

## Sibley v. Air & Liquid Sys. Corp.

United States District Court for the Northern District of California

June 30, 2021, Decided; June 30, 2021, Filed

Case No. 20-cv-07697-MMC

### Reporter

2021 U.S. Dist. LEXIS 122810 \*

CHRISTOPHER GEORGE SIBLEY, et al., Plaintiffs, v.  
AIR AND LIQUID SYSTEMS CORPORATION, et al.,  
Defendants.

### Core Terms

personal jurisdiction, pumps, manufactured, motion to  
dismiss, quotation, forum state, allegations, contacts,  
marketed, supplied, Reply

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**Judges:** MAXINE M. CHESNEY, United States District Judge.

**Opinion by:** MAXINE M. CHESNEY

## Opinion

### ORDER DENYING DEFENDANT VIKING PUMP, INC.'S MOTION TO DISMISS

Before the Court is defendant Viking Pump, Inc.'s ("Viking") [\*4] "Motion to Dismiss for Lack of Personal Jurisdiction," filed March 4, 2021. Plaintiffs Christopher George Sibley and Maria Sibley have filed opposition, to which Viking has replied. Having read and considered the parties' respective written submissions, the Court rules as follows.<sup>1</sup>

#### BACKGROUND

Plaintiffs allege Christopher Sibley, while serving as an electrician in the United States Navy from 1970 through 1974, was "repeated[ly] expos[ed] to asbestos-containing products manufactured, distributed, and/or sold by defendants and supplied to, installed and/or maintained by defendants at [his] worksites" (see Compl. ¶¶ 4, 12) and, as a result, "sustained asbestos-related lung injuries as a result of his inhalation of asbestos fibers" (see *id.* ¶ 1).

Based thereon, Christopher Sibley asserts the following three Causes of Action, titled, respectively, "Negligence," "Products Liability," and "Premises

Owner/Contractor Liability"; Maria Sibley, who, at all relevant times, was Christopher Sibley's spouse, asserts a single cause of action "for the loss of spousal relationship as a result of [Christopher Sibley's] illness and subsequent death." (See Compl. ¶ 69.)<sup>2</sup>

By the instant motion, Viking moves [\*5] to dismiss the Complaint, as alleged against Viking, pursuant to [Rule 12\(b\)\(2\) of the Federal Rules of Civil Procedure](#).

#### LEGAL STANDARD

Under [Rule 12\(b\)\(2\)](#), a defendant may move to dismiss a complaint for lack of personal jurisdiction. See [Fed. R. Civ. P. 12\(b\)\(2\)](#). Where a defendant challenges personal jurisdiction, the plaintiff bears the burden of establishing the forum court's personal jurisdiction over such defendant. See [Mattel, Inc. v. Greiner & Hausser GmbH, 354 F.3d 857, 862 \(9th Cir. 2003\)](#).

In resolving the question of personal jurisdiction, "[t]he court may consider evidence presented in affidavits to assist it in its determination," see [Doe v. Unocal Corp., 248 F.3d 915, 922 \(9th Cir. 2001\)](#), abrogated on other grounds as recognized by [Williams v. Yamaha Motor Co., 851 F.3d 1015 \(9th Cir. 2017\)](#), and where the defendant's motion "is based on written materials rather than an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional facts," see [CollegeSource, Inc. v. AcademyOne, Inc., 653 F.3d 1066, 1073 \(9th Cir. 2011\)](#) (internal quotation and citation omitted). To meet such burden, a plaintiff "cannot simply rest on the bare allegations of its complaint, but uncontroverted allegations in the complaint must be taken as true." See *id.* (internal quotation and citation omitted). Further, although "the truth of allegations in a pleading which are contradicted by affidavit" may not be assumed, see *id.* (internal citation omitted), "any evidentiary materials submitted on the motion are construed in [\*6] the light most favorable to the plaintiff[] and all doubts are resolved in

<sup>2</sup>On April 19, 2021, plaintiffs filed a "Suggestion of Death," providing notice of Christopher Sibley's passing on April 17, 2021, and stating "[p]laintiff w[ould] move for an order substituting Maria Sibley or other successor or representative for Christopher George Sibley within 90 days [thereof]." (See Doc. No. 122 at 1:8-10.) Although, to date, no such motion has been filed, Maria Sibley, who, as noted, brings a loss of consortium claim, remains a plaintiff in the instant action (see Compl. ¶ 69), and Viking, in bringing the instant motion, has made the same arguments as to both plaintiffs' claims.

<sup>1</sup>By order filed June 1, 2021, the Court took the matter under submission.

[the plaintiff's] favor," see [Ochoa v. J.B. Martin & Sons Farms, Inc.](#), 287 F.3d 1182, 1187 (9th Cir. 2002) (internal quotation and citation omitted).

In determining whether a plaintiff has met his/her burden, and where, as here, no federal statute authorizes personal jurisdiction, the district court applies the law of the forum state, see [CollegeSource](#), 653 F.3d at 1073, and because "California's long-arm jurisdictional statute is coextensive with federal due process requirements, the jurisdictional analyses under state law and federal due process are the same," see [Schwarzenegger v. Fred Martin Motor Co.](#), 374 F.3d 797, 800-01 (9th Cir. 2004).

In particular, "[f]or a court to exercise personal jurisdiction over a nonresident defendant consistent with due process, that defendant must have certain minimum contacts with the . . . forum," see [CollegeSource](#), 653 F.3d at 1073 (internal quotation and citation omitted), and depending on the nature and extent of its contacts with the forum, "a defendant may be subject to either general or specific personal jurisdiction," see [Easter v. Am. W. Fin.](#), 381 F.3d 948, 960 (9th Cir. 2004). "A defendant is subject to general jurisdiction only where the defendant's contacts with a forum are substantial or continuous and systematic." See id. (internal quotation and citation omitted). A defendant is subject to specific jurisdiction if the following [\*7] "three-prong test" is met:

- (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
- (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
- (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

See [Schwarzenegger](#), 374 F.3d at 802 (internal quotation and citation omitted).

## DISCUSSION

In the instant case, as to Viking, plaintiffs rely solely on specific personal jurisdiction. In that regard, in addition to the above-referenced allegations in their complaint, plaintiffs also allege therein that Viking "ha[s] regularly

conducted business in the State of California" and that Christopher Sibley, while he was aboard "the USS Ranger (CV-61) at Hunter's Point Naval Shipyard" in California, worked with asbestos-containing Viking products (see Compl. ¶¶ 7, 12, 13); further, plaintiffs have submitted evidence to support their allegation that Christopher Sibley worked on [\*8] pumps manufactured by Viking (see Decl. of Ari Friedman ("Friedman Decl.") Ex. A at 21:22-25, 35:16-20), as well as evidence that Viking has had distributors in California since 1940 (see id. Ex. F at 27:24-28:7), that one such distributor's website advertises it has supplied in California pumps manufactured by Viking since 1956 (see id. Ex. E), and that Viking, between 1911 and 1986, manufactured pumps with internal components that contained asbestos (see id. Ex. F at 25:14-16).

Viking, in bringing the instant motion, "does not dispute that it has the requisite minimum contacts with California" (see Reply at 4 n.2), namely, regular sales of pumps in California during the relevant time period (see Friedman Decl. Ex. F at 25:14-16, 27:8-28:7; see also Reply at 4 n.2), and is "challenging only the 'relatedness' prong of the jurisdictional analysis" (see Reply at 4 n.2), i.e., plaintiffs' contention that Christopher Sibley's injury relates to those forum-related activities. In particular, Viking argues, plaintiffs "have no evidence that Viking ever sold any product at issue in this case in a California market" (see Mot. at 2:14-15), and Viking's "supply of products to the United States [\*9] Navy has nothing to do with California markets" (see id. at 2:18-19).

To the extent Viking's challenge is based on its assertion, in its motion, that it did not sell in California the very pump on which Christopher Sibley worked, however, such argument, as plaintiffs point out, was rejected three weeks later by the Supreme Court in [Ford Motor Co. v. Montana Eighth Judicial District Court](#), 141 S. Ct. 1017 (2021). See id. at 1023, 1026 (holding, in products-liability lawsuit where defendant vehicle manufacturer argued requisite causal link existed "only if [it] had designed, manufactured, or . . . sold in the [forum] State the particular vehicle involved in the accident," personal jurisdiction nonetheless existed, given defendant's marketing and sales of same model in forum state; noting Supreme Court has "never framed the specific jurisdiction inquiry as always requiring proof of causation—i.e., proof that the plaintiff's claim came about because of the defendant's in-state conduct").

Next, to the extent Viking's challenge is based on its assertion that it did not market or sell in California the

model on which Christopher Sibley worked, the Court, as set forth below, is not persuaded.

Although, in Ford, the Supreme Court found Ford marketed and sold the injury-causing model in the [\*10] forum state and specifically noted it was not addressing a situation in which Ford marketed the model only in a different state or region, it was, as one district court has observed, "equally careful about describing the extensive contacts that Ford ha[d] with the [forum] markets, even outside of the specific models at issue in the case," thereby suggesting "it is not *necessarily* a prerequisite for specific jurisdiction that a company market or sell the specific product model at issue in the forum state." See Godfried v. Ford Motor Co., No. 1:19-cv-00372-NT, 2021 WL 1819696, at \*5 (D. Me. May 6, 2021) (emphasis in original) (citing Ford, 141 S. Ct. at 1022-23, 1029-30); see also *id.* at \*5 n.5 (denying Rule 12(b)(2) motion to dismiss; noting defendant offered no evidence to show model at issue was sufficiently different from models marketed in forum state "as to warrant [a] distinction" with respect to specific jurisdiction).

Here, although, as Viking points out, Christopher Sibley "could not specifically recall the type of Viking pump" to which he was exposed, Viking has submitted no evidence in support of its assertion that the models it supplied to the Navy are "not the sort of pump that [it] supplied to California civilians," let alone evidence showing how any such distinction might bear [\*11] on the jurisdictional analysis. (See Reply at 3:14-15, 5:7-8 (citing Decl. of Todd M. Thacker ("Thacker Decl.") Ex. A at 171:19-24).)

Consequently, there being no evidence disputing plaintiffs' allegations and evidence that, in the early 1970s, Christopher Sibley was exposed in California to an asbestos-containing pump manufactured by Viking<sup>3</sup> and that Viking, during that time period, supplied asbestos-containing pumps in California, the Court finds plaintiffs have made the requisite prima facie showing as to personal jurisdiction. Accordingly, Viking's

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<sup>3</sup> To the extent Viking may be arguing its contacts with "federal enclaves" located within California are not relevant to the instant analysis (see Reply at 6:16-17, 6:26-27), such argument is unavailing. See Swanson Painting Co. v. Painters Loc. Union No. 260, 391 F.2d 523, 526 (9th Cir. 1968) (holding defendant "purposefully avail[ed] itself of the privilege of conducting activities within Montana, notwithstanding the fact that such activities occurred mostly within the federal enclave").

motion to dismiss will be denied. Such denial, however, will be without prejudice "to renewal after the parties have had an opportunity to conduct discovery." See In re Toy Asbestos Litig., No. 19-cv-00325-HSG, 2019 WL 2144628, at \*4 (N.D. Cal. May 16, 2019).

## CONCLUSION

For the reasons set forth above, Viking's Motion to Dismiss is hereby DENIED without prejudice.

## IT IS SO ORDERED.

Dated: June 30, 2021

/s/ Maxine M. Chesney

MAXINE M. CHESNEY

United States District Judge

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