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Superior Court - Norfolk
Docket Number

Docketed 12/22/22

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPT.
C.A. NO. *NEW ENTRY*

2282cv1183

KEITH MERCER,
DEBORAH ANN MERCER,
Plaintiffs

v.

DOVER MILL, LLC, and
MATTHEW B. SMITH,
Defendants

COMPLAINT

1. The plaintiff, Keith Mercer, is an individual residing in Maynard, Middlesex County, Massachusetts.
2. The Plaintiff, Deborah Ann Mercer, is a resident of Maynard, Middlesex County, Massachusetts and is the wife of Keith Mercer.
3. The Defendant Dover Mill, LLC, is a Domestic Limited Liability Company with a usual place of business at 2 Mill Street, Dover, Norfolk County, Massachusetts.
4. The Defendant, Matthew B. Smith, is an individual residing in Medfield, Norfolk County, Massachusetts.

COUNT I

5. At all times mentioned herein and relevant hereto, the defendant Dover Mill, LLC was engaged in certain activities at a construction project located at 78 Foxhill Street, Westwood, Massachusetts, including, among

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other things, serving and functioning as the prime or general contractor for said construction project.

6. On or about June 27, 2022, Keith Mercer while engaged in the usual course of his employment at the above-described construction project was caused to sustain serious and permanent physical injuries when he was caused to be exposed to and ingest a large amount of rodent feces.
7. The damages and injuries sustained by Keith Mercer were the direct and proximate result of the carelessness and negligence of the defendant, Dover Mill, LLC as follows:
    a. It negligently failed to maintain the subject construction site in a safe condition;
    b. It negligently managed, maintained, operated, controlled, supervised and/or directed the construction work site so as to created and/or allow the existence of an unreasonably dangerous or hazardous condition;
    c. It negligently failed to provide for adequate controls measures when it knew or should have known of the risk of exposure to the contaminated area;
    d. It negligently failed to provide and ensure the use of personal protective equipment to protect from exposure to rodent feces while working in the contaminated area;
    e. It negligently failed to warn, instruct, adequately warn or adequately instruct the Plaintiff concerning the dangerous and

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defective condition that existed in and around the subject contaminated work area.

f. It negligently created and/or allowed an unreasonably dangerous or hazardous condition to exist when it knew or in the exercise of reasonable care should have known that persons such as this plaintiff who were ignorant of said dangerous and defective conditions created by the contaminated work area would be exposed to dangers thereof.

8. As the direct and proximate result of the negligence of the Defendant Dover Mill, LLC all as hereinabove set forth and all in violation of Federal, State, and municipal law, including but not limited to OSHA Safety Health Standards (29 CFR 1926/1910) and related construction industry standards, the Plaintiff was caused to sustain serious and permanent physical injuries. By reason of said injury, Plaintiff has been caused to suffer permanent loss of function and mobility; he has been caused to incur expense for hospital, surgical, and other medical treatment; he has suffer permanent scarring and disfigurement; his ability to work and earn income has been and will continue to be permanently impaired; his activities have been restricted and his ability to lead a normal life has been adversely affected.

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WHEREFORE, the Plaintiff, Keith Mercer, demands judgement against the Defendant, Dover Mill, LLC, in such amount as this Court deems just and fair together with interest and the costs of this action.

COUNT II

9. The Plaintiff Keith Mercer herein incorporates paragraphs 1 through 8 as though specifically rewritten and set forth herein.

10. On June 27, 2022, the Plaintiff Keith Mercer was an employee of Dover Mill, LLC.

11. On June 27, 2022, during the course of his usual employment for the Defendant Dover Mill, LLC, the Plaintiff was caused to sustain serious and permanent physical injuries while working at the above-described construction project.

12. On information and belief, the Plaintiff alleges that on June 27, 2022 the Defendant Dover Mill, LLC failed to maintain workers' compensation insurance, in violation of the terms and provisions of M.G.L. c. 152, as would have provided workers compensation benefits to the Plaintiff.

13. As a direct and proximate result of the Defendant Dover Mill, LLC's failure to comply with the mandates of M.G.L. c. 152, the Plaintiff has been deprived of the compensation and benefits to which he was entitled under the provisions of M.G.L. c. 152.

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WHEREFORE, Plaintiff demands judgment against the Defendant Dover Mill, LLC in such amount as this Court deems just and fair, together with interests and costs of this action.

COUNT III

14. The Plaintiff, Deborah Ann Mercer, herein repeats and reavers each and every allegation contained within paragraphs 1 through 13 as though specifically rewritten and set forth herein.

15. At all times mentioned herein and relevant hereto, the Plaintiff Deborah Ann Mercer was and is the spouse of Keith Mercer.

16. As a direct and proximate result of the negligence of the Defendant, Dover Mill, LLC, the plaintiff Keith Mercer was caused to sustain serious and permanent physical and emotional injuries. By reason of said injuries, the plaintiff, Deborah Ann mercer has suffered as a result of her being witness to the pain, disability, and suffering endured by her husband, wherein her own health has been seriously and permanently weakened, injured, and impaired; and by reason of the physical and mental condition of her husband, she continues to suffer in body and mind and has been denied the care, protection, consideration, companionship, aid, affection, society and consortium of her husband, Keith Mercer.

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WHEREFORE, the Plaintiff, Deborah Ann Mercer, demands judgment against the defendant, Dover Mill, LLC, in such amount as this Court deems just and fair together with interest and costs of this action.

COUNT IV

17. The Plaintiff Keith Mercer herein repeats and reavers each and every allegation contained within paragraphs 1 through 16 as though specifically rewritten and set forth herein.

18. At all times mentioned herein and relevant hereto, the defendant Matthew B. Smith was engaged in certain activities at a construction project located at 78 Foxhill Street, Westwood, Massachusetts, including, among other things, serving and functioning as the prime or general contractor for said construction project.

19. On or about June 27, 2022, Keith Mercer while engaged in the usual course of his employment at the above-described construction project was caused to sustain serious and permanent physical injuries when he was caused to be exposed to and ingest a large amount of rodent feces.

20. The damages and injuries sustained by Keith Mercer were the direct and proximate result of the carelessness and negligence of the defendant, Matthew B. Smith as follows:

a. It negligently failed to maintain the subject construction site in a safe condition;

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b. It negligently managed, maintained, operated, controlled, supervised and/or directed the construction work site so as to created and/or allow the existence of an unreasonably dangerous or hazardous condition;

c. It negligently failed to provide for adequate controls measures when it knew or should have known of the risk of exposure to the contaminated area;

d. It negligently failed to provide and ensure the use of personal protective equipment to protect from exposure to rodent feces while working in the contaminated area;

e. It negligently failed to warn, instruct, adequately warn or adequately instruct the Plaintiff concerning the dangerous and defective condition that existed in and around the subject contaminated work area.

f. It negligently created and/or allowed an unreasonably dangerous or hazardous condition to exist when it knew or in the exercise of reasonable care should have known that persons such as this plaintiff who were ignorant of said dangerous and defective conditions created by the contaminated work area would be exposed to dangers thereof.

21. As the direct and proximate result of the negligence of the Defendant Matthew B. Smith all as hereinabove set forth and all in violation of Federal, State, and municipal law, including but not limited

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to OSHA Safety Health Standards (29 CFR 1926/1910) and related construction industry standards, the Plaintiff was caused to sustain serious and permanent physical injuries. By reason of said injury, Plaintiff has been caused to suffer permanent loss of function and mobility; he has been caused to incur expense for hospital, surgical, and other medical treatment; he has suffer permanent scarring and disfigurement; his ability to work and earn income has been and will continue to be permanently impaired; his activities have been restricted and his ability to lead a normal life has been adversely affected.

WHEREFORE, the Plaintiff, Keith Mercer, demands judgement against the Defendant Matthew B. Smith, in such amount as this Court deems just and fair together with interest and the costs of this action.

COUNT V

22. The Plaintiff Keith Mercer herein incorporates paragraphs 1 through 21 as though specifically rewritten and set forth herein.

23. On June 27, 2022, the Plaintiff Keith Mercer was an employee of Matthew B. Smith.

24. On June 27, 2022, during the course of his usual employment for the Defendant Matthew B. Smith, the Plaintiff was caused to sustain serious and permanent physical injuries while working at the above-described construction project.

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25. On information and belief, the Plaintiff alleges that on June 27, 2022 the Defendant Matthew B. Smith failed to maintain workers' compensation insurance, in violation of the terms and provisions of M.G.L. c. 152, as would have provided workers compensation benefits to the Plaintiff.

26. As a direct and proximate result of the Defendant Matthew B. Smith's failure to comply with the mandates of M.G.L. c. 152, the Plaintiff has been deprived of the compensation and benefits to which he was entitled under the provisions of M.G.L. c. 152.

WHEREFORE, Plaintiff demands judgment against the Defendant Matthew B. Smith in such amount as this Court deems just and fair, together with interests and costs of this action.

COUNT VI

27. The Plaintiff, Deborah Ann Mercer, herein repeats and reavers each and every allegation contained within paragraphs 1 through 26 as though specifically rewritten and set forth herein.

28. At all times mentioned herein and relevant hereto, the Plaintiff Deborah Ann Mercer was and is the spouse of Keith Mercer.

29. As a direct and proximate result of the negligence of the Defendant, Matthew B. Smith, the plaintiff Keith Mercer was caused to sustain serious and permanent physical and emotional injuries. By reason of said injuries, the plaintiff, Deborah Ann mercer has suffered as

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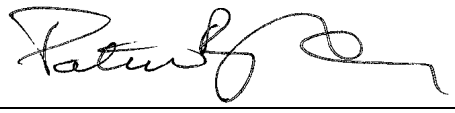
a result of her being witness to the pain, disability, and suffering endured by her husband, wherein her own health has been seriously and permanently weakened, injured, and impaired; and by reason of the physical and mental condition of her husband, she continues to suffer in body and mind and has been denied the care, protection, consideration, companionship, aid, affection, society and consortium of her husband, Keith Mercer.

WHEREFORE, the Plaintiff, Deborah Ann Mercer, demands judgment against the defendant, Matthew B. Smith, in such amount as this Court deems just and fair together with interest and costs of this action.

PLAINTIFF DEMANDS A TRIAL BY JURY.

Respectfully submitted,
Plaintiffs, by their Attorneys,



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