

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

Filed March 25, 2008

SUPERIOR COURT

JOSEPH LAPOINTE
Plaintiff

v.

3M COMPANY, et al.
Defendant

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C.A. No. PC 06-2418

DECISION

GIBNEY, J. This is an asbestos-related product liability case brought against a number of corporate defendants. In the instant matter, Defendant Watts Regulator Company (“Watts”) moves to dismiss the claim filed against it by Plaintiff Joseph LaPointe (“Mr. LaPointe”) pursuant to Super. R. Civ. P. 12(b)(2). Mr. LaPointe objects to the motion.

Facts and Travel

Mr. LaPointe filed a complaint in this Court on May 6, 2006, alleging, inter alia, that he had suffered injuries as a result of occupational and household exposure to asbestos products. Mr. LaPointe suffers from malignant mesothelioma, which he asserts was caused by ingesting or inhaling asbestos contained in products with which he worked. Mr. LaPointe claims that he was injured by Watts’s products while working as an employee for Fall River Gas Co. and during his self-employment at LJ’s Gas Appliances. While so employed, Mr. LaPointe claims that he worked at various homes throughout Fall River, Somerset, Swansea, Cape Cod, and Westport.

Watts, a manufacturer of valves for plumbing and heating systems, has filed the instant motion. Watts argues that Plaintiff has failed to allege facts sufficient to establish a prima facie case of personal jurisdiction. Watts asserts that its headquarters are located in Massachusetts,

and while it maintains facilities in various states, it does not maintain such a facility in Rhode Island. Watts's employees neither work nor reside in Rhode Island. Defendant does not own or lease property, nor does it maintain a telephone listing, mailing address, or post office box in this state. Watts further avers that it is not licensed, registered or otherwise authorized to do business in Rhode Island. Furthermore, it does not specifically advertise in the State, and it has never been required to pay income tax here. Watts sells its products to distributors using the assistance of independent contractors who are not directly employed by the company. These independent contractors, none of whom are headquartered in Rhode Island, have obtained sales in this state. However, Defendant argues that these sales constitute 0.088%—less than one-tenth of one percent—of Watts's total net sales. In support of these facts, Watts has submitted the affidavits of Leo Maguire, the Director of Taxation for Watts Water Technologies (the parent company of Defendant Watts), and of Ernest Elliott, the Executive Vice President of Marketing for Watts Water Technologies. Defendant argues that given these facts, the Plaintiff cannot satisfy the requirements established in Rhode Island law for demonstrating personal jurisdiction.

Mr. LaPointe objects to the motion, contending that due to Rhode Island's small size, the small percentage of net sales accomplished in this State should not preclude a Plaintiff from demonstrating personal jurisdiction. Plaintiff further contends that a motion to dismiss should be brought prior to the commencement of discovery and that here, significant and costly discovery has already been accomplished. Therefore, Plaintiff posits, this case is beyond a stage at which dismissal would be appropriate.

Law and Analysis

“It is well established that to withstand a defendant's Rule 12(b)(2) motion to dismiss a complaint for lack of in personam jurisdiction, a plaintiff must allege sufficient facts to make out

a prima facie case of jurisdiction.” Cerberus Partners, L.P. et al. v. Gadsby & Hannah, LLP, 836 A.2d 1113, 1118 (R.I. 2003) (citations omitted). For purposes of a prima facie showing, the Court must examine the pleadings, accepting all facts alleged by the Plaintiff as true and resolving factual conflicts in the Plaintiff’s favor. Cassidy v. Lonquist Mgmt. Co., 920 A.2d 228, 232 (R.I. 2007). A prima facie case is established “when the requirements of the Rhode Island long-arm statute are satisfied.” Cerberus Partners, L.P. et al., 836 A.2d at 1118. Rhode Island’s long-arm statute, which governs the State’s jurisdiction over nonresident defendants, states in pertinent part that:

“[e]very foreign corporation, every individual not a resident of this state and every partnership or association, composed of any person or persons not such residents, that shall have the necessary minimum contacts with the state of Rhode Island, shall be subject to the jurisdiction of the state of Rhode Island in every case not contrary to the provisions of the constitution or laws of the United States.” G.L. 1956 § 9-5-33.

This statutory language has been interpreted to permit the exercise of jurisdiction over non-resident defendants to the fullest extent permitted by the United States Constitution. Rose v. Firststar Bank, 819 A.2d 1247, 1250 (R.I. 2003). Constitutional due process requires that the Defendant have “minimum contacts” with the forum state, so that the exercise of personal jurisdiction “does not offend traditional notions of fair play and substantial justice.” Coia v. Stephano et al., 511 A.2d 980, 982 (R.I. 1986) (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). In making this determination, the Court must consider the facts of the particular case, and consider whether, given such facts, the defendant should “reasonably anticipate being haled into court” in that state. Cerberus Partners, L.P. et al., 836 A.2d at 1118.

The Rhode Island courts have recognized two types of personal jurisdiction: specific and general. See id. In addressing the issue of specific personal jurisdiction, the Court must

determine whether nonresident defendants “purposefully availed themselves of the privilege of conducting activity within the State of Rhode Island thereby invoking the benefits and protections of this state’s laws” Almeida v. Radovsky, 506 A.2d 1373, 1375 (R.I. 1986) (citations omitted); Cerberus Partners, L.P. et al., 836 A.2d at 1119. Specific personal jurisdiction does not place an onerous burden on the plaintiff; there must be a relationship between the defendant, the forum, and the litigation, but the relationship “need not be terribly robust.” Cerberus Partners, L.P. et al., 836 A.2d at 1119. However, there must be proof of some purposeful act on the part of the defendant that would invoke the benefits of our laws. Id. By contrast, to exercise general jurisdiction over a nonresident defendant, the defendant’s contacts with the state must be “continuous, purposeful, and systematic.” Cerberus Partners, L.P. et al., 836 A.2d at 1122 (citing Rose, 819 A.2d at 1250). Such continuous contacts would allow the defendant to be sued for a matter unrelated to its contacts. Id.

In the instant matter, the Plaintiff’s allegations do not support a finding that any relationship existed among the Defendant, the forum, and the litigation. Cerberus Partners, L.P. et al., 836 A.2d at 1119. Mr. LaPointe claims that he was injured while living and working in Massachusetts and that he came into contact with Defendant’s asbestos-containing product in Massachusetts. Plaintiff’s allegations, which draw no connection between his claim against Watts and Rhode Island, have precluded a finding of specific personal jurisdiction.

With respect to general personal jurisdiction, the Defendant contends that the case at hand should be compared to this Court’s decision in Ballew v. Olson Technologies, Inc., C.A. No. 05-5108, 2006 R.I. Super. LEXIS 147 (October 17, 2006). Watts contends that as in Ballew, the Defendant lacks a business presence in Rhode Island and only a very small percentage of its total sales have been to Rhode Island customers. See id. This Court is persuaded that the

comparison is accurately drawn. Watts's business presence in Rhode Island is limited to its small percentage of sales obtained through independent contractors. Defendant's affidavits demonstrate that it has no personnel, property, mailing address, telephone number, business license or registration, or obligation to pay taxes to this State. See Cerberus Partners, L.P. et al., 836 A.2d at 1122 (finding a lack of general jurisdiction where the defendant "maintains no office in Rhode Island, neither owns nor leases property here, maintains no records here, has neither agent, telephone number nor mailbox here"). Plaintiff has provided no evidence to rebut these facts, and so he has created no factual conflict for the Court to resolve in his favor. Cassidy, 920 A.2d at 232.

The issue is therefore narrowed to whether the Defendant's sales percentage, through independent contractors, is sufficient to establish general personal jurisdiction. See White v. Shiller Chemicals, Inc., 379 F. Supp. 101, 104 (D.R.I. 1974), aff'd 503 F.2d 1396 (1st Cir. 1974) (finding that the Court must "consider defendant's dollar amount of business in Rhode Island as well as the percentage of its Rhode Island business as against its total corporate sales"). In the instant matter, Watts proffers that its sales obtained in Rhode Island constitute 0.088% of its total sales. In addressing a similar issue in Ballew, this Court found that the defendant's 0.3% of net sales obtained in Rhode Island was insufficient to establish general personal jurisdiction. Ballew, C.A. No. 05-5108, 2006 R.I. Super. LEXIS 147 (October 17, 2006). This Court stated there, and reiterates here, that other jurisdictions have found an even larger percentage of total sales to be insufficient to support an exercise of personal jurisdiction over the nonresident defendant. See e.g. Injen Tech. Co. Ltd. v. Advanced Engine Mgmt., 270 F. Supp. 2d 1189, 1194 (D. Cal. 2003) (finding that 2% of defendant's total sales to forum state were not the kind of "systematic and continuous" contacts that would warrant the exercise of general jurisdiction);

Stark Carpet Corp. v. M-Geough Robinson, Inc., 481 F. Supp. 499, 505 (S.D.N.Y. 1980); (holding that when only 2% of defendant's total sales were to the forum state, general personal jurisdiction could not be exercised); Noonan v. Winston Co., 135 F.3d 85, 92-93 (1st Cir. 1998) (holding that business solicitation in forum state and approximately \$ 585,000 in orders was insufficient to establish general personal jurisdiction over the defendant).

To defeat the motion to dismiss, Mr. LaPointe contends that the small percentage of Rhode Island sales should be viewed in perspective to this state's small geographic size. The Plaintiff offers nothing beyond his own logic to support this argument. As a result, this Court finds the argument unpersuasive. Without additional information, this Court cannot conclude that a state's size has any bearing on its potential contribution to a corporation's net income. Even assuming, arguendo, that the percentage of sales in a particular state ought to bear any correlation with the state's geographic size, the amount of Rhode Island sales in this case would nonetheless be insufficient to demonstrate any proportional value that would generally link Watts to this forum. Therefore, this Court finds that the small amount of sales to Rhode Island is insufficient to support an exercise of general personal jurisdiction over Defendant.

The Plaintiff finally contends that the motion in this case is untimely, as significant and costly discovery has already taken place between the two parties. This argument is also unpersuasive. The Rhode Island Supreme Court has found that judicial economy is served by allowing a defendant to file a motion under Rule 12(b)(2), even after a responsive answer to the pleadings and discovery have taken place. See Hall v. Kuzenka, 843 A.2d 474, 477-478 (R.I. 2004). The defendant is entitled to use discovery to perfect its argument on the issue of personal jurisdiction, and such development of the issue is an aid, not a hindrance, to the judicial process.

Id. Therefore, this Court finds that Watts's motion is timely and sufficient to demonstrate a lack of personal jurisdiction.

Conclusion

This Court shall exercise personal jurisdiction over a nonresident party where such exercise complies with constitutional due process. Rose, 819 A.2d at 1250. Such due process is not met if the Plaintiff cannot show specific or general personal jurisdiction consistent with Rhode Island's longarm statute. Cerberus Partners, L.P. et al., 836 A.2d at 1118. For the foregoing reasons, this Court finds that Mr. LaPointe cannot sustain his burden of demonstrating sufficient contacts between Defendant Watts and Rhode Island to support an exercise of either specific or general personal jurisdiction. Therefore, Defendant's motion to dismiss is granted. Counsel shall prepare the appropriate order for entry.