

Trumbull v Adience, Inc.
2018 NY Slip Op 30145(U)
January 23, 2018
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
-----x

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Plaintiffs move to reargue and renew, C.P.L.R. § 2221(d) and (e), the motion by defendant American Biltrite, Inc., to dismiss the complaint against American Biltrite due to lack of personal jurisdiction, C.P.L.R. §§ 302(a), 3211(a)(8), which the court (Moulton, J.) granted in an order dated March 6, 2017. For the reasons explained below, the court denies plaintiffs' motion.

The prior order recites that plaintiff Richard Trumbull alleged exposure to asbestos from American Biltrite's floor tiles from 1959 to 1963 in Missouri. Plaintiffs contend that the court maintains specific jurisdiction over American Biltrite because it purchased its asbestos for its tiles from Union Carbide Corporation, whose principal place of business was in New York during the period of Richard Trumbull's exposure to American Biltrite's tiles. To show these purchases, plaintiffs rely on new evidence in the form of invoices beginning in 1965, C.P.L.R.

§ 2221(e)(2), after the period of Richard Trumbull's exposure to American Biltrite's tiles determined in the prior order, and claim that it misapprehended Richard Trumbull's deposition testimony, which suggests that his exposure to American Biltrite's tiles extended to 1967. C.P.L.R. § 2221(d)(2).

II. TRANSACTION OF BUSINESS IN NEW YORK

Assuming Richard Trumbull's exposure did extend until 1967, however, American Biltrite's payments to Union Carbide's New York office alone do not amount to transaction of business in New York. DirectTV Latin Am., LLC v. Pratola, 94 A.D.3d 628, 629 (1st Dep't 2012); Magwitch, L.L.C. v. Pusser's Inc., 84 A.D.3d 529, 531 (1st Dep't 2011); Pramer S.C.A. v. Abaplus Intl. Corp., 76 A.D.3d 89, 96 (1st Dep't 2010). See Bluewaters Communications Holdings, LLC v. Ecclestone, 122 A.D.3d 426, 427 (1st Dep't 2014). American Biltrite was not itself in New York making or accepting the payments, nor doing so by maintaining an account in New York or by using Union Carbide as American Biltrite's agent over which American Biltrite maintained control for American Biltrite's transactions in New York. Coast to Coast Energy, Inc. v. Gasarch, 149 A.D.3d 485, 487-88 (1st Dep't 2017); DirectTV Latin Am., LLC v. Pratola, 94 A.D.3d at 629. See Rushaid v. Pictet & Cie, 28 N.Y.3d 316, 327-28 (2016); Licci v. Lebanese Can. Bank, SAL, 20 N.Y.3d 327, 339 (2012); FIA Leveraged Fund Ltd. v. Grant Thornton LLP, 150 A.D.3d 492, 493-94 (1st Dep't 2017). Nor does Union Carbide's retention of American Biltrite's payments for Union Carbide's use in local commerce constitute

American Biltrite's, as opposed to Union Carbide's, transaction of business in New York for purposes of conferring jurisdiction over American Biltrite. CDR Créances S.A.S. v. First Hotels & Resorts Invs., Inc., 140 A.D.3d 558, 562-63 (1st Dep't 2016). Plaintiffs do not even present evidence that American Biltrite paid the invoices from Union Carbide, but assuming plaintiffs might uncover such evidence through jurisdictional disclosure, American Biltrite did not purposely avail itself of New York commerce, but merely followed Union Carbide's direction to remit payment to its New York post office box. Paterno v. Laser Spine Inst., 24 N.Y.3d 370, 377 (2014); Ripplewood Advisors, LLC v. Callidus Capital SIA, 151 A.D.3d 611, 612 (1st Dep't 2017); Cotia (USA) Ltd. v. Lynn Steel Corp., 134 A.D.3d 483, 484 (1st Dep't 2015); Magwitch, L.L.C. v. Pusser's Inc., 84 A.D.3d at 531. See D&R Global Selections, S.L. v. Bodega Olegario Falcon Pineiro, 29 N.Y.3d 292, 298 (2017); Rushaid v. Pictet & Cie, 28 N.Y.3d at 326; First Manhattan Energy Corp. v. Meyer, 150 A.D.3d 521, 522 (1st Dep't 2017).

In fact, even though Union Carbide's supply of asbestos did not become American Biltrite's until it reached American Biltrite's facilities in California or New Jersey, American Biltrite was not even obtaining its supply of asbestos from New York. The Union Carbide invoices that plaintiffs present show that Union Carbide shipped its asbestos from its plant in California to American Biltrite in California or New Jersey. In sum, American Biltrite was transacting all its business from

California or New Jersey regarding its acquisition of Union Carbide's asbestos.

III. CONNECTION BETWEEN THE TRANSACTION AND PLAINTIFFS' CLAIMS

For this reason, moreover, even if American Biltrite transacted business in New York, plaintiffs' evidence does not indicate any connection between that transaction and Richard Trumbull's exposure to asbestos in Missouri. Bristol-Myers Squibb Co. v. Superior Court, ___ U.S. ___, 137 S. Ct. 1773, 1781 (2017); Paterno v. Laser Spine Inst., 24 N.Y.3d at 379; McGowan v. Smith, 52 N.Y.2d 268, 273 (1981); Warck-Meister v. Diana Lowenstein Fine Arts, 7 A.D.3d 351, 352 (1st Dep't 2004). See D&R Global Selections, S.L. v. Bodega Olegario Falcon Pineiro, 29 N.Y.3d at 299; Rushaid v. Pictet & Cie, 28 N.Y.3d at 330. The asbestos traveled from one location in California to elsewhere in California or to New Jersey. No evidence shows where the asbestos traveled from there.

Plaintiffs nonetheless insist that their new evidence also shows American Biltrite used a single supplier of asbestos, so that when American Biltrite obtained its supply from Union Carbide, American Biltrite used that asbestos for all American Biltrite's products everywhere. This theory falls apart because, even if Richard Trumbull's exposure to American Biltrite's tiles extended until 1967, plaintiffs' evidence shows that Union Carbide was American Biltrite's supplier beginning in 1969 and that American Biltrite used at least two other suppliers at the same time: entities identified as Atlas, until 1975, and Carey,

until 1985. Aff. of Alani Golanski Ex. 9, at 2. Nor does any evidence indicate that Union Carbide supplied the asbestos for American Biltrite's flooring or tile products, as opposed to its other unrelated products to which plaintiffs allege no exposure. These attempts to stitch together a connection fall far short of the substantial relationship required. Bristol-Myers Squibb Co. v. Superior Court, ___ U.S. ___, 137 S. Ct. at 1780; Licci v. Lebanese Can. Bank, SAL, 20 N.Y.3d at 339-40.

IV. CONCLUSION

For this reason and the reasons set forth above, plaintiffs fail either to demonstrate personal jurisdiction over American Biltrite, C.P.L.R. § 302(a)(1), or to make a sufficient start warranting jurisdictional disclosure, particularly at this late stage of the litigation, when plaintiffs have pursued no such disclosure until now. C.P.L.R. § 3211(d); Latimore v. Fuller, 127 A.D.3d 521, 522 (1st Dep't 2015); Minella v. Restifo, 124 A.D.3d 486, 487 (1st Dep't 2015). See C.P.L.R. § 2221(e)(2); Rhodes v. City of New York, 88 A.D.3d 614, 615 (1st Dep't 2011); Takeuchi v. Silberman, 41 A.D.3d 336, 337 (1st Dep't 2007).

Although plaintiffs hope to uncover a written contract between American Biltrite and Union Carbide for it to supply asbestos to American Biltrite at locations outside New York, plaintiffs do not indicate they expect to uncover its purposeful activities in New York in relation to the contract: reaching out to contact and negotiate with Union Carbide in New York. Paterno v. Laser Spine Inst., 24 N.Y.3d at 377-78; Ripplewood Advisors, LLC v.

Callidus Capital SIA, 151 A.D.3d at 612; Coast to Coast Energy, Inc. v. Gasarch, 149 A.D.3d at 488; SunLight Gen. Capital LLC v. CJS Invs. Inc., 114 A.D.3d 521, 522 (1st Dep't 2014). See FIA Leveraged Fund Ltd. v. Grant Thornton LLP, 150 A.D.3d at 494; Wilson v. Dantas, 128 A.D.3d 176, 182 (1st Dep't 2015), aff'd on other grounds, 29 N.Y.3d 1051 (2017); C. Mahendra (NY), LLC v. National Gold & Diamond Ctr., Inc., 125 A.D.3d 454, 356 (1st Dep't 2015); New Media Holding Co. LLC v. Kagalovsky, 97 A.D.3d 463, 464 (1st Dep't 2012). American Biltrite simply received invoices from Union Carbide's billing office directing payments to its New York post office box. Therefore the court denies plaintiffs' motion to reargue and renew the motion by defendant American Biltrite, Inc., to dismiss plaintiffs' claims against it. C.P.L.R. §§ 2221(d) and (e), 3211(a)(8).

DATED: January 23, 2018



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