

Arazosa v 3M Co.

2018 NY Slip Op 30326(U)

February 20, 2018

Supreme Court, New York County

Docket Number: 190069/2016

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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JOAN ARAZOSA, as Executor for the
Estate of RICHARD ARAZOSA,

Index No. 190069/2016

Plaintiff

- against -

DECISION AND ORDER

3M CO., et al.,

Defendants
-----X

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Plaintiff seeks damages for injuries Richard Arazosa sustained due to exposure to talcum powder products containing asbestos. Defendant Imerys SA filed a pre-answer motion to dismiss the claims against Imerys SA based on lack of personal jurisdiction over Imerys SA, maintaining that it is a holding company based in France with no assets or presence in the United States. Plaintiff claims that Imerys SA is the successor to Talco e Grafite, an Italian mining business that mined the talc containing asbestos used in cosmetic talcum powder products to which Richard Arazosa was exposed. Plaintiff therefore sought permission from the Special Master to serve disclosure demands to demonstrate jurisdiction over Imerys SA by connecting it to Talco e Grafite via successor or parent-subsidary liability. On October 24, 2017, the Special Master granted plaintiff's request to serve jurisdictional disclosure demands regarding successor liability. On November 16, 2017, the Special Master confirmed to

Imerys SA via email that her email dated October 24, 2017, constituted her written recommendation.

On December 18, 2017, Imerys SA moved to vacate the Special Master's recommendation, claiming that disclosure is stayed under C.P.L.R. § 3214(b) and that the demands are overbroad and unduly burdensome. Plaintiff contends that Imerys SA's motion is untimely under the New York City Asbestos Litigation Case Management Order (CMO) and that disclosure is not stayed. On January 29, 2018, after oral argument on Imerys SA's motion, plaintiff submitted revised demands narrowing her interrogatories and requests for production of documents.

II. DISCLOSURE IS NOT STAYED UNDER C.P.L.R. § 3214(b).

Imerys SA contends that its motion to dismiss the claims against Imerys SA triggered a stay of disclosure under C.P.L.R. § 3214(b). The CMO authorizes the Special Master to supervise disclosure and rule on disclosure disputes and allows parties to seek permission from the Special Master to serve additional disclosure demands not specifically covered by the CMO. CMO §§ III(B) and (C), IX(L). CMO § VI further provides that the CMO governs where its provisions differ from the C.P.L.R. The CMO thus empowered the Special Master to lift any stay and order disclosure after defendant Imerys SA filed its motion to dismiss the claims against Imerys SA.

III. THE CMO BARS IMERYS SA'S CURRENT MOTION.

CMO § III(C) required Imerys SA to notify the Special Master by email of any objection to her recommendation within three

business days after receiving the recommendation. The Special Master then must reduce the ruling to writing. CMO § III(C). Imerys SA then must present any objection to the written recommendation to the Coordinating Judge by an order to show cause within seven business days after receiving the Special Master's written recommendation.

Imerys SA filed its order to show cause objecting to the Special Master's recommendation 55 days after the recommendation, grossly exceeding the CMO's window period of seven days. Even were the court to consider Imerys SA's seven days as beginning when the Special Master confirmed to Imerys SA November 16, 2017, that her email of October 24, 2017, was her written recommendation, Imerys SA still took 32 days to appeal by filing its order to show cause. Based on the unexcused untimeliness, the court denies Imerys SA's current motion to vacate the Special Master's recommendation and for a protective order against the disclosure demands her recommendation permits.

IV. THE SCOPE OF DISCLOSURE PERMITTED

The Special Master's order, however, does not prevent Imerys SA from objecting to plaintiff's jurisdictional disclosure demands. Although Imerys SA has not yet responded to plaintiff's demands, it insists in support of its motion that they are overbroad and unduly burdensome. Plaintiff now has attempted to head off Imerys SA's potential objections by narrowing her jurisdictional demands through her correspondence January 29, 2018.

At this juncture, the applicable standard is simply whether plaintiff's demands may lead to relevant evidence regarding jurisdiction over defendant, evidence that confers or negates jurisdiction, C.P.L.R. § 3101(a); Forman v. Henkin, 2018 WL 828101, at *2 (Ct. App. Feb. 13, 2018); SNI/SI Networks LLC v. DIRECTV, LLC, 132 A.D.3d 616, 617 (1st Dep't 2015); Matter of Steam Pipe Explosion at 41st St. & Lexington Ave., 127 A.D.3d 554, 555 (1st Dep't 2015), not, as required to defeat or defer a motion to dismiss claims under C.P.L.R. § 3211(d), whether plaintiff has shown she is likely to uncover evidence that confers jurisdiction. 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).

New York discovery rules do not condition a party's receipt of disclosure on a showing that the items the party seeks actually do exist; rather, the request need only be appropriately tailored and reasonably calculated to yield relevant information. . . . In many if not most instances, a party seeking disclosure will not be able to demonstrate that items it has not yet obtained contain material evidence.

Forman v. Henkin, 2018 WL 828101, at *4. Under this standard, plaintiff has reasonably narrowed her overbroad demands.

Nevertheless, the amended demands still include requests regarding parent-subsidary liability. Since the Special Master's ruling only permitted plaintiff to serve demands regarding successor liability, plaintiff's interrogatories 19 through 23 and 28 through 32, all regarding parent-subsidary liability, are outside the scope of the Special Master's ruling. The rationale for this limitation is that parent liability for a

subsidiary is much more difficult to establish than successor liability for a predecessor and therefore much less likely to form the basis for jurisdiction over a parent premised on jurisdiction over a subsidiary than jurisdiction over a successor premised on jurisdiction over a predecessor. A successor corporation may be liable for its predecessor's conduct if the successor assumed that liability, the predecessor consolidated or merged with the successor, the successor was a mere continuation of the predecessor, or the predecessor sold its assets to the successor to escape the predecessor's obligations. Abreu v. Barkin & Assoc. Real Estate, LLC, 136 A.D.3d 600, 601-602 (1st Dep't 2016); Matter of New York City Asbestos Litig., 112 A.D.3d 529, 530 (1st Dep't 2013); Tap Holdings, LLC v. Orix Fin. Corp., 109 A.D.3d 167, 175-76 (1st Dep't 2013); Fitzgerald v. Fahnstock & Co., 286 A.D.2d 573, 575 (1st Dep't 2001). See Schumacher v. Richards Shear Co., 59 N.Y.2d 239, 245 (1983). A parent corporation is not liable for its subsidiary's conduct unless the parent corporation has intervened directly in the subsidiary's management in disregard of its separate corporate form. Billy v. Consolidated Mach. Tool Corp., 51 N.Y.2d 152, 163 (1980); Colbalt Partners, L.P. v. GSC Capital Corp., 97 A.D.3d 35, 40 (1st Dep't 2012); Silver Oak Capital L.L.C. v. UBS AG, 82 A.D.3d 666, 668 (1st Dep't 2011); Sheridan Broadcasting Corp. v. Small, 19 A.D.3d 331, 332 (1st Dep't 2005).

V. CONCLUSION

For the reasons explained above, the court denies defendant Imerys SA's motion to vacate the Special Master's recommendation dated October 24, 2017, permitting plaintiff to serve disclosure demands regarding successor liability, and for a protective order against that disclosure. The court confirms that recommendation and permits plaintiff to serve defendant Imerys SA with amended jurisdictional disclosure demands conforming with her revisions January 29, 2018, and this decision. Defendant Imerys SA shall respond to the amended jurisdictional disclosure demands within 20 days after service of the demands. C.P.L.R. §§ 3120(2), 3133(a).

DATED: February 20, 2018.



LUCY BILLINGS, J.S.C.

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