

Nelson v 3M Co.

2021 NY Slip Op 30049(U)

January 8, 2021

Supreme Court, New York County

Docket Number: 190095/2019

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 13

Justice

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DARRELL NELSON, BARBARA NELSON,
Plaintiff,

INDEX NO. 190095/2019
MOTION DATE 10/06/2020
MOTION SEQ. NO. 007

- v -

3M COMPANY, ABB, INC., AIR & LIQUID SYSTEMS CORPORATION, ALFA LAVAL, INC., AMTROL, INC., ARMSTRONG INTERNATIONAL, INC., AURORA PUMP COMPANY, BARNES & JONES, INC., BARNES & JONES, LLC, BLACKMER PUMP COMPANY, BORGWARNER MORSE TEC LLC, BW/IP INTERNATIONAL, INC., CAMERON INTERNATIONAL CORPORATION, CBS CORPORATION, CLEAVER-BROOKS INC., CRANE CO., FLOWSERVE US, INC., FMC CORPORATION, FORD MOTOR COMPANY, FORT KENT HOLDINGS, INC., FOSTER WHEELER ENERGY CORPORATION, GARDNER DENVER, INC., GENERAL ELECTRIC COMPANY, GENUINE PARTS COMPANY A/K/A NAPA, GG OF FLORIDA, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOULD ELECTRONICS, INC., GOULDS PUMPS, INCORPORATED, HEXAGON METROLOGY, INC., HOLLEY PERFORMANCE PRODUCTS, INC., HONEYWELL INTERNATIONAL, INC., HOPEMAN BROTHERS INC., IMO INDUSTRIES, INC., INGERSOLL-RAND COMPANY, ITT INC., JENKINS BROS., JOHN CRANE, INC., MCNALLY INDUSTRIES, LLC, METSO USA, INC., THE NASH ENGINEERING COMPANY, NATIONAL AUTOMOTIVE PARTS ASSOCIATION LLC, THE PEP BOYS - MANNY MOE & JACK OF CALIFORNIA, PNEUMO ABEX LLC, ROBERTSHAW CONTROLS COMPANY, SCHNEIDER ELECTRIC SYSTEMS USA, INC., SIEMENS CORPORATION, STERLING FLUID SYSTEMS (USA), LLC, SUPERIOR-LIDGERWOOD-MUNDY CORPORATION, THRUSH CO., INC., UNION CARBIDE CORPORATION, VELAN VALVE CORP., VIAD CORP, VIKING PUMP, INC., WARREN PUMPS, LLC, WEIR VALVES & CONTROLS USA, INC., THE WILLIAM POWELL COMPANY, JOHN DOES 1-100,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256

were read on this motion to/for DISMISS

Upon the foregoing documents, it is ordered that defendants Genuine Parts Company (hereinafter referred to as defendant “GPC”) and National Automotive Parts Association, LLC’s (hereinafter referred to as defendant “NAPA”) motion to dismiss this action as against them is granted without opposition.

Moving defendants seek dismissal of the instant complaint pursuant to CPLR §3211(a)(8) on the grounds that this Court lacks personal jurisdiction over such defendants. Defendants GPC and NAPA argue that they are not subject to the jurisdiction of the Court as they are not residents of New York State. In support, moving defendants proffer, *inter alia*, the affidavits of Mr. Mark Hohe and Mr. Gaylord Spencer, representatives of defendants GPC and NAPA respectively, which establish that neither defendant GPC nor defendant NAPA have their principal place of business within the State of New York, and, thus, are not residents of the state. Moreover, both defendants argue that they do not transact business within the State of New York such that personal jurisdiction cannot be conferred upon them.

Preliminarily, to find personal jurisdiction, the Court must determine whether it has general or specific jurisdiction over the moving defendants. New York’s general jurisdiction statute CPLR §301 and the long arm statute CPLR §302(a) govern jurisdiction over a non-domiciliary defendant. As to general jurisdiction pursuant to CPLR §301, it must be established that a defendant’s “affiliations with the State [of] New York are so continuous and systematic as to render it essentially at home in the...State”. *Robins v Procure Treatment Ctrs., Inc.*, 157 AD3d 606, 607 (1st Dep’t 2018)(internal brackets and citations omitted). “Aside from an exceptional case, a corporation is at home only in a state that is the company’s place of incorporation or its principal place of business”. *Lowy v Chalkable, LLC*, 186 AD3d 590, 592 (2nd Dep’t 2020)(internal quotations and citations omitted). The relevant inquiry regarding a

corporate defendant's place of incorporation and principal place of business, is at the time the action is commenced. *See Lancaster v Colonial Motor Freight Line, Inc.*, 177 AD2d 152, 156 (1st Dep't 1992). The Court notes that defendants GPC and NAPA have established, and it is uncontested, that both of their principal places of business are outside the State of New York and that they are not residents of this state. As both defendants GPC and NAPA had their principal places of business in Georgia at the time the instant action was commenced, and neither such defendant was incorporated in New York State, personal jurisdiction may not be established based upon the residence of the moving defendants.

As for long arm jurisdiction, CPLR §302(a) states that specific jurisdiction may be exercised over a non-resident who "(1) transacts any business within the state or contacts anywhere to supply 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...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 real property situated within the state." Here, the evidence presented fails to demonstrate that defendants GPC and NAPA conducted business within the state or had a substantial nexus to the state. The documents herein establish that plaintiff is a resident of Minnesota, rather than New York, at the relevant time frame of plaintiff's alleged exposure to asbestos and at the time the instant action was commenced. Moreover, the alleged asbestos exposure arose from work plaintiff performed in Minnesota.

Defendant NAPA has established, through the affidavit of Mr. Spencer, the Senior Vice President, Marketing Strategy and Secretary of the National Automotive Parts Association, that it has not manufactured, designed, distributed, supplied, nor sold any asbestos containing automotive parts. Mr. Spencer further affirms that defendant NAPA has no nexus with the State of New York in that it owns no real estate here, it has never been incorporated here, never kept its books or records here, and has never maintained its corporate offices here. Thus, defendant NAPA has established that it does not transact business in New York State, it did not commit a tortious act against plaintiff within the state, it did not commit a tortious act against plaintiff without the state which caused injury to plaintiff within the state, and it does not own real estate within the state. Based upon these facts, the Court finds that specific jurisdiction has not been established as to defendant NAPA.

Similarly, defendant GPC has demonstrated, through the affidavit of Mr. Hohe, an employee of defendant GPC from June 1974 to February 2016 who has held numerous titles, that defendant GPC conducts business nationwide of which less than 5% of its employees conduct work within New York State, approximately 5% of the automotive parts owned by it are situated within the state, less than 5% of the real properties operated by it are within the state, and less than 5% of its revenue is generated within the state. Furthermore, defendant GPC has never had corporate offices within New York State, no board or shareholder meetings have been conducted within the state, and it has no offices or remanufacturing facilities within the state. Here, defendant GPC established that it does not persist in a consistent course of conduct within New York State, nor does it derive substantial revenue from the state. Moreover, defendant GPC has shown that it did not commit a tortious act against plaintiff within the state and it did not commit a tortious act against plaintiff without the state which caused injuries within the state as plaintiff

did not reside in the State of New York at all relevant times and was never exposed to asbestos within New York State. Thus, the Court finds that specific jurisdiction may not be exercised over defendant GPC. As it has been determined that the Court does not have general or specific jurisdiction over defendants GPC and NAPA, the instant motion to dismiss is granted, without opposition, pursuant to CPLR §3211(a)(8) on the grounds that this Court lacks personal jurisdiction over such defendants.

Accordingly, it is

ORDERED that the motion of defendants Genuine Parts Company and National Automotive Parts Association, LLC to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendants, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants only; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

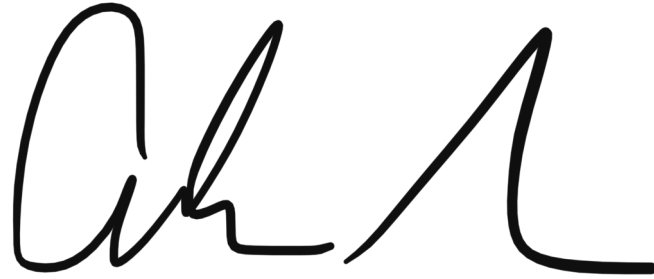
ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving parties shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on*

Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the Decision/order of the Court.



1/8/2021
DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE