

Pira v Air & Liquid Sys. Corp.

Supreme Court of New York, New York County

December 27, 2021, Decided

Index No. 190093/2020

Reporter

2021 N.Y. Misc. LEXIS 6846 *; 2021 NY Slip Op 32863(U) **

[**1] JOSEPH PIRA, AS ADMINISTRATOR FOR THE ESTATE OF GIACINTO PIRA AND MARIA PIRA, INDIVIDUALLY, Plaintiff, - v - 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 CROPSCIENCE INC, AMERICAN OPTICAL CORPORATION, BW/IP, INC. AND ITS WHOLLY OWNED SUBSIDIARIES, CBS CORPORATION, F/K/A VIACOM INC., SUCCESSOR BY MERGER TO CBS CORPORATION, F/K/A WESTINGHOUSE ELECTRIC CORP., CRANE CO, DCO LLC F/K/A DANA COMPANIES, LLC, ELECTROLUX HOME PRODUCTS, INC. INDIVIDUALLY, AND AS SUCCESSOR TO TAPPAN AND COPES-VULCAN, EMPIRE-ACE INSULATION MFG. CORP, 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 CORP., ON BEHALF OF ITS FORMER CHICAGO PUMP & NORTHERN PUMP BUSINESSES, GARDNER DENVER, INC, GENERAL ELECTRIC COMPANY, GOODYEAR CANADA, INC, GOULDS PUMPS LLC, GUARD-LINE, INC, GUTHRIE DELAWARE, INC, HOBART BROTHERS COMPANY, HONEYWELL

INTERNATIONAL, INC., F/K/A ALLIED SIGNAL, INC. / BENDIX, IMO INDUSTRIES, INC, ITT LLC., INDIVIDUALLY AND AS SUCCESSOR TO BELL & GOSSETT AND AS SUCCESSOR TO KENNEDY VALVE MANUFACTURING CO., INC, JENKINS BROS, MCCORD CORPORATION, MINE SAFETY APPLIANCES COMPANY, MORSE TEC LLC, PFIZER, INC. (PFIZER), PREST-O-SALES & SERVICES, INC, STEEL GRIP SAFETY APPAREL COMPANY, INC, STEEL GRIP, INC., STEEL GRIP, INC., A/K/A VOORHEES, INC INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO STEEL GRIP SAFETY APPAREL COMPANY, INC, TENNECO AUTOMOTIVE OPERATING COMPANY INC, THE BOC GROUP, INC, THE GOODYEAR TIRE AND RUBBER COMPANY, U.S. RUBBER CO. (UNIROYAL), UNION CARBIDE CORP., WARREN PUMPS, LLC, Defendant. STEEL GRIP, INC Plaintiff, -against- TOURISTIC UNION INTERNATIONAL, AG, HAPAG-LLOYD CRUISES, A TUI CRUISES GMBH COMPANY Defendant.

Notice: THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

Core Terms

discovery, personal jurisdiction, cross-motion, *asbestos*, principal place of business, motion to dismiss, argues,

gloves, general jurisdiction, substantial revenue, further order, tortious act, cruise ship, incorporation, headquarters, uncontested, documents, contacts, situated, supplies, commits, derives, opposes, renew, ship, arm

Judges: [*1] PRESENT: HON. ADAM SILVERA, Justice.

Opinion by: ADAM SILVERA

Opinion

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 114, 118, 119, 120, 122, 123 were read on this motion to/for DISMISS.

Upon the foregoing documents, it is ordered that defendant Steel Grip, Inc.'s 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 Steel Grip 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, and that plaintiff's alleged exposure to asbestos occurred solely on Italian cruise ships. Defendant Steel Grip 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, [*2] 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 alga*, plaintiff Giacinto Pira's deposition transcript [**2] in which he testifies that the asbestos containing gloves he used, and which exposed him to asbestos, were purchased in New York. Plaintiff further testified that he saw boxes of such gloves being loaded onto ships in New York and that the ship had supplies in New York. 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, 70 N.Y.S.3d 457 (1st Dep't 2018)(internal brackets and citations omitted). "Aside from an exceptional case, a corporation is [*3] 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, 129 N.Y.S.3d 517 (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, 581 N.Y.S.2d 283 (1st Dep't 1992). The Court notes that defendant Steel Grip 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 **[**3]** 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 **[*4]** 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 Steel Grip did, in fact, have contact with the state.

In reply, defendant Steel Grip 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 alleged contacts raised by plaintiff did not establish a substantial nexus between moving Defendant and plaintiff's cause of action. As to jurisdictional discovery, moving defendant argues that plaintiff has failed to meet his burden to establish that defendant Steel Grip was engaged in purposeful activity in New York State. However, such argument is belied by the testimony of Plaintiff which stated that the Italian cruise ships routinely made stops in New York, had supplies in New

York, and sold the asbestos containing **[*5]** gloves in New York. Thus, plaintiff has provided sufficient evidence to demonstrate that jurisdictional discovery is needed herein. As such, Plaintiff's cross-motion is granted and defendant Steel Grip's motion to dismiss is denied without prejudice to renew at the conclusion of discovery.

Accordingly, it is

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

[4]** 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.

12/27/2021

DATE

/s/ Adam Silvera

ADAM SILVERA, J.S.C.

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