

**De Pichardo v Central Laundry Serv. Corp.**

2023 NY Slip Op 34357(U)

December 1, 2023

Supreme Court, Kings County

Docket Number: Index No. 14608/2015

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 1st day of December 2023

HONORABLE FRANCOIS A. RIVERA  
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MARTHA ALMONTE DE PICHARDO and  
MAXIMO PICHARDO,

Plaintiff(s),

Index No.: 14608/2015

**DECISION & ORDER**

-against-

CENTRAL LAUNDRY SERVICE CORP., LAVATECH  
LAUNDRY TECHNOLOGY, INC. and LAVATECH  
LAUNDRY TECHNOLOGY GMBH,

Defendant(s).  
-----X

CENTRAL LAUNDRY SERVICE CORP.,

Third Party Plaintiff(s),

-against-

NORTH SHORE LINEN, INC.,

Third-Party Defendant(s).  
-----X

LAVATECH LAUNDRY TECHNOLOGY, INC.,

Second Third Party Plaintiff(s),

-against-

NORTH SHORE LINEN, INC.,

Second Third-Party Defendant(s).  
-----X

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed by defendant Lavatech Laundry Technology GMBH<sup>1</sup> (hereinafter the movant or Lavatech Germany)) on December 29, 2016, under motion sequence five, for an order, pursuant to CPLR 3211(a)(8) dismissing the verified complaint as asserted against it for lack of personal jurisdiction. The motion was initially opposed and then unopposed.

- Notice of Motion
- Affirmation in Support
  - Exhibit A to E
- Affidavit in support
  - Exhibits A to C
- Additional affidavit in support
  - Exhibit A
- Memorandum of law in support
- Affirmation in opposition
  - Exhibit A-H
- Memorandum of law in reply
- Affirmation in reply

## BACKGROUND

On December 15, 2015, the injured plaintiff and Maximo Pichardo, suing derivatively, commenced the instant action to recover damages for personal injuries by filing a summons and verified complaint with the Kings County Clerk's office (hereinafter KCCO). The verified complaint contains one hundred and eighty-three numbered paragraphs in support of five causes of action. The first cause of action is for breach of warranty. The second cause of action is for strict products liability. The third cause of action is for negligence. The fourth cause of action is for failure to warn. The fifth cause of action is for loss of services asserted by Maximo Pichardo for the loss of services of Martha Almonte Pichardo, his wife.

The verified complaint alleges that on September 16, 2015, the date of the accident, the injured plaintiff was employed by the third-party defendant/second third-party defendant North Shore Linen (hereinafter NSL). On that day, while at work, the injured plaintiff sustained

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<sup>1</sup> The movant indicated that its correct name is Lavatech Laundry Technology gmbH, however, there was no motion to correct the name.

erious injuries while attempting to clear a jam from a Masterfold folding machine, model number E222, serial number E222L1193316 (hereinafter the subject folding machine). The complaint further alleges that the subject folding machine was sold to NSL by defendant third-party plaintiff Central Laundry Service Corp. (hereinafter CLS), an alleged distributor of commercial laundry folding machines to the public. Defendant second third-party plaintiff Lavatech Laundry Technology, Inc. (hereinafter Lavatech USA) and defendant Lavatech Laundry Technology GMBH (Lavatech Germany) are alleged to have, among other things, designed, manufactured, and sold the subject folding machine.

On August 17, 2016, CLS interposed a verified answer with a cross claim asserted against Lavatech USA and Lavatech Germany. On that same day, CLS commenced a third-party action against NSL by filing a third-party summons, verified amended complaint and three annexed exhibits labeled A through C with the KCCO.

On September 7, 2016, Lavatech USA interposed a verified answer including a cross claim against CLS.

On September 20, 2016, NSL interposed a verified answer to the third-party complaint including a cross claim against Lavatech USA and Lavatech Germany and counter claims against CLS.

On October 19, 2016, CLS filed a reply to the counter claims asserted by NSL.

On October 26, 2021, Lavatech USA commenced a second third-party action against NSL by filing a second third-party summons and complaint with the KCCO.

On December 28, 2021, NSL interposed an answer to the second third-party complaint with a counter claim asserted against Lavatech USA.

On December 22, 2022, plaintiff filed a note of issue.

On February 17, 2017, the Court issued an interim order staying the instant motion to permit the plaintiff to conduct discovery on the issue of personal jurisdiction. The order further provided that after completion of such discovery, the plaintiff would be permitted to supplement its opposition to the motion by filing same with motion support. If the plaintiff were to supplement its opposition papers the movant would be permitted to submit supplemental reply papers.

The plaintiff did not supplement its opposition to the instant motion.

#### LAW AND APPLICATION

A foreign corporation is amenable to suit in New York courts under CPLR 301 if it has engaged in such a continuous and systematic course of doing business here that a finding of its presence in this jurisdiction is warranted (*Landoil Resources Corp. v. Alexander & Alexander Servs.*, 77 N.Y.2d 28, 33 [1990], quoting *Laufer v. Ostrow*, 55 N.Y.2d 305, 309–310 [1982]).

The test is whether the aggregate of the corporation's activities in the State are such that it may be said to be present in the State not occasionally or casually, but with a fair measure of permanence and continuity (*Laufer v. Ostrow*, 55 N.Y.2d at 310, quoting *Tauza v. Susquehanna Coal Co.*, 220 N.Y. 259, 267 [1917]). Any exercise of jurisdiction over a foreign corporation on the basis of state law must comport with the due process requirement that there be sufficient minimum contacts between the foreign corporation and the forum State such that the forum State's assertion of jurisdiction will not offend traditional notions of fair play and substantial justice (*International Shoe Co. v. Washington*, 326 U.S. 310, 316 [1945], quoting *Milliken v. Meyer*, 311 U.S. 457, 463 [1941]).

Here, the plaintiff, as the party seeking to assert personal jurisdiction, bear the ultimate burden of proof as to whether the Court has personal jurisdiction over the movant. In opposition

to the movant's motion to dismiss the complaint insofar as asserted against it pursuant to CPLR 3211(a)(8) on the ground of lack of personal jurisdiction, the plaintiffs "need only make a prima facie showing" that such jurisdiction exists (*Cornely v. Dynamic HVAC Supply, LLC*, 44 A.D.3d 986 [2<sup>nd</sup> Dept 2007]).

However, where, as here, plaintiff oppose a motion to dismiss the complaint pursuant to CPLR 3211(a)(8) on the ground that discovery on the issue of personal jurisdiction is necessary, plaintiff need not make a prima facie showing of jurisdiction, but instead need only demonstrate that facts may exist to exercise personal jurisdiction over the defendant (*Ying Jun Chen v. Lei Shi*, 19 A.D.3d 407, 407–408 [2<sup>nd</sup> Dept 2005], quoting *Peterson v. Spartan Indus.*, 33 N.Y.2d 463, 467 [1974]). If it appears from affidavits submitted in opposition to the motion ... that facts essential to justify opposition may exist but cannot then be stated, a court may, in the exercise of its discretion, postpone resolution of the issue of personal jurisdiction (CPLR 3211[d]).

In accordance with this reasoning, the Court had issued an interim order on February 17, 2017. The order stayed the instant motion to permit the plaintiff to conduct discovery on the issue of personal jurisdiction. After completion of such discovery, the plaintiff was permitted to supplement its opposition to the motion by filing same with motion support. If the plaintiff were to supplement its opposition papers the movant would be permitted to submit supplemental reply papers.

On December 22, 2022, plaintiff filed a note of issue. On November 16, 2021, plaintiff filed a consent to change attorney by which plaintiff's prior counsel Finz & Finz, P.C. was replaced by Salerno & Goldberg, P.C.

On October 4, 2023, the movant filed a supplemental reply affirmation seeking, in effect, a lifting of the stay of the instant motion and dismissal of the action as asserted against it. The

reply affirmation apprised the Court that discovery had been completed. On December 22, 2022, plaintiff filed a note of issue in this case. After six years of discovery the plaintiff did not supplement its opposition paper to the instant motion. In fact, plaintiff's new counsel advised the Court at oral argument that it no longer opposed the movant's motion.

**CONCLUSION**

The motion by defendant Lavatech Laundry Technology GMBH, under motion sequence five, for an order, pursuant to CPLR 3211(a)(8) dismissing the verified complaint of plaintiffs Martha Almonte De Pichardo and Maximo Pichardo as asserted against it for lack of personal jurisdiction is granted. The verified complaint is hereby dismissed.

The foregoing constitutes the decision and order of this Court.

ENTER:

Francis A. Rivera x

J.S.C.

**HON. FRANCOIS A. RIVERA**  
J.S.C.