

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Carl Owens Contracting, Inc.,

Plaintiff,

vs.

Gulfside Supply, Inc. d/b/a Gulfeagle
Supply and Weyerhaeuser NR Company,

Defendants.

Weyerhaeuser NR Company,

Third-Party Plaintiff,

vs.

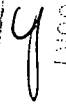
Don Ross, LLC,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

Case No.: 2018-CP-10-05367

**WEYERHAEUSER NR COMPANY'S
ANSWER TO PLAINTIFF'S COMPLAINT
AND THIRD-PARTY COMPLAINT**

FILED
2019 MAR 12 AM 10:10
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

Defendant Weyerhaeuser NR Company (“Weyerhaeuser”), by and through its undersigned attorney, hereby answers the Plaintiff’s Complaint as follows:

FOR A FIRST DEFENSE

1. Weyerhaeuser is without sufficient information to admit or deny the allegations of Paragraphs 1 and 2 of the Complaint and therefore denies the same.

2. In response to Paragraph 3 of the Complaint, Weyerhaeuser admits it is registered in South Carolina as a foreign entity with a principal place of business in the state of Washington and denies the remaining allegations in Paragraph 3.

3. Weyerhaeuser denies the allegations of Paragraph 4 of the Complaint.

4. In response to Paragraph 5 of the Complaint, Weyerhaeuser admits that it is a merchant of building supplies including cedar roofing shingles and denies the remaining allegations in Paragraph 5.

5. Weyerhaeuser is without sufficient information to admit or deny the allegations of Paragraphs 6, 7, and 8 of the Complaint and therefore denies the same.

6. Weyerhaeuser denies the allegations of Paragraphs 9, 10, 11, 12, and 13 of the Complaint.

RESPONDING TO THE FIRST CLAIM
(Breach of Warranties – Express and Implied)

7. Responding to Paragraph 14 of the Complaint, Weyerhaeuser realleges its responses to the preceding paragraphs as if repeated verbatim herein.

8. Weyerhaeuser denies the allegations of Paragraphs 15 and 16 of the Complaint.

9. Weyerhaeuser is without sufficient information to admit or deny the allegations of Paragraph 17 of the Complaint and therefore deny the same.

10. Weyerhaeuser denies the allegations of Paragraphs 18, 19, 20, 21, and 22 of the Complaint.

RESPONDING TO THE SECOND CLAIM
(Strict Liability, S.C. Code Ann. § 15-73-10 *et seq.*)

11. Responding to Paragraph 23 of the Complaint, Weyerhaeuser realleges its responses to the preceding paragraphs as if repeated verbatim herein.

12. In response to Paragraph 24 of the Complaint, Weyerhaeuser admits that it is engaged in the business of selling building materials. Weyerhaeuser is without sufficient information to admit or deny the remaining allegations of Paragraph 24 of the Complaint and therefore deny the same.

13. Weyerhaeuser denies the allegations of Paragraphs 25, 26, 27, and 28 of the Complaint.

RESPONDING TO THE THIRD CLAIM
(Negligent Misrepresentation)

14. Responding to Paragraph 29 of the Complaint, Weyerhaeuser realleges its responses to the preceding paragraphs as if repeated verbatim herein.

15. Weyerhaeuser denies the allegations of Paragraph 30, 31, 32, 33, 34, and 35 of the Complaint.

16. Weyerhaeuser denies the allegations and any relief sought in the Wherefore clause.

17. Weyerhaeuser denies each and every allegation not expressly admitted herein.

FOR A SECOND AND AFFIRMATIVE DEFENSE
(Rule 12(b), SCRPC)

18. Weyerhaeuser asserts the defenses set forth in Rule 12(b) of the South Carolina Rules of Civil Procedure, including, but not limited to, that Plaintiff failed to allege facts sufficient to state a claim against Weyerhaeuser.

FOR A THIRD AND AFFIRMATIVE DEFENSE
(Standing)

19. Plaintiff lacks standing to make the claims asserted against Weyerhaeuser in this action as it is neither the homeowner nor the ultimate user or consumer of the products in question.

FOR A FOURTH AND AFFIRMATIVE DEFENSE
(Waiver / Estoppel / Laches)

20. Plaintiff's claims are barred by the doctrine of Laches, Waiver, and Estoppel.

FOR A FIFTH AND AFFIRMATIVE DEFENSE
(Unclean Hands)

21. Plaintiff's claims, if any, are barred by the doctrine of unclean hands.

FOR A SIXTH AND AFFIRMATIVE DEFENSE
(Lack of Notice and Opportunity)

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

FOR A SEVENTH AND AFFIRMATIVE DEFENSE
(Non-Recoverable Settlement)

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

FOR A EIGHTH AND AFFIRMATIVE DEFENSE
(Statute of Limitations)

24. Some or all of the claims asserted by Plaintiff are barred by the applicable statute of limitations.

FOR A NINTH AND AFFIRMATIVE DEFENSE
(Comparative Negligence)

25. Plaintiff's claims are barred or should be reduced by Plaintiff's own comparative negligence, carelessness, recklessness, willfulness, and wantonness.

FOR A TENTH AND AFFIRMATIVE DEFENSE
(Intervening Acts or Omissions)

26. Plaintiff's claims are the results of acts or omissions of other entities over whom Weyerhaeuser had no control, barring Plaintiff's claims against Weyerhaeuser.

FOR A ELEVENTH AND AFFIRMATIVE DEFENSE
(Failure to Mitigate)

27. Plaintiff failed to mitigate its damages and as a result, Plaintiff's 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 TWELFTH AND AFFIRMATIVE DEFENSE
(Spoliation)

28. 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 Weyerhaeuser and without giving Weyerhaeuser opportunity to observe the alleged deficiencies.

FOR A THIRTEENTH AND AFFIRMATIVE DEFENSE
(Notice and Opportunity to Cure Act)

29. 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.

FOR A FOURTEENTH AND AFFIRMATIVE DEFENSE
(Failure to Join Necessary Parties)

30. Plaintiff's Complaint should be dismissed for failure to join necessary persons, parties and/or entities.

FOR A FIFTEENTH AND AFFIRMATIVE DEFENSE
(Additional Defense)

31. Weyerhaeuser reserves the right to assert and does not waive any addition or further defenses as may be revealed upon any amendments to the pleadings, discovery, or otherwise and reserves the right to amend this Answer to assert any such defenses.

WHEREFORE, Weyerhaeuser prays that Plaintiff's claims be dismissed and that this Court award Weyerhaeuser costs and defense in incurring in defending this action and such other and further relief as this Court deems just.

FURTHER ANSWERING AND BY WAY OF THIRD-PARTY CLAIMS AGAINST DON ROSS, LLC, WEYERHAEUSER ALLEGES AS FOLLOWS:

32. Weyerhaeuser realleges the Paragraphs above as if repeated herein verbatim.

33. Carl Owens Contracting, Inc. ("Carl Owens") was the general contractor for the construction of the residence located at 2672 Goldbug Avenue, Sullivan's Island, Charleston County, South Carolina (the "Residence").

34. Carl Owens has sued Weyerhaeuser claiming damages caused by alleged defective roofing shingles allegedly sold by Weyerhaeuser that were installed at the Residence.

35. Weyerhaeuser has denied all of the substantive allegations against it that were made by Carl Owens.

36. Upon information and belief, Don Ross was a subcontractor of Carl Owens and installed the roofing shingles at issue on the Residence.

37. 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.

38. Upon information and belief, Don Ross failed to exercise ordinary care in the installation of the roof of the Residence and failed to install the shingles in a good and workmanlike manner and in accordance with industry standards.

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

40. To the extent, if any, that Weyerhaeuser is held liable to the Carl Owens in this action, such liability would be a direct and proximate result of the wrongful acts of Don Ross, which have damaged Weyerhaeuser as Weyerhaeuser has been subjected to liability, and has incurred consequential damages in having to expend attorney's fees and costs in defending this action.

41. Weyerhaeuser is entitled to full indemnification from Don Ross for any liability Weyerhaeuser is found to have to Carl Owens in this action, and Weyerhaeuser would be entitled to damages for Don Ross's wrongful actions as aforescribed, entitling Weyerhaeuser to recover from Don Ross its attorney's fees, costs and other expenses incurred in defending this action, and entitling Weyerhaeuser to recover from Don Ross any sums for which it may be held liable to Carl Owens.

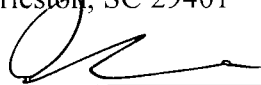
WHEREFORE, Weyerhaeuser prays:

(a) That to the extent that any damages are assessed against Weyerhaeuser, which damages are expressly denied, that it recover the same in indemnity from and against Don Ross;

(b) That it recover all costs and expenses incurred by it in this action against Don Ross in equitable indemnification; and

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

PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

By:  _____

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Attorneys for Defendant Weyerhaeuser NR
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March 12, 2019

2018-CP-10-5367
CERTIFICATE OF SERVICE

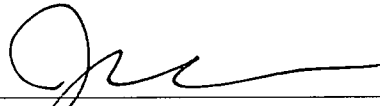
This is to certify that a copy of Weyerhaeuser NR Company's Answer to Plaintiff's Complaint and Third-Party Complaint has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 12th day of March, 2019.

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FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
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Atlanta, GA
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Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC

March 12, 2019

VIA HAND DELIVERY

The Honorable Julie Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

**Re: Carl Owens Contracting, Inc. v. Gulfside Supply, Inc. d/b/a Gulfeagle Supply
and Weyerhaeuser NR Company; Case No.: 2018-CP-10-05367**

Dear Ms. Armstrong:

Enclosed for filing please find an original and a copy of Third-Party Summons and Weyerhaeuser NR Company's Answer to Plaintiff's Complaint and Third-Party Complaint. Please file the originals and return file-stamped copies to me with the courier.

Thank you for your attention to this matter.

Very truly yours,



Jenna K. McGee

JKM/kjg
Enclosures

cc: All Counsel of Record (via email and U.S. Mail)

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