

For over three decades, Decedent worked at Hoechst Chemical Corporation (Hoechst) in Coventry, Rhode Island in various capacities, including as a pipefitter, maintenance supervisor and maintenance foreman. Plaintiff has alleged that over the course of his employment, Decedent “was exposed to various asbestos-containing products,” which “contributed in part or totally to [his] contraction of asbestos-related mesothelioma and other asbestos-related pathologies.” Compl. ¶¶ 4, 5, 7. Plaintiff has further alleged that some of these asbestos-containing products were manufactured or distributed to Hoechst by Watts.

Watts has moved to dismiss Plaintiff’s complaint for lack of personal jurisdiction. Plaintiff has objected to Watt’s motion to dismiss and, conceding that this Court lacks general personal jurisdiction over Watts, urges this Court to defer ruling on the motion until Plaintiff has been given the opportunity to conduct further jurisdictional discovery. In the alternative, Plaintiff contends that the current evidence is sufficient to establish that this Court may exercise specific personal jurisdiction over Watts.

The following facts, relating to whether this Court may exercise specific personal jurisdiction over Watts, are not in dispute: Watts manufactures valves for plumbing and heating systems, and at least some of these valves are or were made with asbestos. Watts asbestos-containing products were in use at Hoechst for many years during Decedent’s employment there, and Decedent worked hands-on with Watts’s asbestos-containing products for at least one year. At all relevant times, Watts did not employ any staff in Rhode Island or direct any advertisements specifically to Rhode Island. Watts never directly sold any of its products to Hoechst; however, during the time that Decedent worked there, Hoechst did purchase several Watts products from distributors.

Watts urges that in determining whether it had sufficient minimum contacts to sustain specific personal jurisdiction, this Court should consider only its contacts with Rhode Island during the narrow time frame in which Decedent worked hands-on with Watts's asbestos-containing products. Accordingly, Watts points only to sales information from that narrow time frame in challenging this Court's specific personal jurisdiction. Plaintiff, on the other hand, argues that because Decedent worked at Hoechst for over thirty years, this Court must consider Watts's sales information from a much longer time period—information that Watts has not made available to Plaintiff or the Court.

II

Standard of Review

When ruling on a motion to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2), a Rhode Island court must “examine the pleadings, accept the facts alleged by the plaintiff as true, and view disputed facts in the light most favorable to the plaintiff.” Cassidy v. Lonquist Management Co., LLC, 920 A.2d 228, 232 (R.I. 2007). The reviewing court may also examine “affidavits and discovery to establish the jurisdictional facts.” Ben's Marine Sales v. Sleek Craft Boats, 502 A.2d 808, 810 (R.I. 1985). In ruling on Defendant's motion, this Court examines Plaintiff's amended complaint and answers to interrogatories along with the parties' affidavits and exhibits.

Because Plaintiff requests additional time to conduct jurisdictional discovery, this Court also considers whether denial of such request would substantially prejudice Plaintiff and whether Defendant has retained exclusive control of information that would be determinative on the question of jurisdiction. Smith v. Johns-Manville Corp., 489 A.2d 336, 339 (R.I. 1985).

III

Analysis

A

Specific Personal Jurisdiction in Rhode Island

Our Supreme Court has held that to withstand a defendant’s motion to dismiss for lack of personal jurisdiction, a plaintiff must make out a prima facie case of jurisdiction by both alleging facts sufficient to satisfy the requirements of Rhode Island’s long-arm statute and demonstrating that “the court’s exercise of personal jurisdiction comports with the requirements of constitutional due process.” Rose v. Firststar Bank, 819 A.2d 1247, 1250 (R.I. 2003). Because Rhode Island’s long-arm statute “permits the exercise of jurisdiction over nonresident defendants to the fullest extent allowed by the United States Constitution,” whether personal jurisdiction is proper depends on whether the requirements of constitutional due process have been satisfied. Id.; G.L. 1956 § 9-5-33(a).

A Rhode Island court’s exercise of personal jurisdiction comports with the requirements of constitutional due process when the plaintiff demonstrates that the defendant has such minimum contacts with Rhode Island that “maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” Rose, 819 A.2d at 1250 (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). Accordingly, specific personal jurisdiction exists when the plaintiff demonstrates that “the claim sufficiently relates to or arises from any of a defendant’s purposeful contacts with the forum.” Rose, 819 A.2d at 1251. Because “there are no readily discernable guidelines” as to which and how many contacts are sufficient, the reviewing court must engage in a case-by-case inquiry as to the “quality and quantity of [the defendant’s] contacts with the forum.” Cassidy, 920 A.2d at 232-33; Rose, 819 A.2d at 1250

(quoting Philips Exeter Academy v. Howard Phillips Fund, Inc., 916 F.3d 284, 288 (1st Cir. 1999)).

B

Discussion

1

The Prima Facie Case for Specific Personal Jurisdiction

The reviewing court must consider two prongs to determine whether the plaintiff has demonstrated the existence of specific personal jurisdiction: the plaintiff's claims must arise from the defendant's specific contacts with the forum, and the defendant must have "purposefully" created those specific contacts between itself and the forum. Rose, 819 A.2d at 1251. In the case at bar, it is conceivable that Plaintiff's claims arise out of Watts's contacts with Rhode Island because Watts's asbestos-containing products found their way to Decedent's place of employment in Rhode Island and Decedent allegedly developed asbestosis as a result of on-the-job contact with asbestos. However, considering the evidence supplied by Plaintiff in support of her objection, it remains unclear whether and to what extent Watts took any purposeful action to send its products into Rhode Island.

In order to demonstrate that Defendant engaged in the kind of purposeful contacts required for specific jurisdiction, Plaintiff must show that Watts "purposefully avail[ed] itself of the privilege of conducting activities within [Rhode Island], thus invoking the benefits and protections of its laws." State of Maryland Central Collection Unit v. Board of Regents, 529 A.2d 144, 151 (R.I. 1987) (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)). Our Supreme Court has noted that the defendant's purposeful contacts underpinning the exercise of specific jurisdiction must have been voluntarily entered into and must have enabled the

defendant to “‘reasonably anticipate’” being made to defend a suit in Rhode Island. Cerberus, 836 A.2d at 1121 (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)). Although even “a single act having impact in and connection with the forum state can satisfy the minimum-contact test,” nothing that Plaintiff has submitted to this Court has shown a purposeful and voluntary act on Watts’s part to conduct some activity in Rhode Island that is related to Plaintiff’s claim. Trustees of Sheppard & Enoch Pratt Hosp. v. Smith, 114 R.I. 181, 184, 330 A.2d 804, 806 (1975).

Seemingly advancing a “stream of commerce” theory, Plaintiff suggests that Watts engaged in the requisite minimum contacts by selling its products to distributors, who then sold Watts products to Hoechst. The U.S. Supreme Court has made clear that, in some cases, specific personal jurisdiction exists where a defendant places goods into “the stream of commerce ‘with the expectation that they will be purchased by consumers within the forum state.’” J. McIntyre Machinery v. Nicastro, 131 S. Ct. 2780, 2788 (2011) (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 298 (1980)). However, mere foreseeability that a defendant’s products will enter a forum is not enough; rather, the defendant must have sought to serve the state’s market or have targeted the state. McIntyre, 131 S. Ct. at 2788 (finding no personal jurisdiction where a company had no contacts with the forum state besides one of its products ending up there through the actions of an independent seller); see also Anderson v. Metropolitan Life Insurance, 694 A.2d 701, 703 (R.I. 1997) (finding no personal jurisdiction over a company that shipped raw asbestos to a manufacturer outside Rhode Island whose products were then sent into Rhode Island).

Thus, because “it is the defendant’s actions . . . that empower a state’s courts to subject him to judgment,” the mere fact that Watts sold its products to distributors, which then sold the

products to Decedent’s Rhode Island-based employer, does not, by itself, demonstrate that Watts took any deliberate action to send its products to Rhode Island. McIntyre, 131 S. Ct. at 2789; see also Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County, 480 U.S. 102, 112 (1987) (opinion of O’Connor, J. for four members of the Court) (holding that “placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum state”). Rather, “[t]he question is whether a defendant has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign” McIntyre, 131 S. Ct. at 2789. As a result, even Plaintiff’s evidence showing that Hoechst bought Watts’s products directly from at least one distributor based in Rhode Island is insufficient to show minimum contacts because that evidence demonstrates only that that distributor—not necessarily Watts—purposely availed itself of the benefits of doing business in Rhode Island. That evidence does not make clear what Watts’s relationship was with the Rhode Island distributor, i.e., whether Watts sold those products directly to that distributor or whether the sales chain was more attenuated.

Moreover, even if Watts did sell directly to the Rhode Island-based distributor, that alone would not satisfy the minimum contacts standard necessary to allow this Court jurisdiction over Watts in this case because that single fact would not demonstrate that Watts “sought to serve” Rhode Island’s market through that distributor. Id. at 2788. A distributor based in Rhode Island could, conceivably, sell little to no products in this state. As a result, even if Plaintiff’s evidence demonstrated a direct relationship between Watts and the Rhode Island distributor—which it does not—Plaintiff would still not have made the requisite connection between the Rhode Island-based distributor and Watts’s alleged targeting of the Rhode Island market because Plaintiff has not shown that Watts sold to that distributor in order to reach the Rhode Island market. Such a

conclusion could, however, be drawn from evidence that, for example, showed that Watts sold to distributors that routinely sold a significant amount of products to Rhode Island customers.

2

Jurisdictional Fact Discovery

Our Supreme Court has stated that a plaintiff's request to postpone a ruling on a motion to dismiss for lack of personal jurisdiction "should be granted where . . . a more satisfactory showing of the facts is necessary" to determine whether jurisdiction is proper. Johns-Manville, 489 A.2d at 339 (quoting Cheng v. Boeing Co., 708 F.2d 1406, 1412 (9th Cir. 1983)). In particular, limited jurisdictional discovery should be allowed when denial would substantially prejudice the plaintiff and when "pertinent facts bearing on the issue of jurisdiction are in question and the relevant information remains in the exclusive control of the defendant." Id. at 340. Allowance of jurisdictional discovery is improper, on the other hand, when the plaintiff's allegations of minimum contacts, even if true, would be insufficient or when the defendant has satisfactorily disproven the plaintiff's allegations of minimum contacts. Coia v. Stephano, 511 A.2d 980, 984 (R.I. 1986).

In the case at bar, it is clear that Watts has not provided Plaintiff with the "pertinent facts" that would enable this Court to determine whether specific personal jurisdiction is proper. Johns-Manville, 489 A.2d at 340. Watts maintains that the only time frame relevant to this Court's jurisdiction is 1969 to 1974, the years when Decedent allegedly worked hands-on with Watts's asbestos-containing products. Accordingly, Watts has only provided Plaintiff with information about its sales of asbestos-containing products during that period. However, Decedent's work with Watts's products from 1969 to 1974 is not the only period during which Plaintiff's claim could have arisen from Watts's contacts with Rhode Island. Plaintiff has

provided ample evidence that Decedent worked with and around Watts's asbestos-containing products for many, if not all, of his years of employment with Hoechst.

Because asbestosis is not contracted through contact between asbestos and the skin, but rather through inhalation of asbestos fibers, all of the years that Decedent worked around Watts's asbestos-containing products—either with those products directly or in proximity to those products—are relevant to the question of specific jurisdiction. Moreover, the years preceding Decedent's employment with Hoechst are also relevant, to the extent that Watts's products were already present at Hoechst when Decedent began working there.

Consequently, jurisdictional discovery is appropriate in this case. Whether Watts took deliberate and voluntary actions to send its products into Rhode Island can be determined only with “information [that] remains in the exclusive control of the defendant.” Johns-Manville, 489 A.2d at 340. Watts has submitted no evidence to rebut Plaintiff's allegations that it purposely availed itself of the benefits of doing business in Rhode Island in the years before 1969 and after 1974. See State of Maryland Central Collection Unit, 529 A.2d at 151 (outlining purposeful availment standard for minimum contacts analysis). Moreover, these allegations, if true, might be sufficient to establish this Court's jurisdiction over Watts. Cf. Coia, 511 A.2d at 984 (declining to grant jurisdictional discovery because the plaintiff's allegations, if true, would have been insufficient to show minimum contacts). Because Plaintiff would be substantially prejudiced if this Court were to decide Watts's motion at this time, Plaintiff's request for jurisdictional discovery is granted.

IV

Conclusion

For the foregoing reasons, resolution of Defendant Watts's motion to dismiss for lack of personal jurisdiction is denied without prejudice in order to permit Plaintiff Gloria Cary to conduct limited jurisdictional discovery into Defendant's contacts with Rhode Island during the years closely preceding and during Decedent's employment with Hoechst. Counsel will submit an appropriate order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Gloria Cary, Executrix of the Estate of Lawson Cary, Jr., and as Surviving Spouse v. American Optical Corporation, et al.

CASE NO: PC 10-3263

COURT: Providence Superior Court

DATE DECISION FILED: September 30, 2013

JUSTICE/MAGISTRATE: Presiding Justice Alice Bridget Gibney

ATTORNEYS:

For Plaintiff: John Deaton, Esq.

For Defendant: James A. Ruggieri, Esq.