

IN THE CIRCUIT COURT OF DEKALB COUNTY, MISSOURI

FILED
AUG 26 2009
JULIE WHITSELL
Circuit Clerk & Ex-Officio Recorder
DE KALB COUNTY, MO

MAYCEE GARDNER, a Minor, By Her Mother)
and Next Friend, CYNDEE GARDNER,)

Plaintiff,)

v.)

PRIME TANNING CORP., et al.,)

Defendants.)

Case No. 09DK-CC00056

ANSWER OF DEFENDANT PRIME TANNING CO., INC.

Prime Tanning Co., Inc. (sometimes referred to as "this defendant"), by and through its counsel, hereby denies each and every allegation of Plaintiff's Petition for Damages not specifically admitted herein below:

The Parties

1. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 1 of the Petition for Damages and therefore denies the same.

2. This defendant admits that Defendant Prime Tanning Corp. is a Missouri corporation, and that Prime Tanning Corp. is a wholly owned subsidiary of Prime Tanning Co., Inc. This defendant denies the remaining allegations contained in ¶ 2 of the Petition for Damages.

3. This defendant admits that Defendant Prime Tanning Co., Inc. is a Maine corporation. This defendant denies the remaining contained in ¶ 3 of the Petition for Damages.

4. This defendant admits the allegations contained in ¶ 4 of the Petition for Damages.

5. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 5 of the Petition for Damages and therefore denies the same.

Jurisdiction and Venue

6. This defendant denies the allegations contained in ¶ 6 of the Petition for Damages.

General Allegations

7. This defendant admits that Prime Tanning Corp., a wholly owned subsidiary of Prime Tanning Co., Inc., formerly owned and operated a leather tanning facility at 205 Florence Road in St. Joseph, Missouri and denies the remaining allegations contained in ¶ 7 of the Petition for Damages.

8. This defendant denies the allegations contained in ¶ 8 of the Petition for Damages.

9. This defendant denies the allegations contained in ¶ 9 of the Petition for Damages.

10. This defendant denies the allegations contained in ¶ 10 of the Petition for Damages.

11. This defendant denies the allegations contained in ¶ 11 of the Petition for Damages.

12. This defendant denies the allegations contained in ¶ 12 of the Petition for Damages.

13. This defendant denies the allegations contained in ¶ 13 of the Petition for Damages.

14. This defendant denies the allegations contained in ¶ 14 of the Petition for Damages.

15. This defendant denies the allegations contained in ¶ 15 of the Petition for Damages.

16. This defendant denies the allegations contained in ¶ 16 of the Petition for Damages.

17. This defendant denies the allegations contained in ¶ 17 of the Petition for Damages.

18. This defendant denies the allegations contained in ¶ 18 of the Petition for Damages.

COUNT I
(Negligence)

19. This defendant repeats and realleges its answers to the allegations contained in ¶¶ 1 through 18 of the Petition for Damages.

20. This defendant denies the allegations contained in ¶ 20 of the Petition for Damages.

21. This defendant denies the allegations contained in ¶ 21 of the Petition for Damages.

22. This defendant denies the allegations contained in ¶ 22 of the Petition for Damages.

WHEREFORE, this defendant requests that the Petition for Damages be dismissed, that Plaintiff takes nothing thereby, and that this defendant be awarded its costs, attorneys fees and expenses, and such other further relief as may be just and equitable.

COUNT II
(Absolute or Strict Liability)

23. This defendant repeats and realleges its answers to the allegations contained in ¶¶ 1 through 22 of the Petition for Damages.

24. This defendant denies the allegations contained in ¶ 24 of the Petition for Damages.

25. This defendant denies the allegations contained in ¶ 25 of the Petition for Damages.

26. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 26 of the Petition for Damages and therefore denies the same.

27. This defendant denies the allegations contained in ¶ 27 of the Petition for Damages.

28. This defendant denies the allegations contained in ¶ 28 of the Petition for Damages.

29. This defendant denies the allegations contained in ¶ 29 of the Petition for Damages.

30. This defendant denies the allegations contained in ¶ 30 of the Petition for Damages.

31. This defendant denies the allegations contained in ¶ 31 of the Petition for Damages.

WHEREFORE, this defendant requests that the Petition for Damages be dismissed, that Plaintiff takes nothing thereby, and that this defendant be awarded its costs, attorneys fees and expenses, and such other further relief as may be just and equitable.

Affirmative Defenses

1. Plaintiff's Petition for Damages fails to state a claim upon which relief may be granted.
2. Plaintiff's claims are barred by the applicable statute of limitations.
3. Plaintiff's claims are barred by the doctrine of laches, waiver and estoppel.
4. Venue is improper in this Court.

5. Plaintiff has failed to join all the parties necessary for a just adjudication of this matter in her Petition for Damages.

6. Plaintiff's claims for damages are barred in whole or in part by her failure to mitigate her damages.

7. This defendant denies the existence, nature, extent, and duration of Plaintiff's alleged damages.

8. Any injuries or damages sustained by Plaintiff, which this defendant expressly denies, were directly and proximately caused or contributed to by the negligence or fault of other persons or entities over whom this defendant has no control and for whom he bears no legal responsibility.

9. Any injuries or damages sustained by Plaintiff, which this defendant expressly denies, were not caused or contributed by any negligence or fault on the part of this defendant.

10. The negligence or fault of the parties to this case should be compared by the trier-of-fact, and any negligence or fault apportioned to Plaintiff should act to bar any recovery or reduce any recovery in direct proportion to any such assessment of fault, all in accordance with the laws of the State of Missouri.

11. This defendant cannot be held jointly and severally liable for the amount of any judgment rendered against the defendants in this case unless this defendant is found to bear fifty-one percent (51%) or more of fault. If this defendant is found to bear less than fifty-one percent (51%) of fault, then this defendant shall only be responsible for the percentage of judgment for which this defendant is determined to be responsible by the trier-of-fact.

12. This defendant can only be severally liable for the percentage of punitive damages, if trier-of-fact attributes any, for which fault to this defendant.

13. This defendant is entitled to a set-off or credit for any judgment, settlement, or proceeds paid to Plaintiff involving other defendants, other defendants' representatives, or third-parties.

14. This defendant expressly requests that Plaintiff's claims be reduced pursuant to § 537.060 RSMo in the event Plaintiff has previously settled or will settle any or their claims asserted in this lawsuit against any other defendant, any other party (person or entity), any other joint tortfeasor (person or entity), or any other person or entity liable for Plaintiff's damages, if any, arising out of the incident that is the subject of this litigation.

15. Plaintiff's claims are barred so far as the alleged product complied with the state of the art at the time it was manufactured as defined by law.

16. The alleged product of which Plaintiff complains was not defective.

17. If Plaintiff was exposed to any alleged harmful product connected to this defendant, which is specifically denied, then such exposure was inconsequential or de minimis, thus barring any recovery by the Plaintiff.

18. If Plaintiff sustained the injuries alleged in the petition, which is denied, there was an intervening, superseding cause or causes leading to the alleged injuries, and therefore, any act or omission on the part of this defendant was not the proximate cause and/or competent producing cause of the alleged injuries.

19. Plaintiff's claims are barred because the alleged dangerous nature of the alleged product was not known and could not reasonably be discovered at the time the product was placed in the stream of commerce.

20. Plaintiff's purported claims are barred because, at all relevant times, this defendant did not create a dangerous or unsafe condition on farmland wherein fertilizer was spread.

21. This defendant states that to the extent the alleged harmful products were altered from their original condition after said alleged products left this defendant's control, said alteration bars or limits this defendant's liability.

22. Plaintiff's claims are barred or limited by any misuse of the alleged product.

23. This defendant was at all times in full compliance with all applicable industry standards regarding the manufacture, sale, or distribution of products to which Plaintiff allegedly was exposed.

24. For other and further answer in defense to Plaintiff's Petition for Damages, Plaintiff's claims for punitive damages should be stricken and dismissed in that they violate both the Missouri Constitution and the United States Constitution as follows:

a. The standards for determining both the amount and/or the subsequent imposition of punitive damages are vague, supply no notice to this defendant of the potential repercussions of his alleged conduct and are subject to the unbridled discretion of the jury, thereby denying due process under the Missouri Constitution, Article 1, Section 10.

b. The standards for determining both the amount and/or the subsequent imposition of punitive damages are vague, supply no notice to this defendant of the repercussions of his alleged conduct and are subject to the unbridled discretion of the jury, thereby denying due process under the Fifth and Fourteenth Amendments of the United States Constitution.

c. Plaintiff's claims for punitive damages are criminal in nature and the rights given this defendant in criminal proceedings under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution are applicable.

d. Plaintiff's claims for punitive damages are criminal in nature and the rights given this defendant in criminal proceedings under the Missouri Constitution, Article 1, Sections 18A, 19, 21, and 22A are applicable.

e. Plaintiff's claims for punitive damages constitute a request for and/or imposition of an excessive fine in violation of the Eighth Amendment of the United States Constitution.

f. Plaintiff's claims for punitive damages constitute a request for and/or imposition of an excessive fine in violation of the Missouri Constitution, Article 1, Section 21.

g. Plaintiff's claims for punitive damages constitute cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.

h. Plaintiff's claims for punitive damages constitute cruel and unusual punishment in violation of the Missouri Constitution, Article 1, Section 21.

i. Plaintiff's claims for punitive damages discriminate against this defendant and constitute a denial of equal protection under the law in violation of the Fifth and Fourteenth Amendments of the United States Constitution in that defendant's wealth or net worth may be requested to be considered by the jury in determining the amounts of any such damage awards.

j. Plaintiff's claims for punitive damages discriminate against this defendant and constitute a denial of equal protection under the law in violation of Article 1, Sections 2 and 10 of the Missouri Constitution.

k. Plaintiff's claims for punitive damages constitute a subsequent imposition of punitive-type damages against this defendant and they cannot protect against multiple punishments for the same alleged conduct or wrong, thereby denying due process under Article 1, Sections 2 and 10 of the Missouri Constitution.

l. Missouri Law does not provide an adequate procedure for the determination of damages in the nature of aggravating circumstances or punitive damages in violation of the equal protection and substantive and procedural due process requirements of both the Missouri Constitution and the United States Constitution and in violation of the United States Supreme Court decisions in *Pacific Mutual Insurance Company vs. Haslip*; *BMW of North American, Inc. vs. Gore*; *State Farm v. Campbell*.

m. The granting of relief requested by Plaintiff would be unconstitutional under the Missouri and the United States constitutions in that it would violate due process and equal protection guarantees, place an undue burden on interstate commerce, and violate constitutional proscriptions against excessive fines.

25. To the extent that any defense arising out of the Missouri Tort Reform Act accrues to the benefit of this defendant, this defendant hereby reserves the right to assert the same should the facts warrant.

26. This defendant specifically reserves the right to plead additional affirmative defenses as they become known and available throughout pendency of this case.

WHEREFORE, having answered Plaintiff's Petition for Damages, defendant Prime Tanning Co., Inc. asks that judgment be entered against Plaintiff, and in favor of this Defendant, for costs, attorneys fees and expenses, and for such other relief the Court deems just and appropriate.

Dated: August 25, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 25th day of August, 2009, copies of the foregoing were transmitted via first class U.S. mail, postage prepaid, to:

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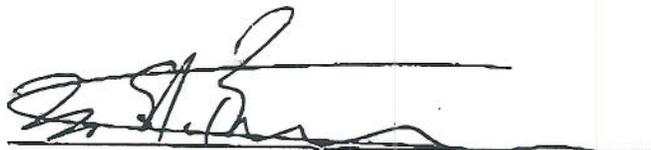
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