

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
VANDERBILT MINERALS, LLC
TO PLAINTIFFS' COMPLAINT**

-against-

84 LUMBER COMPANY, *et al.*,

Defendants.

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Defendant VANDERBILT MINERALS, LLC, incorrectly s/h/a "R.T. VANDERBILT COMPANY, INC., Individually and as Successor to International Talc Co., International Pulp Co. and Gouverneur Talc Co., Inc." (hereinafter "VANDERBILT MINERALS, LLC") by its attorneys, GORDON REES SCULLY MANSUKHANI LLP, answering the Verified Complaint of the Plaintiff(s) herein provides upon information and belief as follows:

ANSWER

FIRST: Defendant denies each and every material allegation set forth in Plaintiffs' Verified Complaint and refers all questions of fact and law to the trier of fact and this Honorable Court.

SECOND: Defendant denies knowledge or information as to each and every material allegation set forth in Plaintiffs' Verified Complaint as they pertain to any other named defendants.

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.

AS AND FOR ITS RESPONSE TO ANY CROSS-CLAIMS

VANDERBILT MINERALS, LLC denies any and all cross-claims now or hereafter asserted against VANDERBILT MINERALS, LLC; asserts all defenses including those set forth above; and avers that it is not liable to plaintiff, to defendants, to any third-party defendant or to any others.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

Some or all of Plaintiff's claims are time-barred by the applicable Statutes of Limitations and/or Statute of Repose.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The causes of action pleaded in Plaintiff's Complaint have not been maintained in a timely fashion. Plaintiff has neglected same, and should be barred by the doctrine of laches.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each and every allegation considered separately, fails to state any cause of action against Answering Defendant upon which relief can be granted.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

This Court lacks personal jurisdiction over Answering Defendant.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

This action may be barred by Plaintiff's failure to join necessary and/or indispensable parties with the result that this action should not proceed and should be dismissed.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

Insofar as Plaintiff's Complaint, and each cause of action considered separately, alleges a cause of action accruing on or after September 1, 1975, to recover damages for personal injuries, the amount of damages recoverable thereon must be diminished by reason of the culpable conduct

attributable to Plaintiff, including contributory negligence and assumption of risk, in the proportion which the culpable conduct attributable to Plaintiff bears on the culpable conduct which caused the damages.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

Insofar as Plaintiff's Complaint, and each cause of action considered separately, alleges a cause of action accruing before September 1, 1975, each such cause of action is barred by reason of the culpable conduct attributable to Plaintiff, including contributory negligence and assumption of the risk.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

If Plaintiff should prove that Plaintiff sustained injuries and damages as alleged, then such damages resulted from acts or omissions on the part of the third parties over whom Answering Defendant had no control or right of control.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

At all times during the conduct of its corporate operations, the agents, servants and/or employees of Answering Defendant used proper methods with respect to its products in conformity with the available knowledge, state-of-the-art and research of the scientific and industrial communities.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

Plaintiff, Plaintiff's co-workers and/or employers misused, abused, mistreated and misapplied any and all of the products designated as "asbestos containing material" as alleged in Plaintiff's Complaint, which abuse and misuse was not reasonably foreseeable, thereby barring Plaintiff from any recovery.

If the Court finds that any misuse, abuse, mistreatment and/or misapplication of the product caused and/or contributed to the alleged damages or injuries to Plaintiff, then Answering Defendant requests that the amount of damages which might be recoverable be diminished by the proportion which the same misuse, abuse, mistreatment and/or misapplication, is attributed to Plaintiff, Plaintiff's co-workers and/or employers bear to the conduct which caused the alleged damages or injuries.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

Any oral warranties upon which Plaintiff relied are inadmissible and unavailable because of the provisions of the applicable Statute of Frauds, or other applicable rules of evidence.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

As to all causes of action pleaded in Plaintiff's Complaint which are based upon express or implied warranties and/or representations, the alleged breaches thereof as against Answering Defendant are legally insufficient by reason of their failure to allege privity of contract between Plaintiff and Answering Defendant.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff did not directly or indirectly purchase any asbestos-containing products or materials from Answering Defendant, and Plaintiff neither received nor relied on any representation or warranty allegedly made by Answering Defendant.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

In the event that any breach of warranty is proven, Plaintiff failed to give proper and prompt notice of any such breach of warranty to Answering Defendant.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

To the extent that the causes of action pleaded by Plaintiff fails to accord with the Uniform Commercial Code, including but not limited to Section 2-725 thereof, Plaintiff's causes of action are time-barred.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff failed to mitigate or otherwise act to lessen or reduce the injuries and disabilities alleged in Plaintiff's Complaint.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff seeks punitive damages against Answering Defendant, these damages are improper, unwarranted, not authorized by law, and are unconstitutional in the context of this litigation. Subjecting Answering Defendant to multiple trials and multiple impositions of punitive damages for the same course of conduct is a violation of both substantive and procedural due process under the United States Constitution and the Constitution of the State of New York. The standard for the award of punitive damages is constitutionally void for vagueness. The lack of limitation on possible multiple impositions of punitive damage awards for the same alleged course of conduct is unconstitutional.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff is estopped from asserting the causes of action alleged in Plaintiff's Complaint.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff has waived the causes of action and recovery alleged in Plaintiff's Complaint.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff lacks requisite capacity, standing and authority to bring the within action, as Plaintiff is not a real party in interest.

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