc, #saggingfloorsnc, #dehumidifiernc, #girderrepairnc, #encapsulation, #pierrepairnc, #joistrepairnc, #crawlspaceexpertnc, #vaporbarrier, #sprayfoaminsulation, #rottedfloorjoist, #structuralexpertnc, and #structuralrepair. The main image shows a blue adjustable bracket supporting a wooden joist in a crawlspace. Below the main image are three smaller images showing different views of the bracket and joist. The post has 2 likes and options to Like, Comment, and Share.

30. In videos on this Facebook page, Defendant boasts that he uses adjustable brackets in his repair work.

31. In one video, posted January 29, 2019, Defendant states that he has “used adjustable brackets in the past” and that he “used to charge extra for them.”

32. In the same video, Defendant states that, “now,” he “uses adjustable brackets as a common practice.”

33. Defendant is depicted in that video wearing a hat that is labeled “ALLPRO CRAWLSPACE.”

34. Defendant has used these infringing adjustable brackets, as shown by the below examples from his Facebook page:



35. For comparison, a sample image of one of Plaintiff's brackets is shown below:



36. Pictures of Plaintiff's brackets are shown below:



37. Claim 1 of the '316 Patent reads as follows:

I claim:

1. An adjustable support bracket for use in combination with a support pier to support a structure subject to loads comprising:

- (a) a first generally flat rigid surface of sufficient thickness and strength to support a definite load;
- (b) on said first flat surface a plurality of support bolts generally perpendicular to said first flat surface, said perpendicular support bolts threaded for use with locking nuts;
- (c) a second flat rigid surface of a general size and structure similar to said first flat surface;

(d) on said second flat surface, a plurality of sleeves sized and shaped for receipt therein of said perpendicular support bolts on said first flat surface;

(e) locking nuts on said threaded perpendicular support bolts;

whereby said adjustable support bracket may be used to support a structure subject to loads when said adjustable support bracket is placed on a support pier, a lifting device is placed between said first and second flat surface and used to raise said second flat surface to come into contact with a structure subject to load, said locking nuts on said support bolts are threaded snug against said sleeves, then said lifting device is removed from said lifting devices position between said first and second flat surfaces and said adjustable support bracket and a support pier now support said structure subject to loads.

38. Defendant's infringing adjustable brackets are composed of two "flat rigid surface[s] of sufficient thickness and strength to support a definite load," separated by "a plurality of support bolts" that are "perpendicular to" the flat surfaces and that are "threaded for use with locking nuts" where the second flat surface has "a plurality of sleeves sized and shaped for receipt therein of said perpendicular support bolts" from the first flat surface.



Flat, rigid surfaces

Perpendicular bolts
threaded for use
with locking nuts

39. Defendant’s infringing adjustable brackets are “used to support a structure subject to loads” by placing the bracket “on a support pier,” placing “a lifting device” or jack “between the first and second flat surfaces” to “raise the second flat surface to come into contact with the structure subject to load” and secured by “thread[ing]” the “locking nuts on said support bolts” “snug against said sleeves” so that the lifting device can be removed while the bracket supports the structure.



Structure subject to loads

Space for jack/lifting device

Support pier

40. Defendant's infringing adjustable brackets meet every limitation recited in Claim 1 of the '316 Patent.

41. Claim 9 of the '316 Patent reads as follows:

9. An apparatus for leveling and supporting a sagging horizontal support girder comprising:

(a) an auxiliary support pier;
(b) means for sinking said auxiliary support pier into a support substrate;

(c) a first flat surface mountable on an exposed end of said auxiliary support pier;

(d) means for mounting said first flat surface on said support pier;

(e) on said first flat surface a plurality of vertical support bolts threaded for use with a locking nut;

(f) a second flat surface including sleeves mounted on said second flat surface for receipt of said vertical support bolts for slidable movement of said second flat surface on said support bolts;

(g) means for raising said second flat surface until said second flat surface levels and supports a sagging horizontal girder;

(h) at least one locking bolt for each of said plurality of vertical support bolts, said locking nut rotated into place on each of said threads on said support bolts to permanently fix said second support plate into place against said sagging girder;

whereby said auxiliary support pier is sunk into the supporting substrate at an appropriate height in proximity to said horizontal girder, said first and second flat surfaces are used in conjunction with means to lift said second flat surface into place against said sagging girder and said locking nuts are used to permanently lock said second flat surface into place.

42. Defendant uses an apparatus to raise, level, and support sagging horizontal supports, consisting of all of the components recited in Claim 9 of the '316 Patent.

43. Defendant's use of the infringing adjustable brackets meets all of the limitations recited in Claim 9 of the '316 Patent.

44. Claim 13 of the '316 Patent reads as follows:

13. A method for leveling and supporting a sagging horizontal support girder, the method including steps of comprising:

- (a) sinking an auxiliary support pier into a support substrate, said auxiliary support pier in proximity to a sagging horizontal support girder;
- (b) mounting a first flat surface on an exposed end of said support pier;
- (c) placing a second flat surface above said first flat surface;
- (d) providing on said first flat surface a plurality of vertical support bolts;
- (e) providing on said second flat surface a plurality of sleeves, said sleeves sized for receipt therein of said vertical support bolts;
- (f) providing locking nuts threaded onto said vertical support bolts;
- (g) raising said second flat surface until said second flat surface provides support to said sagging horizontal support girder by using a means for raising said second flat surface;
- (h) threading said locking nuts on said thread on said vertical support bolts until said locking nuts are snug against said sleeves on said second flat surface.

45. Defendant uses Plaintiff's method of "leveling and supporting a sagging horizontal support girder" by doing each of the following:

- a. "sinking an auxiliary support pier into a support substrate, said auxiliary support pier in proximity to a sagging horizontal support girder;
- b. mounting a first flat surface on an exposed end of said support pier;
- c. placing a second flat surface above said first flat surface;
- d. providing on said flat surface a plurality of sleeves, said sleeves sized for receipt therein of said vertical support bolts;
- e. providing locking nuts threaded onto said vertical support bolts;
- f. raising said second flat surface until said second flat surface provides

support to said sagging horizontal support girder by using a means for raising said second flat surface;” and

- g. “threading said locking nuts on said thread on said vertical support bolts until said locking nuts are snug against said sleeves on said second flat surface.”

46. Defendant’s method of using the infringing adjustable brackets meets all of the limitations recited in Claim 13 of the ‘316 Patent.

47. As a direct and proximate result of the infringing acts of Defendant, Plaintiff has suffered, and is entitled to, monetary damages that adequately compensate Plaintiff for Defendant’s infringement, which, by law, cannot be less than a reasonable royalty, together with interests and cost as fixed by this Court under 35 U.S.C. § 284.

48. Defendant’s continuing infringement has inflicted and, unless restrained by this Court, will continue to inflict irreparable harm upon Plaintiff, including but not limited to deprivation of Plaintiff’s rights to exclude others from using Plaintiff’s patented invention. Plaintiff has no adequate remedy at law. Plaintiff is entitled to injunctive relief enjoining Defendant from engaging in further acts of infringement.

WILLFUL INFRINGEMENT

49. Plaintiff rellages each allegation set forth in the paragraphs above as though fully set forth herein.

50. Despite Defendant’s knowledge of the ‘316 Patent and the Plaintiff’s rights therein and despite notification from Plaintiff that Defendant is infringing on the ‘316 Patent, Defendant has continued to infringe the ‘316 Patent.

51. Defendant’s deliberate, willful infringement entitles Plaintiff to attorneys’ fees

incurred in prosecuting this action under 35 U.S.C. § 285.

Plaintiff asks this Court for the following relief in this action:

1. A judgment that Defendant directly infringes on the '316 Patent;
2. A permanent injunction preventing Defendant from engaging in infringing activities with respect to the '316 Patent.
3. A judgment that Defendant's infringement has been willful.
4. A ruling that Defendant's willful infringement entitles Plaintiff to attorneys' fees for those action.
5. A judgment and order requiring Defendant to pay Plaintiff damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement until entry of judgment, with an accounting, as needed.
6. A judgment and order requiring Defendant to pay Plaintiff's costs of this action.
7. A judgment and order requiring Defendant to pay pre-judgment and post-judgment interest on damages awarded; and
8. Such other and further relief as the Court may deem just and proper.

DATE: August 7, 2019.

YOUNG MOORE AND HENDERSON, P.A.

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