

**W4 FARMS, INC. v. TYSON FARMS, INC.**

16 CVS 1112

SUPERIOR COURT OF NORTH CAROLINA, SURRY COUNTY

November 21, 2016

**Reporter**

2016 NCBC Pleadings LEXIS 194 \*

W4 FARMS, INC. and W4 POULTRY FARMS, LLC,  
Plaintiffs, v. TYSON FARMS, INC, Defendant.

**Type:** Pleading

**Counsel**

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**[\*1]** CRANFILL SUMNER & HARTZOG LLP, F.  
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Raleigh, North Carolina, Attorneys for Tyson Farms,  
Inc.

**Title**

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**MOTION TO DISMISS AND ANSWER TO  
PLAINTIFFS' FIRST AMENDED COMPLAINT  
[DISM; ANSW - Response]**

**Text**

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**MOTION TO DISMISS**

TYSON FARMS, INC. ("Tyson" or "Defendant"), by and through counsel, moves to dismiss Plaintiffs' Complaint, wholly or in part, pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted. Tyson specifically moves for dismissal of "Count III - Negligence/Wantonness" and "Count V - Vicarious Liability" for failure to state a claim upon which relief can be granted based on existing North Carolina law.

**ANSWER**

Tyson responds to the individually numbered allegations of the Plaintiffs' Complaint as follows:

1. It is admitted, on information and belief, that W4 Farms, Inc. is a North Carolina corporation and that W4 Farms, Inc. does business in Surry County, North

Carolina. It is denied that Tyson contracted with or had any other business relationship with W4 Farms, Inc. related to the events alleged **[\*2]** in Plaintiffs' Complaint. Except as expressly admitted, these allegations are denied.

2. Admitted on information and belief.

3. It is admitted that Tyson is a North Carolina corporation and that Tyson does business in Surry County. It is also admitted that Raymond "Bob" Johnson, Alan Pace, Michael Todd, Rodney Eller, and Mac Minton are employees of Tyson and have been since before February 19, 2016. Except as expressly admitted, these allegations are denied.

4. It is admitted that Surry County is a proper venue for this action, and that this Court has jurisdiction over the subject matter of this action. It is also admitted, however, that this case should be designated as a "complex business case" or, in the alternative, as an "exceptional civil case" pursuant to Rule 2.1 of the General Rules of Practice. It is further admitted that this court has personal jurisdiction over Tyson and, on information and belief, over both of the Plaintiffs. It is finally admitted that Tyson is a North Carolina corporation and that Tyson does business in Surry County, North Carolina, Except as expressly admitted, these allegations are denied.

5. Defendant re-alleges and incorporates by reference its **[\*3]** responses to all preceding allegations of Plaintiff's Complaint.

6. It is admitted, on information and belief, that W4 Poultry Farms, LLC is an agribusiness engaged in livestock cultivation. Except as expressly admitted, these allegations are denied for lack of information and belief.

7. These allegations are denied as to W4 Farms, Inc. It is admitted that Tyson entered into a contract with Joey White, individually or doing business as doing business as "W4 Farms, LLC," that was effective on or about August 31, 2010. It is further admitted that this contract, as

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amended, speaks for itself and is the best evidence of its terms. It is finally admitted that Bob Johnson signed the contract with Joey White on behalf of Tyson. Except as expressly admitted, these allegations are denied.

8. The allegations contained in this paragraph of Plaintiffs' Complaint are denied as stated.

9. It is admitted that the contract between Tyson and Joey White, individually or doing business as "W4 Farms, LLC," as amended, speaks for itself and is the best evidence of its terms. Except as expressly admitted, these allegations are denied,

10. Tyson admits that a "catch crew" was present at a farm that [\*4] was, on information and belief, owned or operated by Joey White, individually and/or doing business as "W4 Farms, LLC," on the afternoon of February 19, 2016. It is admitted, on information and belief, that Joey White, Clent White, and C.L. White were present at some time while the catch crew was at this property. Except as expressly admitted, these allegations are denied for lack of information and belief.

11. These allegations are denied for lack of information and belief.

12. These allegations are denied for lack of information and belief.

13. It is admitted, on information and belief, that Clent White or other members of Joey White's family were involved in a verbal disagreement with members of the catch crew on the afternoon of February 19, 2016. Except as expressly admitted, these allegations are denied for lack of information and belief.

14. It is admitted, on information and belief, that Clent White or other members of Joey White's family were involved in a verbal disagreement with members of the catch crew on the afternoon of February 19, 2016. Except as expressly admitted, these allegations are denied for lack of information and belief,

15. These allegations are denied [\*5] for lack of information and belief.

16. Tyson admits that, on February 19, 2016 after the catch crew left the broiler houses referenced in Plaintiffs' Complaint, Alan Pace (then a Live Production Manager for Tyson), Michael Todd (then a Assistant Broiler

Manager for Tyson), and Rodney Eller (then a Broiler Grow-Out Manager for Tyson) went to the property and spoke with Joey White and C.L. White about the verbal disagreement between members of the catch crew and members of the White family, including the discharge of a firearm by a member of the White family very close to a member of the catch crew. Except as expressly admitted, these allegations are denied for lack of information and belief.

17. Tyson admits that, on February 19, 2016 after the catch crew left the broiler houses referenced in Plaintiffs' Complaint, Alan Pace, Michael Todd, and Rodney Eller went to the property where the disagreement occurred and, among other things, inspected the area in or around House 1. Except as expressly admitted, these allegations are denied.

18. Tyson admits that, on information and belief, Clent White was present at the property on the evening of February 19, 2016 but did not meet with or [\*6] speak to Mr. Pace, Mr. Todd, or Mr. Eller. Tyson also admits that Mr. Pace, Mr. Todd, and Mr. Eller did not talk with Plaintiffs about an "event of default or breach pursuant to the broiler production contract" on February 19, 2016 but did discuss the verbal disagreement between members of the catch crew and members of the White family, including the discharge of a firearm by a member of the White family that was very close to a member of the catch crew and indicated that this incident would be discussed further within Tyson. Except as expressly admitted, these allegations are denied.

19. Denied for lack of information and belief.

20. Tyson admits that between February 19, 2016 and February 25, 2016, Mr. Pace or another employee of Tyson spoke with Joey White and told him that Tyson was terminating its contract and would not supply more chickens to him. Except as expressly admitted, these allegations are denied for lack of information and belief.

21. Tyson admits that a letter dated February 25, 2016 and signed by Alan Pace was mailed to Joey White indicating that Tyson was terminating its contract with him and explaining the reasons for this. That letter speaks for itself and is [\*7] the best evidence of its content. Except as expressly admitted, these allegations are denied.

22. Denied as stated.

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23. Denied.

24. Denied for lack of information and belief.

25. Defendant re-alleges and incorporates by reference its responses to all preceding paragraphs of Plaintiffs' Complaint.

26. Denied. Tyson admits that it entered into a Broiler Production Agreement with Joey White individually or doing business as W4 Farms, LLC on or about August 31, 2010 and that this contract, as amended and including all attached schedules, speaks for itself and is the best evidence of its terms. Except as expressly admitted, these allegations are denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Defendant re-alleges and incorporates by reference its responses to all preceding allegations of Plaintiff's Complaint.

32. Tyson admits that it is subject to the legal obligations properly imposed on it by applicable law. Tyson denies that it breached any contract with either Plaintiff, or that it breached any duty imposed on it by applicable law with regard to either Plaintiff. Except as expressly admitted, these allegations are denied.

33. Denied, including all sub-parts. [\*8]

34. Denied.

35. Defendant re-alleges and incorporates by reference its responses to all preceding allegations of Plaintiff's Complaint.

36. Denied. Tyson admits that it entered into a Broiler Production Agreement with Joey White individually or doing business as W4 Farms, LLC on or about August 31, 2010 and that this contract, as amended and including all attached schedules, speaks for itself and is the best evidence of its terms. Tyson denies that it breached any duties that it may have owed to either of the Plaintiffs. Except as expressly admitted, these allegations are denied.

37. Denied, including all sub-parts.

38. Denied.

39. Denied.

40. Defendant re-alleges and incorporates by reference its responses to all preceding allegations of Plaintiff's Complaint.

41. Denied, including all sub-parts.

42. Denied.

43. Denied.

44. Defendant re-alleges and incorporates by reference its responses to all preceding allegations of Plaintiff's Complaint.

45. Tyson admits that it employed Raymond "Bob" Johnson, Alan Pace, Michael Todd, Rodney Eller, and Mac Minton on February 19, 2016 and further admits, on information and belief and subject to discovery in this action, that they were [\*9] acting in the course and scope of that employment on that date. Except as expressly admitted, these allegations are denied.

46. Denied.

47. Denied.

48. Denied.

ALL ALLEGATIONS IN PLAINTIFFS' COMPLAINT, NOT SPECIFICALLY ADMITTED, INCLUDING THE PRAYER FOR RELIEF, ARE DENIED.

### FIRST DEFENSE

In the alternative, and to the extent that Plaintiffs' claims are premised on allegations of negligence by the Defendant or its agents or employees, then Defendant pleads the Plaintiffs' contributory negligence and gross contributory negligence as a bar to all such claims. On information and belief, one or both of the Plaintiffs were negligent and grossly negligent in that they, or their agents, officers, directors, employees, members, managers, family members, or representatives acting on their behalf and within the scope of their agency or employment:

- . Instigated, accelerated, and/or participated in a verbal altercation with the catch crew;
- . Discharged a firearm in the near vicinity of a member of the catch crew;

- . Failed to properly cull chickens from the flock in question;
- . Failed to properly care for or handle the flock in question;
- . Failed to [\*10] properly communicate with Tyson following the altercation with the catch crew; and
- . Acted in a negligent or grossly negligent manner in other ways that will be shown through discovery and proven at trial.

Such failures were a proximate cause of any damages allegedly sustained by Plaintiffs and are a bar to any recovery by Plaintiffs in this action.

## **SECOND DEFENSE**

To the extent that Plaintiffs' allegations against Tyson are based on the actions or omissions of independent contractors not employed by Tyson, then Plaintiffs' claims against Tyson fail under applicable law.

## **THIRD DEFENSE**

In the alternative and on information and belief, Defendant pleads that the Plaintiffs have failed to mitigate their alleged losses and damages by failing to take reasonable measures to obtain grower contracts with other suppliers. The doctrine of mitigation of damages and the doctrine of avoidable consequences are pled in bar of any claims asserted against Defendant.

## **FOURTH DEFENSE**

In the alternative and to the extent applicable, Defendants plead lack of standing by one or both of the Plaintiffs as to all of the claims asserted in the Complaint.

## **FIFTH [\*11] DEFENSE**

Defendant denies that it breached any duty owed to the Plaintiffs.

## **SIXTH DEFENSE**

Any award of punitive or exemplary damages against Defendant: would violate the Fifth and [\*Fourteenth Amendments to the Constitution of the United States\*](#) and analogous provisions of the North Carolina Constitution in that it would deprive Defendant of property without

due process of law; would violate the [\*Fourteenth Amendment of the Constitution of the United States\*](#) and analogous provisions of the North Carolina Constitution in that it would deny equal protection to Defendant; and would violate the prohibition against excessive fines of the [\*Eighth Amendment of the Constitution of the United States\*](#).

## **SEVENTH DEFENSE**

Plaintiffs' claim for punitive damages is barred, wholly or in part, by the limitations on punitive damages set out in [\*North Carolina Gen. Stat. § 1D-1, et seq.\*](#) Defendant specifically pleads all bars to or limitations on punitive damages contained in North Carolina General Statutes Chapter ID as affirmative defenses to Plaintiffs' claim. Defendant further reserves the right to request bifurcation of the issue of punitive damages at the trial of this case, [\*12] pursuant to [\*N.C. Gen. Stat. § 1D-30\*](#).

## **EIGHTH DEFENSE**

Any claim by Plaintiffs for punitive damages in this case is unconstitutional to the extent that it seeks to punish Defendant for any conduct occurring outside the State of North Carolina and hence any such claim violates fundamental and long-standing principles of state sovereignty. See [\*State Farm Mutual Auto. Ins. Co. v. Campbell, 538 U.S. 408 \(2003\)\*](#).

## **NINTH DEFENSE**

Plaintiffs have failed to plead with particularity their allegations of special damages, defamation, and punitive damages as required by Rule 9(g), Rule 9(i), and Rule 9(k) of the North Carolina Rules of Civil Procedure, respectively.

## **TENTH DEFENSE**

Tyson pleads the economic loss rule as a bar to Plaintiffs' claims in this action and requests that any claims violating this rule of law be dismissed with prejudice.

## **ELEVENTH DEFENSE**

To the extent that Plaintiffs allege that Tyson (including its employees) has defamed them, Tyson pleads truth as a defense to any allegedly defamatory statements or conduct.

## **TWELFTH DEFENSE**

Tyson pleads the terms, conditions, and limitations of its contract with "Joey [\*13] White d/b/a W4 Farms, LLC" in bar to or limitation of Plaintiffs' claims against it in this action.

### **THIRTEENTH DEFENSE**

In the alternative, Tyson pleads the affirmative defense of prevention of performance under the contract in bar to or limitation of any claims against it in this action.

### **FOURTEENTH DEFENSE**

Tyson pleads that its actions under its contract with "Joey White d/b/a W4 Farms, LLC" were taken in good faith and that Tyson met its obligations, express or implied, under the contract in question. Tyson further alleges that the conduct of Joey White or others acting on his behalf or on behalf of "W4 Farms, LLC" were a serious and material breach of the contract in question and justified termination of that agreement by Tyson.

### **FIFTEENTH DEFENSE**

Tyson pleads that its performance of its obligations under the subject contract, including its notice of breach and termination of the subject contract, were in compliance with industry standards and with the requirements of the applicable statutes, regulations, rules, and administrative guidance governing the subject relationship and contract, and pleads such compliance as a full and complete defense [\*14] to Plaintiffs' claims.

WHEREFORE, Defendant makes the following prayer for relief;

1. That the Plaintiffs recover nothing from the Defendant and that Plaintiffs' Complaint be dismissed with prejudice;
2. That the Court award Defendant all costs of this action including, but not limited to, reasonable attorneys' fees pursuant to N.C. Gen. Stat. § 1D-45, [N.C. Gen. Stat. § 75-16.1\(2\)](#), [N.C. Gen. Stat. § 6-21.5](#), or any other precedent allowing such recovery;
3. For a trial by jury on all contested issues of fact; and
4. For such other and further relief as the Court deems just and proper.

This the 21st day of November, 2016.

**CRANFILL SUMNER & HARTZOG LLP**

BY: /s/ [Signature]

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### **CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day served the attached *Motion to Dismiss and Answer* on all of the parties to this action by depositing a copy, postage prepaid, in the United States Mail, [\*15] addressed to the attorney for each party, and by electronic mail as follows:

J. Andrew Fulk, Esq.

Dennis E. Goldasich, Esq.

Justin C. Owen, Esq.

Goldasich & Associates, LLC

2100 3rd Avenue North, Suite 700

Birmingham, AL 35203

Email: [Andrew@golaw.net](mailto:Andrew@golaw.net)

This the 21st day of November, 2016,

**CRANFILL SUMNER & HARTZOG LLP**

BY: /s/ [Signature]

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