

PREPARED BY THE COURT

MAGNETEK INC,

Plaintiffs,

vs.

MONSANTO COMPANY,
PHARMACIA LLC f/k/a MONSANTO
and SOLUTIA, INC.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

BERGEN COUNTY

DOCKET NO. BER-L-3362-17

CIVIL ACTION

OPINION

Argued: October 13, 2017

Decided: October 18, 2017

Honorable Robert C. Wilson, J.S.C.

John Altieri, Esq., Joseph Schmit, Esq., and Ryan Lema, Esq. appearing for the Plaintiffs Magnetek Inc. (from the Law Office of John Altieri, Esq. and Phillips Lytle LLP respectively)

Andrew Hamelsky, Esq., Elizabeth Blackwell, Esq., and Christopher Hohn, Esq. appearing for the Defendants Monsanto Company, Pharmacia LLC, and Solutia Inc. (from the law offices of White and Williams, LLP and Thompson Coburn LLP respectively).

FACTUAL BACKGROUND

The instant matter comes by way of Monsanto Company, Pharmacia LLC, and Solutia Inc.'s (hereinafter "Defendants") motions to dismiss, first as to the claims against Monsanto Company ("New Monsanto") and Solutia Inc., and then against the Plaintiff's remaining claims against Pharmacia ("Old Monsanto") for failure to join New Monsanto and Solutia Inc. as indispensable parties.

The conflict underlying Plaintiff Magnetek's claim results from the execution of a Special Undertaking Agreement which its predecessor company, Universal Manufacturing Corporation ("UMC") executed with Old Monsanto (now Pharmacia) relating to the sale of polychlorinated biphenyls ("PCBs") in 1972. Magnetek filed this case to obtain a declaratory judgment in order to relieve it from any purported obligations it has to the Defendants under the Special Undertaking

Agreement. The agreement provided in part that UMC would defend and indemnify Old Monsanto “from any and all liabilities, claims, damages, penalties, actions, suits, losses, costs and expenses...arising out of or in connection with the receipt, purchase, possession, handling, use, sale or disposition of” PCBs which UMC had purchased from Old Monsanto.

Similar agreements were executed by Old Monsanto relating to their continued production and sale of PCBs from 1935 through 1979, during which time they were the sole producer of such chemical compounds in the United States. At the time that the Special Undertaking Agreement was executed between UMC and Old Monsanto, Old Monsanto was a Delaware corporation with its principal place of business in Missouri, while UMC was a New Jersey corporation with its principle place of business in New Jersey. Subsequently, in 1986, UMC and Magnetek merged, with Magnetek as the surviving company. As a result, Magnetek is a party to the Special Undertaking Agreement.

Following the execution of the Special Undertaking Agreement, Old Monsanto underwent a corporate restructuring which resulted in the creation of Defendants “New” Monsanto Company and Solutia Inc. On September 1, 1997 Solutia Inc. was incorporated in the State of Delaware as a wholly-owned subsidiary of Old Monsanto in order to operate Old Monsanto’s chemical business. The agreement memorializing the spin-off of Solutia was also executed on September 1, 1997 and stated that Old Monsanto assigned its chemical assets including any rights under the Special Undertaking Agreement to Solutia. Both Old Monsanto and Solutia were Delaware corporations at the time, and the agreement stated that Delaware law would control.

Similarly, “New” Monsanto (Defendant Monsanto Company) was formed as a wholly-owned subsidiary and spun off by Old Monsanto in 2000. By this time, Old Monsanto had merged with and was doing business as Pharmacia. Defendants contend that Monsanto Company’s rights under the Special Undertaking Agreement were created through a 2008 “Amended and Restated

Settlement Agreement” between Solutia, SFC LLC, and New Monsanto. This agreement was a result of Solutia’s 2003 bankruptcy proceedings and required Solutia to use commercially reasonable efforts to enforce the Special Undertaking Agreement for the benefit of Monsanto Company, which assumed financial responsibility for Legacy Tort Claims and liabilities related to Legacy Sites. These liabilities included certain PCB litigation claims. Defendants claim that (1) all the signatories to this agreement were Delaware Corporations at the time of the execution, and that (2) the agreement specifies that Delaware law controls.

The disputes between the parties to this case have resulted in two separate lawsuits. The first was the instant case, filed by Plaintiff Magnetek, in the midst of negotiations with the defendants about the Special Undertaking Agreement. As explained above, Magnetek seeks a declaratory judgment releasing them from any purported obligations pursuant the Special Undertaking Agreement. The second lawsuit was subsequently filed by the Defendants in Missouri state court alleging breach of contract and misrepresentation.

RULE OF LAW

Under the New Jersey Court Rules, a party may raise a defense of lack of in personam jurisdiction through a motion to dismiss. According to R. 4:6-2(b) a “lack of jurisdiction over the person” may be made by motion to the court before any pleading is made. R. 4:6-2(b). The Appellate Division has explained: A court’s jurisdiction is a “mixed question of law and fact that must be resolved at the outset before the matter may proceed...” Rippon v. Smigel, 449 N.J. Super. 344, 359 (App. Div. 2017) (quoting Citibank, N.A. v. Estate of Simpson, 290 N.J. Super. 519, 532 (App. Div. 1996). A defendant is subject to general jurisdiction when that defendant has “maintained continuous and systematic activities in the forum state...irrespective of its relation to

the state.” Rippon, 449 N.J. Super. at 358-59 (quoting Lebel v. Everglades Marina, Inc., 115 N.J. 317, 323 (1989)). A court may exercise only specific jurisdiction over a defendant when the cause of action arises “directly out of the defendant’s contacts with the forum state” and that defendant has “minimum contacts” with the jurisdiction. Id. at 359.

The plaintiff has the burden to show that there are sufficient facts to support a finding of personal jurisdiction over the defendant. Id. at 360. Further, the courts should allow for jurisdictional discovery unless the plaintiff’s claims are “clearly frivolous”. Id. (quoting Toys "R" Us, Inc. v. Step Two, S.A., 318 F.3d 446, 456 (3d Cir. 2003)). New Jersey Courts have generally held that “the record must support the existence of disputed or conflicting facts to warrant jurisdictional discovery.” Id.

DECISION

The Defendants’ motions to dismiss are denied subject to further jurisdictional discovery proceedings. As stated above, New Jersey Courts have generally allowed for jurisdictional discovery proceedings in order to develop a record of facts which with to the make necessary jurisdictional findings before litigation commences. See Rippon, 449 N.J. Super. at 360 (determining that the trial court had prematurely determined issues of jurisdiction before an adequate record was developed through discovery).

Here, the Plaintiff has asserted that Defendants Solutia has a multitude of contacts with New Jersey, including real estate ownership, operation of a manufacturing plant, business registration, and the designation of a registered agent for service in New Jersey. Plaintiff has also shown that Defendant Monsanto Company is registered to do business in New Jersey, has a registered agent in New Jersey, and appears to have employees working in the state. However, the Defendants argue that Solutia and Monsanto Company are both incorporated in Delaware and that

neither company has taken any action giving rise to the litigation in the state of New Jersey. They further argue that the only action taken that relates to New Jersey is the execution of the Special Undertaking Agreement, which cannot provide for jurisdiction over Solutia and Monsanto Company because they did not exist at the time of the agreement's execution.

This Court has determined that the Defendants' motions to dismiss must be denied to allow for further jurisdictional discovery proceedings. Considering the disputed, fact sensitive nature of the Defendants' corporate structure and activities, a more robust record must be cultivated by the Plaintiff in order for this Court to make the necessary determination as to its jurisdiction over the Defendants. Therefore, the Defendants' motion to dismiss the claims against Solutia and Monsanto Company is hereby denied. As a result, the court must also deny the Defendants' companion motion to dismiss for failure to join indispensable parties because no determination as to the ability to join the Defendants can be made at this time.

For the foregoing reasons, Defendants' two Motions to Dismiss are **DENIED**.

It is so ordered.