

Stomsvik v Vespa Brooklyn

2024 NY Slip Op 34493(U)

December 18, 2024

Supreme Court, Kings County

Docket Number: Index No. 519971/20

Judge: Richard J. Montelione

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 99, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 18th day of December, 2024.

P R E S E N T:

HON. RICHARD J. MONTELLONE,
Justice.
-----X

DECISION /
ORDER

CHRISTIAN STOMSVIK, ET AL.,
Plaintiff,

-against-

Index No.: 519971/20

VESPA BROOKLYN, ET AL.,
Defendants:
-----X

The following e-filed papers read herein:

NYSEF Doc Nos.:

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	<u>21-26, 27-32</u>
Opposing Affidavits (Affirmations)	<u>41-48, 65-68, 49-59, 69-72</u>
Affidavits/ Affirmations in Reply	<u>74-76</u>

Defendant Brembo North America, Inc. (hereinafter Brembo NA) moves (motion sequence [MS] 1), pursuant to CPLR 3211 (a) (8), for an order, dismissing the complaint on the ground that the court lacks personal jurisdiction.

Defendant Brembo S.P.A.¹ (hereinafter Brembo SPA) moves (MS-2), pursuant to CPLR 3211 (a) (8), for an order, dismissing the complaint on the ground that the court lacks personal jurisdiction.

Plaintiffs move, (MS-3), pursuant to CPLR 306 – b and 2004, for an order, extending the time for plaintiff to serve defendant Brembo SPA with the Supplemental Summons and Amended Complaint.

Background

Initiated by Summons and Complaint, and thereafter by Supplemental Summons against additional parties, plaintiffs Christian Stomsvik, and spouse Kathryn Stomsvik derivatively, allege that Christian Stomsvik (hereinafter plaintiff) was caused to suffer severe injuries when plaintiff's 2017 Aprilia Tuono motorcycle, apparently outfitted with Brembo brakes or brake components, failed on July 7, 2018. Plaintiff alleges, *inter alia*, that the Brembo components were defective and had been subject to a recall. Plaintiff brings claims sounding in negligence, breach of warranty, and strict products liability against all Defendants.

Brembo NA is incorporated in Delaware and has its principal place of business in Plymouth, Michigan. Brembo NA asserts that it is not registered with the New York Secretary of State and is thus not authorized to transact business in New York. In support of its motion, Brembo NA submits the affidavit of its President and Chief Executive

¹ Although S.p.A is all capitalized in the case caption, the middle character should be lowercase, as the abbreviation is Società per Azioni in the Italian.

Officer, who affirms in part that it did not “design, manufacture, sell, distribute and/or warranty any of the subject motorcycle’s component parts.”

Brembo SPA is an Italian corporation and has its registered office in Bergamo, Italy. In support of its motion, Brembo SPA submits the affidavit² of Umberto Simonelli, its Chief Legal Officer and Secretary of the Board. He affirms, in part, that Brembo SPA “manufactures and sells brake components to Aprilia SPA [sic], an Italian corporation, in Italy and has no reason to know where Aprilia SPA, in turn, sells the motorcycles it manufactures.” Additionally, he affirmed that, “Brembo SPA did not expect that its acts in selling brake components to Aprilia SPA... would have consequences in the state [sic] of New York.”

Plaintiff opposes both motions. Plaintiff alleges that Brembo SPA introduced brake parts into the stream of commerce, as confirmed by the Simonelli affidavit. Additionally, Brembo SPA is alleged to have committed tortious actions outside the State by their negligent manufacture of brake parts, and thereafter introducing the defective product into the international stream of commerce, causing injury within the State. In support of their opposition, counsel offers numerous excerpts from various Brembo websites. In further support, the 2017 annual report for Brembo SPA shows that Brembo SPA derived 25.7% of their net sales from the North American market: “Europe, the United States and Japan

² Although labeled as an “affidavit” the document is neither notarized nor accompanied by a certificate of conformity or certificate of authentication. See CPLR 2309(c); Real Prop. Law §§ 299, 299-a, 309; *Midfirst Bank v Agho*, 121 AD3d 343, 348-351 [2d Dept 2014]; *21st Mortg. Corp. v Rudman*, 201 AD3d 618, 624-625 [2d Dept 2022]. Pursuant to CPLR 2001, the Court will disregard *this* irregularity, as no party is prejudiced. *GS Cap. Partners, LLC v Ventures*, 215 AD3d 473 [1st Dept 2023].

are Brembo's three most important markets in the motorbike sector" (NY St Cts Elec Filing [NYSCEF] Doc No. 70, at 27). The report further states that Brembo had € 621,314,000 of sales to the North American market (USA, Mexico and Canada) in 2017 (*Id.* at 28). Additionally, page 132 of the report appears to indicate that Brembo SPA has a 100% ownership stake in Brembo NA. Page 43 of the report states that Brembo NA is engaged in the "development, casting, production and sale of... braking systems for cars, motorbikes and the racing sector... [with] [n]et sales for 2017 [of] USD 476,694 thousand... [and] the [Brembo NA] workforce numbered 724, an increase of 58 compared to the end of 2016."

Furthermore, end consumers ostensibly seek out vehicles specifically outfitted with Brembo brakes – an undated excerpt from an Aprilia catalogue is offered to show that Aprilia specifically marketed their motorcycles with Brembo brakes. As such, plaintiff suggests that Brembo must have engaged in marketing in the New York market, which would be demonstrated by marketing agreements and materials: "Plaintiff would find it hard to believe that [Brembo SPA]... would not have one advertisement or other enticement to buy there [sic] product feature at any racing event held in New York, magazine in New York, dealership in New York, and the like." Finally, plaintiff asserts an inability to differentiate which specific Brembo entity is involved with the subject motorcycle and which Brembo entities may have had minimum contacts with New York.

Defendants/Cross Claimants Hadjiminias & Co. d/b/a Vespa Brooklyn, Gotham Moto, and James Butler (hereinafter collectively "Vespa Brooklyn") similarly oppose the Brembo motions. In addition to the plaintiff's reasoning, Vespa Brooklyn offers that

Brembo SPA had prosecuted a civil action (654931/2017) in 2017 in Supreme Court, New York County, against Brembo's former exclusive North American distributor, and thus consented to New York jurisdiction.

Discussion

As an initial matter, the Court is very mindful of the delays³ in adjudicating the remaining instant motions. However, moving forward, the Court aspires to expedite these proceedings.

Defendants' Motions to Dismiss (MS 1 and 2)

International Shoe and its federal and state progeny have led to the bifurcation of personal jurisdiction into two general categories, general jurisdiction and specific jurisdiction. Neither side here seriously contends that the Brembo entities would be subject to New York's general jurisdiction. Thus, the question is whether the Brembo entities would be subject to New York's specific jurisdiction for acts and omissions as related to plaintiff's accident.

³ In the intervening three years, this Court notes that both federal and State case law has continued to evolve and sharpen in the area of specific personal jurisdiction: *Economy Premier Assur. Co. v. Miflex 2 S.p.A.*, 212 AD3d 775 [2d Dept 2023]; *WCVAWCK-Doe v Boys & Girls Club of Greenwich, Inc.*, 216 AD3d 1 [2d Dept 2023]; *Aybar v US Tires and Wheels of Queens, LLC*, 211 AD3d 40 [2d Dept 2022]; *Pyle v 260-261 Madison Ave. LLC*, 228 AD3d 567 [1st Dept 2024]; *Ford Motor. E.g. Cruz v City of New York*, 210 AD3d 523 [1st Dept 2022]; *Matter of New York City Asbestos Litig.*, 206 AD3d 442 [1st Dept 2022]; *Archer-Vail v LHV Precast Inc.*, 209 AD3d 1226 [3d Dept 2022]; *Oklahoma Firefighters Pension & Retirement Sys. v Banco Santander (Mexico) S.A. Institucion de Banca Multiple*, 92 F4th 450 [2d Cir 2024]; *Goldman v Trinity School of Medicine through Bd. of Trustees*, 23-CV-2935(KAM)(JRC), 2024 WL 2832885 [EDNY June 4, 2024]; *Yamashita v LG Chem, Ltd.*, 62 F4th 496 [9th Cir 2023]; *Hardin v Tron Foundation*, 20-CV-2804 (VSB), 2024 WL 4555629 [SDNY Oct. 23, 2024].

Although a plaintiff must ultimately bear the burden of proving jurisdiction over a defendant, requiring plaintiffs to make a prima facie demonstration from the outset “may impose undue obstacles for a plaintiff, particularly one seeking to confer jurisdiction under the ‘long arm’ statute” (*Peterson v Spartan Indus., Inc.*, 33 NY2d 463, 467 [1974]). In fact, in *Peterson*, the Court of Appeals counseled that “[d]iscovery is, therefore, desirable, indeed may be essential, and should quite probably lead to a more accurate judgment than one made solely on the basis of inconclusive preliminary affidavits” (*Peterson* at 467). To that end, a plaintiff must only have made “a sufficient start” (*id.*) toward demonstrating that “their position [is not] frivolous” (*id.*). Put otherwise, “the party need only demonstrate that facts ‘may exist’ whereby to defeat the motion... [and the] court may, in the exercise of its discretion, postpone resolution of the issue of personal jurisdiction” (*Qudsi v Larios*, 173 AD3d 920, 921 [2d Dept 2019] [internal quotations, citations, references omitted]).

Here, plaintiff has made a sufficient start towards proving that it would be reasonable for this Court to exercise long-arm jurisdiction over the two Brembo entities. Brembo SPA has hundreds of millions of dollars of sales in the North America market each year. Brembo SPA essentially admits that they put goods into the stream of international commerce, but then allege they have not the faintest idea to where those products may travel. Plaintiff has also demonstrated that Brembo entities have distributors or retailers in the United States and New York. There is, however, a lack of evidence before this Court about the specific actions, knowledge, and intentions of Brembo entities (*cf. World-Wide Volkswagen Corp. v Woodson*, 444 US 286 [1980]; *LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d 210, 215 [2000] [“Moreover, the defendant need not foresee the specific event that

produced the alleged injury. The defendant need only reasonably foresee that any defect in its product would have direct consequences within the State”]; *Ingraham v Carroll*, 90 NY2d 592, 599 [1997] [“The substantial interstate commerce revenue component, on the other hand, narrows the long-arm reach to preclude the exercise of jurisdiction over nondomiciliaries who might cause direct, foreseeable injury within the State but whose business operations are of a local character”] [quotation marks omitted]; *HBK Master Fund L.P. v Troika Dialog USA, Inc.*, 85 AD3d 665 [1st Dept 2011]. Additionally, on an undeveloped record, the Court cannot say, as a matter of law, that brake components from entities within the Brembo universe did or did not end up in New York either “[by] the fortuitous current of the stream of commerce [or] because Defendant actually made shipments to New York and to distributors that serviced New York” (*Buck Constr., LLC v Murray Corp.*, 2017 WL 3981306, at *7 [ND NY Sept. 8, 2017]; see also *Chloe v Queen Bee of Beverly Hills, LLC*, 616 F3d 158 [2d Cir 2010]; *Am. Girl, LLC v Zembrka*, 118 F4th 271 [2d Cir 2024]; but see *Asahi Metal Indus. Co., Ltd. v Superior Ct. of California, Solano County*, 480 US 102 [1987]; *Finerty v Abex Corp.*, 27 NY3d 236 [2016]; cf. *Universal Inv. Advisory SA v Bakrie Telecom PTE, Ltd.*, 154 AD3d 171 [1st Dept 2017]; *Cruz v Komatsu Am. Corp.*, 2023 NY Slip Op 30660[U] [Sup Ct, New York County 2023, Rosado J.]). It would be an error for this court to decide whether the Brembo entities are subject to this court’s jurisdiction merely “on the basis of conflicting affidavits” (*Stardust Dance Productions, Ltd. v Cruise Groups Intern., Inc.*, 63 AD3d 1262, 1265 [3d Dept 2009]). “In the face of such conflicting affidavits, [the] Supreme Court should [hold] a hearing to

determine the nature and extent of defendants' activities prior to making a determination” (*id.*); see also *Edelman v Taittinger, S.A.*, 298 AD2d 301 [1st Dept 2002].

Plaintiff's Motion to Extend the Time to Serve (MS 3)

As for plaintiffs' motion relating to delayed service of process on Brembo SPA, in the interests of justice given the intervening years, the lack of prejudice to defendant Brembo SPA, the demonstration by plaintiffs of good cause and reasonable due diligence in effectuating service in Italy, and delays by entities wholly outside the control of plaintiff, the Court deems that service of process on Brembo SPA was timely and proper *nunc pro tunc*; however, although service of process is deemed adequate, this should not be construed as imparting personal jurisdiction on Brembo SPA. CPLR 306-b provides that a court may “upon good cause shown” extend the time for service; additionally, a court may “compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay” (CPLR 3012[d]; see also *Nason v Fisher*, 309 AD2d 526 [1st Dept 2003]). Indeed, the Court of Appeals has instructed that state courts should look to how federal courts interpret a nearly identical standard in rule 4(m) of the Federal Rules of Civil Procedure (see *Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95 [2001], which approvingly cites *AIG Managed Mkt. Neutral Fund v Askin Capital Mgt., L.P.*, 197 FRD 104 [SDNY 2000]).

Here, plaintiffs have demonstrated numerous factors that strongly weigh in their favor, including that defendant did not show any prejudice (or even oppose the motion), that plaintiffs had timely sought an extension, that the verified complaint showed merit, that several months of delay are attributable to factors not within the United States, that

service of process in conformance with the Hague Convention can be challenging, and that defendant had timely notice of claim and commencement of action (*see generally PNC Bank, N.A. v Sarfaty*, 225 AD3d 721 [2d Dept 2024]; *LaSalle Bank, NA v Ferrari*, 210 AD3d 976 [2d Dept 2022]; *Estate of Fernandez by Salsbury v Wyckoff Hgts. Med. Ctr.*, 162 AD3d 742 [2d Dept 2018]; *Bumpus v New York City Tr. Auth.*, 66 AD3d 26 [2d Dept 2009]). Additionally, extending the time to serve and requiring plaintiffs to serve defendant Brembo SPA anew in Italy would not expedite resolution of this case and would merely be an academic exercise in traversing foreign bureaucracy (*see generally The Knit With v Knitting Fever, Inc.*, 2010 WL 2788203 [ED Pa July 13, 2010] [discussing Italian laws related to service of process]). Indeed, the Supreme Court has stated that “the core function of service is to supply notice of the pendency of a legal action, in a manner and at a time that affords the defendant a fair opportunity to answer the complaint and present defenses and objections” (*Henderson v United States*, 517 US 654, 672 [1996][Ginsburg, J.]). Here, service of process effectuated in December 2021 in Italy gave defendant adequate notice and defendant was caused to suffer no prejudice therein. Relatedly, in its reply papers, Brembo SPA withdrew the branch of its motion alleging that plaintiffs failed to properly effectuate service under the Hague Convention.

On a different note, the court requests that all parties brief the issue of what law this court should apply, as the Court of Appeals rejected the application of *lex loci delicti*⁴ in tort cases over a half century ago (*see Babcock v Jackson*, 12 NY2d 473 [1963]). CPLR

⁴ “Lex loci delicti” is a Latin phrase meaning “the law of the place where the tort or other wrong was committed” (Black’s Law Dictionary [12th ed 2024], *lex loci delicti*) [Note: online version].

4511 (b) provides that a court “may take judicial notice without request of... the laws of foreign countries or their political subdivisions” (*see generally Edwards v Erie Coach Lines Co.*, 17 NY3d 306 [2011]). Although not specifically pled as required in CPLR 3016 (e), “the fact that the court can on its own volunteer to give the foreign law judicial notice under CPLR 4511 (b) should further divest CPLR 3016 (e) of any undue rigidity” (*Edwards* at 328 [quotation and citation omitted]). Therefore, the parties⁵ are requested to brief whether the substantive laws in each jurisdiction might be relevant to the issues presented in this case and present any actual conflict that might have a significant effect on the outcome of this case (*see Schultz v Boy Scouts of Am., Inc.*, 65 NY2d 189 [1985]; *Elmaliach v Bank of China Ltd.*, 110 AD3d 192 [1st Dept 2013]; *Devore v Pfizer Inc.*, 58 AD3d 138 [1st Dept 2008]; *Tronlone v Lac d'Amiante Du Quebec, Ltee*, 297 AD2d 528 [1st Dept 2002], *affd*, 99 NY2d 647 [2003]; *Licci ex rel. Licci v Lebanese Can. Bank, SAL*, 672 F3d 155 [2d Cir 2012]; *Fin. One Pub. Co. Ltd. v Lehman Bros. Special Fin., Inc.*, 414 F3d 325 [2d Cir 2005]).

Conclusion

Accordingly, it is hereby:

ORDERED that motion sequences 1 & 2 are held in abeyance pending limited discovery on the issues raised by these motions as discussed above; it is further

⁵ Plaintiffs should ensure that assertions made in the Verified Amended Complaint remain true and accurate in light of any discovery. E.g. “BREMBO S.P.A. maintained its principal place of business within the County of Kings, State of New York” (NYSCEF Doc No. 9, verified amended complaint at 48).

ORDERED that within thirty (30) days from the date of this order's entry, plaintiff will serve defendants Brembo NA and Brembo SPA with notices to produce. Within thirty (30) days from receipt of said notices, defendants shall produce the records requested therein, and that any discovery disputes shall be brought promptly to the Court's attention by joint letter; it is further

ORDERED that within sixty (60) days from the date of said production, defendants Brembo NA and Brembo SPA each produce an appropriate individual (see 22 NYCRR §§ 202.20-d) for a deposition, which shall be conducted via real-time audio-visual communications technology, if an in-person deposition would cause hardship or impose an undue burden; it is further

ORDERED that defendants Brembo NA and Brembo SPA shall file the requested supplemental briefing on the issues raised herein, within thirty (30) days after depositions conclude, and that plaintiff shall file the requested supplemental briefing within thirty (30) days thereafter, and that Brembo NA and Brembo SPA may file a reply within thirty (30) days thereafter. No sur-replies shall be filed absent leave of court. Other defendants may submit briefing in accordance with the aforementioned.

ORDERED that annexed to their supplemental brief, each party shall submit a separate, short, and concise statement, in numbered paragraphs, of the material facts as to which the party contends there is no genuine dispute. Each numbered paragraph must be followed by citation to evidence submitted in support of, or, in opposition.

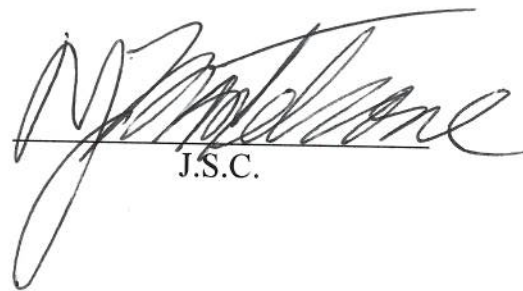
ORDERED that by February 3, 2025, all parties shall file a joint letter apprising the Court of counsel's availability for oral arguments and the status of discovery.

ORDERED that service of process on defendant Brembo SPA effectuated in December 2021 is deemed proper, adequate, and timely *nunc pro tunc*, and that Brembo SPA is compelled to accept service of process therein.

The court, having considered the parties remaining contentions, if any, finds them unavailing. All relief not formally granted herein has been considered and is denied.

This constitutes the decision and order of the court.

ENTER


J.S.C.

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