

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Carl Owens Contracting, Inc.,  
Plaintiff,

vs.

Gulfside Supply, Inc. d/b/a Gulfeagle  
Supply, Weyerhaeuser NR Company, and  
Dixie Contracting, LLC,  
Defendants.

Weyerhaeuser NR Company,  
Third-Party Plaintiff,

vs.

Dixie Contracting, LLC and Don Ross,  
LLC,  
Third-Party Defendants.

IN THE COURT OF COMMON PLEAS  
Case No.: 2018-CP-10-05367

**WEYERHAEUSER NR COMPANY'S  
ANSWER TO PLAINTIFF'S AMENDED  
COMPLAINT, CROSS-CLAIMS, THIRD-  
PARTY AMENDED COMPLAINT**

FILED  
2019 JUN 13 PM 3:19  
JULIE J. ARMSTRONG  
CLERK OF COURT

Defendant Weyerhaeuser NR Company (“Weyerhaeuser”), by and through its undersigned attorney, hereby answers the Plaintiff’s Amended 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 Amended Complaint and therefore denies the same.
2. In response to Paragraph 3 of the Amended 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 is without sufficient information to admit or deny the allegations of Paragraph 4 of the Amended Complaint and therefore denies the same

4. Weyerhaeuser denies the allegations of Paragraph 5 of the Amended Complaint.

5. In response to Paragraph 6 of the Amended Complaint, Weyerhaeuser admits that it is a merchant of building supplies including cedar roofing shingles and denies the remaining allegations in Paragraph 6.

6. Weyerhaeuser is without sufficient information to admit or deny the allegations of Paragraphs 7, 8, and 9 of the Amended Complaint and therefore denies the same.

7. Weyerhaeuser denies the allegations of Paragraphs 10, 11, 12, 13, and 14 of the Amended Complaint.

8. Weyerhaeuser is without sufficient information to admit or deny the allegations of Paragraphs 15, 16, 17, 18, 19, 20, and 21 of the Amended Complaint and therefore denies the same

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

9. Responding to Paragraph 22 of the Amended Complaint, Weyerhaeuser realleges its responses to the preceding paragraphs as if repeated verbatim herein.

10. Weyerhaeuser denies the allegations of Paragraphs 23 and 24 of the Amended Complaint.

11. Weyerhaeuser is without sufficient information to admit or deny the allegations of Paragraph 25 of the Amended Complaint and therefore denies the same.

12. Weyerhaeuser denies the allegations of Paragraphs 26, 27, 28, 29, and 30 of the Amended Complaint.

**RESPONDING TO THE SECOND CAUSE OF ACTION AGAINST GULFEAGLE AND  
WEYERHAEUSER**

**(Strict Liability, S.C. Code Ann. § 15-73-10 *et seq.*)**

13. Responding to Paragraph 31 of the Amended Complaint, Weyerhaeuser realleges its responses to the preceding paragraphs as if repeated verbatim herein.

14. In response to Paragraph 32 of the Amended 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 32 of the Amended Complaint and therefore denies the same.

15. Weyerhaeuser denies the allegations of Paragraphs 33, 34, 35, and 36 of the Amended Complaint.

**RESPONDING TO THE THIRD CAUSE OF ACTION AGAINST GULFEAGLE AND  
WEYERHAEUSER**

**(Negligent Misrepresentation)**

16. Responding to Paragraph 37 of the Amended Complaint, Weyerhaeuser realleges its responses to the preceding paragraphs as if repeated verbatim herein.

17. Weyerhaeuser denies the allegations of Paragraph 38, 39, 40, 41, 42, and 43 of the Amended Complaint.

**RESPONDING TO THE CAUSES OF ACTION AGAINST DIXIE**

18. Paragraphs 44 through 77 of the Amended Complaint do not relate to Weyerhaeuser, and Weyerhaeuser is therefore not required to admit or deny the allegations contained in Paragraphs 44 through 77 of the Amended Complaint. To the extent Weyerhaeuser is required to respond, Weyerhaeuser is without sufficient information to admit or deny the allegations of Paragraphs 44 through 77 of the Amended Complaint and therefore denies the same

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

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

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

21. 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)**

22. 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)**

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

**FOR A FIFTH AND AFFIRMATIVE DEFENSE**  
**(Unclean Hands)**

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

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

25. 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)**

26. 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)**

27. 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)**

28. 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)**

29. 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)**

30. 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)**

31. 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)**

32. 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)**

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

**FOR A FIFTEENTH AND AFFIRMATIVE DEFENSE**  
**(Additional Defense)**

34. 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 CROSS-CLAIMS AND/OR THIRD-PARTY CLAIMS AGAINST DIXIE CONTRACTING, LLC AND DON ROSS, LLC, WEYERHAEUSER ALLEGES AS FOLLOWS:**

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

36. 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").

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

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

39. Upon information and belief, Don Ross, LLC (“Don Ross”) was a subcontractor of Carl Owens and installed the roofing shingles at issue on the Residence.

40. 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.

41. Upon information and belief, Dixie Contracting, LLC (“Dixie Contracting”) was a subcontractor of Carl Owens and installed the roofing shingles at issue on the Residence.

42. Upon information and belief, Dixie Contracting 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.

43. Don Ross and Dixie Contracting are hereinafter collectively and individually referred to as “the Subcontractors.”

44. Upon information and belief, the Subcontractors 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.

45. Any property damage alleged by Carl Owens is due to the negligence of the Subcontractors 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.

46. 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 the Subcontractors, 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.

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

WHEREFORE, Weyerhaeuser prays:

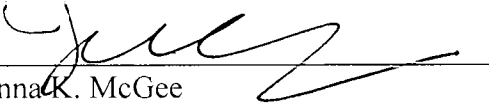
(a) That to the extent that any damages are assessed against Weyerhaeuser, which damages are expressly denied, that it recover the same in indemnity from and against the Subcontractors;

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

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



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Attorneys for Defendant Weyerhaeuser NR  
Company

June 13, 2019

2018-CP-10-5367

**CERTIFICATE OF SERVICE**

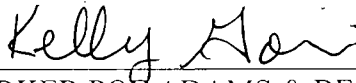
This is to certify that a copy of Weyerhaeuser NR Company's Answer to Plaintiff's Amended Complaint and Third-Party Amended Complaint has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 13th day of June, 2019.

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CLERK OF COURT  
BY \_\_\_\_\_



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June 13, 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 Amended Complaint and Third-Party Amended 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,

A handwritten signature in black ink, appearing to read 'Jenna K. McGee', with a long horizontal flourish extending to the right.

Jenna K. McGee

JKM/kjg  
Enclosures

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

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