

Reid v Mitsubishi Fuso Truck of Am., Inc.

2022 NY Slip Op 32335(U)

January 27, 2022

Supreme Court, Bronx County

Docket Number: Index No. 33659/2020E

Judge: Lucindo Suarez

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19

Mtn. Seq. # 1

MICKANELL REID and MARY REID,

Index No.: 33659/2020E

Plaintiffs,

- against -

DECISION and ORDER

MITSUBISHI FUSO TRUCK OF AMERICA, INC.,
MITSUBISHI FUSO TRUCK AND BUS CORP.,
and MILEA TRUCK SALES CORP,

Defendants.

PRESENT: Hon. Lucindo Suarez

The issue in Mitsubishi Fuso Truck and Bus Corp.’s (“Mitsubishi”) motion to dismiss pursuant to CPLR §3211(a)(8) is whether CPLR §302 confers upon this court personal jurisdiction over Mitsubishi, and if so, whether the exercise of jurisdiction comports with notions of fairness and due process. This court holds it does not have a basis whereupon it may assert personal jurisdiction over Mitsubishi, a foreign Japanese corporate entity, under New York State’s long-arm jurisdiction statute codified in CPLR §302.

I. Background

This action stems from an automobile accident that occurred in March 2020. According to Plaintiff, Mickanell Reid, on the day of the accident was operating a “2007 Mitsubishi Fuso FM645 cab over engine truck” eastbound on the George Washington Bridge Expressway. Mr. Reid claims as traffic slowed ahead of him, he attempted to apply the brakes. He alleges that due to the subject truck’s inability to adequately slow down or stop he collided with the rear end of the vehicle in front of him, a 2019 Freightliner Truck equipped with a box trailer. Mr. Reid

further alleges he sustained severe injuries due to the collapse of the subject truck's occupant compartment as a result of the accident. Plaintiffs now assert causes of action for, *inter alia*, strict liability, negligence, breach of warranty, and loss of consortium as they claim that the subject truck was defective, which caused or contributed to their injuries.

II. CPLR §302(a)(1)

To determine whether a non-domiciliary may be sued in New York, a court must first determine whether CPLR §302 confers personal jurisdiction over it by considering its contacts with New York. *See LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210, 735 N.E.2d 883, 713 N.Y.S.2d 304 (2000). If the defendant's relationship with New York falls within the terms of CPLR §302, the court must then determine whether the exercise of jurisdiction comports with due process. *Id.*

Under CPLR §302(a)(1), New York's long-arm jurisdiction statute, "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." *Matter of James v. iFinex Inc.*, 185 A.D.3d 22, 127 N.Y.S.3d 456 (1st Dep't 2020). Moreover, due process is satisfied when a foreign entity has "minimum contacts" with the State and exercise of jurisdiction does not "offend traditional notions of fair play and substantial justice." *Id.*

Mitsubishi contends that this court cannot assert personal jurisdiction over it pursuant to CPLR §302(a)(1). Mitsubishi argues that: (1) it does not transact any business in New York State; (2) it did not enter into any contracts with Plaintiffs; (3) it issued no warranties to Plaintiffs; (4) it does not contract anywhere to supply goods or services in New York State; and (5) it does not manufacture products specifically designed for sale in New York State's market.

Moreover, it posits that all its contracts to sell its products are entered into in Japan.

Furthermore, Mitsubishi argues that Defendant Mitsubishi Fuso Truck of America, Inc. (“Mitsubishi America”) purchases products from Mitsubishi in Japan then it imports the products to the United States. Once the products arrive to the United States, Mitsubishi America then distributes the products to its chosen distributors throughout the United States, including New York State. However, Mitsubishi contends the mere fact that its products may end up in New York State does not provide a basis for this court to assert personal jurisdiction over it.

In opposition, Plaintiffs contend that Mitsubishi is subject to the personal jurisdiction of this court under CPLR §302(a)(1). They argue that Mitsubishi is a subsidiary of Daimler AG and a part of Daimler Trucks, who holds itself out as the global leader in commercial vehicles, which lists the United States as a country where their vehicles are distributed to. Moreover, it claims that on Mitsubishi’s webpage if a consumer selects the United States it directs the consumer to Mitsubishi’s America webpage, which displays various dealerships in the United States. Plaintiffs allege that Mitsubishi America has 14 dealerships in New York State, including Defendant Milea Truck Sales Corp., (“Milea Truck”), which sold the subject truck to Plaintiffs.

Moreover, Plaintiffs take issue with Mitsubishi’s representation that it has no control over the ultimate destination of its products within the United States. Plaintiffs allege that Mitsubishi explicitly studies and evaluates the performance of its products in the United States market, including New York State. Plaintiffs cite to Mitsubishi’s press release to demonstrate that it actively monitors the distribution of its products to the United States. In Mitsubishi’s press release it publicly announced that “as a result of a re-evaluation by Mitsubishi of its business situation in the United States and Canada and its consequent decision to shift to a service focused operation in these Markets, Mitsubishi America announces that it shall discontinue new truck

sales.”

Furthermore, Plaintiffs contend that Mitsubishi designed and manufactured more than 100,000 vehicles that have been sold in North America. They argue that without further discovery it is unclear how many of those vehicles were sold in New York State. Therefore, they posit that further discovery is necessary to reveal the specific profits generated by the sale of Mitsubishi vehicles in New York State.

Lastly, Plaintiffs assail Mitsubishi’s assertion that it has not specifically targeted New York State’s market for the distribution and marketing of its products. They highlight Mitsubishi’s global launch of its new electric commercial truck in New York City. Plaintiffs allege that Mitsubishi as part of its launch, coordinated with then New York State Attorney General Eric Schneiderman, to supply a fleet of electric vehicles to well-known New York based non-profits including the Wildlife Conservation Society, New York Botanical Garden, Habitat for Humanity New York City, and Big Reuse Brooklyn. Therefore, Plaintiffs claim that the publicly available facts show that Mitsubishi clearly sought out and initiated contact with New York State and solicited business in the State as contemplated under CPLR §302(a)(1). Further, Plaintiffs argue that because Mitsubishi sold its products in New York State, which ultimately was sold to Plaintiffs and caused their injuries there is an articulable nexus between Mitsubishi’s transaction in New York State and Plaintiffs’ claimed injury.

This court finds that the following arguments made by Mitsubishi and the averments made by its Legal Manager for International Operations, Erwin Condez, went uncontradicted by Plaintiffs: (1) Mitsubishi is a Japanese Corporation with its principal place of business in Kawasaki, Japan; (2) it maintains no office, agency or representative in New York State; (3) it is not qualified, licensed or authorized to do business in New York State; (4) it does not have any

officers, employees or agents stationed in New York State nor does anyone on behalf of Mitsubishi is authorized to accept service of process in New York State; (5) Mitsubishi does not have New York bank accounts; (6) it does not own, use or possess New York State real estate; (7) it does not pay New York State taxes; (8) Mitsubishi does not sell Fuso Trucks in New York State rather its subsidiary Mitsubishi America a sperate and distinct corporate entity holds the right to distribute and advertise the sale of Fuso trucks and component parts within the United States, including in New York State; (9) Mitsubishi manufactures all Fuso trucks including the one subject to this action in Japan, which is then sold to Mitsubishi America in Japan with the transfer of title occurring thereat; (10) Mitsubishi is not responsible for the importation and distribution of Fuso trucks within the United States, as well as service and sales support throughout the United States nor does it have control of the ultimate destination of Fuso trucks in the United States; (11) Fuso trucks including the one subject to this action was not manufactured in any way specifically for sale in the United States; and (12) Mitsubishi does not exercise control over the day-to-day business operations of Mitsubishi America nor does it exercise control over any New York dealerships that sell Fuso trucks.

Moreover, this court finds that the single transaction that Plaintiffs could identify where Mitsubishi engaged in activities in New York State when it supplied a fleet of electric vehicles to well-known New York based non-profits had no relationship with the claims asserted in this action. *See Copp v. Ramirez*, 62 A.D.3d 23, 874 N.Y.S.2d 52 (1st Dep't 2009). Thus, this court finds it cannot assert personal jurisdiction over Mitsubishi pursuant to CPLR §302(a)(1).

III. CPLR §302(a)(3)

Under CPLR §302(a)(3)(i)(ii), a court may exercise personal jurisdiction over any non-domiciliary who commits a tortious act without the state causing injury to person or property

within the state... and expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce. *See LaMarca*, 95 N.Y.2d at 214, 735 N.E.2d at 886, 713 N.Y.S.2d at 307 (2000).

The conferral of jurisdiction under CPLR §302(a)(3)(i)(ii), rests on establishing the following five elements: (1) that defendant committed a tortious act outside New York; (2) that the cause of action arises from that act; (3) that the act caused injury to a person or property within New York; (4) where the defendant either: (i) does or solicits business, or engages in any other course of conduct, or derives substantial revenue from activities in New York, or (ii) expects or should expect that its tortious act will have consequences in New York; and (5) that defendant derived substantial revenue from interstate or international commerce. *Id.*; *see also Magwitch, L.L.C. v. Pusser's Inc.*, 84 A.D.3d 529, 923 N.Y.S.2d 455 (1st Dep't 2011).

Mitsubishi argues that personal jurisdiction cannot be asserted over it pursuant to CPLR §302(a)(3) as it does not do business in New York State and it has not "purposefully directed" its activities within the State. In opposition, Plaintiffs contend that Mitsubishi is subject to personal jurisdiction under CPLR §302(a)(3) as it committed a tortious act outside of New York State, Plaintiffs' causes of action arouse out of said act, Mitsubishi's act caused injuries to Plaintiffs in New York State, Mitsubishi regularly does or solicits business in the State, and it engages in other persistent course of conduct. Lastly, Plaintiffs argue that Mitsubishi expects or reasonably should expect that its act in designing a defective product in Japan to have consequences in New York State.

This court finds that it cannot assert personal jurisdiction over Mitsubishi under CPLR §302(a)(3)(i)(ii). Plaintiffs failed to demonstrate that Mitsubishi does or solicits business in New York State, it engages in any other course of conduct in New York State or it derives substantial

revenue from activities in the State. In addition, Plaintiffs failed to show that Mitsubishi expects or should expect that its tortious act occurring in Japan will have consequences in New York State.¹

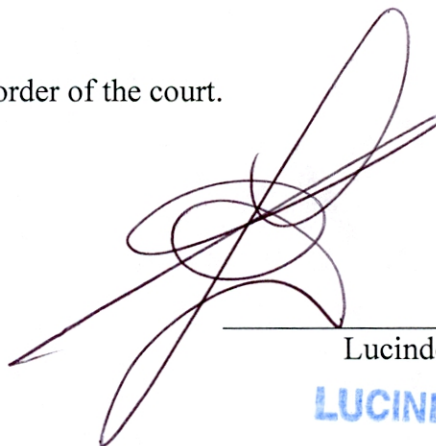
Accordingly, it is

ORDERED, that Defendant Mitsubishi Fuso Truck and Bus Corp.'s motion to dismiss seeking the dismissal of Plaintiffs' complaint pursuant to CPLR §3211(a)(8) is granted; and it is further

ORDERED, that Plaintiffs' complaint is dismissed only as to Defendant Mitsubishi Fuso Truck and Bus Corp.

This constitutes the decision and order of the court.

Dated: January 27, 2022



Lucindo Suarez, J.S.C.

LUCINDO SUAREZ, J.S.C.

¹ Considering that this court found that it cannot exercise personal jurisdiction over Mitsubishi under New York's long-arm jurisdiction statute, CPLR §302, it need not address the Federal due process implications of haling Mitsubishi into New York State courts. Furthermore, this court is unpersuaded by Plaintiffs' request for jurisdictional discovery as they failed to make a "sufficient start" in demonstrating that Mitsubishi was doing business in New York through their direct or indirect subsidiaries to warrant further discovery on the issue of personal jurisdiction or that there possibly exist essential jurisdictional facts that are not yet known. *See HBK Master Fund L.P. v. Troika Dialog USA, Inc.*, 85 A.D.3d 665, 925 N.Y.S.2d 829 (1st Dep't 2011); *see also* CPLR §3211(d).