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STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF LAKE COUNTY

FRED SEIFERT)
)
)
)
Vs.) No. 34984
)
JOHNS-MANVILLE PRODUCTS CORPORATION, a)
corporation

COMPLAINT AT LAW

Plaintiff, for cause of action against the defendant, states:

I. That on and prior to the 22nd day of July , 1933 , the defendant was a corporation and was, on and prior to the aforesaid date, carrying on its business in the City of Waukegan, County of Lake , and State of Illinois, and did maintain, operate and control a plant or factory, in the aforesaid city, county, and state; and in the prosecution and carrying on of its business, the defendant did use and employ and operate, divers machines, tools, and implements in the manufacture of divers of its products and in the course of said manufacture, the defendant did employ a large number of employees.

II. That at the said time and place referred to aforesaid, and for a long time prior thereto, to-wit: since 1926 , the plaintiff was employed by the defendant as a laborer , and did handle and assist in the handling of various forms of asbestos, silica, stone, & magnesia , and the plaintiff, in the

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pursuance of his duties was required to operate and assist in the operation of various power driven machines then and there used by the defendant in the manufacture of its aforesaid products, and was required to work in and about the room in which the aforesaid machines, apparatuses, and devices were in operation.

III. That the plaintiff was engaged in the aforesaid work in various rooms then and there maintained by the defendant where a large number of employees were engaged in the furtherance of the defendant's processes of manufacture and that in the said operation of the aforesaid machines and the handling of the aforesaid materials, then and there in the process of manufacture, divers large quantities of dust of a deleterious nature were caused to be thrown out and to permeate the air in and about the said room or rooms where the plaintiff was required to work; that said dusts were of a nature well calculated to cause injury to the plaintiff by the inhalation thereof.

IV. That the plaintiff was at all times hereinafter mentioned in the exercise of ordinary care and caution for his own personal safety and did not know, nor by the exercise of said degree of care, by one of his experience and intelligence engaged in the same or similar line of work could have known, nor could he be reasonably expected to know of, or appreciate or anticipate, that said dusts were injurious to the health.

V. Plaintiff further says that the defendant knew, or in the exercise of ordinary care and caution

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would have known that the aforesaid dust was of an injurious character and that the continued inhalation of the same by the plaintiff would then and there cause injury to the plaintiff.

VI. That it became and was the duty of the defendant to warn the plaintiff of the nature of the said dust then and there given off as a result of the said processes of manufacture but that the defendant, regardless of his duties in the premises, negligently and carelessly failed to notify, inform, or warn, the plaintiff thereof.

VII. That the plaintiff continued to work in and about said noxious dusts and was exposed thereto, for a long period of time, to-wit: 7 years, in consequence of which he contracted an injury and disease hereinafter set forth.

Count Two

Plaintiff hereby adopts Paragraph I, II, III, IV, V, and VII, of his first count as paragraphs I, II, III, IV, V, and VII of this, his second count, and proceeds as follows:

VI. That it then and there became and was the duty of the defendant to exercise ordinary care and caution to furnish the plaintiff with a reasonably safe place to work; that the defendant negligently failed to observe its duty in the premises in that it failed to furnish:

a. adequate and efficient blowers
b. adequate and efficient ventilating devices
c. adequate and efficient suction fans to collect the injurious dusts as aforesaid

That the aforesaid blowers, ventilating devices, and

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suction fans were then and there available and were then and there being used by employers engaged in the same or similar line of manufacture of which the defendant had knowledge, or in the exercise of the ordinary care and caution would have had knowledge and that the aforesaid devices were practicable and designed for the purpose of collecting and ridding the air of injurious dusts.

Count Three

Plaintiff hereby adopts Paragraph I, II, III, IV, and V, of his first count as paragraphs I, II, III, IV, and V, of this, his third count and proceeds as follows:

VI. That it then and there became and was the duty of the defendant in the exercise of ordinary care and caution to furnish the plaintiff with proper and efficient masks or respirators to be used or worn by the said plaintiff which would effectively prevent the plaintiff from inhaling the said dust caused to impregnate the air in the room or rooms in which the plaintiff was then and there employed.

That the aforesaid masks and respirators were then and there available and were being used by employers engaged in the same or similar line of manufacture of which the defendant had knowledge or in the exercise of ordinary care and caution would have had knowledge and that the aforesaid masks and respirators were practicable and designed for the purpose of preventing the inhalation of said dusts; that the defendant negligently failed to furnish or provide the plaintiff with proper

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masks or respirators.

Count Four

Plaintiff hereby adopts Paragraph I, II, III, IV, and V, of his first count as paragraphs I, II, III, IV, and V, of this, his fourth count, and proceeds as follows:

VI. That it became and was the duty of the defendant in the exercise of ordinary care and caution to moisten and wet down, by means of water, the aforesaid dusty materials; that it was feasible and practicable to keep said dust down in the room or rooms in which the plaintiff was required to work, by means of water as aforesaid, and that the defendant had knowledge, or in the exercise of ordinary care and caution, would have had knowledge that said method of keeping down the dust was regularly and commonly used by employers engaged in the same or similar line of manufacture, but that the defendant did not observe his duty in the premises, but to the contrary, negligently and carelessly failed to moisten or wet down, by means of water, the aforesaid dusty materials or dusts arising from the processes employed by the defendant.

Count Five

Plaintiff hereby adopts Paragraphs I, II, III, of his first count as paragraphs I, II, III, of this, his fifth count, and proceeds as follows:

IV. Plaintiff further states that the defendant well knowing the danger of the continued inhalation of dusts by the plaintiff and the consequent injury to his

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health, wilfully and wantonly and with conscious indifference to the life and health and safety of the plaintiff failed to furnish a reasonably safe place for the plaintiff to work in, and wilfully and wantonly instructed, ordered, and required the plaintiff to continue with his work without protection by means of blowers, ventilating devices or suction fans.

Count Six

Plaintiff hereby adopts Paragraphs I, II, III, of his first count as paragraphs I, II, III of this, his sixth count, and proceeds as follows:

IV. Plaintiff further states that the defendant knew that the aforesaid dusts did then and there imperil, and endanger the life of the plaintiff from the continued inhalation thereof, and wilfully and wantonly and with conscious indifference to the life and health and safety of the plaintiff, ordered, required and instructed the plaintiff to proceed with his work and wilfully and wantonly refused to provide the plaintiff with masks or respirators or other reasonable apparatus to prevent the plaintiff from inhaling the injurious dusts.

The plaintiff concludes each and every one of the foregoing six counts as follows:

That as a direct consequence of the foregoing, plaintiff became sick, sore, lame, and disordered and will so remain during his life, and has become greatly emaciated, ill, and suffers great pain and anguish and will in the future so suffer; that he is stricken with an incurable disease,

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to-wit: siderosis, pneumoconiosis, silicosis, pulmonary tuberculosis, and various other pulmonary and bronchial complications, and will so remain during his life; that he has paid out and incurred divers large sums of money in and about endeavoring to become cured of said disease, and has lost and will in the future continue to lose divers great gains and profits which he would have otherwise made because of said injury to his health, and on account of said diseases, wherefore, plaintiff demands judgment against the defendant in the sum of TWENTY FIVE THOUSAND DOLLARS ($25,000.00), and costs of this suit.

Thos. C. Hollywood
Attorneys for Plaintiff.

Endorsed:-
" Filed May 9-'35
L. J. Wilmot
" Clerk.

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UNITED STATES OF AMERICA)
) ss.
STATE OF ILLINOIS)

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

FRED SEIFERT)
)
vs.) No. 44563
)
JOHNS-MANVILLE PRODUCTS)
CORPORATION, a corporation)

MOTION TO DISMISS

Now comes JOHNS-MANVILLE PRODUCTS CORPORATION, a corporation, by Heth & Lister, its attorneys, and moves the Court that the above entitled cause be dismissed, and as grounds for said motion defendant shows unto the Court that plaintiff's complaint is substantially insufficient in law in the following particulars:

1. The complaint purports to state cause or causes of action by setting forth duties alleged to be imposed by the common law on the defendant as employer of the plaintiff; violations of such alleged duties by the defendant; and injury to the plaintiff by alleged occupational disease or diseases arising out of the employment.

(a) In the absence of valid statutory provisions there are, and during the times in plaintiff's complaint stated were, no duty or duties imposed by law in the State of Illinois on the defendant, as employer of the plaintiff, regarding alleged occupational diseases contracted by plaintiff.

(b) In the absence of valid statutory provisions there was and is, in the State of Illinois, no right of action at law by an employee against

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his employer for injury due to occupational disease or diseases arising out of the employment.

2. That had there been, prior to the effective date of the Workmen's Compensation Act, a right of action under the Common Law for the matters and grievances alleged in said complaint, such right of action was and is barred by Sections 6 and 11 of the Workmen's Compensation Act. (Pars. 143 and 148, Chapter 48, Smith Hurd Revised Statute.)

WHEREFORE, defendant, JOHNS-MANVILLE PRODUCTS CORPORATION, a corporation, moves that plaintiff's action may be dismissed as to it; that plaintiff take nothing by his suit, and that this defendant go hence without day.

Wetle & Lester
Attorneys for Defendant,
JOHNS-MANVILLE PRODUCTS CORPORATION, a corporation.

STATE OF ILLINOIS }
} ss.
COUNTY OF C O O K }

JOHN J. FLYNN does hereby certify that he is one of the attorneys of record for the defendant, JOHNS-MANVILLE PRODUCTS CORPORATION, a corporation; that in his opinion the foregoing motion is well founded in point of law and that it is not interposed for the purpose of delay.

John J. Flynn

Subscribed and sworn to before me this 24th day of July, 1935.

Eugenia Dettmer
Notary Public.

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