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Western District Case Notes

Personal Jurisdiction

KEVIN HOGAN

SEAN MCPHEE

In Peerless Ins. Co. v. Broan-Nutone, LLC, No. 19-cv-01699-GWC (July 21, 2020) — a product liability case removed from state court — plaintiff asserted causes of action against the manufacturer of an allegedly defective product, as well as two out-of-state manufacturers of components used in that product. The component manufacturers then moved to dismiss for lack of personal jurisdiction, contending that New York's long-arm statute did not supply a basis for jurisdiction over them. Plaintiff opposed, arguing that the component manufacturers could have foreseen the potential for consequences in New York because they knew their components would be used in the product, and that it would be sold in all states, including New York. The Court agreed, but noted that foreseeability alone did not end the analysis, observing that "a forum may exercise jurisdiction over an out-of-state corporate defendant only if the defendant has certain minimum contacts with the forum such that maintenance of the suit does not offend traditional notions of fair play and substantial justice." The Court then found that the component manufacturers' partnerships with retailers in New York, and their operation of interactive websites permitting New York customers to order their products, were insufficient, holding that binding precedent requires that the defendant itself create the minimum contacts, and those contacts must be with the forum state itself, not simply with persons who reside there. Finally, the Court reiterated that registration as an active foreign business corporation in New York alone did not provide a basis for personal jurisdiction over the component manufacturers, and denied plaintiff's request for the opportunity to conduct jurisdictional discovery.

Preemption

In English et al. v. Bayer Corporation et al., No. 19-cv-6615-DGL (June 25, 2020), plaintiffs, former users of defendants' medical devices, sued the manufacturers and marketers of the devices for personal injuries under various state common law theories. Defendants moved to dismiss the complaint, on grounds that the claims were entirely preempted by the Medical Device Amendments ("MDA") to the Federal Food, Drug, and Cosmetic Act ("FDCA"). The parties agreed that the devices were "Class III" devices regulated by the MDA and subject to the FDCA's premarket approval process. Before examining the specific claims asserted by plaintiffs, the Court noted that multiple Federal and State Courts nationwide had previously dismissed, on express or implied preemption grounds, claims involving the subject device which were nearly identical to those asserted by plaintiffs here. Finding no reason to depart from that consistent and well-settled precedent, the Court granted defendant's motion to dismiss the complaint. According to the Court, plaintiffs failed to distinguish their claims to bring them outside the scope of the preemption provisions of the MDA, or otherwise to sustain plausible parallel claims under New York law. The Court then denied plaintiffs' cross motion to file and serve an amended complaint, because the new proposed claims were largely identical to the earlier claims and therefore futile. Finally, defendants sought sanctions on grounds that the claims from the current action had already been dismissed in an earlier action. The Court found that the plaintiffs' tactics clearly fell within the scope of the duplicative litigation that Rule 41(b) is designed to address, but declined to award sanctions because plaintiff was financially unable to pay the defendants' costs associated with the prior action. The Court cautioned plaintiff that filing any additional actions against the same parties based on the same operative facts could result in a reexamination of its decision.

Abstention & Preliminary Injunctions

In Esos Rings, Inc. v. Tokenize Inc., 20-cv-06289-CJS-MWP (July 7, 2020) — a patent infringement action concerning plaintiff's communication-based computer that an individual can wear on his or her finger to replace credit cards and house keys — defendant moved to stay the action pending the resolution of a state court case, and plaintiff moved for a preliminary injunction preventing defendant from selling its competing product prior to the resolution of the action. Observing first that federal courts rarely refuse to exercise their jurisdiction by staying an action in favor of another pending in state court, and do so only after a careful balancing of important factors, the Court found that there were no exceptional circumstances warranting abstention, and denied defendant's motion. Turning then to plaintiff's request for a preliminary injunction, the Court noted that the U.S. Supreme Court has discarded the presumption of irreparable harm incident to patent infringement, thereby requiring plaintiff to demonstrate that its potential damages could not be compensated by monetary damages. The Court found that plaintiff failed to meet that burden, which relieved the Court of the need to engage in an analysis of likelihood of success on the merits, balance of hardships, or the impact of a preliminary injunction on the public interest. Accordingly, plaintiff's motion was denied.

CERCLA

In Honeywell International Inc. v. R.R. Donnelly Ampersands Sons Company et al., No. 16-cv-969-WMS (July 7, 2020), plaintiff sought reimbursement of remediation costs under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") against defendants whose corporate affiliates or predecessors were prior owners of the site. Defendants brought a third-party action for contribution against a municipality that acquired title to the parcel through tax foreclosure and later engaged in demolition work at the site, and an electric utility that acquired a right of way within the parcel in order to perform certain utility-related work. In both cases, the third-party plaintiff alleged the work performed by the third-party defendants contributed to the need for environmental cleanup at the site. Both third-party defendants moved to dismiss the contribution claims on grounds that they did not plausibly allege a right to recovery under CERCLA, and the Court granted both motions. The Court first observed that the city could not be liable for CERCLA costs merely because it acquired ownership of a portion of the site through tax delinquency. The Court then concluded that the third-party plaintiffs had not plausibly alleged a CERCLA "arranger" claim against the city because they had not alleged it was engaged in a commercial function, as opposed to acting in its sovereign capacity, when the city demolished the structures on the site. The Court similarly concluded that a CERCLA claim had not been plausibly alleged against the electric utility when the only allegation made was that it may have disturbed the subsoil and added hazardous substances on the right of way. The Court held that the third-party plaintiffs

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needed to allege more than that electric utility had conducted unspecified earth work in order to state a plausible CERCLA contribution claim.

Venue

In Studco Bldg. Sys. US, LLC v. 1st Advantage Fed. Credit Union, No. 19-cv-06819-FPG (July 30, 2020), plaintiff brought suit against a Virginia-based credit union and a "John Doe" defendant, claiming that the credit union knowingly assisted Doe in a fraudulent scheme that caused it to transfer more than $500,000 to Doe, who was impersonating plaintiff's suppliers. The credit union moved to dismiss based on lack of personal jurisdiction or, in the alternative, to transfer the action to the Eastern District of Virginia where its operations are located. Noting first that district courts commonly resolve challenges to personal jurisdiction before addressing motions to transfer venue, the Court observed that there is no requirement that it do so, and proceeded to address the venue application at the threshold. The Court then reviewed the requirements of 28 U.S.C. § 1404(a) and the factors that are considered when deciding such a motion, including the convenience of witnesses and parties, the locus of operative facts, and the interests of justice, and determined that they favor transferring the case. Specifically, plaintiff itself alleged that the fraudulent scheme was carried out in Virginia, and its pleading also suggested that the critical evidence was located there, both of which "strongly favor" transferring venue. And, while the Court recognized that the alleged injury took place in New York, plaintiff did not contend that it would face any hardship or inconvenience if it were required to litigate in Virginia. As a result, the Court found that the "nerve center" of the case is clearly in Virginia, transferred the case, and denied the balance of the motion as moot.

Discovery Stay

In Buffalo Emergency Associates, LLP et al. v. UnitedHealth Group, Inc. et al., No. 19-cv-1148-WMS (June 16, 2020), after defendant moved to dismiss the complaint, plaintiffs sought a scheduling order and defendants moved for a stay of discovery. The Court held that, in its discretion and upon a showing of good cause, discovery should be stayed pending resolution of the motion to dismiss. The Court found that defendants had filed a comprehensive motion to dismiss that might shape the number and nature of the claims going forward in a manner that could significantly impact the breadth of discovery. Proceeding with discovery before that motion was decided could cause the parties and Court to expend unnecessary time and resources. In addition, plaintiffs would not be unfairly prejudiced by a stay, particularly because money damages, as opposed to equitable relief, was at stake.

Clawing Back Privileged Materials

In M&T Bank Corp. v. State Nat'l Ins. Co., 18-cv-00787-EAW-MJR, plaintiff sought to "claw back" two spreadsheets it claimed were inadvertently produced in discovery, contending they were protected by both the attorney-client privilege and the work product doctrine. Defendant disagreed with plaintiff's analysis, and moved to preclude plaintiff from clawing the spreadsheets back. In opposition to the motion, plaintiff submitted an affidavit from its Associate General Counsel, attesting that the spreadsheets were prepared at the request of plaintiff's counsel to convey factual information so that legal advice could be provided to plaintiff. Noting that the attorney-client privilege protects not only communications from a lawyer to his client conveying legal advice, but also "the giving of information to the lawyer to enable him [or her] to give sound and informed advice," the Court found that the spreadsheets were precisely the type of communication that is protected from disclosure by the attorney-client privilege. The Court also found that the spreadsheets were protected from disclosure by the work product doctrine because they were prepared by plaintiff's employees at the direction of counsel and would not have been created but for an ongoing investigation by the Department of Justice. Finally, the Court rejected defendant's suggestion that, even if the spreadsheets were privileged, the privilege was waived because plaintiff put the contents of the spreadsheets "at issue" in the case. In doing so, the Court observed "that a privileged communication contains information relevant to an issue the parties are litigating does not, without more, place the contents of the privileged communication itself 'at issue' in the lawsuit." Instead, the doctrine applies only "when the party has asserted a claim or defense that he intends to prove by the use of the privileged materials." Because that was not the case here, the motion was denied and defendant was ordered to return the spreadsheets and destroy any copies of it, as well as the emails to which they were attached.

Discovery Sanctions

In Mobius et al. v. Quest Diagnostics Clinical Laboratories, Inc. et al., No. 19-cv-499-CR (June 24, 2020), defendants moved to dismiss the complaint and for an award of reasonable expenses after plaintiff failed to respond to defendants' first set of interrogatories. Following an earlier and nearly identical discovery dispute in State Court, and after the lawsuit was removed to Federal Court, the Court directed defendants to conform their pending discovery requests to the Federal Rules. Plaintiffs failed to object or respond to the new demands, and then failed to timely respond to the ensuing motion to compel. Fifteen days after that deadline, they finally opposed the motion and served their discovery responses. The Court concluded that no good cause existed for plaintiffs' failure to oppose the motion or respond to the discovery in a timely fashion, that their noncompliance with the Federal Rules was willful, and that some form of a sanction was warranted. Nevertheless, according to the Court, plaintiffs' conduct fell short of a "total failure to respond" and thus did not warrant outright dismissal of their lawsuit when a less drastic sanction might suffice. Because plaintiffs had not previously been warned by the Court, and there was no reason to believe a monetary sanction would be ineffective in ensuring future compliance, the Court held that the relevant factors weighed against dismissal. But because plaintiffs' failure to respond was not substantially justified and thwarted the just, speedy, and inexpensive determination of the lawsuit, an award of attorney's fees was appropriate.

Kevin M. Hogan is the Managing Partner at Phillips Lytle LLP. He concentrates his practice in litigation, intellectual property and environmental law. He can be reached at khogan@phillipslytle.com or (716) 847-8331.

Sean C. McPhee is a partner with Phillips Lytle LLP where he focuses his practice on civil litigation, primarily in the area of commercial litigation. He can be reached at smcphee@phillipslytle.com or (716) 504-5749.