

Zachary v Avon Prods., Inc.

2023 NY Slip Op 34364(U)

December 11, 2023

Supreme Court, New York County

Docket Number: Index No. 190095/2022

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

-----X

JULANDA ZACHARY,

Plaintiff,

- v -

AVON PRODUCTS, INC, BARRETTS MINERALS, INC., BRENNTAG NORTH AMERICA, AS A SUCCESSOR-IN- INTEREST TO MINERAL PIGMENT SOLUTIONS, INC., AS SUCCESSOR-IN-INTEREST TO WHITTAKER, CLARK & DANIELS, INC, BRENNTAG SPECIALTIES, INC., F/K/A MINERAL PIGMENT SOLUTIONS, INC., AS SUCCESSOR-IN-INTEREST TO WHITTAKER, CLARK & DANIELS, INC., CHARLES B. CHRYSTAL COMPANY, INC., COLOR TECHNIQUES, INC., COSMETIC SPECIALTIES, INC., COTY, INC., INDIVIDUALLY AND FOR ITS SUBSIDIARY, NOXELL CORPORATION, L'OREAL USA, INC., FOR ITS L'OREAL AND MAYBELLINE PRODUCTS, MAC COSMETICS, MAYBELLINE, LLC, AS A SUBSIDIARY OF L'OREAL USA INC., FOR ITS MAYBELLINE BRAND OF PRODUCTS, NOXELL CORPORATION, F/K/A NOXZEMA CHEMICAL COMPANY, PFIZER, INC., PRESERSE CORPORATION, PRESERSE INTERNATIONAL CORP., PUBLIX SUPER MARKETS, INC., REVLON CONSUMER PRODUCTS CORPORATION, INC., REVLON, INC., RITE AID OF NEW YORK CITY, INC., RITE AID OF NEW YORK, INC., SPECIALTY MINERALS, INC., THE ESTEE LAUDER COMPANIES, INC., (SUED INDIVIDUALLY AND FOR LEN-RON MANUFACTURING CO., INC.), THE PROCTER & GAMBLE COMPANY, INDIVIDUALLY AND FOR ITS SUBSIDIARY, NOXELL CORPORATION, WALGREEN EASTERN CO., INC., WHITTAKER, CLARK & DANIELS, INC., JANSSEN PHARMACEUTICALS, INC., INDIVIDUALLY, AND AS SUCCESSOR IN INTEREST TO JOHNSON & JOHNSON CONSUMER, INC., JOHNSON & JOHNSON, JOHNSON & JOHNSON CONSUMER, INC., JOHNSON & JOHNSON HOLDCO (NA), INC., KENVUE INC., INDIVIDUALLY, AND AS SUCCESSOR-IN- INTEREST TO JOHNSON & JOHNSON CONSUMER, INC., KOLMAR LABORATORIES, INC., LTL MANAGEMENT LLC,

Defendant.

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INDEX NO. 190095/2022
MOTION DATE 04/04/2023
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95

were read on this motion to/for

DISMISSAL

Upon the foregoing documents, it is ordered that defendant Color Techniques, Inc.'s (hereinafter referred to as "defendant CTI"), motion to dismiss and plaintiff's cross-motion for jurisdictional discovery is decided below. In this asbestos action, defendant CTI 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 files a cross-motion seeking jurisdictional discovery. Defendant CTI opposes the cross-motion.

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 CTI 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.” Further, a plaintiff need only show that jurisdiction “may exist” in order to defeat a motion to dismiss for lack of jurisdiction under CPLR 3211(a)(8). *Hessel v Goldman, Sachs & Co.*, 281 AD2d 247, 247 (1st Dep’t 2001).

Defendant CTI seeks to dismiss this action arguing, *inter alia*, that it did not sell, distribute, or manufacture any products in the State of New York. Defendant CTI argues that it merely sold its products to Avon, a New York company. Defendant CTI further argues that it is not incorporated in New York, does not have its headquarters in New York, nor does it have its principal place of business in New York, such that the Court lacks personal jurisdiction over it pursuant to CPLR §302(a). Thus, according to defendant CTI, the instant action must be dismissed as against it.

In opposition, pursuant to CPLR §302(a), the plaintiff points to the longstanding business dealings between defendant CTI and Avon, and Avon’s strong ties to New York. In support, the plaintiff proffers, *inter alia*, Avon’s Corporate Record from the Department of State, which

indicates that Avon's principal executive office address is in New York, as well as a Corporation Report from Avon from 1997 which states that Avon's "World Headquarters" is in New York. Moreover, the plaintiff proffers a news article from the Rockland/Westchester Journal News that states that Avon's research, development, and manufacturing plant was located in New York, and also details Avon's history of doing business in New York.

The plaintiff further argues that defendant CTI is a relatively new defendant in NYCAL, such that the only discovery materials available pertaining to defendant CTI are interrogatory responses. The plaintiff further points out that a corporate representative has never been deposed in NYCAL, and that the one instance in which a representative of defendant CTI was deposed occurred in a California case, and the representative was not questioned on any matters pertaining to jurisdiction in New York. The plaintiff submits a deposition from the California case, that of Carolyn Eldridge, the then-VP of Technical Marketing for defendant CTI, who explicitly stated that defendant CTI sold talc to Avon from 1997 through 2010, and that sales records only go back to 1998. Plaintiff contends that personal jurisdiction has been established, or alternatively requests jurisdictional discovery.

In reply, defendant CTI argues that the alleged contacts with the State of New York, as raised in the opposition papers, fail to sufficiently tie moving defendant to the state. Defendant CTI relies on a conclusory affidavit of its President Jennifer Bolitsky, in which she states that defendant CTI is a New Jersey corporation, it is physically located there, and it only sells to manufacturers out of its New Jersey facility. As to jurisdictional discovery, moving defendant argues that plaintiff has failed to come forward with a "sufficient start" to demonstrating jurisdiction. However, given the frequency and nature of defendant CTI's business dealings with Avon, a corporation with clear ties to the State of New York, the plaintiff has provided sufficient

evidence to demonstrate that jurisdictional discovery is needed herein. As such, plaintiff's cross-motion is granted and defendant CTI's motion to dismiss is denied without prejudice to renew at the conclusion of discovery.

Accordingly, it is

ORDERED that defendant Color Techniques, Inc.'s motion to dismiss the complaint is denied without prejudice to renew at the conclusion of discovery; and it is further

ORDERED that plaintiff's cross-motion for jurisdictional discovery is granted; 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.

12/11/2023

DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE