

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE**

TROY SHANE SMITH and ALLYSON JANE SMITH,**Plaintiffs,**

v.

84 LUMBER COMPANY, et al.,**Defendants.****Index No. 814633/2023****VERIFIED ANSWER TO
PLAINTIFFS' VERIFIED
COMPLAINT, CROSS-
CLAIM AND ANSWER
TO CROSS-CLAIMS OF
SPIRAX SARCO, INC.**

Defendant Spirax Sarco, Inc., (hereinafter "Spirax Sarco"), by its attorneys Leader Berkon Colao & Silverstein LLP, hereby acknowledges receipt and answers the Plaintiffs' Verified Complaint, filed on November 14, 2023 (hereinafter the "Complaint"), and alleges, upon information and belief, as follows:

THE PARTIES

1. Spirax Sarco denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1 through 4 of the Complaint.
2. Spirax Sarco denies the allegations contained in paragraph 5 of the Complaint insofar as they are directed at Spirax Sarco, except admits that Spirax Sarco has conducted and/or transacted business in the State of New York.
3. Spirax Sarco denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 6 through 52 of the Complaint.
4. Spirax Sarco denies the allegations contained in paragraph 53 of the Complaint except admits that Spirax Sarco is a duly organized foreign corporation that has done and/or transacted business in the State of New York.
5. Spirax Sarco denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 54 through 61 of the Complaint.

6. Spirax Sarco denies the allegations contained in paragraph 62 of the Complaint insofar as they are directed at Spirax Sarco, except admits that Spirax Sarco has conducted and/or transacted business in the State of New York.

7. Spirax Sarco denies the truth of the allegations contained in paragraphs 63 through 69 (inclusive) of the Complaint insofar as they are directed at Spirax Sarco, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs, and refers all questions of law to the Court.

AS TO THE FIRST CAUSE OF ACTION SOUNDING IN NEGLIGENCE

8. With regard to paragraph 70 of the Complaint, Spirax Sarco repeats, reiterates and realleges each and every response as to paragraphs 1 through 69 of the Complaint as if more fully set forth herein.

9. Spirax Sarco denies the truth of the allegations contained in paragraphs 71 through 78 of the Complaint, including all sub-parts, insofar as they are directed at Spirax Sarco, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs.

AS TO THE SECOND CAUSE OF ACTION SOUNDING IN BREACH OF WARRANTY

10. With regard to paragraph 79 of the Complaint, Spirax Sarco repeats, reiterates and realleges each and every response as to paragraphs 1 through 78 of the Complaint as if more fully set forth herein.

11. Spirax Sarco denies the truth of the allegations contained in paragraphs 80 through 83 of the Complaint, insofar as they are directed at Spirax Sarco, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs.

AS TO THE SIXTH CAUSE OF ACTION SOUNDING IN CONSPIRACY AND
COLLECTIVE LIABILITY/CONCERT OF ACTION

18. With regard to paragraph 121 of the Complaint, Spirax Sarco repeats, reiterates and realleges each and every response as to paragraphs 1 through 120 of the Complaint as if more fully set forth herein.

19. Spirax Sarco denies the truth of the allegations contained in paragraphs 122 through 136 of the Complaint, including all sub-parts, insofar as they are directed at Spirax Sarco, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs.

AS TO THE SEVENTH CAUSE OF ACTION AGAINST DEFENDANT CONTRACTORS

20. With regard to paragraph 137 of the Complaint, Spirax Sarco repeats, reiterates and realleges each and every response as to paragraphs 1 through 136 of the Complaint as if more fully set forth herein.

21. Spirax Sarco denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 138 through 150 (inclusive) of the Complaint, as these allegations do not pertain to it.

AS TO THE EIGHTH CAUSE OF ACTION FOR PREMISES LIABILITY AGAINST
CERTAIN DEFENDANTS

22. With regard to paragraph 151 of the Complaint, Spirax Sarco repeats, reiterates and realleges each and every response as to paragraphs 1 through 150 of the Complaint as if more fully set forth herein.

23. Spirax Sarco denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 152 through 166 (inclusive), including all sub-parts therein, as these allegations do not pertain to it.

AS TO THE NINTH CAUSE OF ACTION JOINT AND SEVERAL LIABILITY

24. With regard to paragraph 167 of the Complaint, Spirax Sarco repeats, reiterates and realleges each and every response as to paragraphs 1 through 166 of the Complaint as if more fully set forth herein.

25. Spirax Sarco denies the truth of the allegations contained in paragraphs 168 through 179 of the Complaint insofar as they are directed at Spirax Sarco, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs, and refers all questions of law to the Court.

AS TO THE TENTH CAUSE OF ACTION PUNITIVE DAMAGES

26. With regard to paragraph 180 of the Complaint, Spirax Sarco repeats, reiterates and realleges each and every response as to paragraphs 1 through 179 of the Complaint as if more fully set forth herein.

27. Spirax Sarco denies the truth of the allegations contained in paragraph 181 of the Complaint, insofar as they are directed at Spirax Sarco, and otherwise denies knowledge

or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs, and refers all questions of law to the Court.

AS TO THE ELEVENTH CAUSE OF ACTION SPOUSAL LOSS OF CONSORTIUM

28. With regard to paragraph 182 of the Complaint, Spirax Sarco repeats, reiterates and realleges each and every response as to paragraphs 1 through 181 of the Complaint as if more fully set forth herein.

29. Spirax Sarco denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 183 of the Complaint.

30. Spirax Sarco denies the allegations contained in paragraph 184 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

31. The Complaint fails to state a cause of action upon which relief can be granted against Spirax Sarco.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

32. Plaintiffs' claims are time barred by reason of the applicable statute(s) of limitations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

33. Plaintiffs' claims are barred by the operation of the doctrine of estoppel.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

34. Plaintiff has waived all claims against Spirax Sarco.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

35. This Court lacks both general and specific personal jurisdiction over Spirax Sarco. Spirax Sarco further objects to and denies an exercise of general jurisdiction over it, notwithstanding any of Plaintiff's allegations in the complaint purporting to establish a basis for general jurisdiction (see, e.g., Daimler AG v. Bauman, 571 U.S. 117(2014); BNSF Ry. Co. v.

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