

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(Filed: August 20, 2024)

ANTHONY FREITAS and JUDITH :  
PARENTE, CO-EXECUTORS OF THE :  
ESTATE OF ANTONIO R. FREITAS, :  
*Plaintiffs,* :

v. :

A.O. SMITH WATER PRODUCTS :  
CORPORATION, et al., :  
*Defendants.* :

C.A. No. PC-2022-02370

**DECISION**

**GIBNEY, P.J.** Before this Court for decision is Defendant PBV Inc.’s (PBV)<sup>1</sup> Motion to Dismiss. (Def.’s Mem. in Supp. Mot. to Dismiss (Def.’s Mot.) 1.) PBV moves to dismiss for lack of personal jurisdiction under Rule 12(b)(2) of the Superior Court Rules of Civil Procedure. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

**I**

**Facts and Travel**

Beginning in the 1960s, Antonio R. Freitas (Mr. Freitas) worked as a professional HVAC and refrigeration mechanic and contractor for approximately fifty years. *See* Compl. ¶¶ 1-5; *see also* Pls.’ Ex. 1 (Freitas’ Dep.) at 21:10-11. His work involved the installation, service, repair, and replacement of HVAC and refrigeration units and their parts. *See* Compl.; *see also* Freitas’ Dep. at 999:14-21.

---

<sup>1</sup> PBV was formerly known as “Industry Products Company” and was identified in the Complaint as such. *See* Compl.

On April 27, 2022,<sup>2</sup> Mr. Freitas filed a Complaint with this Court against various defendants, one of which is PBV. Following Mr. Freitas’ death, Anthony Freitas and Judith Parente, co-executors of the Estate of Antonio R. Freitas (collectively, Plaintiffs), were substituted as plaintiffs. Plaintiffs aver that Mr. Freitas was exposed to asbestos dust and fibers from the products he worked with and as a result developed malignant mesothelioma (an asbestos-related disease), suffered serious bodily injury, and died. (Compl. ¶ 10.) As relevant to this matter, Mr. Freitas recalled working with compressors manufactured by Copeland—specifically recalling that he replaced the gasket materials for Copeland’s compressors. *See* Freitas’ Dep. at 812:23-813:2; 882:21-883:21. He noted that it was “well-known back then that gaskets . . . had asbestos.” *Id.* at 890:19-20. Notably, PBV was Copeland’s principal gasket supplier. *See* Pls.’ Ex. 7 (Ramer Dep., 25:18-23, Mar. 1, 2022) (Ramer Dep.)).

PBV has moved to dismiss Plaintiffs’ Complaint for lack of personal jurisdiction. *See* Def.’s Mot. Plaintiffs have objected. *See* Pls.’ Opp’n. In their Complaint, Plaintiffs allege that PBV “conducted business in the state of Rhode Island and [has] produced, manufactured or distributed asbestos and/or asbestos-containing products with the reasonable expectation that such products would be used or consumed in [Rhode Island]” and PBV’s “products were so used or consumed in this state[.]” (Compl. ¶ 7.) Plaintiffs further assert that Mr. Freitas worked with and was exposed to the asbestos dust and fibers while working in Rhode Island. *See* Pls.’ Opp’n at 1, 4. Further, Mr. Freitas suffered and died while living in Rhode Island. *See id.* at 4.

Plaintiffs contend that PBV engaged Copeland to sell its asbestos-containing compressor gaskets with the understanding that Copeland sold its compressors nationwide. Pls.’ Opp’n at 6,

---

<sup>2</sup> Plaintiffs amended the complaint on August 3, 2022, and again on August 21, 2023. The Third Amended Complaint is the operative document. *See* Third Am. Complaint (hereinafter, Compl.).

13; *see also* Ramer Dep. at 32:6-8 (explaining that Copeland was a “nationwide brand” and PBV understood that its products “would be going around the country”). Thus, Plaintiffs assert that PBV made “efforts to serve a national (including Rhode Island) market.” (Pls.’ Opp’n at 16.) They claim that regardless of whether PBV directly or indirectly served the Rhode Island market, such service was not “random, isolated, or fortuitous” on PBV’s part, but rather PBV had “clear notice” of its exposure to lawsuits in Rhode Island. *Id.* at 16-17 (internal citations omitted). Moreover, Plaintiffs insist that PBV cannot insulate itself from suit in Rhode Island by claiming it is just an intermediary in the gasket-sale process. *See id.* at 19. PBV, however, urges that it did not have minimum contacts with the state of Rhode Island to sustain personal jurisdiction.

## II

### Standard of Review

It is well settled that “the sole function of a motion to dismiss is to test the sufficiency of the complaint.” *Rhode Island Affiliate, American Civil Liberties Union, Inc. v. Bernasconi*, 557 A.2d 1232, 1232 (R.I. 1989). “[D]efenses may at the option of the pleader be made by motion [including] . . . (2) [l]ack of jurisdiction over the person[.]” Super. R. Civ. P. 12(b).

When the Court is faced with a “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.” *Bendick v. Picillo*, 525 A.2d 1310, 1311-12 (R.I. 1987). The 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).

### III

#### Analysis

#### A

##### **Specific Personal Jurisdiction in Rhode Island<sup>3</sup>**

Our Supreme Court has held that “[t]o establish a *prima facie* showing of personal jurisdiction . . . , a plaintiff’s allegations must satisfy the demands of Rhode Island’s long-arm statute, [G.L. 1956] § 9-5-33.” *Cassidy*, 920 A.2d at 232. Section 9-5-33 provides “[e]very foreign corporation . . . 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[.]” Section 9-5-33. Further, our Supreme Court “has interpreted § 9-5-33 to permit the exercise of jurisdiction over a nonresident defendant to the fullest extent allowed by the United States Constitution.” *Martins v. Bridgestone Americas Tire Operations, LLC*, 266 A.3d 753, 757 (R.I. 2022). Whether a Court has “specific jurisdiction over a defendant requires a two-step inquiry: (1) determining whether the defendant has sufficient minimum contacts with the forum state and (2) determining whether the litigation offends traditional notions of fair play and substantial justice.” *Id.* at 757-58 (internal citations omitted).

As to minimum contacts, “a party makes a successful *prima facie* showing of specific jurisdiction over a defendant where the ‘claim sufficiently relates to or arises from any of a

---

<sup>3</sup> General personal jurisdiction need not be addressed in this decision, as PBV is not incorporated in Rhode Island, nor is its principal place of business in Rhode Island. *See St. Onge v. USAA Federal Savings Bank*, 219 A.3d 1278, 1283 (R.I. 2019) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014)) (“a court has general jurisdiction over a corporation in the state in which it is incorporated, where it has its principal place of business, and where the ‘corporation’s affiliations with the state are so continuous and systematic as to render it essentially at home in the forum state’”); *see also* Def.’s Mot. at 2; Pls.’ Opp’n at 1.

defendant's *purposeful* contacts with the forum.” *Id.* (quoting *Cassidy*, 920 A.2d at 233) (emphasis added). Indeed, “there must be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.” *Rose v. Firststar Bank*, 819 A.2d 1247, 1251 (R.I. 2003) (internal quotations omitted). The Court will look to both “quality and quantity of the . . . defendant’s contacts with the forum.” *Id.* at 1250 (internal quotation omitted).

Also referred to as the “stream of commerce” theory, a key inquiry for the Court is whether “[the defendant] should reasonably anticipate being haled into court there.” *World-Wide Volkswagen Corporation v. Woodson*, 444 U.S. 286, 297-98 (1980). The Supreme Court of the United States explained: “[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that *delivers its products* into the stream of commerce with the *expectation* that they will be purchased by consumers in the forum State.” *Id.* at 297-98 (emphasis added). Following *World-Wide Volkswagen Corporation*, the Supreme Court clarified: “it is the defendant’s actions, not his expectations, that empower a State’s courts to subject him to judgment.” *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 883 (2011). In other words, “it is not enough that the defendant might have predicted that its goods will reach the forum State.” *Id.* at 882; *see also Cary v. American Optical Corporation*, No. PC-2010-3263, 2013 WL 5508819, at \*3 (R.I. Super. Sept. 30, 2013) (“mere foreseeability that a defendant’s products will enter a forum is not enough”). Notably, many courts require “*something more* than that the defendant was aware of its product’s entry into the forum [s]tate through the stream of commerce in order for the [s]tate to exert jurisdiction over the defendant.” *Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County*, 480 U.S. 102, 111 (1987) (emphasis added).

For example, in *Ford Motor Company v. Montana Eighth Judicial District Court*, 592 U.S. 351 (2021), the Supreme Court upheld the lower court’s determination that Montana and Minnesota state courts had specific jurisdiction to hear cases regarding an allegedly defective automobile sold by the defendant. *Ford Motor Company*, 592 U.S. at 354. The Supreme Court reasoned that the defendant conducted “substantial business” in the forum states by “advertising, selling, and servicing” the allegedly defective model in those states. *Id.* at 355. In sum, the Supreme Court concluded that the defendant had “systematically served” the market of those states. *Id.* at 365. Thus, there was “a strong relationship among the defendant, the forum, and the litigation.” *Id.* (internal citations omitted); *see also Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774, 781 (1984) (holding that the defendant magazine publisher “continuously and deliberately exploited the [forum state] market” by “purposefully direct[ing]” “regular monthly sales of thousands of magazines [to the forum state]” and therefore, “must reasonably anticipate being haled into court there”).

This Court, too, has emphasized that “something more” is needed than simply placing one’s product into the “stream of commerce.” *Asahi Metal Industry Co., Ltd.*, 480 U.S. at 111. The deliberateness of a defendant’s conduct must be scrutinized. *Compare State v. Purdue Pharma L.P.*, No. PC-2018-4555, 2019 WL 3991963, at \*6 (R.I. Super. Aug. 16, 2019) (finding that personal jurisdiction over the defendant was proper where the defendant “directed a course of conduct aimed at deceptively marketing and selling opioids to Rhode Island providers” and directed “employment of a substantial number of sales representatives in Rhode Island”) *with Cary*, 2013 WL 5508819, at \*3 (“the mere fact that [the defendant] sold its products to distributors, which then sold the products to [d]ecedent’s Rhode Island-based employer, does not, by itself, demonstrate that [the defendant] took any deliberate action to send its products to Rhode Island”).

## B

### The Prima Facie Case for Specific Personal Jurisdiction

Plaintiffs' allegations regarding PBV's actions in Rhode Island fall short of a prima facie showing of jurisdiction. *See Bendick*, 525 A.2d at 1311-12. Indeed, PBV knew that Copeland was a "nationwide brand." *See* Ramer Dep., at 32:6-8. However, Plaintiffs have failed to allege that PBV specifically targeted Rhode Island with advertising, marketing, or the like. Plaintiffs make no allegations of deliberate action by PBV toward Rhode Island specifically. In *Ford Motor Company*, 592 U.S. at 355, the defendant targeted the forum states through advertising. Here, however, no "strong relationship" between PBV and Rhode Island is alleged. *See id.* at 365.

Plaintiffs have also failed to provide this Court with evidence regarding the "quantity" or "quality" of PBV's contacts with Rhode Island. *See Rose*, 819 A.2d at 1250. Plaintiffs established that PBV was Copeland's principal gasket supplier, but this Court is unaware of PBV's specific contacts with Rhode Island. *See* Ramer Dep., at 25:18-23. As such, this Court finds that PBV would not "reasonably anticipate being haled into court" in Rhode Island. *See World-Wide Volkswagen Corporation*, 444 U.S. at 297.

Accordingly, Plaintiffs have not pled facts sufficient to make out a prima facie case for specific personal jurisdiction over PBV to survive a Rule 12(b)(2) motion to dismiss.

## IV

### Conclusion

For the reasons set forth herein, Defendant's Motion to Dismiss is **GRANTED**. Counsel shall prepare the appropriate order for entry.



**RHODE ISLAND SUPERIOR COURT**

***Decision Addendum Sheet***

---

**TITLE OF CASE:** Anthony Freitas, et al. v. A.O. Smith Water Products Corporation, et al.

**CASE NO:** PC-2022-02370

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** August 20, 2024

**JUSTICE/MAGISTRATE:** Gibney, P.J.

**ATTORNEYS:**

**For Plaintiff:** Giuliana D’Esopo, Esq.

**For Defendant:** Peter Mathieu, Esq.; Alexandra B. Thomas, Esq.; Mark Nugent, Esq.; Katherine A. Merolla, Esq.; Timothy Keough, Esq.; Wayne E. George, Esq.; Shannon M. O’Neil, Esq.; Mark O. Denehy, Esq.; Danielle J. Mahoney, Esq.; Lawrence J. Cetrulo, Esq.; Michael J. Chefitz, Esq.; Kendra A. Bergeron, Esq.; Noelle Phelan, Esq.; Jonathan F. Tabasky, Esq.; Brian D. Gross, Esq.; David A. Goldman, Esq.; Megan Sullivan, Esq.; Stephanie Batchelder, Esq.; Clark Yudysky, Esq.; Mary C. Dunn, Esq.; Thomas Lyons, III, Esq.; Kenneth R. Costa, Esq.; Jennifer A. Whelan, Esq.; Richard M. Dighello, Jr., Esq.; Craig Waksler, Esq.; James R. Oswald, Esq.; Paul E. Dwyer, Esq.