

**Martinez v Century Waste Serv., Inc.**

2020 NY Slip Op 31273(U)

April 30, 2020

Supreme Court, Kings County

Docket Number: 525750/18

Judge: Carolyn E. Wade

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At Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Brooklyn, New York on the 3<sup>rd</sup> day of April 2020

**PRESENT:**

**HON. CAROLYN E. WADE,**

Justice

-----X  
ADRIENNE MARTINEZ, as Administrator of the Estate of the Estate of ROBERT MARTINEZ, deceased,

Plaintiff,

Index No.  
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-against-

**DECISION/ORDER**

CENTURY WASTE SERVICE, INC. and SERGIO GALACIA-SARMENTO,

Defendants.

-----X  
CENTURY WASTE SERVICE, INC. and SERGIO GALACIA-SARMENTO,

Third-Party Plaintiff,

-against-

A.J. BLOSENSKI, INC.,

Third-Party Defendant,  
-----X

**Recitation, as required by CPLR §2219(a), of the papers considered in the review of Third-Party Defendant's Motion:**



<b>PapersNumbered</b>	
<b>Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....</b>	<b>1</b>
<b>Cross-Motion and Affidavits/Affirmations.....</b>	
<b>Answering Affidavits/Affirmations.....</b>	<b>2</b>
<b>Reply Affidavits/Affirmations.....</b>	<b>3</b>
<b>Memorandum of Law.....</b>	

Upon the foregoing cited papers, and after oral argument, third-party defendant A.J. Blosenski, Inc. moves for an Order pursuant to CPLR § 3211(a)(8), dismissing the third-party complaint against it, on the ground that there is no basis for the courts of New York State to have personal jurisdiction over it.

The underlying action arises out of a motor vehicle accident that occurred on August 1, 2018 on the I-278E Gowanus ramp in Brooklyn, New York. During the accident, a vehicle that was operated by Robert Martinez was struck by a dislodged tire from a 2009 Mack garbage truck owned by defendant/third-party plaintiff Century Waste Service, Inc., and driven by Sergio Galacia-Sarmiento (collectively, "Defendants/Third-Party Plaintiffs"). Robert Martinez ("Decedent") died as a result of the accident.

Following the commencement of this action by plaintiff Adrienne Martinez, as the Administrator of Decedent's estate, a third-party complaint was filed by the Defendants/Third-Party Plaintiffs against third-party defendant A.J. Blosenski, Inc., the company which sold the subject Mack garbage truck to Century Waste Service, Inc. The third-party complaint sounds in common law negligence, negligent misrepresentation, breach of contract, strict products liability, breach of warranty, and contribution. A.J. Blosenski, Inc. joined issue. The instant motion ensued.

After a meticulous examination of the respective submissions, this Court finds as follows:

In support of the instant motion, third-party defendant A.J. Blosenski, Inc. asserts that it is a Pennsylvania-incorporated garbage and recycling services company; while, Century Waste Service, Inc. has a principal place of business in New Jersey. The subject dump truck was delivered to Century Waste Service, Inc. at A.J. Blosenski, Inc.'s yard located at 1600 Chestnut Tree Road, Honey Brook, Pennsylvania.

A.J. Blosenski, Inc. submits a supporting affidavit from Jim Clark ("Clark"), its business manager. Clark avers that the corporation is not registered to do business in New York, has no contacts within the state, and does not derive substantial revenue from interstate or international commerce. A.J. Blosenski, Inc. maintains that there is no reasonable expectation that a sale of a truck in Pennsylvania to a New Jersey-based company would have New York consequences. Thus, A.J. Blosenski, Inc. argues that it is not subject to the personal jurisdiction of New York state courts, and requests that the third-party complaint be dismissed against it.

Defendants/Third-Party Plaintiffs, in opposition, point out that Century Waste Services, Inc. is a domestic limited liability company of the State of New York; thus, it argues that any damages sustained by it would occur within the state (Exhibit "G" of A.J. Blosenski, Inc.'s motion). They also assert that a review of Century Waste Services, Inc.'s website establishes that it conducts business in the city and state of New York. They contend that it would be disingenuous for its adversary not to reasonably anticipate that the truck would be used in New York. Moreover, they aver that A.J. Blosenski, Inc. has not submitted evidence to support its representation that it does not derive substantial revenue from interstate or international commerce. Defendants/Third-Party Plaintiffs add that it is not in the position to know the

details of A.J. Blosenski, Inc.'s business operations; and that their adversary has not responded to their discovery demands (Exhibit "F" of Defendants/Third-Party Plaintiffs' opposition). They assert that the discovery would be pertinent to the issue of this court's jurisdiction over A.J. Blosenski, Inc.

In rebuttal, A.J. Blosenski, Inc. submits, *inter alia*, a supplemental affidavit from Clark, who avers that in 2019, the corporation's gross revenue was \$54,000,000; however, only a total of \$451,167 came from its garbage and recycling services in Delaware and Maryland. Thus, the movant contends that it does not get substantial revenue from interstate commerce to be subject to this court's long arm jurisdiction.

With respect to New York's long arm jurisdiction, CPLR 302(a)(3) provides, in pertinent part, as follows:

302. Personal jurisdiction by acts of non-domiciliaries

(a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:

3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he

(i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives from substantial revenue from goods used or consumed or services rendered, in the state, or

(ii) **or expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce** [emphasis added];

In the instant case, it is undisputed that there is outstanding discovery to be exchanged

between the parties; to wit, documentation regarding A.J. Blosenski, Inc.'s business operations. In particular, questions remain as to: 1) whether the entity should have reasonably expected for the alleged tortious act to have consequences within this state; and 2) whether it derives substantial revenue from interstate or international commerce. This information will be integral to properly assess the issue of long arm personal jurisdiction pursuant to CPLR 302(a)(3).

The court further notes that A.J. Blosenski, Inc.'s reply papers include a supplemental affidavit from Clark, which contains quantitative data regarding its garbage removal services in Delaware and Maryland. The corporation contends that this is evidence that it did not obtain substantial revenue from interstate commerce. However, the affidavit will not be considered, as this evidence was presented for the first time therein (*Jackson-Cutler v. Long*, 2 A.D.3d 590 [2d Dept 2003]).

Accordingly, based upon the above, A.J. Blosenski, Inc.'s Motion to Dismiss is **denied** without prejudice.

This constitutes the Decision/Order of the court.



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HON. CAROLYN E. WADE  
ACTING SUPREME COURT JUSTICE