

At a term of Supreme Court held in and for the County of Oneida, in the City of Utica, New York on the 1st day of August 2024

PRESENT: HONORABLE JAMES P. McCLUSKY  
Supreme Court Justice

STATE OF NEW YORK  
SUPREME COURT COUNTY OF ONEIDA

WILLIAM AGNEW and PATRICIA AGNEW,

Plaintiffs,

v.

A.O.SMITH WATER PRODUCTS, et al.,

Defendants.

**DECISION**  
**AND**  
**ORDER**

Index No. EFCA2023-001514

This matter is before the Court in connection with the motion by Defendant National Tinsel Manufacturing Company ("National Tinsel") for the dismissal of all claims of the Complaint as against it, with prejudice, pursuant to CPLR 3211(a)(7) and CPLR 3211(a)(1). National Tinsel was incorporated under Wisconsin law in 1918 and continued in existence in that State until its dissolution effective in December 2003. In June of 2021, notification of the dissolution was published in Wisconsin's official state newspaper with state-wide circulation (the *Milwaukee Journal Sentinel*) and two other newspapers located in Manitowoc County, where National Tinsel had located its principal place of business. The instant motion centers on National Tinsel's claim that, pursuant to Wisconsin statute 180.1407, the publication of a company's dissolution containing notice that "persons with claims, whether known or unknown, against the corporation or its directors, officers or shareholders, in their capacities as such, [must] present them in accordance with the [published] notice."

Importantly, according to National Tinsel, the publication of the notice of dissolution, if strictly performed, "began the running of a two (2)-year period which

extended time for all claims against [it] to be filed.” A copy of that provision (Wis. Stat. §180.1407(2)) has been provided to the Court as part of National Tinsel’s motion papers.

Applying the cited provision to this matter, National Tinsel’s position is that all claims against National Tinsel were required to be filed and served on or before June 26, 2023; and that while Plaintiffs filed their Second Amended Complaint on June 22, 2023, they failed to serve that Second Amended Complaint (and thereby make National Tinsel aware of the claim) prior to the expiration of the 2-year window. The claimed failure to meet the statutory-imposed deadlines now serves as the basis for the company’s motion to dismiss the complaint. The Court has reviewed the cited Wisconsin law, together with the cited, and binding, precedential Fourth Department case of Brenon v. Asbestos Corp., Ltd., 188 A.D.3d 1610 (4<sup>th</sup> Dep’t 2020) and concludes, under the circumstances, that Defendant’s motion for dismissal must be denied.

States are understandably covetous of their laws governing incorporation, and the protection of their corporate citizens. That is why, in the context of the choice of law which should apply to a corporation’s dissolution, other states are extremely deferential to the laws of the state of incorporation, not only as a matter of comity, but in recognition of that state’s sovereignty. Indeed, New York has long “applie[d] the law of the state of creation when determining whether an action by or against a dissolved corporation is viable.” Brenon, supra, at 1611, citing Bayer v. Sarot, 51 A.D.2d, 366, 368-368 (1<sup>st</sup> Dep’t 1976), aff’d 41 N.Y.2d 1070 (1977). National Tinsel’s reliance on Wisconsin’s substantive time limitation on the commencement of lawsuits against that dissolved corporation is justified, and its “two-years-to-sue” rule is applicable to this matter. The question remaining, therefore, is whether the Plaintiffs commenced their action within the two-year period.

Defendant has moved to dismiss this New York action on the basis that “[t]he two (2)-year period during which all claims against National Tinsel must be filed and served upon it ended on June 26, 2023 [and that] while Plaintiffs filed their Second Amended complaint on June 22, 2023, they failed to serve National Tinsel and make it aware of the claim prior to the expiration of the two (2)-year window within which to do so, expiring on June 22, 2023”, such that service, here, was beyond the two-year limitation and, therefore, late. In other words, Defendant’s claim is that Wisconsin law should govern the date representing the “commencement of the action,” and that law requires “service of the papers” upon the Defendant within 2 years. The Court’s use of the phrase “New York action” is purposeful. The issue presented here is procedural in nature, and the

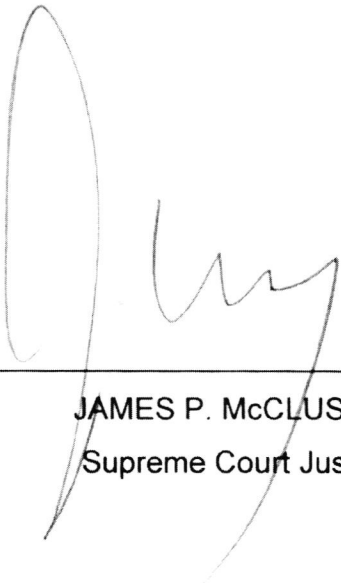
laws of the forum are determinative when deciding whether an action has been timely commenced. See, Marin v. Julius Dierck Equip. Co., 43 N.Y.2d 583, 588 (1978). In New York, an “action is commenced by filing a summons and complaint.” N.Y. CPLR§304(a). The filing is accomplished by filing with the County Clerk, which may now be accomplished by electronic filing. In this regard, the Court takes judicial notice of the electronic filing record in this case, which shows that the action was commenced by the filing of the summons and complaint on June 14, 2023...8 days prior to the “expiration of the two (2)-year window required by Wisconsin’s substantive law governing actions against dissolved corporations.

Based upon the foregoing, it is hereby

ORDERED that Defendant’s motion to dismiss all claims of the complaint against it due to the passing of the period of limitations otherwise established by the laws of the State of Wisconsin is DENIED.

ENTER

August 5, 2024  
Watertown, New York



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JAMES P. McCLUSKY  
Supreme Court Justice