

Albasry v Barretts Mins. Inc.

2024 NY Slip Op 31001(U)

March 25, 2024

Supreme Court, New York County

Docket Number: Index No. 190002/2023

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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DAN ALBASRY, FIRAS MOHAMMAD,

Plaintiff,

- v -

BARRETT'S MINERALS INC., BEACON CMP CORP.,
BRENNTAG NORTH AMERICA INC. (INDIVIDUALLY AND
AS SUCCESSOR TO MINERALS AND PIGMENT
SOLUTIONS INC., SUCCESSOR TO WHITTAKER, CLARK
& DANIELS INC.);, BRENNTAG SPECIALTIES LLC
(INDIVIDUALLY AND AS SUCCESSOR TO MINERALS
AND PIGMENT SOLUTIONS INC., SUCCESSOR TO
WHITTAKER, CLARK & DANIELS INC.);, CHARLES B.
CHRYSTAL COMPANY INC.;, COLGATE PALMOLIVE
CO.;, GLAXOSMITHKLINE CONSUMER HEALTHCARE
HOLDINGS (US) LLC (INDIVIDUALLY, D/B/A AND AS
SUCCESSOR TO YARDLEY OF LONDON, YARDLEY OF
LONDON LTD., YARDLEY OF LONDON (U.S.)
LLC, SMITHKLINE BEECHAM PLC AND BEECHAM
GROUP LLC);, GLAXOSMITHKLINE LLC (INDIVIDUALLY,
D/B/A AND AS SUCCESSOR TO YARDLEY OF LONDON,
YARDLEY OF LONDON LTD., YARDLEY OF LONDON
(U.S.) LLC, SMITHKLINE BEECHAM PLC AND BEECHAM
GROUP LLC);, GSK CONSUMER HEALTH INC.
(INDIVIDUALLY, D/B/A AND AS SUCCESSOR TO
YARDLEY OF LONDON, YARDLEY OF LONDON LTD.,
YARDLEY OF LONDON (U.S.) LLC, SMITHKLINE
BEECHAM PLC AND BEECHAM GROUP LLC);,
LORNAMEAD INC. (INDIVIDUALLY AND AS SUCCESSOR
TO LORNAMEAD ACQUISITIONS LTD. AND LORNAMEAD
BRANDS INC., D/B/A YARDLEY OF LONDON A/K/A
YARDLEY);, PFIZER INC., PORT JERVIS LABORATORIES
INC. (F/K/A KOLMAR LABORATORIES INC.);, THE
PROCTER & GAMBLE CO. (INDIVIDUALLY, D/B/A, AND
AS SUCCESSOR TO YARDLEY OF LONDON LTD.,
YARDLEY OF LONDON A/K/A YARDLEY, YARDLEY OF
LONDON INC., AND YARDLEY OF LONDON (U.S.) LLC);,
WHITTAKER, CLARK & DANIELS INC. (INDIVIDUALLY,
D/B/A, AND SUCCESSOR TO CHARLES MATHIEU INC.
(D/B/A CHARLES MATHIEU & CO. AND CHAS. MATHIEU
INC.), AMERICAN TALC COMPANY INC., METROPOLITAN
TALC COMPANY INC., IMPERIAL PRODUCTS CO.
INC., AND RESOURCE PROCESSO, YARDLEY OF
LONDON INC. (F/K/A LENTHERIC INC. AND LENTHERIC
DISTRIBUTORS INC.);, YARDLEY OF LONDON LTD.,
CONOPCO INC. (INDIVIDUALLY, DOING BUSINESS AS,

INDEX NO. 190002/2023

MOTION DATE 01/16/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

AND AS SUCCESSOR TO ELIZABETH ARDEN INC. AND
 EVYAN PERFUMES INC., PARFUMS INTERNATIONAL
 AND IDEA FRAGRANCES CO.)

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 59, 63, 72, 74, 75, 76, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 177, 178, 179, 180

were read on this motion to/for

DISMISSAL

Upon the foregoing documents, it is ordered that the instant motion to dismiss for *forum non conveniens* pursuant to CPLR 327 is denied in accordance with the decision below.

Here, defendant Port Jervis Laboratories, Inc. f/k/a Kolmar Laboratories, Inc. (“Kolmar”) moves to dismiss this action on the grounds that plaintiff-decedent, Newal Al Saad (“Ms. Al Saad”) has not established a sufficient nexus with New York so as to keep the instant action before this Court. *See* Memorandum of Law in Support of Port Jervis Laboratories, Inc. f/k/a Kolmar Laboratories, Inc.’s Motion to Dismiss for *Forum Non Conveniens*, p. 4-9. Moving defendant highlights that plaintiff-decedent and her surviving family were and are residents of Canada, that plaintiff’s estate is being probated in Canada, and that the majority of plaintiff’s alleged asbestos exposure occurred in Canada. *Id.* Further, defendant Kolmar proffers that all witnesses and records relevant to this case are located in Canada. *Id.*

In opposition, plaintiffs note that witnesses and records can be made available from Canada and transferred. Plaintiffs further highlight Ms. Al Saad’s purchase of the products at issue herein in New York, as well as New York being a place of business for several defendants in the instant matter including defendant Kolmar. *See* Plaintiffs’ Memorandum of Law in Opposition to Port Jervis Laboratories Inc.’s Motion to Dismiss Pursuant to CPLR 327, p. 10-18.

Moving defendant replies, emphasizing the infrequency of Ms. Al Saad's purchase of such products in New York and reiterating the lack of sufficient nexus regarding the factors of the instant matter.

On a motion to dismiss pursuant to CPLR 327(a), "[a] defendant has a heavy burden in attempting to establish that New York is an inappropriate forum before plaintiff's choice of forum is disturbed". *Highgate Pictures, Inc. v De Paul*, 153 AD2d 126, 129 (1st Dep't 1990); *Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 479 (1984); *Grizzle v Hertz Corp.*, 305 AD2d 311, 312 (1st Dep't 2003). The courts have balanced and considered various factors to determine whether to retain jurisdiction including, "the residence of the parties [and] the location of the various witnesses". *Grizzle v Hertz Corp.*, 305 AD2d 311, 312 (1st Dep't 2003).

Applying the above principals, moving defendant has failed to satisfy its burden to warrant a dismissal of this action. Defendant Kolmar's argument that there is no nexus to New York State is contradicted by plaintiff's evidence that moving defendant maintains business in New York State and that plaintiff has purchased and used the products at issue in New York.

Furthermore, defendant Kolmar alleges that potential witnesses may be inconvenienced by a New York venue. However, moving defendant has failed to provide affidavits indicating: (1) the names, addresses and occupations of the witnesses; (2) the facts to which the witnesses would testify, which must be necessary and material; (3) the witnesses' willingness to testify; and (4) how the witnesses would be inconvenienced. *See* CPLR 510(3); *Culhane v Jensen*, 179 AD2d 582 (1st Dep't 1992); *O'Brien v Vassar Bros. Hosp.*, 207 AD2d 169, 172-73 (2d Dep't 1995). Significantly, defendant has failed to even allege the names of any potential witnesses. Thus, defendant's motion, pursuant to CPLR §327(a), must be denied.

Accordingly, it is

ORDERED that defendant Kolmar’s motion to dismiss for *forum non conveniens* is denied in its entirety; and it is further

ORDERED that within 30 days of entry plaintiff shall serve all parties with a copy of this Decision/Order with notice of entry.

This constitutes the Decision/Order of the Court.

03/25/2024
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