

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

FILED
SEP 06 2016
22ND JUDICIAL CIRCUIT
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**MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)**

JAMES KOLOGENSKI)
)
Plaintiff,)
) No. 1622-CC00427
vs.)
) Division No. 29
THE ADEL WIGGINS GROUP, et al.,)
)
Defendants.)
)

ORDER

The Court has before it Defendant Genuine Parts Company's ("GPC") Motion to Dismiss for Lack of Personal Jurisdiction. The Court now rules as follows.

Plaintiff James Kologenski brought this action against GPC and others seeking damages for personal injuries sustained as a result of exposure to asbestos-containing products. Plaintiff alleges that he developed malignant pleural mesothelioma as a result of his exposure.

In response to Plaintiff's Seconded Amended Petition, GPC has filed a Motion to Dismiss for Lack of Personal Jurisdiction. In its Motion, GPC argues that it is not subject to specific personal jurisdiction because there has been no assertion of Missouri residence and the claims alleged do not arise out of, or relate to, conduct by GPC that took place in Missouri. GPC also asserts that it is not subject to general personal jurisdiction in Missouri as a matter of federal due process, as GPC is neither incorporated in Missouri nor does it have its principal place of business in Missouri. GPC notes that it is incorporated in Georgia and has its principal place of business in

Atlanta, Georgia. GPC further argues that the quantity and nature of GPC's limited connections with Missouri do not satisfy the jurisdictional requirements set forth in Daimler AG v. Bauman, 134 S.Ct. 746 (2014).

When deciding on a motion to dismiss for lack of personal jurisdiction, the allegations of the petition are given an intendment most favorable to the existence of the jurisdictional fact. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980). A court may assert personal jurisdiction over a defendant only if certain minimum contacts between Missouri and the defendant are established, *unless* one of the "traditional territorial bases of personal jurisdiction" exist--presence, domicile or consent. Bryant v. Smith Interior Design Grp., Inc., 310 S.W.3d 227, 232 (Mo. banc 2010).

Daimler, which is extensively relied on by GPC, states that "a court may assert jurisdiction over a foreign corporation to hear any and all claims against [it] only when the corporation's affiliations with the State in which suit is brought are so constant and pervasive as to render [it] essentially 'at home' in the forum State." 134 S. Ct. at 751. A corporation may fairly be regarded "at home" in its place of incorporation and in its principal place of business. Id. at 760.

As aforementioned, GPC is incorporated in Georgia and has its principal place of business there. GPC does not have corporate offices in the State of Missouri, but it has a certificate of authority to transact business in Missouri from the Missouri Secretary of State. It owns real property and has retail automotive parts stores in Missouri. It has employees in Missouri. GPC maintains a registered agent to accept service of process in Missouri, and it was served in this lawsuit via its Missouri registered agent.

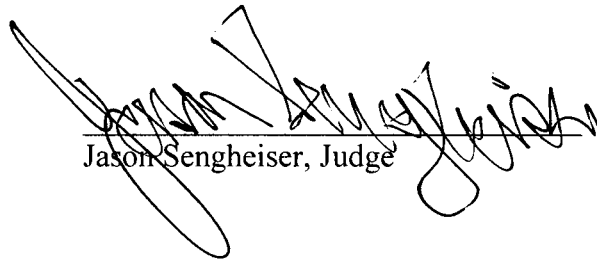
In this case, however, the Court finds that Plaintiff need not show that GPC has minimum contacts with or is “at home” in Missouri in order to bring a lawsuit against GPC here. Due process requires minimum contacts with the territory of the forum only where the defendant is not “present” in the forum, or where it has not consented to jurisdiction in the forum. Int’l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95 (1945). A corporation has long been considered “present” within the state when its agent is served with process in the state. State ex rel. K-Mart Corp. v. Holliger, 986 S.W.2d 165, 167 (Mo. banc 1999); Lafayette Ins. Co. v. French, 59 U.S. 404 (1856). Further, despite GPC’s arguments, Daimler, 134 S. Ct. 746, 751-754 (2014), did not affect the long-standing rule that a defendant is present or has consented to jurisdiction through the appointment of a registered agent in the state. In Daimler, the German defendant was not present, was not served, and did not do any business in California. In contrast, GPC maintains a registered agent in Missouri and has been served through its registered agent, and thus is considered present in Missouri. See State ex rel. K-Mart, 986 S.W.2d at 167.

Lastly, the Court acknowledges that in State ex rel. K-Mart, K-Mart conceded its contacts in Missouri were sufficient to satisfy due process requirements, and thus, the Court did not address the issue of whether registration of a foreign corporation and designation of an agent for service of process, without more, is always sufficient to confer jurisdiction. 986 S.W.2d at 168. In Smith v. Union Carbide Corp., Cause No. 1422-CC00457 (22nd Judicial Circuit, Division 18, January 12, 2015), the Court held that registration of a foreign corporation and designation of an agent for service of process alone were insufficient to determine general personal jurisdiction and that the Court had to conduct a due process analysis even when these things were present. However, the

Smith case is not controlling authority and this case is distinguishable from Smith where a wholly-owned subsidiary was being used to acquire jurisdiction over a parent company that had no Missouri contacts. As noted above, GPC has significant contacts and operations in Missouri in addition to the fact that it consented to jurisdiction in Missouri by maintaining a registered agent to accept service of process in Missouri.

THEREFORE, it is Ordered and Decreed that Defendant Genuine Parts Company's Motion to Dismiss for Lack of Personal Jurisdiction is denied.

SO ORDERED:



Jason Sengheiser, Judge

Dated: September 26, 2016