

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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MICHAEL DJURIC and MARIA DJURIC,

Index No. 703422/2024

Plaintiffs,

VERIFIED ANSWER

-against-

SHAWMUT DESIGN AND CONSTRUCTION,

Defendant

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The defendant SHAWMUT WOODWORKING & SUPPLY, INC. d/b/a SHAWMUT DESIGN AND CONSTRUCTION by its attorneys, MORRIS DUFFY ALONSO FALEY & PITCOFF, upon information and belief, answers the plaintiff's Complaint herein as follows:

1. Denies each and every allegation contained in the paragraph or subdivision of the Complaint designated "1" except admits that SHAWMUT WOODWORKING & SUPPLY INC. D/B/A SHAWMUT DESIGN AND CONSTRUCTION is a foreign business corporation duly authorized to transact business in the State of New York and respectfully refers all questions of law to this honorable court.

2. Denies any knowledge or information thereof sufficient to form a belief as to the truth of the allegations contained in the paragraphs or subdivisions of the Complaint designated "2", "3", "4", "5", "7", "8" and "9" and respectfully refers all questions of law to this honorable court.

3. Denies each and every allegation contained in the paragraph or subdivision of the Complaint designated "6" with respect to answering defendant and respectfully refers all questions of law to this honorable court.

ANSWERING THE SECOND CAUSE OF ACTION

4. As to the paragraph of the Complaint designated "10", answering defendant repeats, reiterates and realleges each and every denial heretofore made with respect to paragraphs "1" through "9" inclusive, with the same force and effect as if fully set forth at length herein.

5. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph or subdivision of the Complaint designated "11".

6. Denies any knowledge or information thereof sufficient to form a belief as to the truth of the allegations contained in the paragraphs or subdivisions of the Complaint designated "12" and "13" and respectfully refers all questions of law to this honorable court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

7. Any damages which may have been sustained by the plaintiff were contributed to in whole or in part by the culpable conduct of the plaintiff, pursuant to Section 14-A, CPLR.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

8. Any damages which may have been sustained by the plaintiff were contributed to in whole or in part by the culpable conduct of third parties not under the control of answering defendant.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

9. Pursuant to CPLR 4545(c), if it be determined or established that plaintiff has received or with reasonable certainty shall receive the cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss, and that the same shall be replaced or indemnified, in whole or in part from any collateral source such as insurance (except for life insurance), social security (except for those benefits provided under title XVIII of the Social Security Act), workers' compensation or employee benefit programs (except such collateral source entitled by law to liens against any recovery of the plaintiff), then and in that event answering defendants hereby plead in mitigation of damages the assessment of any such cost or expense as a collateral source in reduction of the amount of the award by such replacement or indemnification, minus an amount equal to the premiums paid by the plaintiff for such benefits for the two year period immediately preceding the accrual of this action and minus an amount equal to the projected future cost to the plaintiff of maintaining such benefits and as otherwise provided in CPLR 4545(c).

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

10. The injuries and damages alleged, all of which are denied by the answering defendant, were caused by the intervening, interceding and superseding acts of third parties not under the control of answering defendant.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

11. The plaintiff failed to mitigate his damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

12. That the action against the answering defendant cannot be prosecuted due to the plaintiff's failure to name and likewise prosecute an indispensable party to this litigation.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

13. Answering defendant is entitled to limitation of liability pursuant to Article 16 of the CPLR.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

14. The Complaint fails to state a cause of action upon which relief may be granted.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

15. This action lacks merit and is contrary to established law and fact and answering defendant is entitled to costs in the sum of \$10,000 for this frivolous action.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

16. Plaintiff is bound by the provisions of Workers Compensation Law of the State of New York and, by virtue of the statutes therein contained are restricted and limited to recovery under the provisions of said law.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

17. If the plaintiff sustained damages as alleged, such damages occurred while the plaintiff was engaged in an activity into which he entered, knowing the hazard, risk and danger of the activity and he assumed the risks incidental to and attending the activity.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

18. The plaintiff's claim is barred by reason of a previous accord, satisfaction and release as to the same claim.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

19. Any alleged defective condition was open and obvious and therefore should have been avoided by plaintiff.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

20. Any alleged defective condition was a "trivial defect" for which plaintiff may not recover.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

21. Plaintiff's action is barred by recalcitrant worker defense.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

22. Defendant asserts that plaintiff's claim for indemnification is barred by Section 5.322.1 of the General Obligations Law.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

23. Upon information and belief the plaintiff did not suffer a “grave injury” as defined under the Workers Compensation Laws of the State of New York and therefore this third party is barred.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

24. The plaintiff failed to satisfy a condition precedent.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

25. Answering defendant did not own, lease or control the area where the occurrence took place, and therefore, cannot be found negligent.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

26. The Complaint must be dismissed due to lack of privity between plaintiff and answering defendant.

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

27. Plaintiff was involved in an activity inherently dangerous.

AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE

27. The defendant is not liable to the plaintiff as the plaintiff’s actions were the sole proximate cause of the alleged occurrence.

AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE

28. The answering defendant did not have actual or constructive notice of the alleged condition.

AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE

29. No duty to plaintiff was owed by answering defendant.

AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE

30. Defendant did not control the alleged work site, had no duty and was not on actual or constructive notice of circumstances alleged in plaintiff’s Complaint.

AS AND FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE

31. Plaintiff was not injured as alleged in the Complaint as a worker in a protected activity as enumerated by the New York State Labor Law.

AS AND FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE

32. Plaintiff was not employed at the premises, nor lawfully upon the premises, as required for a finding of liability under Labor Law Section 241(6).

AS AND FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE

33. Plaintiff was involved in an activity inherently dangerous.

AS AND FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE

34. This action is barred by virtue of the absence of privity or of any contractual relationship whatsoever between plaintiff and this defendant.

AS AND FOR A THIRTIETH AFFIRMATIVE DEFENSE

35. Plaintiff's claims are barred in whole or in part as it is against public policy.

AS AND FOR A THIRTY-FIRST AFFIRMATIVE DEFENSE

36. Plaintiff lacks standing to seek damages from defendant.

AS AND FOR A THIRTY-SECOND AFFIRMATIVE DEFENSE

37. Defendant asserts Section 15-108 of the General Obligations Law and will ask the Court that the defendant be entitled to a set-off for any settlements, releases or discontinuances.

AS AND FOR A THIRTY-THIRD AFFIRMATIVE DEFENSE

38. Defendant reserves the right to amend affirmative defenses after receipt of alleged contract and additional discovery.

WHEREFORE, answering defendant demands judgment dismissing the Complaint together with the costs, interest and disbursements of this action.

Dated: New York, New York
April 9, 2024

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