

RULING

RE: City & County of Honolulu and BWS v. Sunoco, LP, et al;
Civ. No. 1CCV-20-0000380 (First Circuit Court, State of Hawai'i)

RE: Ruling on Defendants' Joint Motion to Dismiss for Lack of Personal
Jurisdiction; (motion filed 6/2/21; Dkt. 347)

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1. The above motion was heard on the record via Zoom on August 27, 2021. The court took this motion and several related motions under advisement, and hereby issues its ruling.

2. This ruling is a brief outline of the court's analysis. Due to the press of other matters, it does not include all legal citations, reasons, or issues underlying the court's analysis and ruling. Full particulars, correct citations, and other elements can be included through the Circuit Court Rule 23 process.

3. Legal Standard.

A. This is a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction. Plaintiffs' initial burden is to make a *prima facie* showing that 1) the criteria in Hawai'i's long-arm statute (HRS 634-635) are met, and 2) personal jurisdiction does not violate due process. Norris, 102 Haw 203, 207 (2003). An evidentiary hearing was not requested and so the personal jurisdiction issues were presented on the briefs and at oral argument. Therefore, the court looks to the allegations of the complaint, which are deemed to be true for purposes of the motion. See, Shaw, 76 Haw 323, 327 (1994), and federal authorities cited therein.

4. The court concludes there is a *prima facie* showing for *specific* jurisdiction, and therefore DENIES the motion in large part. The court GRANTS the motion to the extent Plaintiffs rely on an *alter ego* theory to attribute the contacts of “at home” defendants to an out-of-state corporate parent or intermediate entity in order to gain general jurisdiction.

5. Specific jurisdiction.

A. The first prong of specific jurisdiction (purposeful availment) is met. The out-of-state Defendants all conducted fossil fuel-related business here and purposefully availed themselves of the forum. Per extensive case law, such availment invokes both benefits and obligations. This first prong does not seem to be in dispute.

B. The second prong is whether the claim “arises out of or relates to” the defendants’ forum-related activities. The court agrees that Ford controls. It’s focus on the second prong is the crux of this motion. Plaintiffs claim the “arising out of or relates to” second prong is met here, because there is a connection between the activities in the forum (marketing fossil fuels) and the claim or controversy (tortious marketing of fossil fuels including failure to warn). Defendants argue the second prong is not met because their allegedly tortious business conduct did not occur in and was not targeted at Hawai‘i, and the connection between their allegedly tortious business conduct and a tortious event or impact in Hawai‘i is insubstantial, incidental, or not supported by causation.

C. Some of the cases Defendants rely on (Burger King, Walden) focus more on the first prong, and seem to argue standards for the first prong are part of the second prong. It is important to keep the two prongs separate.

D. Second prong: “arising out of or relates to”. Plaintiffs allege that Defendants’ fossil fuel marketing campaign was worldwide, *including Hawai‘i*, and that the tortious marketing and failure to warn helped drive fossil fuel demand worldwide, *including Hawai‘i*. Plaintiffs further allege Defendants’ tortious marketing activity caused impacts in the forum state. As this court reads Ford, combined with the first prong, more is not required. Ford does not establish any in-forum, geo-located “causation” requirement. Neither does Ford require that particular or proportional Hawai‘i sales and emissions “cause” harm to Hawai‘i. Rather, Ford made clear the US Supreme Court has not and does not require a showing that

plaintiff's claim occurred due to or because of a defendant's in-state conduct. Neither does Ford establish any second-prong requirement of "substantial connection." "The plaintiff's claims, we have often stated, 'must arise out of or relate to the defendant's contacts' with the forum." 141 S.Ct. at 1025. "Or put just a bit differently, there must be an affiliation between the forum and the underlying controversy, principally an activity or an occurrence that takes place in the forum state and is therefore subject to the State's regulation." (citation omitted, cleaned up). Id., 141 S. Ct. at 1025. As contrast, if Defendants were marketing and installing only *infrastructure* for fossil fuels (e.g., pipelines, storage tanks), the required relationship or affiliation might be lacking. Based on the allegations, the court sees little daylight "between the forum and the underlying controversy." Defendants argue that general activities and injury in the state is not enough. The court agrees. The key is the connection -- the long-time purposeful availment to market fossil fuels *in* the forum state and the allegedly tortious marketing in and failure to warn the forum state, and the related impacts in the forum state. Defendants argue that Ford is distinguishable because the actual car crash occurred in the forum state. The court does not see how that one fact is dispositive, when the test is whether there is a relationship or affiliation between contacts and claims. In any event, based on the allegations which are presumed correct for this motion, the court considers the in-state conduct/events here to be just as substantial as in Ford. In both cases, in addition to purposeful availment, the alleged result of the alleged tortious conduct allegedly occurred in the forum state.

E. Failure to warn/Sulak. Defendants argue failure to warn cannot serve as the basis for jurisdiction, and cite Sulak, involving a helicopter crash in Hawai'i. Although Sulak is a trial court opinion and is not binding precedent on this court, the court reviewed Sulak carefully due to this court's respect for Judge Ezra. In Sulak, the court found there was no general jurisdiction and moved to the second prong -- specific jurisdiction. The evidence of specific jurisdiction was sparse. The court next found there was no purposeful availment (first prong), because the sale did not occur in Hawai'i, and any business connections between Defendant and Hawai'i were very limited. Post-sale there was maintenance of the helicopter in Hawai'i, but the available evidence was that a third party did the maintenance, not Defendant. The only argument left was Plaintiff's failure to warn argument, which alone would never

support personal jurisdiction. That is what makes Sulak easily distinguishable. As discussed above, there is far more here than just a failure to warn.

F. Fairness/reasonableness/due process. Once the first and second prongs of specific jurisdiction are met, the final question is whether exercising personal jurisdiction is unreasonable. The court answers no. Defendants have significant contacts with Hawai'i, and purposefully availed themselves of the benefits and obligations of operating in the forum state for decades. As discussed above, the court concludes those purposeful forum contacts are related to the claims made, and the tortious acts allegedly culminated in harms in the forum. Under those circumstances, it cannot be a great surprise to be hailed into a U.S. court in that forum. Looking at other factors, Defendants' burden in litigating here is not substantial in view of their resources. The harms/damages claimed are those in Hawai'i only. Honolulu County and the Board of Water Supply have a strong interest in litigating in Hawai'i. The location of the evidence and witnesses could create some burden, but the evidence and witnesses will likely be from around the country or world, not just from a Defendant's home state. When balancing the various factors, the court concludes it is not unreasonable to exercise personal jurisdiction over movants.

6. General jurisdiction. The court rejects Plaintiffs' arguments that the *alter ego* theory applies here, essentially for the reasons argued by Defendants. Hawai'i courts rarely apply the doctrine, to better effectuate the protections of corporate form. The briefs did not demonstrate that the court should make an exception to the general rule.

7. Plaintiffs are to submit the proposed order on the above ruling per the usual CCR Rule 23 process. This includes adding proposed particular findings, analysis, or citations to the above broad outline of the court's ruling, if necessary.

8. Regarding Exxon's separate argument that no deceptive conduct took place in or targeted Hawai'i, the court disagrees. See above discussion, especially paragraph 5(D). The operative complaint alleges Exxon has and continues to tortiously distribute, market, advertise, and promote its products in Hawai'i, with knowledge that those products have

caused and will continue to cause climate crisis-related injuries in Hawai'i. Exxon did not factually challenge the allegations of the complaint for purposes of this motion, except to argue the allegations were conclusory and therefore required dismissal. The court respectfully disagrees.

9. The parties shall follow the usual CCR Rule 23 process to formalize the above ruling, Plaintiffs to submit first. This includes adding particular findings, analysis, or citations to the above outline of the court's ruling, if necessary.

10. A separate ruling will be issued later today or tomorrow on BHP's separate motion.

Dated: Honolulu, Hawai'i, February 28, 2022.

/s/ Jeffrey P. Crabtree



JUDGE OF THE ABOVE-TITLED COURT

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