

Stultz v 3M Co.

2021 NY Slip Op 31164(U)

April 2, 2021

Supreme Court, New York County

Docket Number: 190224/2018

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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ROBERT STULTZ and MARY SUE SLOAN,

Plaintiff,

INDEX NO. 190224/2018

MOTION DATE 10/09/2020

MOTION SEQ. NO. 008

- v -

3M COMPANY, A.O. SMITH CORPORATION, ACUITY BRANDS LIGHTING, INC., INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO LITHONIA LIGHTING, AIR & LIQUID SYSTEMS CORPORATION AS SUCCESSOR-BY-MERGER TO BUFFALO PUMPS INC., AKZO NOBEL INC., AMERICAN ELECTRIC POWER, F/K/A OHIO POWER COMPANY, ARCELORMITTAL USA, LLC SUCCESSOR IN INTEREST TO INLAND STEEL COMPANY, AURORA PUMP COMPANY, BORGWARNER MORSE TEC LLC, BRAND INSULATIONS INC., CARRIER CORPORATION, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO BRYANT MANUFACTURING, CBS CORPORATION FKA VIACOM INC. SUCCESSOR BY MERGER TO CBS CORPORATION FKA WESTINGHOUSE ELECTRIC CORPORATION, CERTAINTEED CORPORATION, CLYDE UNION INC., CONOCO PHILIPS COMPANY, COOPER INDUSTRIES LLC., CRANE CO., DYNEGY INC. INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO ILLINOIS POWER GENERATING COMPANY, EATON CORPORATION, AS SUCCESSOR IN INTEREST TO EATON ELECTRICAL, INC. AND CUTLERHAMMER, ELOF HANSSON USA INC., EMPIRE ACE INSULATION MANUFACTURING CORP., FMC CORPORATION ON BEHALF OF ITS FORMER PEERLESS PUMP DIVISION AND CHICAGO PUMP DIVISION, FOSTER WHEELER ENERGY CORPORATION, GARDNER DENVER INC., GARDNER-GIBSON INC. INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO THE GIBSON HOMANS COMPANY, GENERAL ELECTRIC COMPANY, GOULD ELECTRONICS INC., GOULDS PUMPS INCORPORATED, GRAYBAR ELECTRIC COMPANY INC., GRINNELL LLC., GTE PRODUCTS OF CONNECTICUT CORPORATION, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO UNION INSULATING COMPANY, HENRY COMPANY, INDIVIDUALLY AND AS SUCCEOSOR IN INTEREST TO MONSEY PRODUCTS COMPANY, HONEYWELL INTERNATIONAL, INC. FKA ALLIED SIGNAL INC./BENDIX, HUBBELL LIGHTING INC., INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO PRESCOLITE INC., IMPERIAL SUGAR COMPANY, INGERSOLL-RAND COMPANY, ITT CORPORATION

**DECISION + ORDER ON
MOTION**

FORMERLY KNOWN AS ITT INDUSTRIES INC. INDIVIDUALLY AND AS SUCCESSOR TO BELL & GOSSETT COMPANY AND AS SUCCESSOR TO KENNEDY VALVE MANUFACTURING CO., INC. AND AS SUCCESSOR TO GRINNELL VALVE CO., INC., J-M A/C PIPE CORPORATION, J-M MANUFACTURING COMPANY INC., KOHLER COMPANY, LENNOX INDUSTRIES INC., LIGHTOLIER, INC., MARIO & DIBONO PLASTERING COMPANY, PEERLESS INDUSTRIES INC., ROCKWELL AUTOMATION INC., AS SUCCESSOR IN INTEREST TO ALLEN-BRADLEY COMPANY LLC., RHEEM MANUFACTURING COMPANY LLC., RSCC WIRE & CABLE LLC., SCHNEIDER ELECTRIC USA INC. FORMERLY KNOWN AS SQUARE D COMPANY, SIEMAN INDUSTRIES INC., AS SUCCESSOR TO SIMENAS ENERGY AND AUTOMATION, SIMPSON TIMBER COMPANY, THE DOW CHEMICAL COMPANY, THE OKONITE COMPANY INC., THE UPJOHN COMPANY, TRANE US INC. FKA AMERICAN STANDARD INC. INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO KEWANEE BOILER CORPORATION, THE W.W. HENRY COMPANY, UNION CARBIDE CORPORATION, UNITED STATES STEEL CORPORATION INDIVIDUALLY AND AS SUCCESSOR TO AMERICAN STEEL & WIRE CO THE ELECTRICAL CABLE DIVISION, UNITED STATES STEEL CORPORATION AS SUCCESSOR IN INTEREST TO USX CORPORATION AS SUCCESSOR IN INTEREST TO UNITED STATES STEEL CORPORATION AND ITS DIVISION AMERICAN BRIDGE COMPANY, WEIL MCLAIN, WESTERN AUTO SUPPLY COMPANY, XCEL ENERGY INC., ZURN INDUSTRIES LLC., AERCO INTERNATIONAL INC., BMCE INC., F/K/A UNITED CENTRIFUGAL PUMP

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 008) 226, 227, 228, 229, 230, 231, 232, 233, 234, 235

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is ordered that defendant Simpson Timber Company’s motion to dismiss this action as against it is granted without opposition.

Moving defendant seeks dismissal of the instant complaint pursuant to CPLR §3211(a)(8) on the grounds that this Court lacks personal jurisdiction over it. Defendant Simpson Timber Company argues that it is not subject to the jurisdiction of the Court as it is not a resident of New York State. In support, moving defendant proffers, *inter alia*, its answer to interrogatories, which

establish that defendant Simpson Timber Company did not have its principal place of business within the State of New York, and, thus, are not residents of the state. Moreover, moving defendant argues 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 defendant. 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 defendant Simpson Timber Company has established, and it is uncontested, that its principal place of business is outside the State of New York, that it was incorporated in the State of Washington at the time this action was commenced. Furthermore, defendant Simpson Timber Company is not authorized to do business in the State of New York such that it is not a resident of this state. As such, personal jurisdiction may not be established based upon the residence of the moving defendant.

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 defendant Simpson Timber Company conducted business within the state or had a substantial nexus to the state. If fact, based upon plaintiff’s answers to interrogatories and deposition transcript, defendant Simpson Timber Company’s products were not even identified by plaintiff as a product which exposed him to asbestos. Thus, defendant Simpson Timber Company 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 Simpson Timber Company.

As it has been determined that the Court does not have general or specific jurisdiction over defendant Simpson Timber Company, 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 defendant.

Accordingly, it is

ORDERED that the motion of defendant Simpson Timber Company to dismiss the

complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant 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 party 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.

4/2/2021
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	