

Graul v Amchem Prods., Inc.

2020 NY Slip Op 30958(U)

April 14, 2020

Supreme Court, New York County

Docket Number: 190019/2018

Judge: Manuel J. Mendez

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ
Justice

PART 13

IN RE: NEW YORK CITY ASBESTOS LITIGATION

ALBERT J. GRAUL JR. and CHARLOTTE GRAUL,

INDEX NO. 190019/2018

MOTION DATE 03/23/2020

MOTION SEQ. NO. 003

MOTION CAL. NO. _____

Plaintiffs,

-against-

AMCHEM PRODUCTS, INC., et al.,

Defendants.

The following papers, numbered 1 to 6 were read on defendant Tecumseh Products Company, LLC's motion to dismiss for lack of personal jurisdiction:

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...	<u>1-3</u>
Answering Affidavits - Exhibits _____	<u>4-5</u>
Replying Affidavits _____	<u>6</u>

CROSS-MOTION YES NO

Upon a reading of the foregoing cited papers it is Ordered that defendant Tecumseh Product Company LLC's (hereinafter "Tecumseh") motion to dismiss plaintiffs' claims as against it for lack of personal jurisdiction, pursuant to CPLR § 3211(a)(8) is granted, and the complaint and all cross-claims against this defendant are severed and dismissed.

Plaintiff, Albert J. Graul Jr., was diagnosed with mesothelioma in November 2017 as a result of his alleged exposure to asbestos. It is alleged that he was exposed to asbestos-containing components of Tecumseh engines from 1973 to approximately 1975.

Mr. Graul was deposed over the course of three (3) days on February 20, 21, and 22, 2018. His only alleged exposures to Tecumseh engines took place while he was employed at Barg's Lawn and Garden Center in Freehold, New Jersey from 1973 to 1975, where he alleged exposure to Tecumseh engines which had asbestos-containing head gaskets. Notable, however, he did not allege any exposure to Tecumseh products within the State of New York. (Moving papers, Exh. 3, 104:25-107:10, 250:24-259:1, 291:4).

Jason Smith, the Corporate Director of Environmental Control and Legal Support at Tecumseh Products Company, LLC., states in his affidavit in support of

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

this motion that Tecumseh is a corporation organized pursuant to the laws of the State of Michigan, where it is incorporated. Tecumseh is a resident of the State of Michigan, and its current principal place of business is in Ann Arbor, Michigan. Tecumseh does not currently have any offices in the State of New York and has never been registered as a foreign corporation authorized to do business in New York. They have never manufactured products in New York and never owned or paid taxes for real estate in New York. (Smith Affidavit., ¶ 3, 4, 5, and 6).

Tecumseh argues that this Court does not have personal jurisdiction over them because Mr. Graul's exposure occurred outside of the State of New York and Mr. Graul never alleged exposure within the State of New York. (Moving papers, Exh. 3). Tecumseh further argues that they are not incorporated in New York and do not maintain their principal place of business here, thus there is no general jurisdiction. Furthermore, Tecumseh contends that plaintiffs' claims do not arise from any of Tecumseh's New York transactions, and that Tecumseh did not commit a tortious act within the State of New York or without the State of New York that caused an injury to person or property within the State of New York, and therefore, there is no specific jurisdiction. (see CPLR § 302(a)(1), (2), and (3)).

Plaintiffs oppose the motion arguing that Tecumseh voluntarily participated in the litigation of this action and their participation constituted submission to the jurisdiction of the Courts of New York, which is a predicate for personal jurisdiction. Plaintiffs further argue that during the time of Mr. Graul's alleged exposure, Tecumseh engines were in use in the State of New York, and that Tecumseh had other corporate businesses in the State of New York, and as such there is specific jurisdiction over Tecumseh under CPLR 302(a)(1), or (a)(2). (See generally, Opp. Exh. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18).

"On a motion to dismiss pursuant to CPLR § 3211, the Court must accept as true the facts as alleged in the complaint and submissions in opposition to the motion, accord the plaintiffs the benefit of every possible inference and determine only whether the facts as alleged fit within any cognizable legal theory." (Sokoloff v. Harriman Estates Dev. Corp., 96 N.Y.2d 409, 729 N.Y.S.2d 425, 754 N.E.2d 184 [2001]). A motion to dismiss pursuant to CPLR § 3211(a)(8) applies to lack of jurisdiction over the defendant. Jurisdiction over a non-domiciliary is governed by New York's general jurisdiction statute CPLR § 301, and long-arm statute CPLR § 302.

The plaintiff bears the burden of proof when seeking to assert jurisdiction. (Lamarr v. Klein, 35 A.D.2d 248, 315 N.Y.S.2d 695 [1st Dept. 1970]). However, in opposing a motion to dismiss, the plaintiff needs only to make a sufficient start by showing that its position is not frivolous. (Peterson v. Spartan Indus., Inc., 33 N.Y.2d 463, 354 N.Y.S.2d 905, 310 N.E.2d 513 [1974]).

General Jurisdiction:

“General jurisdiction permits a court to adjudicate any cause of action against the defendant, wherever arising, and whoever the plaintiff.” (Lebron v. Encarnacion, 253 F.Supp.3d 513 [EDNY 2017]). To obtain jurisdiction pursuant to CPLR § 301, the plaintiff must show that the defendant’s “affiliations with [New York] are so continuous and systematic as to render them essentially at home in” New York. (Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S.Ct. 2846 [2011]; Daimler AG v. Bauman, 134 S.Ct. 746 [2014]). “For a corporation, the paradigm forum for general jurisdiction, that is the place where the corporation is at home, is the place of incorporation and the principal place of business.” (Daimler AG *supra*).

This Court cannot exercise general personal jurisdiction over Tecumseh because it is not incorporated in New York, nor does it have its principal place of business in the State of New York. Absent “exceptional circumstances” a corporation is at home where it is incorporated or where it has its principal place of business.” (Daimler, *supra*). Tecumseh is incorporated in Michigan with its principal place of business in Michigan. (Smith Affidavit ¶¶ 3 and 4). Furthermore, the plaintiff is unable to demonstrate “exceptional circumstances” for this Court to exercise general personal jurisdiction over Tecumseh.

Specific Jurisdiction:

“For the court to exercise specific jurisdiction over a defendant the suit must arise out of or relate to the defendant’s contacts with the forum. Specific Jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction. When no such connection exists, specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State. What is needed is a connection between the forum, and the specific claims at issue.” (Bristol-Meyers Squibb Co. v. Superior Court of California, San Francisco, 136 S. Ct. 1773 [2017]). “It is the defendant’s conduct that must form the necessary connection with the forum state that is the basis for jurisdiction over it. The mere fact that this conduct affects a plaintiff with connections with a foreign state does not suffice to authorize jurisdiction.” (*Id*; Walden v. Fiore, 134 S. Ct. 1115 [2014]).

With CPLR § 302(a)’s long-arm statute, courts may exercise specific personal jurisdiction over a non-resident when it: “(1) transacts any business within the state or contracts anywhere to supply the goods or services in the state; or (2) commits a tortious act within the state,...; or (3) commits a tortious act without the state causing injury to person or property within the state,... if he (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or

international commerce; or (4) owns, uses or possesses any real property situated within the state.” (CPLR § 302[a]).

“Jurisdiction is proper under the transacting of business provision of New York’s long-arm statute even though the defendant never enters New York, so long as the defendant’s activities in the state were purposeful and there is a substantial relationship between the transaction and the claim asserted. (McKinney’s CPLR § 302(a)(1); *Al Rushaid v. Pictet & Cie*, 28 N.Y.3d 316, 68 N.E.3d 1, 45 N.Y.S.3d 276 [2016]). “A non-domiciliary defendant transacts business in New York when on their own initiative the non-domiciliary projects itself into this state to engage in a sustained and substantial transaction of business. However, it is not enough that the non-domiciliary defendant transact business in New York to confer long-arm jurisdiction. In addition, the plaintiffs’ cause of action must have an “articulable nexus” or “substantial relationship with the defendant’s transaction of business here. At the very least, there must be a relatedness between the transaction and the legal claim such that the latter is not completely unmoored from the former, regardless of the ultimate merits of the claim. This inquiry is relatively permissive, and an articulable nexus or substantial relationship exists where at least one element arises from the New York contacts.” (*D & R Global Selections, S.L., v. Bodega Olegario Falcon Pineiro*, 29 N.Y.3d 292, 78 N.E.3d 1172, 56 N.Y.S.3d 488 [2017] quoting *Licci v. Lebanese Can. Bank, SAL*, 20 N.Y.3d 327, 984 N.E.2d 893, 960 N.Y.S.2d 695 [2012]).

This Court cannot exercise specific personal jurisdiction over Tecumseh under CPLR § 302(a)(1), (2), and (3). Mr. Graul did not allege exposure to any asbestos-containing Tecumseh gaskets in New York. Mr. Graul worked in the State of New Jersey during the relevant period and was diagnosed and treated with mesothelioma in the State of New Jersey. (Moving papers, Exh. 1). Mr. Graul alleged in his deposition testimony that he was exposed to asbestos-containing Tecumseh hand gaskets while working at Barg’s Lawn and Garden Center in Freehold, New Jersey from 1973 to 1975. (Moving papers, Exh. 3). During this period Mr. Graul only worked in the State of New Jersey and only encountered Tecumseh asbestos-containing products in the State of New Jersey. Mr. Graul never worked in New York, did not allege exposure to asbestos-containing Tecumseh products in New York, and Tecumseh did not transact business within the State of New York.

The only facts given by the plaintiffs to establish specific personal jurisdiction over Tecumseh is that Tecumseh had asbestos-containing engines in the State of New York during the same time of Mr. Graul’s alleged exposure, and that there are Tecumseh business corporations other than Tecumseh Products Company LLC incorporated and authorized to do business in the State of New York. Negotiations and contracting to do business in the State of New York is not enough to constitute a “sufficient start.” (*IMAX Corp. v. The Essel Group*, 154 A.D.3d 464, 62 N.Y.S.3d 107 [1st Dept. 2017]). Furthermore, the listing of a New York office and telephone number, without more, is insufficient to confer personal jurisdiction. (*Minella v. Restifo*, 124 A.D.3d 486, 3 N.Y.S.3d 322 [1st Dept. 2015]).

Thus, there is no articulable nexus or substantial relationship between Tecumseh's in-state conduct and the claims asserted.

Tecumseh has established that long-arm jurisdiction should not be exercised over it under CPLR 302(a)(1), (2), and (3), and this Court lacks jurisdiction over Tecumseh.

Accordingly, for the foregoing stated reasons, it is ORDERED that defendant Tecumseh Products Company LLC's, motion to dismiss plaintiffs' complaint against it pursuant to CPLR § 3211(a)(8) for lack of personal jurisdiction, is granted, and it is further

ORDERED that the complaint and all crossclaims against defendant Tecumseh Products Company LLC are severed and dismissed, and it is further,

ORDERED that the Clerk of the Court enter judgment accordingly.

ENTER:



MANUEL J. MENDEZ
J.S.C.

Dated: April 14, 2020

MANUEL J. MENDEZ
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE