

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

RUTH ANN SHAW and
SAMUEL SHAW, JR.,

Plaintiffs,

vs.

No. 2:11-cv-02552-JPM

KENNEDY INTERNATIONAL, INC.,
a New Jersey Company; AND
THE TJX COMPANIES, INC. d/b/a
TJ MAXX, a Massachusetts
Corporation

Defendants.

ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Before the Court is Plaintiffs' Motion for Partial Summary Judgment to Declare Defendant Kennedy International, Inc. Subject to Suit in Strict Products Liability Pursuant to Tenn. Code Ann. § 19-28-106(b) ("Pls.' Mot.") (Docket Entry ("D.E.") 48), filed on December 7, 2011. Defendant Kennedy International, Inc. did not file a response. For the reasons that follow, Plaintiffs' motion is GRANTED.

Plaintiff Ruth Shaw alleges that she fell and broke her femur while using a defective stepping stool sold by Defendants. (See Compl. (D.E. 1) ¶ 12.) On June 30, 2011, Plaintiffs sued

Defendants pursuant to the Tennessee Products Liability Act, Tenn. Code Ann. §§ 29-28-101 et seq. (Compl. ¶¶ 16-20.) Plaintiffs filed the instant motion to declare Defendant Kennedy International subject to suit under the Tennessee Products Liability Act as a seller pursuant to Tennessee Code Annotated § 29-28-106. Under § 106(4), a products liability action cannot be maintained against a seller, other than the manufacturer, unless "[t]he manufacturer or distributor of the product or part in question is not subject to service of process in this state and the long-arm statutes of Tennessee do not serve as the basis for obtaining service of process." Tenn. Code Ann. § 106(4). Plaintiffs assert that the manufacturer of the stepping stool at issue is not subject to service of process in Tennessee or within the reach of Tennessee's long-arm statutes. Plaintiffs therefore assert that Defendant Kennedy International is subject to liability under the Tennessee Products Liability Act as a seller of the stepping stool. (See Pls.' Mot. 1-2.)

Defendant Kennedy International did not respond to Plaintiffs' statement of material facts, and thus does not dispute Plaintiffs' asserted facts for the purposes of summary judgment. See Local Rule 56.1(d). Defendant Kennedy International purchased the stepping stool from a Chinese company, the East Future International Trading Company, Ltd., but Kennedy International believes the actual manufacturer of

the stool was Ningbo Tianqi Plastic Factory located in Ningbo, China. (Kennedy Int'l, Inc.'s Answers and Resp. to Pls.' First Set of Interrog. and Req. for Produc. of Doc. (D.E. 48-2) at 4 ("The actual manufacturer of the subject stool for East Future International Trading Company is believed to be NINGBO TIANQI PLASTIC FACTORY-Jingia Village-Longshan Town- Ningbo, China.").)

It is undisputed that Ningbo Tianqi is not subject to service of process within Tennessee. Ningbo Tianqi is not qualified to conduct business in Tennessee, does not have a registered agent for service of process in Tennessee, does not own property in Tennessee, and does not have any employees in Tennessee. (See Pls.' Statement of Undisputed Material Facts ("Pls.' UMF") (D.E. 48-2) ¶¶ 7, 10, 11.) Plaintiff may only maintain a suit against Ningbo Tianqi if Ningbo Tianqi is subject to personal jurisdiction in Tennessee.

Tennessee's long-arm statute is interpreted to be "coterminous with the limits on personal jurisdiction imposed' by the Due Process Clause of the United States Constitution, and thus, 'the personal jurisdictional limits of Tennessee law and of federal constitutional law of due process are identical.'" Intera Corp. v. Henderson, 428 F.3d 605, 616 (6th Cir. 2005) (quoting Payne v. Motorists' Mut. Ins. Cos., 4 F.3d 452, 455 (6th Cir. 1993)). The Sixth Circuit applies a three-part test to determine personal jurisdiction:

First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequence caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

S. Mach. Co. v. Mohasco Indus., Inc., 401 F.2d 374, 381 (6th Cir. 1968); Bridgeport Music, Inc. v. Still N The Water Publ'g, 327 F.3d 472, 477-78 (6th Cir. 2003). The Sixth Circuit has adopted the "stream of commerce plus" theory with respect to whether a party's activities rise to the level of purposeful availment. See Bridgeport Music, 327 F.3d at 479-80. Under this approach, "[t]he placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State." Asahi Metal Indus. Co. Ltd. v. Superior Court, 480 U.S. 102, 112 (1987).

There is no evidence indicating that Ningbo Tianqi has purposefully directed any action toward Tennessee; Ningbo Tianqi has not registered to conduct business in Tennessee, does not advertise or solicit business in Tennessee, and did not manufacture the stepping stool for a Tennessee company. (See Pls.' UMF ¶¶ 5, 8, 10.) Therefore, the Court finds that Ningbo Tianqi is not subject to personal jurisdiction in Tennessee.

Because the manufacturer of the stepping stool at issue in this case is not subject to service of process or personal

