IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS, BEAUMONT DIVISION.

FILED
MAY 1 - 1967
M.
James R. Cooney, Clerk, U. S. Court
By DEPUTY

CLAUDE J. TOMPLAIT, PLAINTIFF, §

VS. §

CIVIL ACTION NO. 5402.

COMBUSTION ENGINEERING, INC., §

DEFENDANT. §

SECOND MOTION OF DEFENDANTS, COMBUSTION ENGINEERING, INC., AND R. AND I. REFRACTORY AND INSULATION CORPORATION, FOR A MORE DEFINITE STATEMENT.

TO THE HONORABLE JUDGE OF SAID COURT:

Now come the defendants, Combustion Engineering, Inc., and R. and I Refractory and Insulation Corporation, in the above-entitled and numbered cause, and make and file this, their Second Motion for a More Definite Statement, and move the Court that the plaintiff be required to make and serve a more definite statement in this cause, and as grounds therefor would respectfully show unto the Court as follows:

1.

Plaintiff has alleged, in paragraph 14 of his First Amended Complaint that various types of insulation compounded, manufactured and placed in containers and sold by the defendants contained chemicals and minerals and deleterious substances and matters which were highly poisonous, dangerous and harmful to human beings and to the health of man, and that such materials were defective and were not suitable for the purposes for which they were intended.

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In Paragraphs 15 through 36, inclusive, of said Amended Complaint, the plaintiff alleges that he was employed by various and sundry employers on twenty-two different jobs, where he worked as an insulator, and came in contact with certain materials. However, he does not specify the trade name of the product nor the name of the alleged manufacturer of such product or products which were used by the various contractors and employers, and nowhere does he set forth with sufficient particularity that these defendants, or either of them, manufactured, sold or delivered the various products to the different construction jobs on which he alleges he was working, or any of such jobs.

Further, he alleges in paragraph 37 of the Amended Complaint that he was employed as an insulator in the course of his employment and was required to handle large quantities of the insulation mentioned by him which was compounded, manufactured and prepared by the defendants; and no dates are alleged on which he claims he came in contact with any materials which he claims were manufactured by these defendants or either of them.

The amended complaint wholly fails to allege any time or place or the name of any type of material manufactured by these defendants or either of them, and no other means of identification are alleged identifying any product which he claims caused his alleged injury, and said allegations are too vague, indefinite and ambiguous to apprise these defendants of any information whereby this defendant can affirmatively admit or deny plaintiff's allegations, or to formulate a responsive pleading thereto.

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2.

Said amended complaint fails to allege any date or dates when plaintiff claims he sustained his alleged injury and wholly fails to identify his injury with any product of these defendants or to show any date or dates of any alleged contact with any specific product or the name of any product, and these defendants should not be required to answer such ambiguous, vague and indefinite allegations of the plaintiff, the re being other defendants named, and it is nowhere stated that he was using any products of these defendants on any job which he claims he was doing or had been engaged in.

3.

The amended complaint is too vague, ambiguous and indefinite as to when and where the plaintiff first suffered any injury made the basis of this suit, and these defendants are entitled to have the plaintiff allege such before these defendants are required to answer the complaint by specifically admitting or denying the allegations.

4.

Nowhere in said complaint does the plaintiff relate any injury which he claims to have received to any product manufactured, sold, delivered or furnished by these defendants or either of them, to any or either of his alleged employers or contractors on any particular job, and does not set forth any job on which he claims to have sustained any injury made the basis of this suit.

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5.

In Paragraphs 38 and 39 plaintiff alleges that his injuries and damages were caused by the negligence of "the defendants" but such allegations are too vague, ambiguous and indefinite and general and do not apprise these defendants or any of the defendants of any definite or specific act or omission complained of and same are insufficient to inform the defendants of whether the plaintiff claims he came in contact with any product or products manufactured or sold by these defendants or either of them, or the date or dates on which any such contact was made or had by him with any product manufactured by these defendants or otherwise.

6.

The plaintiff by his amended complaint, in paragraphs 15 through 36, Incl., goes no further than to allege that during the years beginning in 1959 through 1964, he came in contact with certain materials on each job listed by him, but there is no allegation that the defendants manufactured, sold or furnished any such materials complained of by him on any of such jobs, and he does not identify these defendants or either of them or any other defendant with the products involved with which plaintiff claims he came in contact.

7.

Because the dates which the plaintiff has set forth over a period of years state only the years during which he claims to have sustained an injury and are too vague and indefinite to inform the defendants of what proof they will be required to meet and make in that regard, and plaintiff has not fairly complied with or met the order of the Court granting these defendants' motion for more definite statement, filed to the plaintiff's Original Complaint, and has not met the letter and spirit of such motion or order, and he should be required to give these

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defendants a more definite statement in order that defendants may be apprised of what they themselves are charged with in regard to the matters set forth in such original or amended complaint.

WHEREFORE, defendants pray that this motion be set for hearing and that same be granted for more definite statement in order that these defendants can know with sufficient particularity the matter of the claim made as against these defendants, and to have sufficient details as to the materials allegedly manufactured or sold by these defendants, and the dates, times and places that the plaintiff alleges or claims he came in contact with any materials manufactured or sold by these defendants, all in order that these defendants may formulate a responsive pleading to such amended complaint, and prays for such other relief in the premises as defendants may be entitled to receive.

Respectfully submitted,

ATTORNEY FOR DEFENDANTS, COMBUSTION ENGINEERING, INC., AND R. AND I. REFRACTORY AND INSULATION CORPORATION; 1014 San Jacinto Bldg., P.O.Box 1632, Beaumont, Texas.

CERTIFICATE OF SERVICE.

I hereby certify that the above and foregoing motion has been served on the plaintiff and his attorneys of record by placing a true and correct copy thereof in a correctly addressed, stamped and sealed envelope, addressed to Messrs. Stephenson,Thompson & Morris, Stephenson Building, Orange, Texas, plaintiff's attorneys of record, and by depositing same in the United States Mail at Beaumont,Texas, this 1st day of May, 1967; and copies of same are likewise being furnished to counsel for the other defendants in this cause.

ATTORNEY FOR DEFENDANTS.