

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

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TROY SHANE SMITH and ALLYSON JANE SMITH,

Index No.: 814633/2023

Plaintiff(s),

VERIFIED ANSWER OF  
VELAN VALVE CORP.

-against-

84 LUMBER COMPANY, et al.,

Defendants.

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Defendant, VELAN VALVE CORP., by its attorneys, GORDON REES SCULLY MANSUKHANI LLP, in accordance with the Case Management Order, for its Verified Answer to the complaints in which it is named as a Defendant, provides upon information and belief as follows:

FIRST: Denies each and every material allegation in the complaint as they pertain to VELAN VALVE CORP., and refers all questions of fact and law to the trier of the fact and this Honorable Court.

SECOND: Denies knowledge and information sufficient to form a belief with respect to the truth of all other allegations contained in the complaint, and refers all questions of fact and law to the trier of fact and this Honorable Court.

THIRD: Reserves the right to amend this answer and to assert additional defenses, and/or to supplement, alter or change this answer upon ascertaining additional facts during and upon completion of discovery and investigations.

**AFFIRMATIVE DEFENSES**

In the following defenses, the use of the term “Plaintiffs” shall be considered to include both the singular and the plural, the masculine as well as the feminine, and, where appropriate, the Plaintiffs’ Decedent. Also, references to the “Complaint” shall, where applicable, include any amendments thereto.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a cause of action against Defendant.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

This Court lacks jurisdiction over the subject matter of this action.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

This Court lacks personal jurisdiction over Defendant.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

This Court is not the proper venue for this matter.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

The lawsuit was not commenced by Plaintiffs within the time prescribed by law and the Plaintiffs, therefore, is barred from recovery pursuant to applicable statutes of limitations or applicable statutes of repose.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs’ claims are barred by the doctrine of laches.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

This action cannot be maintained, as there is another action pending for the same Relief.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

To the extent that any injury relating to Plaintiffs occurred in the context of an employer-employee relationship, claims for said injuries are preempted by the Workers' Compensation Act.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

There is no justiciable issue or controversy.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

The claims for damages have not accrued, are purely speculative, uncertain and contingent.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claim is barred under applicable state and federal law.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

To the extent Plaintiffs seek to maintain a claim for relief on behalf of any decedent, said Plaintiffs lack capacity and/or standing to maintain such claim for relief against Defendant.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs lack the necessary standing to maintain this action.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

To the extent Plaintiffs bring suit in a representative capacity, Plaintiffs have failed to allege sufficient facts to demonstrate legal capacity to sue pursuant to New York Estate Powers and Trusts Law §5-1.1 to 5-4.6.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' injury was not foreseeable.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred under applicable law pursuant to public policy, since social utility and benefit of asbestos-containing products outweighed the risk at the time of Plaintiffs' alleged exposure.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred because of Plaintiffs' failure to join necessary and indispensable parties.

**AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs may not bring this action as Plaintiffs have failed to exhaust all of their administrative remedies.

**AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE**

At all times relevant to this litigation, Defendant complied with all applicable law, regulations and standards.

**AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE**

Relief is barred by virtue of the doctrines of estoppel, collateral estoppel, and waiver.

**AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE**

Upon information and belief, some or all of the causes of action may not be maintained because of *res judicata*.

**AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' action is barred by the doctrine of preclusion.

**AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE**

Upon information and belief, some or all of the causes of action may not be maintained because of arbitration and award.

**AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Upon information and belief, some or all of the causes of action may not be maintained because of discharge in bankruptcy.

**AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Upon information and belief, some or all of the causes of action may not be maintained because of payment.

**AS AND FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Upon information and belief, some or all of the causes of action may not be maintained because of release.

**AS AND FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Upon information and belief, Plaintiffs have made claims concerning his alleged injuries in other matters, including but not limited to claims submitted to various trusts, which claims foreclose Plaintiffs' claims against Defendant.

**AS AND FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

This Court lacks jurisdiction over Defendant by reason of improper service of process.

**AS AND FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE**

The Complaint, and each purported cause of action stated therein, is ambiguous and uncertain.

**AS AND FOR A THIRTIETH AFFIRMATIVE DEFENSE**

Economic and consequential damages are not properly recoverable in tort actions, including actions based on negligence or strict liability.

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