

## Redell-Witte v Algoma Hardwoods, Inc.

Supreme Court of New York, New York County

July 21, 2023, Decided

INDEX NO. 190011/2020

### Reporter

2023 N.Y. Misc. LEXIS 3738 \*; 2023 NY Slip Op 32525(U) \*\*

**[\*\*1]** HOLLY REDELL-WITTE, Plaintiff, - v - ALGOMA HARDWOODS, INC, ALTMAN STAGE LIGHTING CO., INC, AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC AG COMPANY, N/K/A BAYER CROPSCIENCE INC, BALLANTYNE OF OMAHA, INC. INDIVIDUALLY AND AS SUCCESSOR TO STRONG ELECTRIC CORP AND STRONG INTERNATIONAL, BELL & HOWELL COMPANY, CBS CORPORATION, F/K/A VIACOM INC., SUCCESSOR BY MERGER TO CBS CORPORATION, F/K/A WESTINGHOUSE ELECTRIC CORPORATION, CERTAINTTEED CORPORATION, GENERAL ELECTRIC COMPANY, INTERNATIONAL PAPER COMPANY, INDIVIDUALLY AND AS SUCCESSOR TO CHAMPION INTERNATIONAL CORPORATION, AS SUCCESSOR TO UNITED STATES PLYWOOD CORPORATION, KLIENGL BROS., UNIVERSAL ELECTRIC STAGE LIGHTING CO., INC, MOLE-RICHARDSON CO, PFIZER, INC. (PFIZER), SIEMENS INDUSTRY, INC., SUCCESSOR IN INTEREST TO SIEMENS ENERGY & AUTOMATION, INC, STRAND LIGHTING, INC, STRONG INTERNATIONAL, A DIVISION OF BALLANTYNE OF OMAHA, INC., INDIVIDUALLY AND AS SUCCESSOR TO CENTURY PROJECTOR CORPORATION, SIMPLEX PROJECTOR CORP., AND PEERLES PROJECTOR CORP, T.M. COBB COMPANY, U.S. RUBBER COMPANY (UNIROYAL), UNION CARBIDE CORPORATION, WEYERHAEUSER COMPANY, AERCO INTERNATIONAL, INC., BMCE INC., F/K/A UNITED CENTRIFUGAL PUMP, HARSCO CORPORATION, AS SUCCESSOR TO PATTERSON-KELLEY COMPANY, INC., INDIVIDUALLY AND D/B/A PATTERSON-KELLEY, MORSE TEC LLC, MOLE-RICHARDSON CO., LLC, PK&P INVESTMENT CO. F/K/A MOLE-RICHARDSON CO SIGNIFY.COM, Defendant.

**Notice:** THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

### Core Terms

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motion to dismiss, sales and distribution, personal jurisdiction, substantial revenue, personal knowledge, tortious act, documents, asbestos, products, commits, derives, records, doors

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

**Opinion by:** ADAM SILVERA

### Opinion

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#### DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 171, 172, 173 were read on this motion to/for DISMISSAL.

**[\*\*2]** Upon the foregoing documents, it is ordered that defendant T.M. Cobb Company's motion to dismiss, pursuant to CPLR §3211(a)(8), is decided in accordance with the decision below.

In this asbestos action, defendant T.M. Cobb seeks to dismiss the complaint against it on the basis that it has no connections to the State of New York and the Court has no personal jurisdiction over it. Defendant T.M. Cobb alleges, based on the testimony of Jeffrey Cobb ("Mr. Cobb"), that "T.M. Cobb did not sell its products in New York and never conducted business in New York." See Memorandum of Law in Support of Defendant T.M. Cobb's Renewed Motion to Dismiss for Lack of Personal Jurisdiction, p. 3 (emphasis omitted).

Plaintiff opposes and notes that plaintiff-decedent,

James Witte ("Mr. Witte"), testified unequivocally to encountering T.M. Cobb-brand doors in New York City. See Affirmation in Opposition to Defendant T.B. [sic] Cobb Company's [\*2] Motion to Dismiss, p. 2-3.

[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, plaintiff has presented information sufficient to establish T.M. Cobb's business in New York in the 1960s. Mr. Witte recalled T.M. Cobb by name several times in connection with his worksite in New York and specifically testified to such. See Affirmation in Opposition, [\*3] *supra*, p. 2-3. Defendant T.M. Cobb relies heavily on testimony from Mr. Cobb, who has failed to show that he has personal knowledge of the [\*3] sales and distribution of T.M. Cobb products, during the time frame at issue herein. See Order to Show Cause, Exh, D, Deposition Transcript of Jeffrey Cobb on Mar. 31, 2022 at p. 50-52. Further, Mr. Cobb confirmed that T.M. Cobb has not retained any sales records from the 1960s, has no document retention policy, and that he was unaware of which states T.M. Cobb's customers (largely dealers and distributors) were in. See *id.* at 56, 59, 67.

Without any records indicating otherwise or anyone with personal knowledge of sales and distribution during the relevant time period, T.M. Cobb has failed to prove that it did not sell or distribute doors to New York. The Court of Appeals has held that "proof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted." [Kreutter v McFadden Oil Corp., 71 NY2d 460, 467, 522 N.E.2d 40, 527 N.Y.S.2d 195 \(1988\)](#). Here, where plaintiff's explicit testimony is that he was exposed to **asbestos** through T.M. Cobb's product in New York, defendant's motion fails pursuant

to [CPLR §302\(a\)\(2\)](#). Thus, defendant T.M. Cobb's motion to dismiss is denied.

Accordingly, it [\*4] is

ORDERED that defendant T.M. Cobb's motion to dismiss is denied in its entirety; 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.

**07/21/2023**

**DATE**

/s/ Adam Silvera

**ADAM SILVERA, J.S.C.**

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