JGT:DFG - 5/13/68

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FILED
MAY 17 1968
James R. Cooney, Clerk, U. S. Court
By Margaret Lowe DEPUTY

CLAUDE J. TOMPLAIT X

VS. X CIVIL ACTION 5402

COMBUSTION ENGINEERING, INC., ET AL X

Answer of the Defendant, Gustin-Bacon Manufacturing Company to Plaintiff's Second Amended Complaint

Defendant, Gustin-Bacon Manufacturing Company, in response to plaintiff's second amended complaint, says:

1.

Defendant cannot admit or deny Paragraph 1 with respect to jurisdiction as defendant has no knowledge or information as to the residency and citizenship of other defendants.

2.

Answering Paragraphs 2, 3 and 9, defendant admits the same.

3.

Answering Paragraphs 4, 5, 6, 7, 8, 10, 11 and 12, defendant says that such paragraphs refer to parties other than this defendant and this defendant is not required to and does not have sufficient information to answer the same.

4.

Answering Paragraph 13, defendant says it is without sufficient knowledge or information to admit or deny the allegations which refer to the products manufactured by all defendants, but it is denied that defendant's product contained the materials alleged and it is denied that any of such products caused any injury to plaintiff.

5.

Answering the allegations in Paragraphs 14, 37, 38, 39, 40, 41 and 43, defendant denies the same.

6.

Answering the allegations in Paragraphs 15 through 36, defendant says it is without sufficient knowledge or information to admit or deny the same.

7.

Answering the allegations in Paragraph 42, defendant says it is without sufficient knowledge or information to admit or deny the same.

8.

Answering the prayer to plaintiff's complaint, defendant denies that plaintiff is entitled to any of the relief sought.

AFFIRMATIVE DEFENSES

9.

Further answering, and by way of affirmative defense, defendant says that the products which this defendant manufactured and sold were at all times reasonably fit and suitable for the purpose for which manufactured and sold. It is denied that the same were in anywise defective.

10.

Defendant denies that any product which it manufactured and sold in anywise caused or brought about any injury or illness to plaintiff, and defendant further says that the physical condition of which plaintiff complains was in nowise caused or brought about by any product manufactured and sold by this defendant and that such condition was due solely to disease and other causes.

11.

Further answering, defendant says that plaintiff's cause of action, if any, accrued more than four years prior to the institution of this action

and four
and defendant pleads the two/year statute of limitation of the State of Texas in bar of plaintiff's claim.

12.

Further answering, defendant says that the injuries, conditions and damages of which plaintiff complains were due solely and alone, or in the alternative, were proximately caused by the negligent acts, wrongs and omissions of the plaintiff, and that at all times material hereto plaintiff failed to exercise ordinary care for his own safety, all of which proximately caused the injuries and conditions of which he complains, all of which is plead in bar hereof.

13.

For further answer and affirmative defense, defendant says that as early as 1961 plaintiff became ill, suffering from weakness and shortness of breath, and he was then and there instructed and directed by a physician of his own choice to stop working with, in and around materials or in areas whereby he was exposed to inhalation of dust or other foreign substances. Plaintiff failed to heed such warnings, instructions and directions and continued to voluntarily expose himself to the matters of which he now complains, and plaintiff failed to take reasonable precautions, such as the use of a safety mask or respirator, and he voluntarily exposed himself to the conditions and hazards of which he complains and voluntarily assumed the risk of injury thereby, all of which is plead in bar hereof.

14.

For further answer, defendant says that if plaintiff should recover any judgment herein (and defendant denies that plaintiff is entitled to recover judgment), that then under the provisions of Article 2212, Vernon's Annotated Civil Statutes, as well as at common law, defendant is entitled to judgment for contribution over and against the co-defendants, and each of them, jointly and severally.

WHEREFORE, defendant moves and prays the Court that upon trial hereof plaintiff recover nothing, and in the alternative, for judgment against the co-defendants for contribution, and for such other and further relief in the premises as it may show itself justly entitled to receive.

Beaumont Savings Building
Beaumont, Texas
Attorneys for Defendant, Gustin-Bacon Manufacturing Company

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing amended answer and cross-action of defendant, Gustin-Bacon Manufacturing Company, was on the 16 day of May, 1968, served upon counsel for each of the other parties herein by depositing the same in the United States mail postage prepaid, addressed to Mr. Ben L. Reynolds, Royston, Rayzor & Cook, 877 San Jacinto Building, Houston, Texas 77002; Mr. Ward Stephenson, Stephenson Building, Orange, Texas; Mr. John Rienstra, Beaumont Savings Building, Beaumont, Texas 77701; Mr. George A. Weller, P. O. Box 350, Beaumont, Texas 77704; Mr. Charles S. Pipkin, P. O. Box 1632, Beaumont, Texas 77704; Mr. George Duncan, Beaumont Savings Building, Beaumont, Texas 77701; Mr. Gordon Pate, Beaumont Savings Building, Beaumont, Texas 77701; Mr. James W. Mehaffy, San Jacinto Building, Beaumont, Texas 77701; Mr. George Murphy, San Jacinto Building, Beaumont, Texas 77701.

Attorney for Gustin-Bacon Manufacturing Company

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CLAUDE J. TOMPLAIT

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ET AL

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ORGAIN, BELL & TUCKER
ATTORNEYS AT LAW
BEAUMONT, TEXAS

The Tomplait v. Combustion Engineering Case File (1962-1969), Answer to second amended complaint
ACL Doc 10588 · Page 5 of 5
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