IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

LUIS PEREZ)
)
vs.) No. 13677
)
JOHNS-MANVILLE PRODUCTS)
CORPORATION, a corp.)

COMPLAINT AT LAW

NOW COMES THE PLAINTIFF, LUIS PEREZ, by his attorney, MAX L. EASOFF, and complains of the defendant, JOHNS-MANVILLE PRODUCTS CORPORATION, a corp., of trespass on the case, and further complains as follows:

1. Plaintiff avers that the above entitled suit is brought against the defendant for the sum of Fifty Thousand ($50,000.00) Dollars for personal injuries sustained by reason of a so-called "occupational disease" and that this action is wholly of a civil nature; that the matter and amount in dispute in the said suit exceeds, exclusive of interest and costs, the sum of Three Thousand ($3,000.00) Dollars, all of which will more fully appear from the following paragraphs; that the defendant herein is, and was at the commencement of this suit, a foreign corporation, duly formed, created and organized under and by virtue of the laws of the State of New York, having its principal place of residence in the City of New York, State of New York; that the plaintiff herein is, and was at the commencement of this suit, a citizen and resident of the State of Illinois.

2. Plaintiff further states that on or about the 13th day of August, A. D. 1933, and for many years prior thereto, the defendant, incorporated under the laws of the State of New York, as aforesaid, was duly authorized to do business in the State of Illinois, County of Lake

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and City of Waukegan; That on said date, and prior thereto, and in the City of Waukegan, as aforesaid, the defendant owned, operated and maintained a factory, mill or establishment for the purpose of manufacturing tile and other asbestos products.

3. That said defendant, in its factory, mill or establishment, as aforesaid, owned and operated a certain department known as the "mixing room" where asbestos and cement were mixed in dry form, the materials being poured into a hopper from sacks and coming out as a mixture; that in the course of said processes, a great deal of asbestos and cement dust, and other dusts, were cast to and did impregnate the air in said premises in such great quantities as to be greatly deleterious to the health of human beings.

4. That on the aforesaid day and at the place aforesaid, and for a number of years prior thereto, the plaintiff was in the employ of the defendant and worked in said Mixing Room as a laborer, his principal work being to open the aforesaid sacks of cement and asbestos and dump them into a mixing machine, which machine mixed said materials in dry form, as aforesaid.

5. That in the carrying on of the said premises by the defendant as the same was being done, and as it had been conducted for many years prior thereto, the defendant knew, or in the exercise of due care and caution should have known that the same was apt to and did produce the illness and disease in the plaintiff of which the plaintiff now complains, which illness and disease is peculiar to such work and operations carried on and used in said business to which employees are not ordinarily exposed in their lines of business.

6. That plaintiff was in entire ignorance of the dangerous character of the various dusts to which he was exposed and to the specific nature of the disease or diseases that would or could result from the inhalation of the aforesaid dusts and was never at any time

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informed by any agent of the defendant of the fact that such danger did or could possibly exist.

7. That plaintiff was caused to and did during the period aforesaid, necessarily breathe in large quantities of asbestos dust, cement dusts and other dusts, in his throat and lungs, causing the illnesses herein complained of, while he, the plaintiff, was in the exercise of due care and caution for his own personal health and safety.

8. That at and during the aforesaid place and time, the defendant did one or more of the following acts, thereby causing the plaintiff to contract and succumb to the occupational disease known as Asbestosis which resulted in Pneumoconiosis in an advanced stage and Tuberculosis, as a result whereof: plaintiff has lost considerable weight; he has been incapacitated and weakened so that he cannot perform any work for which he is fitted; that he has suffered great mental and physicial pain and anguish and will continue so to suffer for the rest of his life; that he has become liable for and expended large sums of money in and about endeavoring to be cured of his illness as aforesaid; and that he was prevented and hindered from attending to his usual occupation whereby he has lost divers great gains and profits and will be prevented to lose divers great gains and profits.

(a) Defendant wilfully failed to provide reasonable and approved devices, methods or means for the prevention of said diseases, contrary to the provisions of Section 1 of an act entitled "An Act to Promote the Public Health by Protecting Certain Employees in this State from Dangers of Occupational Diseases" and providing for the enforcement thereof, in this, that there were in and about the said premises no proper suction fans or other apparatus provided for collecting the injurious dusts in the air in the said premises where plaintiff worked; that defendant failed to provide masks, air respirators or other apparatus to be used or worn by said plaintiff which would effectively prevent the plaintiff from inhaling the said dusts caused to impregnate and flow in the air in and about the said premises as provided by said Statute and which would effectively prevent him from contracting the diseases herein complained of.

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(b) Plaintiff negligently failed to remove as far as practicable, by either ventilating or exhaust devices, the aforesaid injurious dusts from the premises in which the plaintiff worked, contrary to Section 12 of "An Act Concerning the Health and Safety of Employees in Factories, Mercantile Establishments, Mills and Workshops in the State of Illinois."

(c) Negligently caused and permitted the premises to be swept so as to raise Asbestos dust, Cement dust and other dusts, contrary to Section 13 of "An Act Concerning the Health and Safety of Employees in Factories, Mercantile Establishments, Mills and Workshops."

9. Wherefore plaintiff asks judgment for Fifty Thousand ($50,000.00) DOLLARS.

Attorney for Plaintiff

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IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

LUIS PEREZ	)	
	)	
vs.	)	No. 43672
	)	
JOHNS-MANVILLE PRODUCTS CORPORATION, a corp.	)	

AFFIDAVIT OF DANIEL E. RICARDO, M.D.

DANIEL E. RICARDO being first duly sworn on oath deposes and says that he is a physician, duly licensed to practice medicine in the City of Chicago and State of Illinois, and that his office is located at 185 N. Wabash Avenue, Chicago.

Affiant further states that on the 13th day of August, 1934, one, LUIS PEREZ, came under his professional care; that on said date said LUIS PEREZ stated to this affiant that he was 49 years of age; that he was married and had no children; that he had been employed by the JOHNS-MANVILLE PRODUCTS CORPORATION for about sixteen years where he worked as a laborer, mixing cement and asbestos.

Affiant further states that an examination of LUIS PEREZ on said date revealed that he had a high temperature, clubbing of his finger ends, and that he had a constant cough; that in the opinion of this affiant, said LUIS PEREZ is suffering from fibrosis, calcified areas of both lungs, silicosis resulting in pneumoconiosis and tuberculosis; that said LUIS PEREZ is in a dangerous condition and should be treated with the greatest of care.

Affiant makes this affidavit for the purpose of inducing the District Court of the United States for the Northern District of Illinois, Eastern Division, to advance this case on the Calendar.

D. E. Ricardo M.D.

SUBSCRIBED and SWORN to before me this 25th day of October, A. D. 1934.

Notary Public

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MAX L. RASOFF

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION.

LUIS PEREZ	)	
	)	
vs.	)	No. 43672
	)	
JOHNS-MANSVILLE PRODUCTS CORPORATION, a corp.	)	

AFFIDAVIT OF J. H. CARPENTER, M. D.

J. H. CARPENTER, being first duly sworn on oath deposes and says that he is a physician duly licensed to practice medicine in the City of Chicago and State of Illinois, and that his office is located at 1904 S. Ogden Ave., Chicago; that he has for the last several years specialized in x-ray of chests and the interpretation of findings and diagnosis of such x-rays so made; that on or about September 18th, 1934, your Affiant made an x-ray of the chest of the plaintiff, Luis Perez, and that the x-ray so made disclosed that the said plaintiff, Luis Perez, was suffering from the third stage of pneumoconiosis, and asbestosis, with advanced stage of tuberculosis; that from the history of the said Luis Perez' employment, your Affiant is of the opinion that the said Luis Perez contracted the said diseases, pneumoconiosis, asbestosis and advanced tuberculosis by virtue of contact by inhalation of asbestos and cement dust; that the condition of the said Luis Perez on the aforesaid date, was such that there was immediate need of hospitalization, medical care and attention to the said Luis Perez; that your Affiant is further of the opinion that the physical condition of the said Luis Perez is such that he will not be physically able to be present in Court and testify in his own behalf if such case is placed upon the regular trial calander and there await its turn of trial.

It is the opinion of your Affiant that the said Luis Perez will not live for possibly more than a year longer, and may succomb to the said disease within that period of time.

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Your Affiant makes this affidavit for the purpose of advising the District Court of the United States for the Northern District of Illinois, Eastern Division, of the physical condition of the said Luis Perez, and for the further purpose of having the Court advance the case upon trial call, so that the Court and jury may have the benefit of the testimony of the said plaintiff, Luis Perez.

And further your Affiant sayeth not.

J. S. Lawrence M.D.

Subscribed and sworn to before me this 7th day of January, 1935.

Notary Public.

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IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION.

LUIS PEREZ	)	
	)	
vs.	)	No. 43672
	)	
JOHNS-MANSVILLE PRODUCTS CORPORATION, a corp.	)	

AFFIDAVIT OF CLEMENT W. K. BRIGGS, M. D.

CLEMENT W. K. BRIGGS, being first duly sworn on oath deposes and says that he is a physician duly licensed to practice medicine in the City of Chicago and State of Illinois, and that his office is located at 160 N. La Salle St., Chicago.

Affiant further states that on September 18th, 1934, he first examined the plaintiff, Luis Perez, and on that date found the physical condition of the patient to be critical, and such examination was verified by your affiant's inspection of x-rays of the chest of said plaintiff made on or about the said date, which showed as follows:

> Patient's heart to be very much enlarged; temperature was 106 degrees; that he was constantly subjected to coughing to the extent that it interfered with the patient's ability to speak.

From the diagnosis then made and a further examination on, to wit, January __ 1935, which was made for the purpose of this affidavit and to find out if any advancement of the patient's condition would then be shown, such examination showing no improvement, it is the opinion of this Affiant that the said plaintiff is now suffering from an advanced stage of pneumoconiosis and asbestosis, with an advanced stage of tuberculosis, and it is further the opinion of this affiant from the history of the employment of the said plaintiff, the condition of advanced pneumoconiosis, asbestosis and tuberculosis was contracted by reason of contact with and inhalation of asbestosis and cement dust; that the said

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plaintiff should have been hospitalized from the 18th day of September, 1934 to the present date; that the prognosis is bad; that the said plaintiff's physical condition is such in the opinion of your Affiant, that if the above entitled cause is placed on the ordinary trial calander and awaits its turn of trial for the period of a year to a year and one-half, the said plaintiff will not be physically able to appear in Court and there is a strong probability that the said plaintiff will not survive the attack of such disease; that it is the opinion of this Affiant that the plaintiff, Luis Perez, will not live for more than a year and may likely die in less time.

Your Affiant makes this affidavit for the purpose of advising the District Court of the United States for the Northern District of Illinois, Eastern Division, of the present physical condition of the said plaintiff, Luis Perez, and your Affiant urges the Court to advance the said cause for trial at the earliest date to be set by the Court so that the testimony of the said plaintiff, Luis Perez, may be had.

And further your Affiant sayeth not.

Clement W. K. Briggs MD

Subscribed and sworn to before me this 7th day of January, 1935.

Notary Public.

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IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION.

LOUIS PEREZ	)	
	)	
vs.	)	No. 43672
	)	
JOHNS-MANSVILLE PRODUCTS CORPORATION, a corp.	)	

P E T I T I O N

TO THE HONORABLE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION:-

YOUR PETITIONER, LUIS PEREZ, respectfully represents unto the Court that he is the plaintiff in the above entitled cause and further that your petitioner was employed by the defendant for about sixteen (16) years, and that during his period of employment, his work brought him into daily contact with asbestos and cement dust; that your petitioner is now ill, and has been for some period of time, of a chest condition, and that he has been advised by several physicians that the said disease is known as pneumoconiosis, asbestosis with tuberculosis.

Your petitioner further respectfully represents that during the time of his employment that he earned a wage of $20.00 per week, which was his only means of livlihood, and that upon such salary, he suported his wife and himself; that on August 13th, 1933, he became ill of the chest condition hereinabove set forth, and that he has thereafter been unable to continue his duties and employment, and as a result thereof, he was discharged from the employment of the said defendant; that your petitioner is now wholly destitute and without means for medical care and attention and hospitalization.

Your petitioner further represents that he has been under the care of a physician and has been examined by several other reliable physicians who have advised that his physical condition

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is such that he will not now, or hereafter, be able to work.

Your petitioner further states that if the above entitled cause is placed upon the regular trial call, he will not be able physically, to submit to the ordeal of a trial at the time of his turn in the ordinary course of the trial calender; that he has been further advised by his physician that there is a liklihood that he will succomb to the disease before such case is reached for trial on the regular calender; that in that event, his then widow will be subjected to additional legal difficulties in establishing her right of action against the said defendant.

Your petitioner's testimony is materially necessary to properly establish the allegations set forth in your petitioner's complaint herein, and your petitioner therefore prays this honorable Court to advance the above entitled cause on trial call and set the said case for trial at an early date convenient to said Court.

Witness to mark: [illegible]

his
Luis (X) Perez
mark

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

LUIS PEREZ being first duly sworn upon oath deposes and says that he has read the above and foregoing petition by him subscribed; that he knows the contents therein contained and that the same is true in substance and in fact.

his
Luis (X) Perez
mark

SUBSCRIBED and SWORN to before me this 7th day of January, A. D., 1935.

Witness to mark:
[illegible]

[illegible]
Notary Public.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Luis Perez -vs- Johns-Manville Products Corporation.	No. 43,672.
George Ruskell -vs- Johns-Manville Products Corporation.	No. 43,218.
Nick Bojko -vs- Johns-Manville Products Corporation.	No. 43,363.
Tony Yakobich -vs- Johns-Manville Products Corporation.	No. 43,364.
Pearl H. Barenklau -vs- Johns-Manville Products Corporation et al.	No. 43,448.
Charles Serounas -vs- Johns-Manville Products Corporation	No. 43,500.
Frank Brown -vs- Johns-Manville Corporation.	No. 43,633.
Jack Coleman -vs- Johns-Manville Corporation	No. 43,634.
Alex Taraban -vs- Johns Manville Corporation	No. 43,635.

M E M O R A N D U M

These cases come on to be heard on the motions of the defendant to dismiss.

The motion was argued in the Luis Perez case, and the court was informed that this case was typical of all the others.

The question raised by the motions to dismiss is whether this court has jurisdiction, or whether the exclusive jurisdiction of the cause of action resides in the Illinois Industrial Commission pursuant to the provisions of the Illinois Workmen's Compensation Act.

Section 2 of the Occupational Diseases Act (Cahill's Illinois Revised Statutes 1933, p. 1375) provides:

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"Every employer in this State engaged in the carrying on of any process of manufacture or labor in which sugar of lead, white lead, lead chromate, litharge, red lead, arsenate of lead, or paris green are employed, used or handled, or the manufacture of brass or the smelting of lead or zinc, which processes and employments are hereby declared to be especially dangerous to the health of the employes engaged in any process of manufacture or labor in which poisonous chemicals, minerals or other substances are used or handled by the employes therein in harmful quantities or under harmful conditions, shall provide for and place at the disposal of the employes engaged in any such process or manufacture and shall maintain in good condition and without cost to the employes, proper working clothing *** ***."

Section 15 (b) 1 of the Occupational Diseases Act (Cahill's Illinois Revised Statutes 1933, p. 1375) provides:

"If an employee is disabled or dies, and his disability or death is caused by an occupational disease arising out of and in the course of his employment in one or more of the occupations referred to in section 2 of this Act, he or his dependents, as the case may be, shall be entitled to compensation, in the same manner and subject to the same terms, conditions and limitations as are now or may hereafter be provided by the Workmen's Compensation Act for accidental injuries *** ***."

If the cause of action made by the plaintiff's complaint is a cause of action arising under the underscored clause of Section 2 of the Occupational Diseases Act aforesaid, then this court do s not have jurisdiction and the exclusive jurisdiction resides in the Illinois Industrial Commission.

The court has carefully examined the plaintiff's complaint, and from such examination cannot say that said complaint alleges that the defendant is engaged in the carrying on of a process of manufacture or labor in which "poisonous chemicals, minerals or other substances are used or handled by the employes therein in harmful quantities or under harmful conditions." What the proof will be, of course, the court does not know, but, on the allegations of the plaintiff's complaint, the court is of the opinion that it has jurisdiction.

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Therefore, the motion to dismiss in each of the cases aforesaid will be overruled and denied.

Judge.

December 27, 1934..

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