

Stuck v Avon Prods., Inc.

2023 NY Slip Op 33488(U)

October 6, 2023

Supreme Court, New York County

Docket Number: Index No. 190096/2022

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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INDEX NO. 190096/2022

MICHELE STUCK AND JACK BANNISTER, INDIVIDUALLY
AND AS EXECUTORS OF THE ESTATE OF PENELOPE
RIGBY, DECEASED,

MOTION DATE 06/20/2023

MOTION SEQ. NO. 001

Plaintiff,

- v -

AVON PRODUCTS, INC., BATUS HOLDINGS INC., SUED
INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO
BRITISH AMERICAN COSMETICS, YARDLEY CO. AND
YARDLEY OF LONDON, INC., BARRETT'S MINERALS
INC., BRENNTAG NORTH AMERICA, INC., SUED
INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO
MINERAL PIGMENT SOLUTIONS, INC. AND AS
SUCCESSOR-IN-INTEREST TO WHITTAKER CLARK &
DANIELS, INC., BRENNTAG SPECIALTIES LLC F/K/A
BRENNTAG SPECIALTIES, INC. F/K/A MINERAL
PIGMENT SOLUTIONS, INC., SUED INDIVIDUALLY AND
AS SUCCESSOR-IN-INTEREST TO WHITTAKER CLARK &
DANIELS, INC., CHANEL, INC., CHARLES B. CHRYSTAL
COMPANY, INC., CHRISTIAN DIOR, INC., CHRISTIAN
DIOR PERFUMES LLC, CLINIQUE LABORATORIES LLC
F/K/A CLINIQUE LABORATORIES, INC., A SUBSIDIARY
OF THE ESTEE LAUDER COMPANIES INC., COLOR
TECHNIQUES, INC., CONOPCO, INC. D/B/A UNILEVER
HOME & PERSONAL CARE USA, SUED INDIVIDUALLY
AND AS SUCCESSOR-IN-INTEREST TO SUED
INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO
CHESEBROUGH MANUFACTURING COMPANY A/K/A
CHESEBROUGH-PONDS, COSMETIC SPECIALTIES,
INC., SUED INDIVIDUALLY AND FORMERLY D/B/A G&G
SPECIALTY PRODUCTS CO., COTY, INC., SUED
INDIVIDUALLY AND D/B/A RIMMEL LONDON AND
RIMMEL INC., THE ESTEE LAUDER COMPANIES,
INC., SUED INDIVIDUALLY AND AS SUCCESSOR-IN-
INTEREST TO LEN-RON MANUFACTURING CO. INC.,
ESTEE LAUDER, INC., A SUBSIDIARY OF THE ESTEE
LAUDER COMPANIES, INC., ESTEE LAUDER
INTERNATIONAL, INC., GLAXOSMITHKLINE LLC F/K/A
SMITHKLINE BEECHAM CORP. AND SMITHKLINE
BEECHAM P.L.C., SUED INDIVIDUALLY AND AS
SUCCESSOR-IN-INTEREST TO YARDLEY OF LONDON
A/K/A YARDLEY, L'OREAL USA, INC., LORNAMEAD INC.
D/B/A YARDLEY OF LONDON A/K/A YARDLEY, LVMH
FRAGRANCE BRANDS US LLC, LVMH MOET
HENNESSY LOUIS VUITTON INC., LVMH PERFUMES

**DECISION + ORDER ON
MOTION**

AND COSMETICS INC.;, LVMH PERFUMES & COSMETICS LLC; , MAYBELLINE LLC; , PFIZER INC.; , PLAYTEX PRODUCTS, LLC F/K/A PLAYTEX PRODUCTS INC., SUED INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO ESMARK INC. AND MAX FACTOR & COMPANY; , PRESERSE CORPORATION, SUED INDIVIDUALLY AND D/B/A PRESERSE INTERNATIONAL CORP; , THE PROCTER & GAMBLE COMPANY SUED INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO YARDLEY OF LONDON A/K/A YARDLEY, THE SHULTON GROUP AND/OR SHULTON INC. AND ITS INTERNATIONAL DIVISION, PLAYTEX PRODUCTS INC. AND MAX FACTOR & COMPANY; , SHULTON INC., SUED INDIVIDUALLY AND AS SUCCESSOR TO THE SHULTON GROUP AND ITS INTERNATIONAL DIVISION; , SPECIALTY MINERALS INC., SUED INDIVIDUALLY AND AS A SUBSIDIARY OF MINERALS TECHNOLOGIES INC.; , UNILEVER UNITED STATES, INC., SUED INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO CHESEBROUGH MANUFACTURING COMPANY A/K/A CHESEBROUGH-PONDS; , WHITTAKER CLARK & DANIELS, INC.; , WYETH HOLDINGS LLC F/K/A WYETH HOLDINGS CORPORATION F/K/A AMERICAN CYANAMID COMPANY, SUED INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO THE SHULTON GROUP AND/OR SHULTON INC. AND ITS INTERNATIONAL DIVISION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 65, 66, 67, 68, 69, 70, 74, 75, 76

were read on this motion to/for

DISMISS

Upon the foregoing documents, it is ordered that defendant BATUS Holdings Inc.'s motion to dismiss is decided below. In this asbestos action, moving defendant seeks to dismiss the complaint against it arguing that it has no connection to New York such that the Court has no personal jurisdiction over it. Plaintiff opposes and seeks jurisdictional discovery. Defendant BATUS Holdings Inc. replies.

Moving defendant seeks to dismiss this action arguing that it is merely a holding company with its principal place of business in Delaware. Defendant BATUS Holdings Inc. further argues that as a holding company, it has never placed any products in the stream of

commerce such that it has no ties to the State of New York and personal jurisdiction pursuant to CPLR §302(a) is lacking herein. Thus, according to moving defendant, the instant action must be dismissed as against it.

In opposition, plaintiff argues that defendant BATUS Holdings Inc. is being sued herein as the manufacturer of Yardley of London talcum powder products. Plaintiff argues that moving defendant had contacts with the State of New York justifying personal jurisdiction and/or jurisdictional discovery.

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). The Court notes that defendant BATUS Holdings Inc. has established, and it is uncontested, that its principal place of business is outside the State of New York and that it is not a resident of this state. It is further uncontested that moving defendant was not incorporated in New York State such that personal jurisdiction may not be established based upon the residence of the moving defendant.

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.”

Defendant BATUS Holdings Inc. has established, through the affidavit of Lisa M. Oakes, Corporate Secretary of moving defendant, that it is a holding company that has not manufactured, designed, distributed, supplied, nor sold any asbestos containing talcum powder. Ms. Oakes further affirms that defendant BATUS Holdings Inc. has no nexus with the State of New York in that it owns no real estate here, it has never been incorporated here, has never maintained its corporate offices here, has not contracted for goods and services here, is not licensed to conduct business here, and that it is not a successor-in-interest to Yardley of London. Thus, moving defendant has established that it does not transact business in New York State, it did not commit a tortious act against plaintiff within the state, it did not commit a tortious act against plaintiff without the state which caused injury to plaintiff within the state, and it does not own real estate within the state. Based upon these facts, the Court finds that specific jurisdiction has not been established as to defendant BATUS Holdings Inc.

Here, plaintiff seeks jurisdictional discovery arguing that moving defendant is sued herein as the manufacturer of Yardley of London talcum powder, that it had a presence in New

York State with regard to Yardley, Inc., that moving defendant advertised for Yardley of London in New York, and that moving defendant entered into contracts in New York. Plaintiff proffers meeting minutes from an August 4, 1970 meeting regarding senior management in Yardley, Inc.'s New York office, a contract dated November 14, 1973 ordering advertisement for Yardley of London, and a "Note for the Chairman's Policy Committee" dated September 30, 1981 regarding agreements in New York. *See* Affidavit of Robert Ellis in opposition, Exh. A, B, and C. However, such documents relied upon by plaintiff do not specifically refer to defendant BATUS Holdings Inc. In fact, such documents make no mention of moving defendant. As such, there has been no evidence presented to demonstrate that defendant BATUS Holdings Inc. did, in fact, have contact with the State of New York, and plaintiff has failed to make a sufficient start to establish that defendant BATUS Holdings Inc. was engaged in purposeful activity in New York State such that jurisdictional discovery should be ordered. *See Peterson v Spartan Industries, Inc.*, 33 NY2d 463, 467 (1974). Thus, the Court declines to order jurisdictional discovery herein.

As it has been determined that the Court does not have general or specific jurisdiction over defendant BATUS Holdings Inc., the instant motion to dismiss is granted pursuant to CPLR §3211(a)(8) on the grounds that this Court lacks personal jurisdiction over moving defendant.

Accordingly, it is

ORDERED that the motion of defendant BATUS Holdings Inc. to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant only, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant only; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the Decision/order of the Court.

10/06/2023
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: