

Unger v A.W. Chesterton Co.
2022 NY Slip Op 31440(U)
April 29, 2022
Supreme Court, New York County
Docket Number: Index No. 190098/2020
Judge: Adam Silvera
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA PART 13

Justice

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EDWARD UNGER, LISA UNGER,

Plaintiff,

INDEX NO. 190098/2020

MOTION DATE 08/04/2021

MOTION SEQ. NO. 006

- v -

A.W. CHESTERTON COMPANY, ABB, INC., ALL ACQUISITION CORPORATION, LLC, AIR & LIQUID SYSTEMS CORPORATION, ALFA LAVAL, INC., ALLEN-BRADLEY COMPANY, INC., AMTROL, INC., ARMSTRONG INTERNATIONAL, INC., ATWOOD & MORRILL CO., INC., AURORA PUMP COMPANY, BLACKMER PUMP, BURNHAM CORPORATION, BW/IP INTERNATIONAL CO., CARRIER CORPORATION, CATERPILLAR INC., CBS CORPORATION, CLARK RELIANCE CORPORATION, CLEAVER-BROOKS COMPANY, CRANE CO., CROWN BOILER CO., CUMMINS ENGINE COMPANY, INC., CUMMINS INC., CUMMINS NORTHEAST, INC., DEZURIK, INC., EATON CORPORATION, ELECTROLUX HOME PRODUCTS, INC., ELLIOTT TURBOMACHINERY CO., INC., FLOWSERVE US, INC., FMC CORPORATION, FOSTER WHEELER, LLC, GENERAL ELECTRIC COMPANY, GENUINE PARTS COMPANY, GOULD ELECTRONICS, INC., GOULDS PUMPS, INC., GREENE, TWEED & CO., INC., GRINNELL CORPORATION, HENRY TECHNOLOGIES, INC., HONEYWELL INTERNATIONAL, INC., HOWDEN BUFFALO, INC., I.T.T. INDUSTRIES, INC., INGERSOLL RAND, INC., JENKINS BROS., LENNOX INDUSTRIES, INC., LIGHTOLIER INCORPORATED, METROPOLITAN LIFE INSURANCE COMPANY, MORSE TEC LLC, NAPA AUTO PARTS, NASH ENGINEERING COMPANY (THE), NEW ENGLAND INSULATION CO., PNEUMO ABEX CORPORATION, PNEUMO-ABEX LLC, PROGRESS LIGHTING, INC., RHEEM MANUFACTURING COMPANY, INC., ROCKWELL AUTOMATION, INC., SCHNEIDER ELECTRIC USA, INC., SPENCE ENGINEERING COMPANY, INC., SPIRAX SARCO, INC., SPX COOLING TECHNOLOGIES, INC., SUPERIOR LIDGERWOOD MUNDY CORP., THRUSH CO., INC., TUTHILL CORPORATION, UNION CARBIDE CORPORATION, VELAN VALVE CORP., WARREN PUMPS LLC, WEIL MCLAIN, WILLIAM POWELL COMPANY (THE), YORK INTERNATIONAL CORPORATION, BARNES & JONES, INC., MUELLER CO., O.C. KECKLEY COMPANY, SKIDMORE PUMP, WATTS REGULATOR COMPANY, INDIVIDUALLY AND AS SUCCESSOR TO WARREN

**DECISION + ORDER ON
MOTION**

WEBSTER, WATTS WATER TECHNOLOGIES, INC., CAMERON INTERNATIONAL CORPORATION INDIVIDUALLY AND AS SUCCESSOR TO PENNSYLVANIA PUMP & COMPRESSOR COMPANY AND COOPER BESSEMER, SID HARVEY INDUSTRIES, INC., SID HARVEY SUPPLY, INC., SIEMENS CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO MURRAY & FURNAS, DISTRIBUTOR CORPORATION OF NEW ENGLAND, EMERSON SWAN, INC., HAJOCA CORPORATION, HAJOCA PLUMBING SUPPLY COMPANY, PEABODY SUPPLY CO., ECR INTERNATIONAL, INC., INDIVIDUALLY AND AS SUCCESSOR TO DUNKIRK, DUNKIRK BOILERS AND UTICA BOILERS, KOHLER CO., HUBBELL INCORPORATED (DELAWARE), GRUNDFOS CBS INC., INDIVIDUALLY AND AS SUCCESSOR TO PACO PUMPS AND PACIFIC PUMPS, PACO PUMPS, INC., PCC FLOW TECHNOLOGIES, INC., F/K/A PCC FLOW TECHNOLOGIES LP, INDIVIDUALLY AND AS SUCCESSOR TO PACO PUMPS AND PACIFIC PUMPS, PCC FLOW TECHNOLOGIES LP, AS SUCCESSOR IN INTEREST TO PACO PUMPS, INC., PRECISION CASTPARTS CORP., INDIVIDUALLY AND AS SUCCESSOR TO PACIFIC PUMPS AND PACO PUMPS, SULZER PROCESS PUMPS (US), INC., INDIVIDUALLY AND AS SUCCESSOR TO PACO PUMPS AND SULZER PUMPS, HOUSTON, INC., SULZER PUMPS (US), INC., INDIVIDUALLY AND AS SUCCESSOR TO JOHNSTON PUMP AND AHLSTROM PUMPS AND PACO PUMPS AND SULZER PUMPS, HOUSTON, INC., SIEMENS INDUSTRY, INC., SUCCESSOR IN INTEREST TO SIEMENS ENERGY & AUTOMATION, INC., AERMOTOR PUMPS, INC., INDIVIDUALLY AND AS SUCCESSOR TO MUELLER PUMP AND WEINMAN PUMP, AMW PUMP COMPANY, INC., INDIVIDUALLY AND AS SUCCESSOR TO MUELLER PUMP, AERMOTOR, AND WEINMAN, GRINNELL CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO MUELLER PUMP AND WEINMAN PUMP, JIM WALTER CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO MUELLER CO., MUELLER WATER PRODUCTS AND MUELLER PUMP, MUELLER PUMP COMPANY, MUELLER WATER PRODUCTS INC., INDIVIDUALLY AND AS SUCCESSOR TO MUELLER PUMP COMPANY, AMW PUMPS, AND WEINMAN PUMP, MUELLER STEAM SPECIALTY, I.G. MARSTON CO., INC., COOPER CAMERON CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO PENNSYLVANIA PUMP & COMPRESSOR COMPANY AND COOPER BESSEMER AND GROVE REDUCER VALVES, PRATT & WHITNEY POWER SYSTEMS, INC., UNITED TECHNOLOGIES CORPORATION, INDIVIDUALLY AND AS SUCCESSOR TO PRATT & WHITNEY (PRATT & WHITNEY/AIRCRAFT DIVISION), RAYTHEON TECHNOLOGIES CORPORATION F/K/A UNITED TECHNOLOGIES CORPORATION, BLAKE

GROUP HOLDINGS, INC., F.W. WEBB COMPANY,
 INDIVIDUALLY AND AS SUCCESSOR TO BERGEN
 INDUSTRIAL SUPPLY CO., FORT KENT HOLDINGS, INC.
 F/K/A DUNHAMBUSH, INC., GRUNDFOS PUMPS
 CORPORATION, INDIVIDUALLY AND AS SUCCESSOR-
 IN-INTEREST TO PACIFIC PUMP COMPANY, JOMAR
 DISTRIBUTORS, INC., MCMaster-CARR SUPPLY
 COMPANY, TACO, INC., TOTAL AIR SUPPLY INC., VIKING
 PUMP, INC., A UNIT OF IDEX CORPORATION, W. W.
 GRAINGER, INC., BALTIMORE AIRCOIL COMPANY,
 INC., NASH ENGINEERING HOLDINGS LLC,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 499, 666, 667, 668, 669, 670, 722

were read on this motion to/for

DISMISSAL

Upon the foregoing documents, it is hereby ordered that defendant Watts Water Technologies, Inc.'s (hereinafter referred to as Watts) motion pursuant to CPLR §3211(a)(8) to dismiss plaintiff's complaint for lack of personal jurisdiction is denied for the reasons set forth below.

Plaintiff, Edward Unger, was diagnosed with mesothelioma. *See* Notice of Motion, Exh. D, p. 124, ln 22. Plaintiff commenced the instant action against Watts on April 20, 2020 seeking damages for personal injuries from alleged exposure to asbestos. Plaintiff was deposed for eight days wherein Watts argued that Plaintiff testified that "over the approximately twenty-year period from 1977 to 1997, he believes he was exposed to asbestos from working with 'Watts' valves at Southern New Hampshire Medical Center in Nashua, New Hampshire." Affirmation In Support Of Defendant Watts Water Technologies, Inc.'s Motion To Dismiss For Lack Of Personal Jurisdiction, p. 3, ¶ 12. Watts Industries' Certificate of Incorporation was filed on December 27, 1985, and the corporation's registered office is located in the state of Delaware. *See* Notice of Motion, Exh. L. On October 15, 2003, Watts Waters Technologies, Inc. merged with Watts Industries, Inc. with the surviving corporation being Watts Industries, Inc., retaining

the name Watts Waters Technologies, Inc.. See Notice of Motion, Exh. M. Watts moves to dismiss under CPLR §3211(a)(8) for lack of personal jurisdiction. Plaintiff opposes and Watts replies.

Pursuant to CPLR §3211(a)(8), “[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that. . . the court has not jurisdiction of the person of the defendant”. Further, CPLR §302(a) explicitly states that “a court may exercise personal jurisdiction over any non-domiciliary. . . who. . . (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. . . or (3) commits a tortious act without the state causing injury to person or property within the state. . . if (i) [they] regularly [do] 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”.

Preliminarily, Watts argues that plaintiff does not have general jurisdiction, as Watts is a Delaware corporation with its principal place of business in Massachusetts. General jurisdiction is applicable “when a foreign corporation’s ‘continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.’” *Daimler AG v Bauman*, 571 US 117, 118, (2014). In the instant matter, plaintiff has not provided evidence to demonstrate that Watts’ contacts within New York “are so ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Goodyear Dunlop Tires Operations, S.A. v Brown*, 564 US 915, 919, (2011). “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). Therefore, this Court finds that there is no general jurisdiction over Watts.

As for long arm jurisdiction, CPLR §302(a) specifies circumstances wherein specific jurisdiction may be found. The Court of Appeals has held that "proof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted." *Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467 (1988). Further, "there must be an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Bristol-Myers Squibb Co. v Superior Ct. of California, San Francisco County*, 137 S Ct 1773, 1780, (2017) (internal quotations and brackets omitted).

Plaintiff alleges that he was exposed to asbestos by valves which possess the name "Watts" from 1977 to 1997. Conversely, Watts contends that due process does not permit specific jurisdiction in New York to be exercised, as "Watts Water engaged in no activities in New York out of which Plaintiffs' claims arise or to which they relate because it did not even exist until long after 1973 or 1974, the time period when Plaintiff asserts he worked around others working with 'Watts' valves in New York." Watts Aff. In Support, *supra*, at p. 8. "A corporation may be held liable for the torts of its predecessor if (1) it expressly or impliedly assumed the predecessor's tort liability, (2) there was a consolidation or merger of seller and purchaser, (3) the purchasing corporation was a mere continuation of the selling corporation, or (4) the transaction is entered into fraudulently to escape such obligations." *Schumacher v*

Richards Shear Co., Inc., 59 NY2d 239, 245 (1983). In the instant matter, this case is analogous to Hon. Manuel J. Mendez's decision in *Babcock v A.O. Smith Water Prods., et al.*, Index No. 190134/2018 (NYCAL), which found the following:

Watts Water Technologies, Inc. concedes that there was a merger of two companies but provides no documentation or otherwise accounts for the potential liability to the plaintiffs for the entity called 'Watts Water Technologies, Inc.', prior to 1985, or up to 2003 merger with Watts Industries, Inc.. The only corporate documentation provided is the "Certificate of Ownership and Merger." Watts Water Technologies, Inc. claims that it is the only entity that survived the merger. The lack of pre-merger documentation, including that which establishes the assets and liabilities of the companies, and the manner in which they were assumed under the merger, establishes that the plaintiffs have made a sufficient showing that their claims of specific jurisdiction under successor liability are not frivolous, warranting denial of the §3211(a) relief sought in this motion." p. 5

In the instant matter and similarly in *Babcock*, Watts does not yield any probative evidence to indicate that they are the sole survivor of the merger and are relieved of liability besides the certificate of ownership and merger. Thus, as the situation here is identical to that in *Babcock*, Judge Mendez has previously ruled on this very issue and plaintiff has established that his claims under successor liability are not frivolous.

Watts asserts that "plaintiffs' claims based on Mr. Unger's alleged direct work with 'Watts' valves in New Hampshire exposure clearly do not 'arise out of or relate to' Watts Water's contacts with New York, because plaintiffs have not shown any relationship whatsoever, much less a relationship sufficient to support jurisdiction, between any New York conduct by Watts Water and their New Hampshire-based claims." Watts Affirmation In Support, *supra at p.* 8. However, "Watts Water extensively markets and sells its products to New Yorkers. By way of illustration, its own website lists literally one hundred and twenty one (121) distributors of its products in New York." Affirmation In Opposition To Defendant Watts Water Technologies, Inc.'s Motion To Dismiss For Lack Of Personal Jurisdiction, p. 4, ¶ 11 (internal emphasis omitted). "Watts Water is registered to do business in New York with the Department of State."

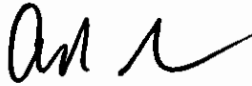
Id. at ¶ 12. Plaintiff alleged that he was exposed to asbestos through Watts’ products during the time he was working in New York at Governor’s Island. “On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (*see*, CPLR 3026).” *Leon v Martinez*, 84 NY2d 83, 87 (1994). This court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” *Id.* at 87-88. It is clear that plaintiffs have demonstrated there was a connection between the alleged exposure of asbestos and the business Watts was conducting in New York by specifying that the valves plaintiff worked on bore the name “Watts”. Therefore, it is not unwarranted for plaintiff to claim the exercise of personal jurisdiction over Watts, particularly in light of the fact that Watts has failed to proffer any pre-merger documentation which establish the assets and liabilities of the companies. Thus, Watts’ arguments fail and its motion to dismiss is denied

Accordingly, it is

ORDERED that defendant Watts Water Technologies, Inc.’s motion to dismiss for lack of personal jurisdiction is hereby denied in its entirety; and it is further

ORDERED that, within 21 days of entry, plaintiffs shall serve a copy of this decision/order upon all parties, together with notice of entry.

This constitutes the decision/order of the court.

<p><u>4/29/2022</u> DATE</p>	 <hr/> <p>ADAM SILVERA, J.S.C.</p>	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE