

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2018-CP-10-5367

CARL OWENS CONTRACTING, INC.,)
)
Plaintiff,)

v.)

GULFSIDE SUPPLY, INC. D/B/A)
GULFEAGLE SUPPLY,)
WEYERHAEUSER NR COMPANY, and)
DIXIE CONTRACTING, LLC,)

Defendants,

GULFSIDE SUPPLY, INC. D/B/A)
GULFEAGLE SUPPLY,)

Third-Party Plaintiff,

v.)

DIXIE CONTRACTING, LLC and)
DON ROSS, LLC,)

Third Party Defendants.

**GULFSIDE SUPPLY, INC. D/B/A
GULFEAGLE SUPPLY'S ANSWER
TO PLAINTIFF'S AMENDED
COMPLAINT, RESTATED CROSS-
CLAIM AGAINST CO-DEFENDANT
WEYERHAEUSER NR COMPANY AND
THIRD-PARTY COMPLAINT/CROSS
CLAIM AGAINST DON ROSS, LLC AND
DIXIE CONTRACTING, LLC**

FILED
2019 JUL 10 AM 10:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY AG

Defendant Gulfside Supply, Inc. d/b/a Gulfeagle Supply (“Defendant” or “Gulfside”), by and through its undersigned attorney, hereby answers the Plaintiff’s Amended Complaint as follows:

FOR A FIRST DEFENSE

Subject to and without waiving the defenses set forth herein, Gulfside responds to each of the enumerated allegations of Plaintiff’s Amended Complaint, as follows:

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 1 of Plaintiff’s Amended Complaint, and, therefore, denies the same and demands strict proof thereof.

2. Defendant admits that it is registered in South Carolina as a foreign entity, with its principal place of business in Florida and with a store location in North Charleston, South Carolina.

Defendant denies the remaining allegations contained in Paragraph 2 of Plaintiff's Amended Complaint.

3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 3 and 4 of Plaintiff's Amended Complaint, and, therefore, denies the same and demands strict proof thereof.

4. The averments contained in Paragraph 5 of Plaintiff's Amended Complaint constitute legal conclusions which Defendant is not required to answer. To the extent that Paragraph 5 of Plaintiff's Amended Complaint sets forth factual allegations to which a response is required, Defendant denies the same and demands strict proof thereof.

5. Defendant admits that it sells building supplies, including roofing shingles. Defendant denies the remaining allegations set forth in Paragraph 6 of Plaintiff's Amended Complaint as stated against Defendant. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments set forth against Defendant Weyerhaeuser NR Company in Paragraph 6 of Plaintiff's Amended Complaint and, and, therefore, denies the same and demands strict proof thereof.

6. Defendant denies the allegations set forth in Paragraph 7 of Plaintiff's Amended Complaint. Defendant further states that the Plaintiff did not purchase cedar roofing shingles from Defendant.

7. Defendant admits the allegations set forth in Paragraph 8 of Plaintiff's Complaint.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 9 of Plaintiff's Amended Complaint, and, therefore, denies the same and demands strict proof thereof.

9. Defendant denies the allegations set forth in Paragraphs 10, 11, 12, 13, and 14 of Plaintiff's Amended Complaint and demands strict proof thereof.

10. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraphs 15, 16, 17, 18, 19, 20, and 21 of the Amended

Complaint and therefore denies the same and demands strict proof thereof.

**RESPONDING TO THE FIRST CAUSE OF ACTION AGAINST GULFEAGLE AND
WEYERHAEUSER**
(Breach of Warranties - Express and Implied)

11. Responding to Paragraph 22 of Plaintiff's Amended Complaint, Defendant incorporates and restates its responses to Paragraph 1-21 of Plaintiff's Amended Complaint as if fully set forth herein verbatim.

12. Defendant denies the allegations set forth in Paragraphs 23 and 24 of Plaintiff's Amended Complaint and demands strict proof thereof.

13. Defendant admits only that it sold cedar roofing shingles to Don Ross, LLC. The remaining averments contained in Paragraph 25 of Plaintiff's Amended Complaint constitute legal conclusions which Defendant is not required to answer. To the extent that the remaining averments of Paragraph 25 of Plaintiff's Amended Complaint set forth factual allegations to which a response is required, Defendant denies the same and demands strict proof thereof.

14. Defendant denies the allegations set forth in Paragraphs 26, 27, 28, 29, and 30 of Plaintiff's Amended Complaint and demands strict proof thereof.

**RESPONDING TO THE SECOND CAUSE OF ACTION AGAINST GULFEAGLE
AND WEYERHAEUSER**
(Strict Liability, S.C. Code Ann. § 15-73-10 *et seq.*)

15. Responding to Paragraph 31 of Plaintiff's Amended Complaint, Defendant incorporates and restates its responses to Paragraph 1-30 of Plaintiff's Amended Complaint as if fully set forth herein verbatim.

16. Defendant admits the allegations set forth in Paragraph 32 of Plaintiff's Complaint. Defendant further states that the Plaintiff did not purchase cedar roofing shingles from Defendant.

17. Defendant denies the allegations of Paragraphs 33, 34, 35, and 36 of Plaintiff's Amended Complaint and demands strict proof thereof.

**RESPONDING TO THE THIRD CAUSE OF ACTION AGAINST GULFEAGLE AND
WEYERHAEUSER**
(Negligent Misrepresentation)

18. Responding to Paragraph 37 of Plaintiff's Amended Complaint, Defendant incorporates and restates its responses to Paragraph 1-36 of Plaintiff's Amended Complaint as if fully set forth herein verbatim.

19. Defendant denies the allegations set forth in Paragraphs 38, 39, 40, 41, 42, and 43 of Plaintiff's Amended Complaint.

RESPONDING TO THE CAUSES OF ACTION AGAINST DIXIE

20. Paragraphs 44 through 77 of Plaintiff's Amended Complaint do not relate to Defendant, and Defendant is therefore not required to admit or deny the allegations contained in Paragraphs 44 through 77 of Plaintiff's Amended Complaint. To the extent Defendant is required to respond, Defendant is without sufficient information to admit or deny the allegations set forth in Paragraphs 44 through 77 of Plaintiff's Amended Complaint and therefore denies the same.

DEFENDANT DENIES EACH AND EVERY ALLEGATION IN PLAINTIFF'S AMENDED COMPLAINT NOT EXPRESSLY ADMITTED ABOVE AND RESERVES THE RIGHT TO AMEND ITS ANSWER AND SUPPLEMENT THE DEFENSES ASSERTED THEREIN, OR TO ADD ADDITIONAL DEFENSES AND/OR CLAIMS AGAINST PLAINTIFF IF FURTHER INVESTIGATION AND/OR DISCOVERY REVEALS THE NEED FOR SUCH AMENDMENTS, SUPPLEMENTS OR ADDITIONS.

FOR A SECOND DEFENSE

(Motion to Dismiss Pursuant to SCRCP 12(b)(6))

Defendant moves for dismissal of Plaintiff's Complaint, with prejudice, pursuant to SCRCP 12(b)(6) for failure to state facts sufficient to constitute a cause of action against Defendant Gulfside. Plaintiff has never contracted with, and does not otherwise have privity with, Defendant Gulfside.

FOR A THIRD DEFENSE

(Motion to Dismiss Pursuant to SCRCP 12(b)(4))

Defendant moves for dismissal of Plaintiff's Complaint, with prejudice, pursuant to SCRPC 12(b)(4) for insufficiency of process served upon Defendant Gulfside.

FOR A FOURTH DEFENSE

(Motion to Dismiss Pursuant to SCRPC 12(b)(5))

Defendant moves for dismissal of Plaintiff's Complaint, with prejudice, pursuant to SCRPC 12(b)(5) for insufficiency of service of process upon Defendant Gulfside.

FOR A FIFTH DEFENSE

(Lack of Notice and Opportunity to Inspect/Respond)

Plaintiff failed to give Defendant reasonable notice of the existence of any alleged defects and failed to provide Defendant a reasonable opportunity to inspect and/or participate in responding to the alleged defects. Plaintiff's failure to give Defendant this notice and opportunity constitutes a complete defense to Plaintiff's claims.

FOR A SIXTH DEFENSE

(Statute of Limitations)

Defendant moves for dismissal of Plaintiff's Complaint, with prejudice, pursuant to S.C. Code Ann. §§ 15-3-530, for failure to file this lawsuit within the relevant limitations periods of three-years for each claim alleged in Plaintiff's Complaint.

FOR A SEVENTH DEFENSE

(Proximate Causation)

Defendant moves for dismissal of Plaintiff's Complaint, with prejudice, because Plaintiff and/or its agents, employees, or subcontractors, were negligent and proximately caused, and are not entitled to, the damages alleged in Plaintiff's Complaint.

FOR AN EIGHTH DEFENSE

(Contributory Negligence)

Any claims, causes of action, injuries and damages allegedly suffered by the Plaintiff in this case are the result of the actions, inactions or omissions of Plaintiff or a third party and are not the result of any actions or inactions on the part of Defendant; therefore, Defendant is not liable to Plaintiff in any amount.

FOR A NINTH DEFENSE

(Laches and Waiver)

Plaintiff's claims are barred by laches and waiver. Upon information and belief, the materials complained of in Plaintiff's Complaint were purchased and installed in 2014.

FOR A TENTH DEFENSE

(Standing)

Plaintiff lacks standing to assert the claims set forth in the Complaint, as it is not the owner of the subject property nor the ultimate user or consumer of the products at issue. Therefore, the Complaint should be dismissed.

FOR AN ELEVENTH DEFENSE

(Non-Recoverable Settlement)

Plaintiff cannot recover from Defendant the cost of its settlement of the homeowner's claims because the settlement was not bona fide and reasonable under the circumstances.

FOR A TWELTH DEFENSE

(Incorporation by Reference of SCRCP 8(c) Affirmative Defenses)

Defendant incorporates by reference all affirmative defenses contained in SCRCP 8(c) as though fully set forth herein.

FOR A THIRTEENTH DEFENSE

(Reservation of Right)

Defendant reserves the right to assert any additional affirmative defenses as may be disclosed during the course of additional investigation and discovery.

FOR A FOURTEENTH DEFENSE

(Failure to Mitigate)

Plaintiff failed to mitigate its damages and as a result, Plaintiffs' claims are barred or should be reduced to the extent Plaintiff could have taken prompt and reasonable action to avoid the damages claimed.

FOR A FIFTEENTH DEFENSE

(Spoliation)

Plaintiff's claims are barred or should be dismissed by virtue of the doctrine of spoliation of evidence, to the extent Plaintiff spoiled evidence and repaired alleged deficiencies without notice to Gulfside and without giving Gulfside opportunity to observe the alleged deficiencies.

FOR A SIXTEENTH DEFENSE

(Notice and Opportunity to Cure Construction Dwelling Defects Act)

Plaintiff's claims are barred and/or should be stayed or dismissed by virtue of Plaintiff's failure to comply with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, South Carolina Code § 40-59-810, *et seq.*

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Defendant, reserving all rights to amend or supplement its pleadings and to assert counterclaims against Plaintiff, prays that this Honorable Court inquire into the facts and matters alleged herein and enter judgment in favor of Defendant and against Plaintiff with respect to all of the allegations of the Amended Complaint and enter an award of fees and costs against the Plaintiff and in favor of Defendant, that Defendant have a trial by jury, and for such other and further relief as the Court deems just and proper.

**RESTATED COUNTERCLAIM AGAINST PLAINTIFF, CROSS CLAIM AGAINST CO-
DEFENDANT WEYERHAEUSER NR COMPANY AND CROSS CLAIM AND/OR
THIRD PARTY COMPLAINT AGAINST DON ROSS, LLC AND DIXIE
CONTRACTING, LLC**

COMES NOW, Gulfside Supply, Inc. d/b/a Gulfeagle Supply (“Gulfside”), and restates its Counterclaim against Plaintiff Carl Owens Contracting, Inc. (“Carl Owens”), Cross Claim against Weyerhaeuser NR Company (“Weyerhaeuser”), and Cross Claim and/or Third Party Complaint against Don Ross, LLC (“Don Ross”) and submits its Cross Claim and/or Third Party Complaint against Dixie Contracting, LLC (“Dixie Contracting”), as follows:

1.

In the Complaint, Carl Owens admits that it is a South Carolina corporation conducting business in Charleston County, South Carolina. Carl Owens is subject, and has submitted itself, to the jurisdiction and venue of this Court.

2.

Defendant Weyerhaeuser is a foreign entity registered to conduct business in South Carolina, with its principal place of business in Washington State. It conducts business in Charleston County, South Carolina. Defendant Weyerhaeuser is subject to the jurisdiction of this Court and venue is proper as to Defendant Weyerhaeuser.

3.

Don Ross is a South Carolina limited liability company that may be served with process via its registered agent, Donald W. Ross, at 138 Ross Way, Cross, South Carolina 29436. Don Ross conducts business in Charleston County, South Carolina and installed the roofing shingles at issue in this case at 2672 Goldbug Avenue, Sullivan’s Island, Charleston County, South Carolina. Don Ross is subject to the jurisdiction of this Court and venue is proper as to Defendant Don Ross.

4.

Dixie Contracting is a South Carolina limited liability company that may be served with process via its registered agent, Dianne Ross, at 400 Toccoa Drive, Manning, South Carolina 29102. Dixie Contracting conducts business in Charleston County, South Carolina and installed the roofing shingles at issue in this case at 2672 Goldbug Avenue, Sullivan's Island, Charleston County, South Carolina. Dixie Contracting is subject to the jurisdiction of this Court and venue is proper as to Defendant Dixie Contracting.

5.

Carl Owens was the general contractor for the construction of the residence located at 2672 Goldbug Avenue, Sullivan's Island, Charleston County, South Carolina, which, upon information and belief, was constructed in or around 2014 by Carl Owens (the "Project").

6.

Upon information and belief, Don Ross and Dixie Contracting were subcontractors of Carl Owens and installed the roof in connection with the Project.

7.

Weyerhaeuser is engaged in the business of selling building materials, including cedar roofing shingles.

8.

Gulfside purchased No. 1 Blue Label Cedar Shingles (the "Shingles") from Weyerhaeuser on August 7, 2014, under Order # P1518568 (the "Order").

9.

Gulfside made the Order in response to an order placed with Gulfside by Don Ross.

10.

Don Ross purchased the Shingles from Gulfside.

11.

Upon information and belief, Don Ross, Dixie Contracting and Carl Owens failed to exercise ordinary care in the installation of the roof of the Project, including the Shingles, and failed to install the same in a good and workmanlike manner and in accordance with industry standards.

12.

Carl Owens filed this action against Gulfside and Weyerhaeuser alleging that the Shingles were defective and unreasonably dangerous and that the defective Shingles caused property damage, purportedly in breach of certain alleged express and implied warranties on behalf of the Gulfside and Weyerhaeuser, which claims are denied by Gulfside.

13.

Any property damage alleged by Carl Owens is due to the negligence of Carl Owens, Dixie Contracting and Don Ross in failing to exercise ordinary care in the installation of the roof of the Project, including the Shingles, and in failing to install the same in a good and workmanlike manner and in accordance with industry standards.

14.

Carl Owens, Dixie Contracting and Don Ross are liable to equitably indemnify Gulfside for any sums which may be adjudged against Gulfside and for all costs and expenses, including reasonable attorney's fees, that Gulfside has been forced to incur and will continue to incur in connection with the defense of the claims that have been brought by Carl Owens, as the negligence, acts and/or omissions of Carl Owens, Dixie Contracting and Don Ross are the cause of any alleged damages.

15.

Any defect with respect to the Shingles, which Gulfside denies, was due to the acts or omissions of Weyerhaeuser and not any act or omission of Gulfside.

16.

Any negligent misrepresentation made regarding the Shingles, which Gulfside denies, was made by or due to the acts or omissions of Weyerhaeuser.

17.

Weyerhaeuser is liable to Cross-claimant Gulfside in contribution for sums which may be adjudged against Gulfside in favor of Carl Owens.

18.

Weyerhaeuser is liable to equitably indemnify Gulfside for any sums which may be adjudged against Gulfside, together with all costs and expenses, including reasonable attorney's fees, that Gulfside is forced to incur in connection with the defense of the claims that have been brought in this action.

WHEREFORE, Gulfside prays:

(a) That to the extent that any damages are assessed against Gulfside, which damages are expressly denied, that it recover the same in indemnity and/or contribution from and against Carl Owens, Don Ross, Dixie Contracting and Weyerhaeuser;

(b) That it recover all costs and expenses incurred by it in this action against Carl Owens, Don Ross, Dixie Contracting and Weyerhaeuser in equitable indemnification; and

(c) For such other relief as the Court deems just and proper.

WEINER, SHEAROUSE, WEITZ,
GREENBERG & SHAW, LLP


HELEN BACON HESTER

South Carolina Bar No. 78742
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July 9, 2019

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 CARL OWENS CONTRACTING, INC.,)
)
Plaintiff,)
 v.)
)
 GULFSIDE SUPPLY, INC. D/B/A)
 GULFEAGLE SUPPLY,)
 WEYERHAEUSER NR COMPANY, and)
 DIXIE CONTRACTING, LLC,)
)
Defendants,)
)
 GULFSIDE SUPPLY, INC. D/B/A)
 GULFEAGLE SUPPLY,)
)
Third-Party Plaintiff,)
 v.)
)
 DIXIE CONTRACTING, LLC and)
 DON ROSS, LLC,)
)
Third Party Defendants.)

IN THE COURT OF COMMON PLEAS
 CASE NO.: 2018-CP-10-5367

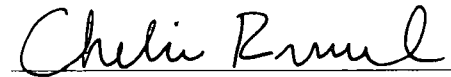
CERTIFICATE OF SERVICE

FILED
 2019 JUL 10 AM 10:03
 JUDITH A. SMITH
 CLERK OF COURT
 BY _____

This is to certify that a true and correct copy of *Gulfside Supply, Inc. d/b/a Gulfeagle Supply's Answer to Plaintiff's Amended Complaint, Restated Counterclaim Against Plaintiff, Cross Claim Against Co-Defendant Weyerhhaeuser NR Company and Cross-Claim/Third Party Complaint Against Don Ross, LLC and Dixie Contracting, LLC* has been served as of this day, July 9, 2019, upon all parties in the above-captioned action by U.S. Mail, postage prepaid, as follows:

Steven L. Smith, Esq.
 Zachary J. Closser, Esq.
 Samuel M. Wheeler, Esq.
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July 9, 2019

Charleston County Clerk of Court
Attn: Ms. Julie J. Armstrong
Judicial Center
100 Broad Street, Suite 106
Charleston, South Carolina 29401

Re: In the Court of Common Pleas of Charleston County, South Carolina
Carl Owens Contracting, Inc. v. Gulfside Supply, Inc. d/b/a Gulfeagle Supply and Weyerhaeuser NR
Company

Dear Ms. Armstrong:

Please find enclosed for filing an original and a copy of Gulfside Supply, Inc. d/b/a Gulfeagle Supply's Answer to Plaintiff's Amended Complaint, Cross-Claims, and Amended Third Party Complaint along with an original Summons.

I trust you will find all in order, but should you have any questions or concerns regarding this filing, please do not hesitate to contact me. I have further enclosed a stamped return envelope so that you may return the file-stamped copy to me.

Sincerely,



Keri M. Martin

Enclosures