

# MASSACHUSETTS Lawyers Weekly

Part of the  BRIDGETOWER MEDIA network

■ SEPTEMBER 13, 2024

## German manufacturer can't be haled into Massachusetts court

Suit sought indemnification for workplace injury

■ PAT MURPHY

A German manufacturer could not be sued in Massachusetts for indemnification of damages claimed by a temporary worker who alleged he lost three fingers while cleaning a dough machine used at a Haverhill plant, a Superior Court judge has held.

In 2017, plaintiff Luis H. Chalas was employed as a temporary worker at a plant operated by defendants Cedar's Mediterranean Foods and International Bakers. The plaintiff sued the defendants for negligence, alleging that the accident occurred when the dough machine turned on without notice.

Cedar's responded by filing a third-party complaint for indemnification and contribution against the German company that had made the dough machine, Werner Pfleiderer Lebensmitteltechnik GmbH. The manufacturer moved to dismiss, arguing that its business contacts with Massachusetts were insufficient to establish personal jurisdiction under the state's long-arm statute.

Judge Lynn C. Rooney agreed, concluding that third-party plaintiff Cedar's failed to establish long-arm jurisdiction under G.L.c. 233A, §3(a), the "transacting any business in this commonwealth clause," or under §3(d), which requires the showing of tortious injury within the commonwealth caused by a person's out-of-state act or omission.

In addition, §3(d) requires a showing that the person "regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this commonwealth."

In that regard, the judge concluded that third-party defendant WP-L could not be deemed an agent or subsidiary of WP USA, a vendor that Cedar's argued did conduct business in Massachusetts and which appeared from information on the WP USA website to be tied to WP-L.

"At best, the information on WP USA's website shows that,

at one time, WP-L and WP USA shared a common owner, Horstmann Group, and that they belong to the same brand, WP Bakery Group," Rooney wrote. "However, the description of the company's history does not demonstrate that WP-L controls WP USA or that the two companies have common management."

The 13-page decision is *Chalas v. Cedar's Mediterranean Foods, Inc., et al. v. Werner Pfleiderer Lebensmitteltechnik GmbH*, Lawyers Weekly No. 12-034-24.

### Jurisdictional limits

Boston attorney Peter M. Durney, who represents third-party defendant WP-L, said the decision is important because it reinforces the state's long-arm statute as a barrier to attempts to file suit against a foreign entity in Massachusetts.

Moreover, Durney said Chalas is significant because it recognizes that, even after the U.S. Supreme Court's 2021 seminal decision in *Ford Motor Company*



*The judge basically concluded that there was no jurisdiction because these alleged contacts with Massachusetts either didn't really exist or didn't amount to much.* —Peter M. Durney

*v. Montana Eighth Judicial District Court*, a foreign company's maintenance of a website accessible to Massachusetts residents — without more — does not convey jurisdiction over that foreign entity in Massachusetts.

The Supreme Court in *Ford* held that, where a manufacturer serves a market for a product in a state and that product causes injury in the state to one of its residents, the state's courts may entertain the resulting lawsuit. According to Durney, some litigators viewed *Ford* as essentially putting a brake on motions to dismiss for lack of jurisdiction.

"The reality is that, in Massachusetts, you start with the long-arm statute before you get to any constitutional issue — it's a two-prong analysis," Durney said. "In the *Chalas* decision, the judge looked very closely at jurisdictional analysis embedded in the long-arm statute. The judge basically concluded, as we thought she would, that there was no jurisdiction because these alleged contacts with Massachusetts either didn't really exist or didn't amount to much."

*Chalas* stands for the proposition that, in the wake of *Ford*, there is still the opportunity for a foreign

defendant to bring a motion to dismiss when it does not do any direct business with Massachusetts and does not have any property or employees in the state, Durney said.

"Rather than abandoning the idea in the wake of *Ford* that a motion to dismiss is never going to be successful, *Ford* is actually helpful in a lot of respects," Durney said.

In her opinion, Rooney repeatedly cites the Supreme Judicial Court's 2023 decision in *Doucet, et al. v. FCA US LLC, et al.* In *Doucet*, a products liability case arising from an automobile accident, Durney unsuccessfully argued that a Michigan automaker's contacts with Massachusetts were insufficient for purposes of establishing long-arm jurisdiction. Instead, the SJC held that the complaint against the defendant should not have been dismissed because the automaker, through its predecessor, had transacted business in the commonwealth.

Braintree PI attorney Cathryn L. Crowley said she was not surprised by the outcome in *Chalas*.

"Under the facts that the court cited, [the third-party plaintiff] just could not prove any direct contact with Massachusetts," Crowley said. "The case law has

**CHALAS V. CEDAR'S MEDITERRANEAN FOODS, INC., ET AL. V. WERNER PFLEIDERER LEBENSMITTELTECHNIK GMBH**

**THE ISSUE:** Can a German manufacturer be sued in Massachusetts for indemnification of damages claimed by a temporary worker who alleged he lost three fingers when cleaning a dough machine used at a Haverhill plant?

**DECISION:** No (Superior Court)

**LAWYERS:** Robert R. Pierce of Pierce & Mandel, Boston (third-party plaintiff Cedar's Mediterranean Foods)

Peter M. Durney and Steven D. Procopio, of Smith Duggan Cornell & Gollub, Boston (third-party defendant Werner Pfleiderer Lebensmitteltechnik GmbH)

been pretty clear that just because a company has a website doesn't mean you're going to be able to bring them into state court here. You certainly need more."

Brett R. Corson, a products liability attorney in Boston, said that the judge made the right call in dismissing the third-party complaint against WP-L.

"This company has taken great pains to separate itself, to remain a German entity," Corson said. "It has designated a U.S. distributor and, beyond that, doesn't have any control where its products go. In *Doucet*, the plaintiff was able to establish a chain of commerce for that vehicle from the time it came off the assembly line to the time it was involved in the accident."

Counsel for third-party plaintiff Cedar's did not respond to a request for comment.

### **Unsafe machine?**

According to court records, plaintiff Chalas was employed by a staffing agency when he was injured on May 25, 2017, while working at a Haverhill plant operated by defendants Cedar's and Bakers. The plaintiff alleged that when he reached into the dough machine to begin cleaning, the machine turned on and severed three of his fingers.

In his negligence suit against Cedar's and Bakers, the plaintiff alleged that his injuries were caused by the defendants' failure to maintain a safe work environment. In particular, he alleged that the machine lacked guards to protect a worker's hands from being exposed to the blades of the machine. The plaintiff further alleged that the machine should have had a control to prevent the machine from cycling while it was being cleaned.

In Cedar's third-party complaint against WP-L, the company alleged claims for breach of express and/or implied warranty against the German manufacturer, arguing that the dough machine was unsafe, not of merchantable quality, and unfit for its intended use.

WP-L moved to dismiss, and the court granted the third-party plaintiff limited jurisdictional discovery. Jurisdictional facts in the record revealed that WP-L is a wholly owned subsidiary of JH III GmbH. WP-L, which is based Dinkelsbuhl, Germany, and man-

ufactures machines used in the baking industry.

WP-L makes all its products in Germany and otherwise is not registered to do business in Massachusetts. The manufacturer also does not have offices or assets in the commonwealth. Further, the company does not sell machines directly to any consumers, using distributors instead.

For example, the dough machine that allegedly caused Chalas' injuries — a "Tewimat 8" — was sold to JBS-Process Engineering sometime after its manufacture in 1999. WP-L had no role in the resale of the Tewimat 8 that led to the machine's entry into the Massachusetts market.

### **Third-party complaint dismissed**

In opposing WP-L's motion to dismiss, Cedar's argued that personal jurisdiction arose under §3a of the long-arm statute, and that WP-L conducted business in Massachusetts through WP USA.

However, apart from rejecting Cedar's argument that the WP USA website demonstrated that the company was WP-L's subsidiary or agent, Rooney found unconvincing purchase orders evidencing WP-L's sale of machines to a distributor, Kemper Baker Systems.

While WP-L admitted that it sold its machines to Kemper, WP-L contended it had no control over products once they were purchased by Kemper.

"Here, the Court concludes that the purchase orders, by themselves, do not show that WP-L knew that its products could be used in Massachusetts," Rooney wrote. "[Cedar's] has not proffered any evidence regarding the circumstances that gave rise to the Purchase Orders, any communications between WP-L and Kemper regarding the Purchase Orders, or evidence that WP-L received copies of the Purchase orders when the orders were placed."

Moreover, Rooney wrote that even if the court were to assume WP-L transacts business in Massachusetts, Cedar's could not satisfy *Doucet's* "but for" causation standard, which requires a showing that a company's transacting of business in Massachusetts "is the first step in the chain of events that results in the personal injury."

"WP-L proffers that the Dough Machine was sold to an entity called JBS-Process Engineering, not to Kemper. [Cedar's] has not proffered any evidence to the contrary," Rooney wrote. "There is no evidence regarding when WP-L sold the Dough Machine to JBS-Process Engineering, or when and how the Dough Machine made its way from JBS-Process Engineering to [the defendants'] facility in Massachusetts. On this record, the court cannot conclude that the plaintiff's injury arose out of the transacting of business in Massachusetts by WP-L, Kemper or WP-USA."