

Redell-Witte v Algoma Hardwoods, Inc.

Supreme Court of New York, Appellate Division, First Department

December 28, 2023, Decided; December 28, 2023, Entered

Index No. 190011/20, Appeal No. 1307, Case No. 2023-03839

Reporter

2023 N.Y. App. Div. LEXIS 6994 *; 2023 NY Slip Op 06826

Holly Redell-Witte, Plaintiff-Respondent, v Algoma Hardwoods, Inc., et al., Defendants, T.M. Cobb Company, Defendant-Appellant.

Notice: THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.

THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

Prior History: Order, Supreme Court, New York County (Adam Silvera, J.), entered on or about July 24, 2023, which denied defendant T.M. Cobb Company's motion to dismiss the complaint for lack of personal jurisdiction pursuant to [CPLR 3211\(a\)\(8\) \[*1\]](#), unanimously reversed, on the law, without costs, and the motion granted. The Clerk is directed to enter judgment accordingly.

Core Terms

personal jurisdiction, manufactured

Counsel: Clyde & Co US LLP, New York (Thomas G. Carruthers of counsel), for appellant.

Weitz & Luxenberg, P.C., New York (Christopher Romanelli of counsel), for respondent.

Judges: Before: Kern, J.P., Oing, Gesmer, Moulton, Mendez, JJ.

Opinion

The court should have granted the motion to dismiss the complaint as against this defendant for lack of personal jurisdiction pursuant to [CPLR 302\(a\)\(2\)](#) because there is no evidence that the fire doors that allegedly caused decedent plaintiff's injury by exposing him to **asbestos**

were manufactured in New York. To the contrary, the testimony revealed that defendant, a company incorporated in California, never manufactured any products outside of California. Thus, defendant did not commit a tortious act "within the state" to confer jurisdiction (see [CPLR 302\(a\)\(2\)](#); [Longines-Wittnauer Watch Co. v Barnes & Reinecke, 15 NY2d 443, 458-466 \[1965\]](#), cert denied sub nom. *Estwing Mfg. Co. v Singer*, 382 US 905 [1965]; [SOS Capital v Recycling Paper Partners of PA, LLC, 220 AD3d 25 \[1st Dept 2023\]](#)).

Furthermore, there is insufficient evidence of defendant's requisite minimal [*2] contacts with New York to comport with due process in the exercise of personal jurisdiction over it (see [Williams v Beemiller, Inc., 33 NY3d 523, 528 \[2019\]](#); [Carpino v National Store Fixtures, 275 AD2d 580, 582 \[3d Dept 2000\]](#)).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: December 28, 2023

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