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| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF CHARLESTON |) | CASE NO: 2020-CP-10-02138 |
| |) | |
| HENRY ANTONIO WASHINGTON, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | <u>ANSWER</u> |
| |) | |
| CERES MARINE TERMINALS, INC. and |) | |
| LITTLE JOHN POU, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

COMES NOW, CERES MARINE TERMINALS, INC., hereinafter “Ceres” and LITTLE JOHN POU, (hereinafter collectively referred to as “Defendants”), and by and through their undersigned counsel of record, hereby respectfully files their Answer to Plaintiff’s Complaint and shows this Honorable Court as follows:

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff’s Complaint fails to state a claim for which relief can be granted and should therefore be dismissed.

SECOND AFFIRMATIVE DEFENSE

No acts or omissions by Ceres Marine Terminals, Inc. or Little John Pou proximately caused any injuries or damages to Plaintiff. Should Defendants be liable to Plaintiff, which liability is denied, Defendants would be entitled to a set off for all sums of money received or available from, or on behalf of, any other party for the same damages alleged in Plaintiff’s Complaint.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred or limited by the Plaintiff's comparative negligence. Defendants assert that the alleged incident and damages, if any, complained of in Plaintiff's Complaint, resulted solely and proximately from the fault or negligence, or either, of Plaintiff.

FOURTH AFFIRMATIVE DEFENSE

Defendants deny that the incident, which is the subject of this action, occurred as alleged in Plaintiff's Complaint. In the alternative, Defendants state that if it is determined that fault should be assessed, possible negligent acts or omissions of other persons or parties are the direct and proximate cause of some or all of the damages alleged in Plaintiff's Complaint.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate his damages, if any. To that extent, Plaintiff cannot recover from these Defendants.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are or may be barred by the statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are or may be barred by the doctrines of waiver, laches and/or estoppel.

EIGHTH AFFIRMATIVE DEFENSE

To the extent the evidence should show that Plaintiff by ordinary care could have avoided the consequences to himself, Plaintiff would not be entitled to recovery, or any recovery would be subject to reduction. Specifically, without limiting the generality of the foregoing. Defendants affirmatively plead and preserve the defenses of contributory negligence, comparative fault, assumption of the risk and the doctrine of avoidance.

NINTH AFFIRMATIVE DEFENSE

Without waiver of the following defenses, Defendants respond to Plaintiff's Complaint as follows:

1. Defendants are without sufficient information to deny or admit the allegations contained within paragraph 1 of Plaintiff's Complaint and therefore these allegations stand denied.

2. Defendants admit the allegations contained within paragraph 2 of Plaintiff's Complaint.

3. Defendants admit the allegations contained within paragraph 3 of Plaintiff's Complaint.

4. Defendants admit the allegations contained within paragraph 4 of Plaintiff's Complaint.

FACTUAL BACKGROUND

5. Defendants admit the allegations contained within paragraph 5 of Plaintiff's Complaint.

6. Defendants admit the allegations contained within paragraph 6 of Plaintiff's Complaint.

7. Defendants admit the allegations contained within paragraph 7 of Plaintiff's Complaint.

8. Defendants are without sufficient information to deny or admit the allegations contained within paragraph 8 of Plaintiff's Complaint and therefore these allegations stand denied.

9. Defendants are without sufficient information to deny or admit the allegations contained within paragraph 9 of Plaintiff's Complaint and therefore these allegations stand denied.

10. Defendants deny the allegations contained within paragraph 10 of Plaintiff's Complaint.

11. Defendants deny the allegations contained within paragraph 11 of Plaintiff's Complaint.

12. Defendants deny the allegations contained within paragraph 12 of Plaintiff's Complaint.

13. Defendants are without sufficient information to deny or admit the allegations contained within paragraph 13 of Plaintiff's Complaint and therefore these allegations stand denied.

**FOR A FIRST CAUSE OF ACTION
(Negligence, Gross Negligence)**

14. Paragraph 14 of Plaintiff's Complaint calls for a legal conclusion to which no response is needed, and on that basis, it stands denied.

15. Defendant denies the allegations contained within paragraph 15 of Plaintiff's Complaint, together with all of its subparts.

**FOR A SECOND CAUSE OF ACTION
(Negligent Entrustment as to Ceres Marine Terminals, Inc.)**

16. Defendants reincorporate and restate their responses to paragraphs 1-15 as if stated verbatim herein.

17. Defendants deny the allegations contained within paragraph 17 of Plaintiff's Complaint.

18. Defendants deny the allegations contained within paragraph 18 of Plaintiff's Complaint.

19. Defendants deny the allegations contained within paragraph 19 of Plaintiff's Complaint.

20. Defendants deny the allegations contained within paragraph 20 of Plaintiff's Complaint.

Responding to the last unnumbered paragraph contained in Plaintiff's Complaint, beginning with "WHEREFORE," including each subparagraph contained therein, Defendants

deny that Plaintiff is entitled to a judgment in its favor or for any relief whatsoever from these Defendants.

Defendants deny any and all allegations contained Plaintiff's Complaint not heretofore admitted, denied or otherwise responded to.

RESPECTFULLY SUBMITTED, this 9th day of June, 2020.

BOUHAN FALLIGANT LLP

By: /s/ John D. Northup, III
JOHN D. NORTHUP, III
South Carolina Bar No: 102791
*Attorneys for Defendants Ceres Marine
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CERTIFICATE OF SERVICE

I, Todd M. Baiad, do hereby certify that I have this day served the following counsel of record with a copy of the foregoing Ceres Marine Terminals, Inc. and Little John Pou's Answer to Plaintiff's Complaint by U. S. first class mail with proper postage affixed thereon addressed as follows:

William H. Nixon, Jr.
One Cool Blow Street, Suite 201
Charleston, SC 29403
bill@billnixonlaw.com

RESPECTFULLY SUBMITTED this 9th day of June, 2020.

BOUHAN FALLIGANT LLP

By: /s/ John D. Northup, III
JOHN D. NORTHUP, III
South Carolina Bar No: 102791
*Attorneys for Defendants Ceres Marine
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