

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SAM BIBBEE,

Plaintiff,

v.

No. 2:19-cv-11-MRH

OX BODIES, INC.,

Defendant.

BRIEF IN SUPPORT OF RULE 12(B)(2) MOTION TO DISMISS

Defendant Ox Bodies, Inc. (hereafter, “Ox Bodies”), by and through its undersigned counsel, submits this brief in support of its Motion to Dismiss pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure.

I. INTRODUCTION

Ox Bodies designs and manufactures high-quality dump truck bodies, platforms, parts, and accessories, and it does so exclusively in Alabama. Sam Bibbee (“Plaintiff”) claims that he was injured due to an alleged defect in a ladder welded to a dump truck body manufactured by Ox Bodies. He initiated this lawsuit in Pennsylvania—presumably the state where the accident occurred, though he never actually says so—to recover damages. But Plaintiff’s pleading fails to identify any connection whatsoever between Ox Bodies’ conduct, this Commonwealth, and Plaintiff’s action. Accordingly, this Court lacks personal jurisdiction over these claims.

Indeed, even presuming Plaintiff’s accident took place in Pennsylvania, there can be no argument that Ox Bodies—an Alabama corporation with its principal place of business in Alabama—is “at home” in this Commonwealth, so general jurisdiction is a non-starter. *Goodyear Dunlop Tires Op’ns., S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011). And nearly 40 years ago, the Supreme Court debunked the notion that specific jurisdiction exists anywhere a

defendant's product might be found. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 296 (1980). "[M]ere injury to a forum resident is not a sufficient connection to the forum." *Walden v. Fiore*, 134 S. Ct. 1115, 1125 (2014). "Rather, it is the *defendant's conduct* that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Id.* at 1122 (emphasis supplied).

Here, the subject dump truck body was designed and manufactured by Ox Bodies exclusively in Alabama, and then distributed to a customer in Tennessee. If the product did, in fact, reach this Commonwealth through the stream of commerce, it did so through the independent actions of third parties, unrelated and unbeknownst to Ox Bodies. But the "unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984). The defendant *itself* must create a substantial connection between the forum state and the subject matter of the litigation in order to create specific jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985).

Under the circumstances, it certainly cannot be said that Plaintiff's "suit arises out of or relates to" Ox Bodies' contact with Pennsylvania. *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (internal quotations, citations, and modifications omitted). To the contrary, the only link between this Defendant, this lawsuit, and this forum is Plaintiff's presence in Pennsylvania. That doesn't cut it under controlling Supreme Court precedent. *Walden*, 134 S. Ct. at 1122.

Accordingly, Plaintiff has not and cannot meet his burden of proving the existence of general or specific jurisdiction over Ox Bodies. The Complaint should therefore be dismissed under Rule 12(b)(2).

II. BACKGROUND

Plaintiff alleges that he suffered severe personal injuries on August 20, 2018, when the hand rail of a ladder welded to the side of a dump truck body supposedly failed, causing him to fall six feet to the ground. (Dkt. 1-1, Compl. ¶ 6.) Although the situs of the incident is never specified, the Complaint does indicate that the accident occurred while Plaintiff—a resident of Prosperity, Washington County, Pennsylvania—was employed with Patalsky Homes, Inc. (“Patalsky Homes”), located in Export, Westmoreland County, Pennsylvania. (*Id.* ¶¶ 1, 6.) Ox Bodies will therefore assume for purposes of its Motion to Dismiss that the incident at issue occurred in this Commonwealth.

On or about November 21, 2018, Plaintiff commenced this action with the filing of a Complaint in the Court of Common Pleas of Allegheny County, a venue with no discernible connection to this litigation. Liability is premised on claims for strict liability, negligence, and breach of warranty against Ox Bodies, the alleged manufacturer of the dump truck body at issue. Ox Bodies timely removed this action to federal court on January 4, 2019, on the basis of diversity. (*See generally* Dkt. 1, Not. of Removal.)

Ox Bodies is a corporation organized and existing under the laws of the State of Alabama with its principal place of business in Fayette, Alabama. (Ex. A, Bell Decl. ¶¶ 4, 5).¹ While Ox Bodies is engaged in the design and manufacture of high-quality dump truck bodies, platforms, parts, and accessories used in a wide variety of industrial, construction, municipal, demolition, and agricultural settings, none of the activities relating to design, testing, development, engineering, or manufacturing of its products takes place in Pennsylvania. (*Id.* ¶¶ 6, 17, 23.)

¹ “A resolution of factual issues may be required to establish personal jurisdiction under a [Rule] 12(b)(2) motion and thus a party may introduce extrinsic evidence beyond the pleadings to do so.” *TNK Marine Transport, LLC v. Big 3 Diesel Repair, LLC*, No. 2:18-cv-1211, 2018 WL 6602214, at *2 (W.D. Pa. Dec. 17, 2018).

Indeed, Ox Bodies is not registered to do business in this Commonwealth; it does not maintain a registered office in this Commonwealth; it does not own, lease, rent, possess, operate or otherwise have an interest in any real property within this Commonwealth; and it does not maintain any inventory, equipment, or corporate records in this Commonwealth. (*Id.* ¶¶ 16, 18, 19, 21.) Along the same lines, none of Ox Bodies’ employees reside in Pennsylvania, and none of its offices, warehouses, or plants are located here. (*Id.* ¶¶ 20, 22.) In no way, shape, or form could Ox Bodies be considered “at home” in this Commonwealth.

The Complaint identifies the product at issue as an Ox Bodies dump truck body, Serial No. S161312184697AL, Model No. 18FT 227D (the “Subject Dump Truck Body”). (Compl. ¶ 4.) Assuming that to be the case, the Subject Dump Truck Body was manufactured by Ox Bodies in Fayette, Alabama, and up-fitted onto a Mack chassis on December 15, 2016. (Bell Decl. ¶¶ 7, 8.) On December 16, 2016, the Subject Dump Truck Body was sold and shipped by Ox Bodies to Tri-State Truck Center Memphis Inc. (“Tri-State”), a distributor located in Memphis, Tennessee. (*Id.* ¶ 9.)

From that point forward, Ox Bodies has no further independent knowledge regarding the ownership, sale, or use history of the Subject Dump Truck Body. (*Id.* ¶ 11.) However, upon information and belief, Tri-State sold the Subject Dump Truck Body to an entity known as V McGee Trucking Inc., whose website indicates that it is based in Mississippi. (*Id.* ¶ 10.) Ox Bodies was not a party to, nor did it direct, this transaction. (*Id.*)

As noted, Plaintiff alleges that this accident occurred while he was an employee of Patalsky Homes. (Compl. ¶ 5.) In connection with the submission of a pre-suit claim, Plaintiff’s counsel represented to Ox Bodies that Patalsky Homes is the current owner of the Subject Dump Truck Body. (Bell Decl. ¶ 13.) Ox Bodies has no information as to how the Subject Dump Truck

Body ostensibly came into the ownership of Patalsky Homes, except to say that Ox Bodies did not play any role in the transaction. (*Id.*)

The reality of the situation is that Ox Bodies never shipped, sold, or delivered the Subject Dump Truck Body anywhere in Pennsylvania, and it certainly did not design or intend the Subject Dump Truck Body for use specifically in Pennsylvania. (*Id.* ¶¶ 14, 15.) Finally, Ox Bodies did not perform any repair, maintenance, or other work on the Subject Dump Truck Body in Pennsylvania prior to the accident in this case. (*Id.* ¶ 14.) Simply put, there is no connection between this Commonwealth and Ox Bodies’ activities with regard to the design, manufacture, and distribution of the Subject Dump Truck Body.

III. STANDARD

Subject to constitutional limits, a federal district court may assert personal jurisdiction over a nonresident to the extent authorized by the state’s long-arm statute. FED. R. CIV. P. 4(k); *Marten v. Godwin*, 499 F.3d 290, 296 (3d Cir. 2007). Pennsylvania’s long-arm statute provides for jurisdiction “to the fullest extent” permitted under the Due Process Clause of the Fourteenth Amendment. 42 Pa.C.S. § 5322(b). Rule 12(b)(2) allows a defendant to challenge a court’s exercise of personal jurisdiction by way of motion to dismiss.

“Once a defendant challenges a court’s exercise of personal jurisdiction over it, the plaintiff bears the burden of establishing personal jurisdiction.” *D’Jamoos ex rel. Estate of Weingeroff v. Pilatus Aircraft Ltd.*, 566 F.3d 94, 102 (3d Cir. 2009) (citing *Gen. Elec. Co. v. Deutz AG*, 270 F.3d 144, 150 (3d Cir. 2001)).

A Rule 12(b)(2) motion, such as the motion made by the defendants here, is inherently a matter which requires resolution of factual issues outside the pleadings, i.e. whether in personam jurisdiction actually lies. Once the defense has been raised, then the plaintiff must sustain its burden of proof in establishing jurisdictional facts through sworn affidavits or other competent evidence. [T]herefore, at no point may a plaintiff rely on the bare pleadings

alone in order to withstand a defendant's Rule 12(b)(2) motion to dismiss for lack of in personam jurisdiction. *See International Ass'n of Machinists & Aerospace Workers v. Northwest Airlines, Inc.*, 673 F.2d 700 (3d Cir.1982). Once the motion is made, plaintiff must respond with actual proofs, not mere allegations.

Time Share Vacation Club v. Atl. Resorts, Ltd., 735 F.2d 61, 66 n.9 (3d Cir. 1984).

IV. ARGUMENT

"[D]ue process requires . . . that in order to subject a defendant to a judgment . . . he have certain minimum contacts with [a state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 61 S. Ct. 339, 343 (1941)). Since *International Shoe*, courts have recognized two types of jurisdiction: (i) general (or "all-purpose") and (ii) specific (or "case-linked"). *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco*, 137 S. Ct. 1773, 1779–80 (2017).

A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so continuous and systematic as to render them essentially at home in the forum State. Specific jurisdiction, on the other hand, depends on an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation. In contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.

Goodyear, 131 S. Ct. at 2851 (internal citations, quotations, and alterations omitted).

In this instance, neither general nor specific jurisdiction exists over Ox Bodies.

A. General Jurisdiction Is Lacking

The Complaint contains precisely zero well-pleaded allegations of fact that could even arguably justify the exercise of personal jurisdiction over Ox Bodies. The closest Plaintiff comes is in paragraph 2, where he alleges in boilerplate fashion—and implausibly so—that Ox Bodies

“regularly and continuously conducts business” in Allegheny County. This allegation is offered in the hope of justifying Plaintiff’s choice of venue in state court, not to establish personal jurisdiction. Even so, “the court need not consider merely conclusory claims, or legal conclusions in the complaint as establishing jurisdiction.” *NuCal Foods, Inc. v. Quality Egg LLC*, 887 F. Supp. 2d 977, 988 (E.D. Cal. 2012) (citations omitted).

Regardless, the Supreme Court in *Bauman* squarely “rejected the argument that general jurisdiction is appropriate whenever a corporation engages in a substantial, continuous, and systemic course of conduct—and clearly found that the only relevant facts for determining whether a corporation is ‘at home’ are its place of incorporation and its principal place of business.” *AM Trust v. UBS AG*, 78 F. Supp. 3d 977, 986 (N.D. Cal. 2015), *aff’d*, 681 F. App’x 587 (9th Cir. 2017). As already established, *see* Bell Decl. ¶¶ 4, 5, Ox Bodies is neither incorporated nor headquartered in Pennsylvania, and “[o]nly in an ‘exceptional case’ will general jurisdiction be available anywhere else,” *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014) (quoting *Bauman*, 571 U.S. at 139 n.19).

In only one instance, *Perkins v. Benguet Consol. Mining Co.*, 72 S. Ct. 413 (1952), has the Supreme Court ever found this “exceptional” standard to have been met. There, a Philippine mining corporation was sued in Ohio for a cause of action unrelated to its business activities in Ohio. *Id.* at 415. The Supreme Court noted that the president of the company, who was also the general manager and principal stockholder, had returned to his home in Ohio where he maintained an office on behalf of the company. *Id.* at 419. In describing the president’s activities in Ohio, the Court explained:

He kept there office files of the company. He carried on there correspondence relating to the business of the company and to its employees. He drew and distributed there salary checks on behalf of the company, both in his own favor as president and in favor of two company secretaries who

worked there with him. He used and maintained . . . two active bank accounts carrying substantial balances of company funds Several directors' meetings were held at his office or home in [Ohio]. From that office he supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines and he dispatched funds to cover purchases of machinery for such rehabilitation.

Id. Given these extensive in-state operations, the Court concluded that the corporation's president "carried on in Ohio a continuous and systematic supervision" of core aspects of the company's business, such that the exercise of general jurisdiction over the corporation in Ohio would not violate due process. *Id.* at 419-420.

When the facts of *Perkins* are contrasted against those involved here, it is beyond dispute that there is no general jurisdiction over Ox Bodies. Most significantly, Ox Bodies is not headquartered or incorporated in Pennsylvania. (Bell Decl. ¶¶ 4, 5.) It also has no property in Pennsylvania, and it makes no products in Pennsylvania. (*Id.* ¶¶ 19, 23.) It conducts no testing or development work in Pennsylvania. (*Id.* ¶¶ 17, 23.) It does not maintain corporate records in Pennsylvania, and it does not have employees in Pennsylvania. (*Id.* ¶¶ 20, 21.)

"[T]hose who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts as a general matter." *J. McIntyre Mach., ltd. v. Nicastro*, 131 S. Ct. 2780, 2787 (2011) (plurality). And it makes no difference that a manufacturer-defendant's products might be found in the forum state, as the so-called "stream-of-commerce metaphor" has no place in the general-jurisdiction analysis. *Goodyear*, 131 S. Ct. at 2854–55. Ox Bodies—an Alabama corporation with its principal place of business in Alabama—is not subject to general jurisdiction in Pennsylvania. Any suggestion otherwise is frivolous.

B. Specific Jurisdiction Is Lacking

The specific-jurisdiction inquiry is "defendant-focused," centering upon "the relationship among the defendant, the forum, and the litigation." *Walden*, 134 S. Ct. at 1121–22 (citation and

quotation marks omitted). “[T]he defendant’s *suit-related conduct* must create a substantial connection with the forum State.” *Id.* at 1121 (emphasis supplied). “When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State.” *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1781.

In determining whether there is specific jurisdiction, we undertake a three-part inquiry. First, the defendant must have purposefully directed its activities at the forum. Second, the litigation must arise out of or relate to at least one of those activities. And third, if the first two requirements have been met, a court may consider whether the exercise of jurisdiction otherwise comports with fair play and substantial justice.

D’Jamoos, 566 F.3d at 102 (internal citations, quotations, and modifications omitted). This is a “forum-by-forum, or sovereign-by-sovereign,” analysis, *Nicastro*, 131 S. Ct. at 2789, meaning that a defendant’s contacts with other states or the “national market” are immaterial, *D’Jamoos*, 566 F.3d at 104; *see also Nicastro*, 131 S. Ct. at 2789–90 (observing that a defendant might target the United States market but not be subject to specific jurisdiction in “any particular State”). “[W]hat is necessary is a deliberate targeting” of the forum state in which the lawsuit is pending. *O’Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 317 (3d Cir. 2007).

What Plaintiff must do, therefore, is to come forward with record evidence proving that, with regard to this particular lawsuit, (i) Ox Bodies has purposefully directed its activities toward Pennsylvania; (ii) his product-liability claims arise out of Ox Bodies’ activities in Pennsylvania; and (iii) the exercise of specific jurisdiction would be reasonable under the circumstances. This he cannot do.

Indeed, Plaintiff’s Complaint is devoid of any facts which might establish specific jurisdiction over Ox Bodies, and the record evidence submitted by Ox Bodies along with this Motion effectively forecloses the possibility that Plaintiff might meet his burden of proof moving forward. What the sworn declaration of Mr. Bell shows is that *none* of Ox Bodies’ conduct

which supposedly gives rise to Plaintiff's claims has any connection to Pennsylvania. Whereas Plaintiff alleges that there was a defect in a ladder welded to the Subject Dump Truck Body, the fact remains that:

- Ox Bodies did not design the Subject Dump Truck Body in Pennsylvania;
- Ox Bodies did not manufacture the Subject Dump Truck Body in Pennsylvania;
- None of Ox Bodies' activities relating to design, testing, product development, product engineering, or manufacturing of dump truck bodies takes place in Pennsylvania;
- Ox Bodies played no role in the Subject Dump Truck Body reaching Pennsylvania;
- Ox Bodies did not design the Subject Dump Truck Body for use specifically in Pennsylvania or otherwise target the Pennsylvania market; and
- Ox Bodies did not perform any repair, maintenance, or other work on the Subject Dump Truck Body in Pennsylvania prior to the accident in this case.

(Bell Decl. ¶¶ 8–24.)

“The constitutional touchstone of the determination of whether an exercise of personal jurisdiction comports with due process remains whether the defendant purposefully established minimum contacts in or purposely directed its activities toward residents of the forum state.” *Resnick v. Manfredy*, 52 F. Supp. 2d 462, 466 (E.D. Pa. 1999) (quotation marks omitted). Plaintiff lacks any evidence in support of this foundational requirement. Indeed, what Ox Bodies has demonstrated is that the Subject Dump Truck Body was designed and manufactured in Alabama, and then distributed to a third-party distributor in Tennessee. Ox Bodies in no way targeted Pennsylvania; in fact, it had no idea the Subject Dump Truck Body had even reached Pennsylvania until it received Plaintiff's pre-suit claim.

And even if Ox Bodies could have somehow foreseen that the Subject Dump Truck Body might reach this Commonwealth, “‘foreseeability’ alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause.” *World-Wide Volkswagen*, 444 U.S. at

295. “The transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State.” *Nicastro*, 131 S. Ct. at 2788. The “stream of commerce” theory, therefore, offers no recourse to Plaintiff. And, in any event, the theory has been repeatedly rejected by the Third Circuit as inconsistent with due process limitations on personal jurisdiction. *See Shuker v. Smith & Nephew, PLC*, 885 F.3d 760, 780 (3d Cir. 2018) (“We thus have no cause to revisit our Court’s precedent on this issue, and we decline to adopt the [plaintiffs’] stream-of-commerce theory of specific personal jurisdiction.”).

V. CONCLUSION

The Supreme Court has refused to sign off on any “grasping” scheme which would render a manufacturer subject to jurisdiction in all 50 states. *Bauman*, 571 U.S. at 139. It has also roundly rejected the notion that a manufacturer is amenable to suit wherever it might be accused of somehow having caused an injury. *World-Wide Volkswagen*, 444 U.S. at 295. Were it otherwise, “[e]very seller of chattels would in effect appoint the chattel his agent for service of process.” *Id.* This, in turn, would destroy the “degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.” *Id.* at 297. In guaranteeing “the fair and orderly administration of the laws,” *Int’l Shoe*, 326 U.S. at 319, the Due Process Clause protects companies like Ox Bodies from being dragged into a forum whose only connection to the underlying litigation is the plaintiff. *Walden*, 134 S. Ct. at 1122.

“Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for

litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.” *World-Wide Volkswagen*, 444 U.S. at 294 (citing *Hanson v. Denckla*, 357 U.S. 235, 251, 254 (1958)).

WHEREFORE, Defendant Ox Bodies, Inc. respectfully requests the entry of an order dismissing the Complaint under Rule 12(b)(2) for lack of personal jurisdiction.

Dated: January 9, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this the 9th day of January, 2019, I electronically filed the foregoing with the Clerk of the Court using the ECF system which will send notification of such filing to the following counsel of record.

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