

Trumbull v Adience, Inc.
2017 NY Slip Op 32650(U)
December 14, 2017
Supreme Court, New York County
Docket Number: 190084/2016
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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RICHARD S. TRUMBULL and
MARGARET TRUMBULL,

Index No. 190084/2016

Plaintiffs

- against -

DECISION AND ORDER

ADIENCE, INC., f/k/a BMI, INC.,
et al.,

Defendants

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LUCY BILLINGS, J.S.C.:

For the reasons more fully explained on the record December 14, 2017, the court denies the motion by defendant Gusmer Enterprises, Inc., to dismiss the claims against it due to lack of personal jurisdiction. C.P.L.R. § 3211(a)(8). This denial is without prejudice to a motion for similar relief, notwithstanding C.P.L.R. § 3211(e), at the conclusion of the disclosure related to personal jurisdiction ordered below. Concomitantly, the court grants plaintiffs' cross-motion for jurisdictional disclosure to the limited extent set forth below. C.P.L.R. § 3211(d).

Plaintiff Richard Trumbull claims exposure to asbestos in the filters used in breweries in New York, which were customers of his employer, a manufacturer of glass products, and which he visited during 1976-80 as his employer's marketing director and administrative manager. He claims that Cellulo Company, a predecessor of Gusmer Enterprises, manufactured or sold these filters and that Gusmer Enterprises now is liable for his injury

from the asbestos in the filters.

I. GUSMER ENTERPRISES' BASES FOR CONTESTING PERSONAL JURISDICTION

Gusmer Enterprises establishes based on admissible New Jersey State documents that it is incorporated and maintains its principal place of business in New Jersey. Gusmer Enterprises also establishes based on admissible Ohio State documents that Cellulo Company was incorporated and maintained its principal place of business in Ohio. Therefore Gusmer Enterprises has met its prima facie burden to show lack of jurisdiction over both corporations pursuant to C.P.L.R. § 301, which plaintiffs do not rebut. BNSF Railway Co. v. Tyrrell, ___ U.S. ___, 137 S. Ct. 1549, 1559 (2017); Daimler AG v. Bauman, 571 U.S. ___, 134 S. Ct. 746, 761-62 (2014); Magdalena v. Lins, 123 A.D.3d 600, 601 (1st Dep't 2014).

Gusmer Enterprises supports its defense regarding lack of specific jurisdiction solely with Richard Trumbull's deposition testimony, to show that Richard Trumbull was not exposed to any filter in New York manufactured, distributed, or sold by Cellulo Company. Since plaintiffs do not allege that he was exposed to filters anywhere other than in New York, Gusmer Enterprises concludes that, even if Cellulo Company manufactured filters in New York or distributed or sold them from New York, those filters would not be any to which Richard Trumbull was exposed.

The evidence of Richard Trumbull's nonexposure to filters from Cellulo Company, however, is tenuous. Richard Trumbull did not identify any particular brewery or location where he

encountered filters, but he did limit his encounters with filters to breweries in New York operated by eight customers of his employer: Anheuser-Busch, Budweiser, Genesee, Miller, Pabst, Rheingold, Schaefer, and Schlitz. He did not testify that the filters he encountered were Cellulo Company filters, but he did specify that the only brand of filters he was familiar with were from Cellulo Company, raising the inference that he was familiar with Cellulo Company filters from encountering them at the breweries he visited.

II. THE DISCLOSURE NEEDED

Consequently, if Richard Trumbull was exposed to Cellulo Company filters that released asbestos fibers and were installed in New York breweries without warning of the hazard from Cellulo Company, such conduct would establish specific jurisdiction under C.P.L.R. § 302(a)(2). Invar Intl., Inc. v. Zorlu Enerji Elektrik Uretim Anonim Sirketi, 86 A.D.3d 404, 405 (1st Dep't 2011); CIBC Mellon Trust Co. v. HSBC Guyerzellar Bank AG, 56 A.D.3d 307, 308-309 (1st Dep't 2008). See CPC Intl. v. McKesson Corp., 70 N.Y.2d 268, 287 (1987); Tucker v. Sanders, 75 A.D.3d 1096, 1097 (4th Dep't 2010). Disclosure of whether Cellulo Company manufactured, distributed, or sold filters for the eight identified beer manufacturers' breweries in New York during 1976-80 or within a reasonable period before then, depending on such filters' useful life, may show whether the Cellulo Company filters were the filters to which Richard Trumbull was exposed at the breweries he visited. Such transactions, if conducted in New York, in turn

may establish specific jurisdiction under C.P.L.R. § 302(a)(1). D&R Global Selections, S.L. v. Bodega Olegario Falcon Pineiro, 29 N.Y.3d 292, 298-99 (2017); Rushaid v. Pictet & Cie, 28 N.Y.3d 316, 328-29 (2016); C. Mahendra (NY), LLC v. National Gold & Diamond Ctr., Inc., 125 A.D.3d 454, 457-58 (1st Dep't 2015).

Because it is the weaknesses in Gusmer Enterprises' basis for contesting specific jurisdiction, premised exclusively on Richard Trumbull's testimony, that warrant further disclosure, Gusmer Enterprises also may conduct a supplemental deposition of Richard Trumbull, limited to identifying particular breweries or locations where he encountered Cellulo Company filters. If he shows through medical evidence that his physical condition prevents his travel to New York, Gusmer Enterprises must conduct his deposition at a location he designates at or near his residence. Gusmer Enterprises may serve a notice of deposition, accompanied by any request for production of documents not already sought, limited to the subject of the deposition, consistent with C.P.L.R. §§ 3107 and 3111, so as to complete the deposition by January 31, 2018.

The court grants plaintiffs' cross-motion for the disclosure plaintiffs seek to the following extent. C.P.L.R. § 3211(d); Venegas v. Capric Clinic, 147 A.D.3d 457, 458 (1st Dep't 2017); American BankNote Corp. v. Daniels, 45 A.D.3d 338, 340 (1st Dep't 2007) Edelman v. Taittinger, S.A., 298 A.D.2d 301, 302 (1st Dep't 2002); Amsellem v. Host Marriott Crop., 280 A.D.2d 357, 359 (1st Dep't 2001). See Matter of New York City Asbestos Litig., 112

A.D.3d 529, 530 (1st Dep't 2013). Plaintiffs also may serve a notice of deposition of the Gusmer Enterprises witness most knowledgeable about whether Cellulo Company manufactured, distributed, or sold filters for breweries in New York during 1976-80 or within a reasonable period before then, depending on such filters' useful life, and which breweries in New York purchased any Cellulo Company filters. C.P.L.R. §§ 3106(d), 3107. Plaintiffs shall limit their inquiry to these subjects and complete the deposition by January 31, 2018. Plaintiffs likewise may accompany their notice of deposition with a request for production of documents not already sought, limited to the subject of the deposition. C.P.L.R. § 3111.

III. REASONS FOR ALLOWING THIS DISCLOSURE AT THIS LATE STAGE

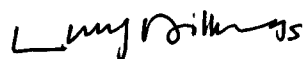
The court grants both prongs of disclosure for the following reasons. (1) It is limited in time and substantive scope. (2) Gusmer Enterprises' basis for contesting jurisdiction is weak. (3) The court recently allowed limited jurisdictional disclosure from defendants that stipulated to it or did not oppose it based on plaintiffs' prior insistence that plaintiffs had completed disclosure.

To excuse plaintiffs' failure to seek jurisdictional disclosure before insisting plaintiffs were ready for trial, their suggestion that undertaking disclosure concerning all of every defendant's affirmative defenses would unduly protract this multi-defendant litigation is persuasive. On the other hand, plaintiffs may not protract the litigation by (1) suing

defendants with no perceptible connection to New York that plead lack of personal territorial jurisdiction; (2) completing all other disclosure, knowing they may move to dismiss the action against them based on this defense "at any . . . time"; and (3) waiting for that motion before seeking disclosure on the issue. C.P.L.R. § 3211(e). E.g., Stolarski v. Family Servs. of Westchester, Inc., 110 A.D.3d 980, 982 (2d Dep't 2013).

At minimum, when plaintiffs inquire through disclosure regarding defendants' conduct, surely they may inquire regarding the location of that conduct or where defendants directed it without burdening the progress of the litigation. Therefore, while the court excuses plaintiffs' prior failure to seek any jurisdictional disclosure from Gusmer Enterprises for the reasons explained above, the court will not necessarily excuse that failure with respect to other defendants under different circumstances.

DATED: December 14, 2017



LUCY BILLINGS, J.S.C.

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