

Alvarado v Samsung Elecs. Am., Inc.

2024 NY Slip Op 30634(U)

February 29, 2024

Supreme Court, New York County

Docket Number: Index No. 156617/2021

Judge: Leslie A. Stroth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

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ORLANDO ALVARADO,
Plaintiff,

INDEX NO. 156617/2021

MOTION DATE 07/18/2023

MOTION SEQ. NO. 002

- v -

SAMSUNG ELECTRONICS AMERICA, INC.; SAMSUNG
SDI AMERICA, INC.; SAMSUNG SDI CO., LTD. and ECIG
WAREHOUSE, INC. D/B/A CLOUD 99 VAPES,

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38,
39, 40, 42, 43, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 72, 73, 74, 75, 76
were read on this motion to/for DISMISS

In this personal injury action, defendant Samsung SDI Co., Ltd. (SDI Co.) moves, pursuant
to CPLR 3211 (a) (7) and (8), to dismiss the complaint brought by plaintiff Orlando Alvarado.

Background

The following facts are drawn from the amended verified complaint (complaint) unless
stated otherwise and are assumed to be true for purposes of this pre-answer motion to dismiss
(Davis v Boehm, 24 NY3d 262, 268 [2014]).

In 2019, plaintiff, a New York State resident, purchased a "G-priv 220 mod" SMOK brand
vaping device from defendant ECIG Warehouse, Inc. d/b/a Cloud 99 Vapes (ECIG), a domestic
corporation based in Rockland County (NY St Cts Elec Filing [NYSCEF] Doc No. 25, complaint
¶¶ 1 and 7-8). The vaping device was equipped with 18650-25R lithium-ion batteries allegedly
manufactured or sold by SDI Co. (id., ¶¶ 9-11). On or about June 15, 2019, the vaping device in
which the 18650-25R batteries were installed spontaneously exploded in the back pocket of
plaintiff's trousers, causing plaintiff to sustain first, second and third degree burns to his body (id.,

¶¶ 15-17). SDI Co., a foreign business corporation based in South Korea, manufactures 18650-type batteries (*id.*, ¶ 4).

The complaint pleads the four causes of action: (1) negligence; (2) breach of warranty; (3) strict products liability; and (4) a violation of General Business Law § 349. Plaintiff has discontinued the action against defendants Samsung Electronics America, Inc. and Samsung SDI America, Inc. (NYSCEF Doc Nos. 26 and 82). SDI Co. now moves to dismiss the complaint.

The Parties' Contentions

SDI Co. contends the complaint should be dismissed because the court lacks both general and specific jurisdiction over it. SDI Co. proffers an affidavit from Heuseob Shin (Shin), a principal engineer and an authorized representative (NYSCEF Doc No. 37, David E. Freed [Freed] affirmation, exhibit B, Shin aff, ¶ 1). Shin attests that SDI Co. is a South Korean corporation organized under the laws of the Republic of Korea where it maintains its headquarters and principal place of business (*id.*, ¶ 4). Shin avers that SDI Co. has no employees, representatives or agents based in New York; is not registered or licensed to conduct business in New York; does not pay taxes or hold board or other official meetings in the state; does not maintain an office, warehouse, place of business, bank account, mailing address, telephone or telefax number in New York; and does not conduct business with any retail store in New York (*id.*, ¶¶ 5-13 and 15).

SDI Co. manufactures different models and sizes of batteries, including 18650 batteries which are not designed or marketed to be used individually or outside a battery pack (*id.*, ¶¶ 4 and 16). Shin explains that SDI Co. markets its batteries on a business-to-business basis and distributes them via two distribution channels (*id.*, ¶ 17). The "Packer Distribution Channel" involves the bulk sale of 18650 battery cells to sophisticated, qualified companies called "packers" who assemble individual cells into battery packs the packer has manufactured and designed for subsequent distribution and sale (*id.*, ¶¶ 17-18). The battery cells and a battery management

system, which is an electronic circuit board that monitors the batteries and prevents thermal runaway, are encased in an exterior case to form a single battery pack unit (*id.*, ¶ 19). The battery pack is then incorporated into an authorized product, such as a laptop computer or power drill (*id.*). Shin avers that SDI Co. has no right or ability to control a packer's subsequent sale of the battery packs it has assembled (*id.*, ¶ 20). The "Transaction Distribution Channel" involves the bulk sale of battery cells to "transacting companies" in Asia, Europe and North America (*id.*, ¶ 21). Transacting companies, none of which are affiliated with SDI Co., are involved in the manufacture of authorized products or the supply chain leading to the manufacture of authorized products (*id.*). Shin avers that SDI Co. has no right or ability to control the sales made by the transacting companies nor does SDI Co. track the volume or location of those sales (*id.*, ¶ 22).

Shin represents that e-cigarette or vaping devices are not authorized products and that SDI Co. does not manufacture battery cells for use in those types of devices (*id.*, ¶ 23). Beginning in 2017, SDI Co. has employed a vetting process, or the "Customer Environment Test," that requires each of its customers to submit an application detailing the intended use for the 18650 battery cells (*id.*, ¶ 24). Shin states that "SDI Co. will not approve any sale if a customer's application reveals connections to distributors or sellers in the e-cigarette/vaping industry" (*id.*). SDI Co. also revised its website in July 2017 to include additional warnings with respect to the use of 18650 battery cells, and specifically warns consumers and end-users against using individual, cylindrical lithium-ion batteries and removing individual batteries from battery packs (*id.*, ¶ 25). Product specification documents that accompany SDI Co.'s sales of 18650 batteries also warn against dismantling battery cells from a battery pack (*id.*, ¶ 28). The documents further specify that "inaccurate handling of lithium-ion and lithium-ion batteries ... may cause leakage, heat, smoke, an explosion, or fire" (*id.*). As of January 2018, SDI Co.'s product specification documents for 18650 battery cells include warnings against their use in e-cigarette or vaping devices, including a statement that

such batteries were not designed or manufactured for use in an e-cigarette or vaping device, and that SDI Co. had not authorized any third party to sell or use its battery cells as power sources in such devices (*id.*, ¶ 29).

Shin avers that SDI Co. has never shipped, sold, distributed, advertised or marketed 18650 batteries individually or in battery packs to New York nor has it marketed those batteries through a New York sales agent (*id.*, ¶¶ 30-33). Shin states that SDI Co. has never authorized a third party to advertise, distribute or sell 18650 batteries for use by consumers in e-cigarette devices and has never authorized a distributor, wholesaler, retailer, or re-seller to advertise or sell 18650 batteries individually or outside of a battery pack or without a battery management system (*id.*, ¶¶ 35-36).

Plaintiff counters that SDI Co. is subject to jurisdiction under CPLR 302 (a) (1), (2) and (3) because it has sufficient minimum contacts with this state. Google searches for ‘best vaping batteries’ list SDI Co.’s 18650 batteries as an option (NYSCEF Doc No. 55, Alban Dunisha [Dunisha] affirmation, exhibit D at 8-27). Individual battery cells are also sold online through retailers such as Amazon, Walmart, and “Zees All In One Smoke Shop” (*id.* at 1-7). Plaintiff SDI Co. has made at least 17,386 shipments of items to the United States (NYSCEF Doc No. 62, Dunisha affirmation, exhibit K at 4), including shipment of such batteries from Busan, South Korea to Mitsubishi Electric Power Products Inc., which was received at the Port of New York and New Jersey on October 17, 2021 (*id.* at 1-2).

Plaintiff avers that when he purchased the vaping device from ECIG, he chose to purchase Samsung 18650-25R batteries because he assumed they were a higher quality battery (NYSCEF Doc No. 52, Dunisha affirmation, exhibit A, plaintiff aff, ¶ 5). Plaintiff further avers that the batteries did not include warnings against individual use or use in vaping devices (*id.*, ¶ 7). Robert Testagrossa (Testagrossa) of ECIG avers that ECIG regularly purchased Samsung INR 18650-25R batteries from dhgate.com, a B2B website based in China, and shipments ECIG received from

dhgate.com did not include any warnings or instructions on use and handling of those batteries, particularly in vaping devices (NYSCEF Doc No. 72, Testagrossa aff, ¶¶ 2-6).

Discussion

The court may grant dismissal on a motion brought under CPLR 3211 (a) (7) if “the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery” (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]). However, “[w]hen evidentiary material is considered, the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one” (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]).

When a defendant moves for dismissal under CPLR 3211 (a) (8) for lack of personal jurisdiction, the plaintiff as the party asserting jurisdiction bears the burden “of presenting sufficient evidence, through affidavits and relevant documents, to demonstrate jurisdiction” (*Coast to Coast Energy, Inc. v Gasarch*, 149 AD3d 485, 486 [1st Dept 2017]).

A. General Jurisdiction

CPLR 301 provides for general jurisdiction over a foreign corporation if its “affiliations with the [s]tate are so ‘continuous and systematic’ as to render them essentially at home in the forum [s]tate” (*Aybar v Aybar*, 37 NY3d 274, 289 [2021], quoting *Goodyear Dunlop Tires Operations, S. A. v Brown*, 564 US 915, 919 [2011]; see also *Daimler AG v Bauman*, 571 US 117, 137 [2014] [“the place of incorporation and principal place of business are “paradig[m] ... bases for general jurisdiction”] [internal quotation marks and citation omitted]). SDI Co. is a South Korean corporation with its principal place of business in that country. Here, plaintiff has failed to show that SDI Co. is domiciled in New York so as to confer general jurisdiction (see *Okoroafor v Emirates Airlines*, 195 AD3d 540, 540 [1st Dept 2021], *lv denied* 37 NY3d 919 [2022]).

B. Specific Jurisdiction

Whether the exercise of personal jurisdiction over a non-domiciliary is proper under New York's long-arm statute involves a two-step inquiry (*Williams v Beemiller, Inc.*, 33 NY3d 523, 528 [2019]). First, the court must determine whether jurisdiction is permissible under CPLR 302 (*id.*). Second, the exercise of jurisdiction must comport with federal due process (*id.*). CPLR 302 is "a 'single act statute' and proof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted" (*Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467 [1988]).

Plaintiff maintains that CPLR 302 (a) (1) through (3) confer jurisdiction over SDI Co. because the company manufactured, sold and distributed millions of lithium-ion batteries to the United States, including New York, and that it was aware as early as December 2015 that individual batteries were being sold and used in e-cigarettes or vaping devices in the United States. Plaintiff further argues that despite implementing a customer vetting process, SDI Co. took no action to supervise its customers, namely packers and transacting companies, to ensure that its batteries were not sold and used in a manner for which they were not intended. Plaintiff claims that indirect sales of SDI Co.'s lithium-ion batteries in an uncontrolled market has generated significant revenue for the company. These arguments primarily address the second step in the inquiry, namely whether the exercise of jurisdiction comports with federal due process. Nevertheless, even if federal due process has been satisfied, plaintiff has failed to establish that the statutory requirements in CPLR 302 have been met.

1. CPLR 302 (a) (1)

CPLR 302 (a) (1) allows for jurisdiction over a non-domiciliary defendant who "transacts any business within the state or contracts anywhere to supply goods or services in the state." The plaintiff must demonstrate that the defendant "conducted sufficient activities to have transacted

business in the state” and “the claims must arise from the transactions” (*Rushaid v Pictet & Cie*, 28 NY3d 316, 323 [2016]). Regarding the first prong, the defendant must have “purposefully availed itself of ‘the privilege of conducting activities’ in the state by transacting business in New York” (*D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d 292, 297-298 [2017]). “[C]ourts must ask ‘whether what the defendant did in New York constitutes a sufficient ‘transaction’ to satisfy the statute’” (*State of New York v Vayu, Inc.*, 39 NY3d 330, 332 [2023]). The quality of the defendant’s contacts is key (*Fischbarg v Doucet*, 9 NY3d 375, 380 [2007]). As to the second prong, “the plaintiff’s cause of action must have an ‘articulable nexus’ or ‘substantial relationship’ with the defendant’s transaction of business here” (*D&R Global Selections, S.L.*, 29 NY3d at 298-299 [citation omitted]).

Under these principles, plaintiff has failed to show that CPLR 302 (a) (1) confers jurisdiction over SDI Co. SDI Co. has demonstrated that it does not advertise, distribute or sell batteries, either individually or in battery packs, to New York for use in e-cigarette devices, and plaintiff has not produced any evidence to refute SDI Co.’s proof. Instead, plaintiff submits the results of Google searches listing individual 18650 batteries available for purchase. The search results, however, are unavailing since none identify SDI Co. as the seller. Instead, the results list third parties as the sellers. As such, these results are insufficient to infer that SDI Co. purposefully projected itself into New York via a “sustained and substantial transaction of business” (*Fischbarg*, 9 NY3d at 382 [internal quotation marks and citation omitted]). That SDI Co. shipped its batteries through the Port of New York and New Jersey to companies in the United States is similarly unavailing, since “knowledge of a product’s destination, in and of itself, has been determined insufficient to establish jurisdiction” (*Carpino v National Store Fixtures*, 275 AD2d 580, 581 [1st Dept 2000], *lv denied* 95 NY2d 769 [2000]; *see also Stephan v Babysport, LLC*, 499 F Supp 2d 279, 287 [ED NY 2007] [“While Babysport may have been aware that its products were later

distributed by MacLane throughout the United States, such knowledge constitutes neither knowledge of the products' ultimate destination nor purposeful availment of the protection of New York law"). Testarossa's averment that ECIG purchased the batteries it sold in the shop from a seller in China undercuts plaintiff's argument that SDI Co. transacted business in New York (*see Fernandez v DaimlerChrysler, A.G.*, 143 AD3d 765, 767 [2d Dept 2016], *appeal dismissed* 28 NY3d 1129 [2017], *cert denied* 583 US 825 [2017] [no jurisdiction where defendant did not sell the vehicle to the decedent]). Likewise, plaintiff cannot establish an articulable nexus between ECIG's purchase of batteries from a Chinese company and his claims (*see Matter of New York City Asbestos Litig.*, 206 AD3d 442, 444 [1st Dept 2022]). And while the purposeful activities of an agent for a non-domiciliary may serve as a basis for specific jurisdiction (*see Kreutter*, 71 NY 2d at 468), plaintiff has not alleged, let alone shown, that dhgate.com is SDI Co.'s corporate agent.

Plaintiff also posits that SDI Co. specifically targeted the New York market for its batteries because it holds trademarks and patents in the United States. However, "the purpose of the trademark law ... is to protect the owner of a trademark from unfair competition ... [and is] not an adjunct to the law of negligence or products liability" (*Porter v LSB Indus.*, 192 AD2d 205, 211 [4th Dept 1993]). The patent law is also meant "to fulfill the constitutional and statutory goal of promoting 'the Progress of Science and the useful Arts'" (*Diamond v Chakrabarty*, 447 US 303, 315 [1980]). Thus, it cannot be said that SDI Co. specifically invoked the benefits and protections of New York's laws simply because it registered trademarks or obtained patents in the United States. CPLR 302 (a) (1) does not provide a basis for jurisdiction.

2. CPLR 302 (a) (2)

CPLR 302 (a) (2) confers jurisdiction where a non-domiciliary "commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act." Here, plaintiff has not furnished any evidence that SDI Co. committed a tortious act while

physically present in the state (*see PC-16 Doe v Hill Regional Career High Sch.*, — AD3d —, 2024 NY Slip Op 00225, *2 [1st Dept 2024]; *Redell-Witte v Algoma Hardwoods, Inc.*, 222 AD3d 603, 604 [1st Dept 2023] [defendant not subject to jurisdiction where it did not manufacture products in New York]). CPLR 302 (a) (2) is inapplicable.

3. CPLR 302 (a) (3)

CPLR 302 (a) (3) allows for jurisdiction over a non-domiciliary who commits a tortious act outside of New York that causes injury to a person in the state if the non-domiciliary “(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.” Jurisdiction under this section requires the plaintiff to satisfy five elements: (1) the defendant’s commission of a tortious act outside New York; (2) the plaintiff’s cause of action arises from that act; (3) the defendant’s act caused injury to the plaintiff in New York; (4) the “defendant expected or should reasonably have expected the act to have consequences in the State”; and (5) the “defendant derived substantial revenue from interstate or international commerce” (*LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d 210, 214 [2000]).

As applied here, plaintiff has not demonstrated that CPLR 302 (a) (3) provides a basis for jurisdiction. CPLR 302 (a) (3) (i) requires a showing that the non-domiciliary intended to derive revenue in New York (*Williams*, 33 NY3d at 537 [Feinman, J., concurring]). Regularly conducting or soliciting business or engaging in a persistent course of conduct is sufficient to establish contacts with New York (*id.* at 535). SDI Co. has demonstrated that it does not market, advertise, solicit, distribute or sell its batteries to New York and otherwise has no contacts with the state. Plaintiff’s proof in opposition principally consists of Google searches showing the availability of individual batteries for sale outside of a battery pack or authorized device in which a battery pack has been

incorporated as well as shipment information. As noted above, though, SDI Co. distributes and sells its batteries only to packers and transacting companies, and not the individual retailers listed in plaintiff's Google searches (*see Stephan*, 499 F Supp 2d at 289 [revenue from sale made outside New York insufficient for CPLR 302 (a) (3) (i) jurisdiction]). Under CPLR 302 (a) (3) (ii), the plaintiff must show there was a “discernible effort [by the non-domiciliary] to directly or indirectly serve the New York market” (*Williams*, 33 NY3d at 539 [Feinman, J., concurring] [citation omitted]). Again, the record contains no evidence of discernible efforts on the part of SDI Co. to reach or serve the New York market with respect to its batteries.

Plaintiff's reliance on a stream of commerce theory to demonstrate specific jurisdiction under CPLR 302 (a) (3) is misplaced (*see Roberts v Keith*, 2007 WL 271253, *7, 2007 US Dist LEXIS 68811, *21 [SD NY, Sept. 18, 2007, No. 04 Civ. 10079 (CSH)] [“[CPLR] 302 says nothing about introducing works into a stream of interstate commerce”]). In *Cruz v City of New York* (210 AD3d 523 [1st Dept 2022]), the Court explained:

“the Supreme Court of the United States has made clear that the fortuitous circumstance that a product sold in another state later makes its way into the forum jurisdiction through no marketing or other effort of [the] defendant, or the mere likelihood that a product will find its way into the forum[,] cannot establish the requisite connection between [the] defendant and the forum to support an exercise of specific personal jurisdiction”

(*id.* at 524 [internal quotation marks and citation omitted]). To find jurisdiction, there must be “something more,” such as special state-related design, advertising, advice, marketing, or anything else” (*J. McIntyre Machinery, Ltd. v Nicaastro*, 564 US 873, 889 [2011] [Breyer, J., concurring]). Plaintiff has produced no such evidence here.

Plaintiff's request for jurisdictional discovery is denied as he has not made “a ‘sufficient start, via tangible evidence,’ of showing that defendant transacted any business in New York

having any substantial relationship to the claim alleged in the complaint” (*Noris Med., Inc. v Siev*, 214 AD3d 540, 541 [1st Dept 2023] [citation omitted]).

Because plaintiff has failed to carry his burden demonstrating jurisdiction, the court need not reach whether the complaint should be dismissed for failure to state a cause of action.

Accordingly, it is

ORDERED that the motion of defendant Samsung SDI Co., Ltd. to dismiss the complaint is granted, and the complaint is dismissed in its entirety as against said defendant, 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; and it is further

ORDERED that within 30 days of entry of this order, counsel for the moving party shall serve a copy of this order upon all parties, with notice of entry, and shall file such notice via NYSCEF.

This constitutes the decision and order of the Court.

DATE: 2/29/2024


HON. LESLIE A. STROTH
J.S.C.