

Beagan v Akebono Brake Corp.

2023 NY Slip Op 32139(U)

June 27, 2023

Supreme Court, New York County

Docket Number: Index No. 190419/2018

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 13

Justice

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BRIAN P. BEAGAN AS THE ADMINISTRATOR FOR THE ESTATE OF JOHN BEAGAN, DECEASED,

Plaintiff,

INDEX NO. 190419/2018

MOTION DATE 09/08/2022, 09/08/2022

MOTION SEQ. NO. 007 008

- v -

AKEBONO BRAKE CORPORATION, AMERICAN BILTRITE, INC., AURORA PUMP COMPANY, BORG-WARNER MORSE TEC LLC, BRIDGESTONE/FIRESTONE AMERICA'S HOLDING INC., BWDAC INC F/K/A BWD AUTOMOTIVE CORPORATION, CASHCO INC, CBS CORPORATION A DELAWARE CORP, CERTAIN-TEED CORPORATION, CHICAGO GASKET COMPANY, CHICAGO WILCOX MANUFACTURING COMPANY, CLEAVER BROOKS A DIVISION OF AQUA-CHEM INC, CONTINENTAL TEVES, COOPER INDUSTRIES LLC, COPEL VULCAN INC, CRANE COMPANY, CROWN CORK & SEAL USA INC, DANA COMPANIES, LLC., DAP PRODUCTS INC, EMERSON AUTOMATION SOLUTIONS FINAL CONTROL US LP, FLOWSERVE U.S., INC, FORD MOTOR COMPANY, FOSTER WHEELER CORPORATION, GARDNER DENVER, INC, GENERAL ELECTRIC COMPANY, GENERAL REFRACTORIES COMPANY, GOODYEAR TIRE & RUBBER CO, THE GORMAN RUPP COMPANY, GOULDS PUMPS (IPG) LLC, HEDMAN RESOURCES LIMITED, HERCULES LLC, HOMASOTE COMPANY, HONEYWELL INTERNATIONAL INC, IMO INDUSTRIES INC, INGERSOLL RAND COMPANY, ITT CORPORATION, J-M MANUFACTURING COMPANY INC, JOHN CRANE INC, THE J.R. CLARKSON COMPANY LLC, KAISER GYPSUM COMPANY INC, KEELER-DORR OLIVER BOILER COMPANY, KROGH PUMP COMPANY INC, 3M COMPANY, MANN HUMMEL FILTRATION TECHNOLOGY US LLC, MAREMONT CORPORATION, MCMASTER-CARR SUPPLY COMPANY, METSO MINERALS INDUSTRIES, INC, PNEUMO ABEX LLC, RELIANCE WORLDWIDE CORPORATION, ROSS OPERATING VALVE COMPANY, SPENCE ENGINEERING COMPANY INC, SPIRAX SARCO INC, STERLING FLUID SYSTEMS USA LLC, SULZER PUMPS US INC, SUPERIOR BOILER WORKS INC, TENNECO AUTOMOTIVE OPERATING COMPANY INC, TOYOTA MOTOR SALES USA INC, TRANE US, INC., UNION CARBIDE CORPORATION, UNIROYAL INC, VELLUMOID INC, VIAD CORPORATION, VOLKSWAGEN GROUP OF AMERICA INC, WARREN PUMPS LLC, THE WILLIAM POWELL

DECISION + ORDER ON MOTION

COMPANY, YORK INTERNATIONAL CORPORATION,
ZURN INDUSTRIES LLC, METROPOLITAN LIFE
INSURANCE CO, NISSAN NORTH AMERICA,
INC., AMERICAN HONDA MOTOR CO, INC., SUMITOMO
CORPORATION OF AMERICAS, HENNESSY
INDUSTRIES, LLC

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 390, 392

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

The following e-filed documents, listed by NYSCEF document number (Motion 008) 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 391, 393

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

Upon the foregoing documents, it is ordered that defendants' American Honda Motor Co., Inc. ("Honda") and Nissan North America, Inc. ("Nissan") motions for summary judgment, motion sequence numbers 007 and 008, respectively, are denied in accordance with the decision below.

In this action, moving defendants seek to dismiss the complaint based on a lack of due process and jurisdiction. The Court finds no merit to defendants' due process claims. Regarding jurisdiction, Plaintiff files an omnibus affirmation to oppose both motions on the grounds that defendants are international auto-companies with marketing, sales, and vehicle repair occurring across the United States, including in New York. Here, Plaintiff decedent offered testimony regarding his exposure to asbestos at Honda and Nissan dealership locations in New York in the 1990s. Moving defendants attempt to minimize this testimony by focusing on plaintiff decedent's exposure in Florida as well as his memory regarding specific dealership locations. Noticeably lacking is any assertion that moving defendants lacked dealership locations in New York, that those locations did not house asbestos-containing car parts in the 1990s, or that

plaintiff was not present at those locations. Thus, plaintiff has sufficiently raised questions of fact as to the extent of his exposure via defendants' New York contacts.

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). Both defendants note that their respective principal places of business are outside New York.

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 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...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, evidence has been presented to demonstrate that defendants Honda and Nissan are registered with the New York State Department of Corporations, have registered service of process agents in New York, and conducted business within the state and New York City boroughs. *See Omnibus Affirmation in Opposition to Defendants’ Motions to Dismiss, Exh. F-I; Exh. K, Plaintiff’s Omnibus Memorandum of Law in Opposition to the Motions for Summary Judgment Made by Defendants: (1) Nissan North America, Inc.; (2) American Honda Motor Co., Inc., at p. 6-8.* Thus, plaintiff has provided sufficient evidence to demonstrate jurisdiction.

Accordingly, it is

ORDERED that defendant Honda’s motion for summary judgment (motion sequence number 007) is denied in its entirety; and it is further

ORDERED that defendant Nissan’s motion for summary judgment (motion sequence number 008) is denied in its entirety; 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.

06/27/2023
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input checked="" type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
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"/>	