

Frederick v Amchem Prods., Inc.

2023 NY Slip Op 33490(U)

October 6, 2023

Supreme Court, New York County

Docket Number: Index No. 190203/2018

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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WINFIELD P FREDERICK,

Plaintiff,

- v -

AMCHEM PRODUCTS, INC., AMERICAN HONDA MOTOR CO., INC. (AHM), ARVINMERITOR, INC., BORGWARNER MORSE TEC LLC, CERTAINTEED CORPORATION, DANA COMPANIES, LLC, EATON CORPORATION, AS SUCCESSOR -IN-INTEREST TO, FORD MOTOR COMPANY, GENERAL ELECTRIC COMPANY, GENUINE PARTS COMPANY, TRADING AS NAPA AUTO PARTS, HONEYWELL INTERNATIONAL, INC., OWENS-ILLINOIS, INC, PFIZER, INC. (PFIZER), PNEUMO ABEX LLC, SUCCESSOR IN INTEREST, TOYOTA MOTOR SALES U.S.A., INC, U.S. RUBBER COMPANY (UNIROYAL), UNION CARBIDE CORPORATION, FEDERAL- MOGUL ASBESTOS PERSONAL INJURY TRUST AS A SUCCESSOR TO FELT PRODUCTS MFG. CO., PEPBOYS, PERKINS ENGINES, INC., ROYAL CARIBBEAN CRUISE LINE INC., INDIVIDUALLY AND SUCCESSOR TO YARMOUTH CRUISE LINE INC. AND EASTERN STEAMSHIP CORPORATION, ROYAL CARRIBEAN CRUISE LINE, LTD. INDIVIDUALLY AND SUCCESSOR TO YARMOUTH CRUISE LINE INC. AND EASTERN STEAMSHIP CORPORATION, STANDARD MOTOR PRODUCTS, INC., WESTERN AUTO SUPPLY COMPANY INC., NAVISTAR, INC., A/K/A INTERNATIONAL TRUCK & ENGINE CORP. F/K/A INTERNATIONAL HARVESTER, INC.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 134, 135, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 151, 152, 153, 154

were read on this motion to/for DISMISSAL

Upon the foregoing documents, it is ordered that defendant Western Auto Supply Company's ("Western Auto") motion seeking dismissal of this action for lack of personal jurisdiction and for summary judgment for lack of product identification and causation, pursuant

to CPLR §3211 and CPLR §3212 respectively, are decided in accordance with the decision below.

In this asbestos action, defendant Western Auto first moves for summary judgment on the basis that this Court has no general jurisdiction over it, as a company that is both incorporated outside of and maintains its principal place of business outside of New York. *See* Memorandum of Law in Support of Western Auto Supply Company's Motion for Summary Judgment, p. 4-6. Plaintiff notes that this Court has specific, not general, jurisdiction over moving defendant and that defendant Western Auto does not contest any basis for specific jurisdiction. *See* Affirmation in Opposition to Defendant Western Auto Supply Company's Motion to Dismiss and for Summary Judgment, p. 29.

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).

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, moving defendant does not even allege that it does not have contacts with the State of New York, and it is undisputed that defendant Western Auto placed products into the stream of commerce. As this Court’s basis for specific jurisdiction is not contested, and plaintiff proffers evidence of defendant Western Auto’s contacts with New York State, the instant motion to dismiss based on lack of personal jurisdiction is denied.

Additionally, defendant Western Auto moves for summary judgment on the basis that plaintiff has insufficiently identified Western Auto products in the instant case. *See* Memorandum of Law in Support, *supra*, p. 8-11. Plaintiff notes that defendant Western Auto’s reliance on the affidavit of a corporate representative to establish their lack of involvement with the products identified herein is insufficient to establish entitlement to summary judgment. Moreover, plaintiff argues that Mr. Frederick’s unequivocal testimony identifying a Western Auto product brand raises issues of triable fact. *See* Affirmation in Opposition, *supra*, p. 4-8; 20-23.

The appropriate standard for summary judgment for moving defendant can be found in *Dyer v Amchem Products Inc.*, 207 AD3d 408, 409 (1st Dep't 2022). In *Dyer*, defendants were granted summary judgment not by “simply argu[ing] that plaintiff could not affirmatively prove causation” but by “affirmatively prov[ing], as a matter of law, that there was no causation.” *Id.* Here, defendant Western Auto fails to meet their burden on summary judgment as set forth in *Dyer*. Solely pointing to plaintiff’s evidence does not establish a *prima facie* case on behalf of moving defendant. Moreover, defendant Western Auto’s only affirmative piece of evidence is the affidavit of their corporate representative. *See* Memorandum of Law in Support, *supra*, Exh. B, Affidavit of Danny J. Simmons, dated July 17, 2017. This affidavit does not demonstrate the requisite personal knowledge to establish as a matter of law that Mr. Frederick could not have been exposed to “Wizard” brand automobile brakes manufactured or sold by defendant Western Auto. In fact, defendant Western Auto concedes that it sold the products at issue herein from the late 1950s through the early 1970s. Even if the timelines indicated by Mr. Simmons were taken as accurate, defendant fails to establish that earlier manufactured “Wizard” brakes could not still have been in circulation or available to Mr. Frederick during his work in the late 1970s through 1990s, particularly in light of the fact that such brakes were sold by moving defendant for nearly fifteen years. *See id.* at p. 2. Thus, defendant Western Auto has failed to establish entitlement to summary judgment, and issues of fact exist herein.

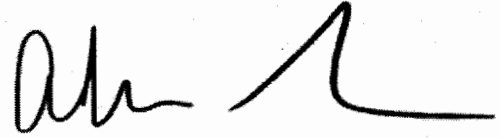
Accordingly, it is

ORDERED that the portion of defendant Western Auto’s motion seeking summary judgment is denied in its entirety; and it is further

ORDERED that the portion of defendant Western Auto’s motion seeking to dismiss for lack of personal jurisdiction 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.



10/06/2023

DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: