

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Receipt # 3079163

Book Page CIVIL

No. Pages: 6

Instrument: ORDER

Control #: 202205160820

Index #: E2021001525

Date: 05/16/2022

Time: 2:47:31 PM

Return To:
Christina R. Massoud
200 Elizabeth Street
Utica, NY 13502

GAUB, JOHN
GAUB, JAYNE

84 LUMBER COMPANY
BURNHAM CORPORATION
CARRIER CORPORATION
CINCINNATI INCORPORATED
DREIS & KRUMP MANUFACTURING COMPANY

Total Fees Paid: \$0.00

Employee: CW

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK



STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

JOHN GAUB and JAYNE GAUB,

Plaintiffs,

-against-

84 LUMBER COMPANY, et al.,

Defendants.

DECISION & ORDER

Index No.: 2021001525

RJI No.:

PRESENT: HON. ERIN P. GALL
JUSTICE SUPREME COURT

APPEARANCES:

Susan Van Gelder, Esq.
Goldberg Segalla, LLP
Attorney for Textron, Inc.
Buffalo, New York

Michael Macrides, Esq.
Belluck & Fox, LLP
Attorney for Plaintiffs
New York, New York

The plaintiffs John and Jayne Gaub (hereinafter "Plaintiffs") commenced the within action on February 22, 2021, by filing a summons and complaint in the Monroe County Clerk's Office. The plaintiffs seek to recover damages for personal injuries allegedly resulting from John Gaub's exposure to various asbestos containing products. Issue was subsequently joined, and discovery has been conducted pursuant to an expedited schedule. This matter is scheduled for trial commencing on May 19, 2022.

The defendant, Textron, Inc., sued Individually and as alleged successor to Bridgeport Machines, Inc. (hereinafter “Defendant”) has now made a motion to dismiss plaintiffs’ complaint, pursuant to CPLR 3211(a) and/or CPLR 3212 for lack of personal jurisdiction.¹ The motion was returnable on March 15, 2022. The defendant seeks dismissal on the theory that this Court has neither general, nor specific personal jurisdiction over it because Textron is not incorporated in New York, has no principal place of business in New York, and there are no acts which would render long-arm jurisdiction appropriate. The plaintiffs have opposed the defendant’s motion and contend it should be denied as untimely, or in the alternative, stayed pursuant to CPLR 3211(d)/CPLR 3212(f) because Textron failed to produce requested discovery.

John Gaub was diagnosed with mesothelioma in October 2020. Plaintiffs allege, for the purposes of this motion, that Mr. Gaub was exposed to asbestos-containing materials when the brakes were changed, in his presence, on Bridgeport machines.²

Defendant, a non-domiciliary, maintains that it is incorporated in Delaware, and has its principal place of business in Providence, Rhode Island. It is undisputed that Mr. Gaub’s alleged exposures from Textron’s products occurred at worksites in Pennsylvania and Ohio. Therefore, the defendant argues that this Court cannot exercise jurisdiction over it because it is not incorporated in, nor is its principal place of business in New York State (see Daimler AG v Bauman, (134 S Ct 746 [2014])) and further, that the alleged tortious conduct and Mr. Gaub’s alleged exposures all exist, occurred, or arose outside of New York State (see Bristol-Myers Squibb Co. v Superior Court, 137 S Ct 1773 [2017]).

In response to the defendant’s motion to dismiss, the plaintiffs do not contest Textron’s general jurisdiction argument. However, the plaintiffs argue that the motion should be denied or held in abeyance pending Textron’s production of material and necessary discovery that directly impacts their ability to establish specific jurisdiction through defendant’s presence, contacts,

¹ Textron also moved to dismiss plaintiffs’ punitive damages and loss of consortium claims, which plaintiffs do not oppose.

² Textron owned Bridgeport from 1968 through 1986.

and/or transactions within New York or with New York-based entities.

CPLR 302(a)(1) subjects a non-domiciliary to personal jurisdiction when it “transacts any business within the state” and there is a substantial relationship between the transaction and the legal claim asserted. “Essential to the maintenance of a suit against a non-domiciliary under CPLR § 302(a)(1) is the existence of some articulable nexus between the business transacted and the cause of action sued upon” (McGowan v Smith, 52 NY2d 268, 272[1981]). To determine whether jurisdiction exists under CPLR 302(a)(1), the Court must decide whether the defendant transacts any business in the state of New York and, if so, whether the plaintiff’s cause of action arises out of such business transactions (Johnson v Ward, 4 NY3d 516, 519[2005]). There must be a relatedness between the transaction and the legal claim being asserted (Licci v Lebanese Canadian Bank, SAL, 20 NY 3d 327, 339[2012]; Gottlieb v Merrigan, 170 AD 3d 1316, 1317 [3rd Dept. 2019]).

With respect to plaintiffs’ claim of possible jurisdiction pursuant to CPLR 302(a)(1), they contend they need to depose Textron’s corporate representative and examine its records regarding the supplier(s) of the asbestos components of its milling machinery; if any of those suppliers were located in New York, shipped its products from this State, or the transactions otherwise occurred within this jurisdiction, that is a basis for long-arm jurisdiction pursuant to CPLR 302(a)(1).

It is well settled that the party asserting jurisdiction bears the ultimate burden of proof to establish the same (see Urfirer v SB Bldrs., LLC, 95 AD3d 1616 [3d Dept 2012]; Daniel B. Katz & Assoc. Corp. v Midland Rushmore, LLC, 90 AD3d 977, 978 [2d Dept 2011]). However, “on a motion to dismiss, a plaintiff may defeat the motion by showing that facts ‘may exist’ to support the exercise of personal jurisdiction over the defendant” (Rajpurohit v Rajpurohit, 122 AD3d 706, 708 [2d Dept 2014]; see Yin Jun Chen v Lei Shi, 19 AD3d 407 [2d Dept 2005]). The Court also notes that when deciding whether the plaintiff has met said burden, it “. . . must construe the pleadings and affidavits in the light most favorable to [the plaintiff] and resolve all doubts in [the plaintiff’s] favor” (Brandt v Toraby, 273 AD2d 429, 430 [2d Dept 2000]).

The plaintiffs assert that they are entitled to jurisdictional discovery under CPLR

3211(d)/CPLR 3212(f) and upon completion of such discovery, the defendant then will have an opportunity to raise this issue in the context of trial. However, there is nothing in the record other than speculation which would show that the granting of jurisdictional discovery may very well lead to evidence of alleged transactions within this State that bear a substantial relationship to Mr. Gaub's exposure to asbestos containing materials at his workplaces in Pennsylvania and Ohio. It is undisputed that Mr. Gaub's work with Bridgeport machines only occurred in Pennsylvania and Ohio, that Mr. Gaub has no claim against Textron arising from work done in New York, and that all of Mr. Gaub's medical treatment occurred in Pennsylvania and Ohio. Mr. Gaub did not know from where these mills and any replacement parts were acquired, and did not provide any testimony demonstrating a nexus between his claim and any conduct performed by Textron (or Bridgeport) in New York. Moreover, the plaintiffs' contentions regarding outstanding discovery and deficiencies in Textron's interrogatory responses are to categories of information unrelated to personal jurisdiction.

Upon reviewing the motion papers and the arguments of counsel the Court finds that the plaintiffs have failed to demonstrate a "sufficient start" to justify additional jurisdictional discovery at this late stage. Simply stated, there is no connection between Mr. Gaub, his work with Bridgeport products, and New York. Textron cannot produce documents nor a corporate representative it does not possess,³ and the absence of records or people does not support denial of this motion. Conclusory allegations and assumptions cannot be the sole basis of a claim of specific jurisdiction pursuant to CPLR §302(a) (Polansky v Gelrod, 20 AD3d 663, 664[3rd Dept. 2005]; Coast To Coast Energy v Gasarch, 149 AD3d 485, 487[2017]).

The defendant's motion to dismiss for lack of personal jurisdiction is granted.

³ Textron sold the Bridgeport business in 1986, and does not have a corporate representative with personal knowledge of Bridgeport, its equipment, or its operations.

This writing shall constitute the Decision and Order of this Court.

Signed this 16 day of May 2022, at Utica, New York.


HON. ERIN P. GALL, J.S.C

ENTER