

Seger v Amchem Prods., Inc.
2021 NY Slip Op 31854(U)
June 1, 2021
Supreme Court, New York County
Docket Number: 190246/2019
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART IAS MOTION 13

Justice

X

INDEX NO. 190246/2019

MOTION DATE 12/09/2020

MOTION SEQ. NO. 001

GEORGE SEGER,

Plaintiff,

- v -

AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC
AG COMPANY, N/K/A BAYER CROPSCIENCE INC,
AURORA PUMP COMPANY, CERTAINTIED
CORPORATION, CRANE CO, CROSBY VALVE
LLC, FLOWSERVE US, INC. SOLELY AS SUCCESSOR
TO ROCKWELL MANUFACTURING COMPANY,
EDWARD VALVE, INC., NORDSTROM VALVES,
INC., EDWARD VOGT VALVE COMPANY, AND VOGT
VALVE COMPANY, FMC CORPORATION, ON BEHALF
OF ITS FORMER CHICAGO PUMP & NORTHERN
PUMP BUSINESSES, GARDNER DENVER, INC,
GENERAL ELECTRIC COMPANY, GOULDS PUMPS
LLC, GRINNELL LLC, HONEYWELL INTERNATIONAL, INC.,
F/K/A ALLIED SIGNAL, INC. / BENDIX, IMO INDUSTRIES,
INC, ITT LLC., INDIVIDUALLY AND AS SUCCESSOR TO
BELL & GOSSETT AND AS SUCCESSOR TO KENNEDY
VALVE MANUFACTURING CO., INC, JENKINS BROS,
KAISER GYPSUM COMPANY, INC, PEERLESS
INDUSTRIES, INC, PFIZER, INC. (PFIZER), RHEEM
MANUFACTURING COMPANY, U.S. RUBBER COMPANY
(UNIROYAL), UNION CARBIDE CORPORATION,
WARREN PUMPS, LLC, WEIL-MCLAIN, A DIVISION OF
THE MARLEY-WYLAIN COMPANY, A WHOLLY OWNED
SUBSIDIARY OF THE MARLEY COMPANY, LLC, CBS
CORPORATION, F/K/A VIACOM INC., SUCCESSOR BY
MERGER TO CBS CORPORATION, F/K/A
WESTINGHOUSE ELECTRIC CORPORATION, EATON
CORPORATION, INDIVIDUALLY AND AS SUCCESSOR-
IN-INTEREST TO CUTLER-HAMMER, INC., FOSTER
WHEELER, L.L.C., AERCO INTERNATIONAL, INC., AIR &
LIQUID SYSTEMS CORPORATION, AS SUCCESSOR-BY-
MERGER TO BUFFALO PUMPS, INC., BMCE INC., F/K/A
UNITED CENTRIFUGAL PUMP, KAMCO SUPPLY CORP.,
BLACKMER, VELAN VALVE CORPORATION,

Defendant.

X

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 103, 104, 105, 106,
107, 108, 109, 110, 111, 112, 113, 114, 115, 119, 120, 121, 122, 123, 124, 125, 126, 127

were read on this motion to/for

DISMISS

After oral argument and upon review of the papers it is ORDERED that defendant Crosby Valve, LLC's ("Crosby") motion to dismiss the Complaint, pursuant to CPLR 3211(a)(8) on the basis that this Court lacks personal jurisdiction over said defendant is denied. Defendant contends that this Court does not have personal jurisdiction over them because plaintiff George Serger ("Decedent") did not work with or use defendant's product in New York, their illness did not develop in New York, and defendant is not a New York company. Here, the Court finds that general personal jurisdiction cannot be exercised over defendant because at the time this action was commenced, defendant was neither incorporated nor maintained their principal place of business in New York. Thus, the Court shall examine 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-Myers Squibb Co. v Superior Court of California, San Francisco*, 137 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" (*Walden v Fiore*, 134 S. Ct. 1115 [2014]).

Under CPLR 302(a)'s long arm statute, the Court may exercise specific personal jurisdiction over a non-resident when it: "(1) transacts any business within the state or contracts anywhere to supply goods or services in the state; or (2) commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or (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 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 or possesses any real property situated within the state.

Here, the Court is entitled to exercise specific personal jurisdiction under CPLR 302 (a)(1) because there is a clear nexus and substantial relationship between defendant's conduct in New York and the claims asserted. Defendant has transacted business in New York, and it can be argued that plaintiff's cause of action arises from defendant's activity in New York. While the products at issue were used by plaintiff out of state of New York, plaintiff has demonstrated that the product at issue was sold to Combustion Engineering, a company headquartered in New York, for use in that company's boiler aboard the USS Hepburn, a vessel on which Decedent served aboard during his time in the Navy from November 2, 1976 through October 12, 1980 (Aff in Op, Exh I at 52, 54).

Plaintiff has demonstrated that during the time of their exposure, defendant conducted business activities in New York with a company that sold Crosby asbestos products that were used at Decedent's place of work. This Court can exercise jurisdiction over a foreign entity such as defendant under CPLR 302(a)(3) as there is a clear connection between New York and the specific claims at issue. Thus, the court has personal jurisdiction over defendant such that defendant's motion to dismiss plaintiffs' Complaint, pursuant to CPLR 3211(a)(8) on the basis that this Court lacks personal jurisdiction over said defendant, is denied.

Accordingly, it is

ORDERED that defendant's motion to dismiss plaintiffs' Complaint, pursuant to CPLR 3211(a)(8) on the basis that this Court lacks personal jurisdiction over said defendant is denied; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this Decision/Order upon defendants with notice of entry.

This Constitutes the Decision/Order of the Court.

6/01/2021

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