

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

TROY SHANE SMITH and ALLYSON JANE SMITH,

Plaintiffs,

vs.

84 LUMBER COMPANY, *et al.*,

Defendants.

VERIFIED ANSWER

Index No.: 814633/2023

VERIFIED ANSWER OF HOWDEN NORTH AMERICA INC.
TO THE VERIFIED COMPLAINT

Defendant, Howden North America Inc., herein improperly as Howden Buffalo, Inc., Individually and as Successor in Interest to FB Sturtevant, The Howden Buffalo Group and Buffalo Fan, (hereinafter “Howden”), by its attorneys, Barclay Damon LLP, as and for its verified answer to the verified complaint, respectfully alleges upon information and belief, as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation, and all subparts thereto, contained in the Paragraphs 1, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 114, 115, 116, 117, 118, 119, 120, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 166, and 183 of the verified complaint.

2. Denies each and every allegation, and all subparts thereto, contained in Paragraphs 2, 5, 62, 63, 64, 65, 66, 67, 68, 69, 71, 72, 73, 74, 75, 76, 77, 78, 80, 81, 82, 85, 86, 87, 88, 89, 90, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112,

122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 163, 164, 165, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 181, and 184 of the verified complaint as it relates to defendant, Howden, and denies knowledge or information sufficient to form a belief as to the truth of the allegations as to the co-defendants.

3. As and for its response to paragraphs 70, 79, 84, 94, 113, 121, 137, 151, 167, 180, and 182, defendant Howden repeats, reiterates and realleges the responses previously interposed to the allegations contained in paragraphs 1 through 184 as if fully set forth herein.

4. Admit so much of Paragraph 40 that Howden was and is a duly organized foreign corporation doing business in the State of New York and denies the rest and remainder of said paragraph.

5. Denies each and every other remaining allegation of the verified complaint not hereinbefore specifically admitted or otherwise denied.

First Affirmative Defense

6. This Court lacks personal jurisdiction over Howden for any acts complained of in plaintiff's verified complaint.

Second Affirmative Defense

7. Plaintiff's verified complaint fails to state a claim upon which relief may be granted.

Third Affirmative Defense

8. Plaintiff's verified complaint fails to state a claim within the applicable statute of limitations.

Fourth Affirmative Defense

9. Plaintiff's claims against Howden are pre-empted by the Workers' Compensation Law of the State of New York and should, therefore, be dismissed.

Fifth Affirmative Defense

10. Plaintiff has failed to join a party pursuant to the applicable CPLR sections.

Sixth Affirmative Defense

11. The injuries and damages alleged by plaintiff was caused by the acts or omissions of persons or entities other than Howden.

Seventh Affirmative Defense

12. The injuries and damages alleged by plaintiff was the result of an intervening and superseding cause and are not the proximate result of the alleged acts of Howden.

Eighth Affirmative Defense

13. Plaintiff's claims are subject to apportionment of fault and Howden is not liable for any fault apportionable or attributable to other persons or entities.

Ninth Affirmative Defense

14. Plaintiff lacks the privity of contract necessary to sustain a cause of action for breach of warranty.

Tenth Affirmative Defense

15. Plaintiff has not been damaged by Howden.

Eleventh Affirmative Defense

16. Plaintiff has failed to mitigate his damages, if any.

Twelfth Affirmative Defense

17. Plaintiff is not entitled to any of the relief for which they pray.

Thirteenth Affirmative Defense

18. The statute of repose relating to product liability cases has expired.

Fourteenth Affirmative Defense

19. Plaintiff's verified complaint fails to identify with sufficient specificity the products allegedly exposed to, the dates of exposure, and the locations of exposure.

Fifteenth Affirmative Defense

20. Plaintiff's verified complaint fails to allege that any exposure is a substantial factor in the proximate causation of plaintiff's alleged injuries.

Sixteenth Affirmative Defense

21. Any asbestos-containing component in any product manufactured by Howden did not release fibers in excess of any established threshold limit or regulatory limit. Every product manufactured by Howden was reasonably safe based upon the established state of medical knowledge and engineering that existed at the time of sale.

Seventeenth Affirmative Defense

22. Any product manufactured by Howden met all established and applicable Federal, State, and Local safety guidelines and regulations and all industry standards.

Eighteenth Affirmative Defense

23. No product manufactured by Howden was unreasonably dangerous or defective in design, manufacture or information accompanying the product.

Nineteenth Affirmative Defense

24. Howden is not responsible for any asbestos-related product or material that it did not design, manufacture or sell, but that may have been specified and applied by others at, near, on or within any property allegedly owned or maintained by Howden or on any product manufactured by Howden.

Twentieth Affirmative Defense

25. Howden denies that plaintiff sustained any injury as a result of contact or use of any product present at any property allegedly owned or maintained by Howden and further states that any contact or use of any such product would be so slight that it would not cause or contribute to the cause of any injury of which plaintiff complains.

Twenty-First Affirmative Defense

26. Howden denies that any product or products which it manufactured or sold caused any injury or illness, if any, to plaintiff, and further states that the physical conditions of which plaintiff complains were in no way caused or brought about by any product present at any property allegedly owned or maintained by Howden.

Twenty-Second Affirmative Defense

27. If plaintiff sustained any injury, or sustained any occupational disease as a result of exposure to any unreasonably dangerous product present at any property allegedly owned or maintained by Howden, such being expressly denied, then plaintiff was guilty of comparative fault by reason of his own voluntary acts and omissions, each and all of which amounted to assumption of the risk which was a proximate cause of his injury, then his recovery must be reduced by his percentage of fault.

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