

<b>Coffman v A.O. Smith Water Prods. Co</b>
2022 NY Slip Op 32057(U)
June 22, 2022
Supreme Court, New York County
Docket Number: Index No. 190137/2016
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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INDEX NO. 190137/2016

PATRICIA LEE COFFMAN, AS EXECUTOR FOR THE ESTATE OF ROBERT G. COFFMAN,

MOTION DATE 06/15/2021

Plaintiff,

MOTION SEQ. NO. 003

- v -

A.O. SMITH WATER PRODUCTS CO, AMCHEM PRODUCTS, INC., AMERICAN BILTRITE INC, AZROCK INDUSTRIES, BIRD INCORPORATED, BORGWARNER MORSE TEC LLC., BURNHAM, LLC, CERTAINTEED CORPORATION, CUMMINS, INC, DAP, INC., EATON CORPORATION, AS SUCCESSOR -IN-INTEREST TO, G.S. BLODGETT CORPORATION, GENERAL ELECTRIC COMPANY, GEORGIA PACIFIC LLC, GOULDS PUMPS, INC., HONEYWELL INTERNATIONAL, INC., KAISER GYPSUM COMPANY, INC, LIPE-AUTOMATION CORPORATION, MANNINGTON MILLS, INC, MAREMONT CORP., MCCORD CORPORATION, OWENS-ILLINOIS, INC, PEERLESS INDUSTRIES, INC, PFIZER, INC. (PFIZER), PNEUMO ABEX LLC, SUCCESSOR IN INTEREST, QCP, INC., INDIVIDUALLY AND AS SUCCESSOR TO, STANDARD MOTOR PRODUCTS, INC., U.S. RUBBER COMPANY (UNIROYAL), UNION CARBIDE CORPORATION,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166

were read on this motion to/for DISMISS

Upon the foregoing documents, it is hereby ordered that Defendant Domco Products Texas Inc.'s (hereinafter referred to as Domco) motion to dismiss based on lack of personal jurisdiction is denied, and Plaintiff's cross-motion for jurisdictional discovery is denied for the reasons set forth below.

In the instant action, Plaintiff Patricia Lee Coffman as the executor for the estate of decedent Robert. G. Coffman filed suit claiming personal injuries and wrongful death due to alleged

exposure to asbestos by Domco's products. Domco moves to dismiss based on lack of personal jurisdiction. Namely, Domco argues that Plaintiff has failed to demonstrate both that Domco falls under New York's long arm statute and that that this Court has general jurisdiction over Domco. Conversely, Plaintiff opposes Domco's motion, contending that Domco is subject to New York's long arm statute, as "Mr. Coffman was exposed to asbestos from Azrock Vinyl asbestos-containing tile, [in which] Defendant exclusively purchased chrysotile asbestos fiber which it incorporated into all of its asbestos-containing floor tiles from Huxley-Westfried Corporation which was located in the Time & Life Building, Rockefeller Center, New York, New York 10020." Affirmation In Opposition To Defendant Domco Products Texas Inc.'s Motion To Dismiss For Lack of Personal Jurisdiction, p. 2, ¶ 5. Further, Plaintiff makes a cross-motion seeking jurisdictional discovery.

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 [they] (i) 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". Further, 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).

Preliminarily, Domco argues that plaintiff does not have general jurisdiction, as Domco is a Delaware corporation with its principal place of business in Ohio. 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 Domco's 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). Thus, Domco correctly argues that this Court does not have general jurisdiction over it.

As for long arm jurisdiction, Domco contends that Plaintiff has not proffered evidence demonstrating any connection between the business Domco conducted and the claims Plaintiff asserted. Domco further contends that Plaintiff's claims do not arise from any activity by Domco in New York, and that Plaintiff has failed to allege any facts to support the inference that any

transaction in New York by Domco supports Plaintiff's causes of action. However, as stated above, defendant need only transact business on one occasion in New York for the Courts to exercise jurisdiction, so long as such transaction substantially relates to the claim asserted. *See Kreutter, supra*. In the instant matter, Plaintiff argues that "[d]efendant's admissions via interrogatory responses and corporate representative deposition testimony clearly indicate that all of the asbestos fibers that were incorporated into the asbestos-containing tiles that Plaintiff worked with and was exposed to were purchased from a company registered and headquartered in New York, and it is from those transactions that Mr. Coffman was ultimately exposed to asbestos. Therefore, it is plain both that the suit arises from Domco's purposeful New York transactions, i.e., its purchase of chrysotile asbestos from Huxley Development Corporation, and that there is a direct connection between these transactions and Mr. Coffman's injury."

Affirmation In Opposition, *supra*, p. 7, ¶ 23. According to Domco's interrogatories, chrysotile asbestos fiber was purchased from Huxley-Westfried Corp. located in New York from 1955 to 1956, and Huxley Development Corp. located in New York from 1957 to 1974. *See* Affirmation In Opposition, Exh. 3., Answers Of Defendant, Domco Products Texas, L.P., To Plaintiffs' First Set of Liability Interrogatories, p. 13. The asbestos fibers that were used to create the Azrock Vina-Lux Vinyl asbestos tiles were in fact from a New York corporation. Essentially, Domco was utilizing the resources of New York to further the purpose of Domcos' business which resulted in the decedent's injury.

Domco states that Plaintiff's pleadings as to Domcos' connection to New York have no factual support. However, Plaintiff states that by supplying consumers with materials that contained asbestos through the dealings of a New York Corporation, Domco has committed a tortious act within the state under the meaning of New York's long arm statute. Domco was

purchasing the asbestos containing product over the course of a 20 year period for the purpose of creating tiles. As for Domco’s responsibility to warn of a hazardous product, “[t]he duty ‘extends to the original or ultimate purchasers of the product, to employees of those purchasers, and to third persons exposed to a foreseeable and unreasonable risk of harm by the failure to warn’”.

*Matter of New York City Asbestos Litig.*, 27 NY3d 765, 788-89 (2016). There was a clear foreseeable and unreasonable risk when Domco purchased an asbestos containing product from a New York Corporation. Thus, Domco has sufficient contacts with New York to give rise to specific jurisdiction. As jurisdiction has been established, Plaintiff’s cross-motion for jurisdictional discovery is denied as moot, without prejudice to renew should the question of this Court’s jurisdiction over Domco be raised again.

Accordingly, it is

ORDERED that Defendant Domcos’ motion to dismiss the complaint is denied in its entirety; and it is further

ORDERED that plaintiff’s cross-motion for jurisdictional discovery is denied as moot; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

ADAM SILVERA, J.S.C.

6/22/2022  
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: