

Vavala v A.O. Smith Water Prods. Co.

2021 NY Slip Op 32541(U)

December 2, 2021

Supreme Court, New York County

Docket Number: Index No. 190027/2020

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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RALPH VAVALA,

Plaintiff,

- v -

INDEX NO. 190027/2020
MOTION DATE 06/09/2021
MOTION SEQ. NO. 001

A.O. SMITH WATER PRODUCTS CO, AIR & LIQUID SYSTEMS CORPORATION, AS SUCCESSOR-BY-MERGER TO BUFFALO PUMPS, INC, AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC AG COMPANY, N/K/A BAYER CROPS SCIENCE INC, AURORA PUMP COMPANY, BURNHAM, LLC, INDIVIDUALLY, AND AS SUCCESSOR TO BURNHAM CORPORATION, BW/IP, INC. AND ITS WHOLLY OWNED SUBSIDIARIES, CARRIER CORPORATION, COLUMBIA BOILER COMPANY OF POTTSTOWN, COMPUTDYNE CORPORATION, INDIVIDUALLY, AND AS SUCCESSOR TO YORK SHIPLEY, INC, CRANE CO, CRANE CO. INDIVIDUALLY AND AS SUCCESSOR TO PACIFIC VALVES, CROWN BOILER CO., F/K/A CROWN INDUSTRIES, INC, DAP, INC, FLOWSERVE US, INC. INDIVIDUALLY AND SUCCESSOR TO ROCKWELL MANUFACTURING COMPANY, EDWARD VALVE, INC.,NORDSTROM VALVES, INC., EDWARD VOGT VALVE COMPANY, AND VOGT VALVE COMPANY, FMC CORPORATION, ON BEHALF OF ITS FORMER CHICAGO PUMP & NORTHERN PUMP BUSINESSES, FORT KENT HOLDINGS, INC., FORMERLY KNOWN AS DUNHAM-BUSH, INC, FOSTER WHEELER, L.L.C, GARDNER DENVER, INC, GENERAL ELECTRIC COMPANY, GOULDS PUMPS LLC,GRINNELL LLC,H.B. FULLER COMPANY, HONEYWELL INTERNATIONAL, INC., F/K/A ALLIED SIGNAL, INC. / BENDIX, IMO INDUSTRIES, INC, ITT INDUSTRIES, INC. INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO HOFFMAN SPECIALTY, ITT LLC., INDIVIDUALLY AND AS SUCCESSOR TO BELL & GOSSETT AND AS SUCCESSOR TO KENNEDY VALVE MANUFACTURING CO., INC, JENKINS BROS, J-M MANUFACTURING COMPANY, INC, KAISER GYPSUM COMPANY, INC, KAMCO SUPPLY CORP, KOHLER CO, MORSE DIESEL, INC, MORSE TEC LLC,NORTHROP GRUMMAN CORP. AS SUCCESSOR TO GEORGE A. FULLER COMPANY, PEERLESS INDUSTRIES, INC, PFIZER, INC. (PFIZER), PNEUMO ABEX LLC,SUCCESSOR IN INTEREST TO ABEX CORPORATION (ABEX), SLANT/FIN CORPORATION, SPIRAX SARCO, INC. INDIVIDUALLY

DECISION + ORDER ON MOTION

AND AS SUCCESSOR TO SARCO COMPANY, TACO, INC, TISHMAN LIQUIDATING CORP, TISHMAN REALTY & CONSTRUCTION CO., INC, TURNER CONSTRUCTION COMPANY, U.S. RUBBER COMPANY (UNIROYAL), UNION CARBIDE CORPORATION, UNITED CENTRIFUGAL PUMP CO, UTICA BOILERS, INC., INDIVIDUALLY AND AS SUCCESSOR TO UTICA RADIATOR CORPORATION, VELAN VALVE CORPORATION, VIKING PUMP, INC, WARREN PUMPS, LLC, WEIL-MCLAIN, A DIVISION OF THE MARLEY-WYLAIN COMPANY, A WHOLLY OWNED SUBSIDIARY OF THE MARLEY COMPANY, LLC, BMCE INC., F/K/A UNITED CENTRIFUGAL PUMP,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 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, 165, 166, 167, 175, 179, 180, 181, 182, 183, 184, 186, 187, 189, 193, 194, 195, 200, 201

were read on this motion to/for

DISMISSAL

Upon the foregoing documents, it is ordered that defendant Jenkins Bros' motion to dismiss and plaintiff's cross-motion seeking jurisdictional discovery is decided below. In this asbestos action, moving defendant seeks to dismiss the complaint against it arguing that it has no connection to New York such that the Court has no personal jurisdiction over it. Plaintiff opposes and files a cross-motion seeking jurisdictional discovery. Defendant Jenkins Bros opposes the cross-motion.

Moving defendant seeks to dismiss this action arguing that it did not sell, distribute, or manufacture any products in the State of New York. Defendant Jenkins Bros further argues that it is not incorporated in New York, does not have its headquarters in New York, nor does it have its' principal place of business in New York, such that the Court lacks personal jurisdiction over it pursuant to CPLR §302(a). Thus, according to moving defendant, the instant action must be dismissed as against it.

In opposition, plaintiff proffers, *inter alia*, his own deposition transcript in which he testifies that, at the relevant periods, one of the types of equipment he worked on was valves. Plaintiff further testified that he worked on Jenkins' valves during his career. Moreover, plaintiff proffers the deposition transcript of Mr. David Boisvert as representative of defendant Jenkins Bros. in which Mr. Boisvert testified that defendant Jenkins Bros maintained an office in New York, and specifically testified that there were distributors in New York State which defendant Jenkins Bros sold asbestos-containing valves through. *See* Notice of Cross Motion, Exh. 2, Depo. Tr. of David Boisvert, p. 391, ln. 17-21. Plaintiff contends that personal jurisdiction has been established, or alternatively requests jurisdictional discovery.

To find personal jurisdiction, the Court must determine whether it has general or specific jurisdiction over the moving defendant. New York's general jurisdiction statute CPLR §301 and the long arm statute CPLR §302(a) govern jurisdiction over a non-domiciliary defendant. As to general jurisdiction pursuant to CPLR §301, it must be established that a defendant's "affiliations with the State [of] New York are so continuous and systematic as to render it essentially at home in the...State". *Robins v Procure Treatment Ctrs., Inc.*, 157 AD3d 606, 607 (1st Dep't 2018)(internal brackets and citations omitted). "Aside from an exceptional case, a corporation is at home only in a state that is the company's place of incorporation or its principal place of business". *Lowy v Chalkable, LLC*, 186 AD3d 590, 592 (2nd Dep't 2020)(internal quotations and citations omitted). The relevant inquiry regarding a corporate defendant's place of incorporation and principal place of business, is at the time the action is commenced. *See Lancaster v Colonial Motor Freight Line, Inc.*, 177 AD2d 152, 156 (1st Dep't 1992). The Court notes that defendant Jenkins Bros has established, and it is uncontested, that its principal place of business is outside the State of New York and that it is not a resident of this state. It is further uncontested that

moving defendant was not incorporated in New York State such that personal jurisdiction may not be established based upon the residence of the moving defendant.

As for long arm jurisdiction, CPLR §302(a) states that specific jurisdiction may be exercised over a non-resident who “(1) transacts any business within the state or contracts anywhere to supply goods or services in the state; or (2) commits a tortious act within the state...; or (3) commits a tortious act without the state causing injury to person...within the state...if he (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or (4) owns, uses or possesses real property situated within the state.” Here, evidence has been presented to demonstrate that defendant Jenkins Bros did, in fact, conducted business within the state as well as used and possessed real property situated within the state.

In reply, defendant Jenkins Bros argues that the alleged contacts with the State of New York, as raised in the opposition papers, fail to sufficiently tie moving defendant to the state. According to moving defendant, its headquarters was not situated in New York State and the office maintained in New York State was used only on occasion. As to jurisdictional discovery, moving defendant argues that plaintiff has failed to meet his burden to establish that defendant Jenkins Bros was engaged in purposeful activity in New York State. However, such argument is belied by the testimony of its own corporate representative who explicitly stated that defendant Jenkins Bros maintained an office in the State of New York, moving defendant had written promotional and publication material as well as advertisements which listed an office in the State of New York as an executive office, and that moving defendant had distributors in New York

State through which asbestos-containing valves were sold. Thus, plaintiff has provided sufficient evidence to demonstrate that jurisdictional discovery is needed herein. As such, plaintiff's cross-motion is granted and defendant Jenkins Bros' motion to dismiss is denied without prejudice to renew at the conclusion of discovery.

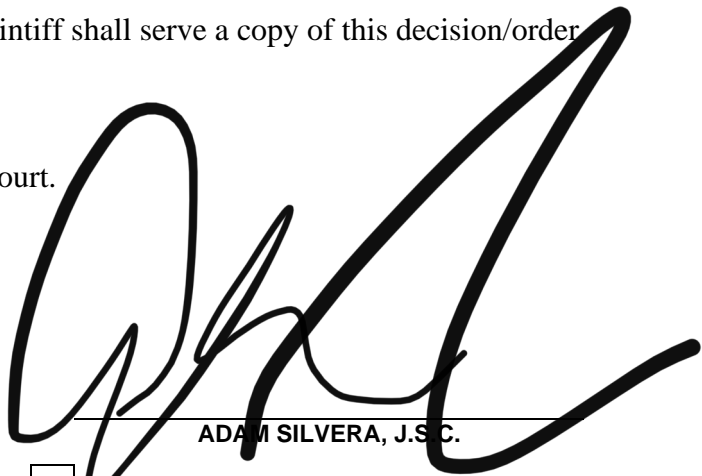
Accordingly, it is

ORDERED that defendant Jenkins Bros' motion to dismiss the complaint is denied without prejudice to renew at the conclusion of discovery; and it is further

ORDERED that plaintiff's cross-motion for jurisdictional discovery is granted; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.



12/2/2021
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