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SC Court of Appeals

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
REID FLEMING,	)	Civil Action No. 2021-CP-10-01663
	)	
Plaintiff,	)	
	)	
vs.	)	<b>ORDER GRANTING</b>
	)	<b>DEFENDANT LG CHEM, LTD.’S</b>
THE PLANET VAPE, LLC;	)	<b>MOTION TO DISMISS FOR</b>
SCECIGARETTE, LLC; LG CHEM, LTD.;	)	<b>LACK OF PERSONAL</b>
	)	<b>JURISDICTION</b>
Defendants.	)	
_____	)	
	)	
	)	

Before the Court is Defendant LG Chem, Ltd.’s (“LG Chem”) Motion to Dismiss for Lack of Personal Jurisdiction. Having fully considered all of the parties’ arguments raised in the motions, memoranda, exhibits, submissions, and the arguments of counsel at the video hearing held on January 18, 2022, the Court grants LG Chem’s Motion to Dismiss for Lack of Personal Jurisdiction.

**FACTS**

The relevant facts are as follows: Plaintiff Reid Fleming is a resident of Anderson County, South Carolina. (Complaint, filed April 12, 2021, ¶ 1.) Plaintiff alleges that prior to the accident at issue, he purchased a number of lithium ion batteries from Defendants The Planet Vape (“Planet Vape”) and SCECIGARETTE, LLC (“SC E-Cigarette”) for use with his vaping device. He further alleges that these retailers marketed or represented the batteries as being an LG brand. (*Id.* ¶¶ 20, 21) Plaintiff also alleges that on or around May 24, 2018, he was injured when one of these lithium ion batteries exploded in his pocket (*id.* ¶ 31).

LG Chem, Ltd. is a Korean corporation with its headquarters and principal offices in Seoul, South Korea. (Aff. of Hwi Jae Lee, dated July 13, 2021, ¶ 7; Compl., ¶ 4.) The uncontroverted evidence shows the following: LG Chem has never designed, manufactured, distributed, advertised, or sold its lithium ion battery cells to consumers for use as standalone, replaceable batteries in South Carolina or anywhere else. (Lee Aff., ¶¶ 16–17.) Instead, the 18650 lithium ion cells that LG Chem manufactured are industrial component parts; they are not standalone, replaceable consumer batteries, and they were not designed to be handled by consumers. (*Id.* ¶ 16). LG Chem never authorized anyone to advertise, distribute, or sell its lithium ion cells to individual consumers for use as standalone, replaceable batteries in South Carolina, or anywhere else. (*Id.* ¶¶ 20, 21.)

In support of its motion, LG Chem provided two affidavits of Mr. Hwi Jae Lee, dated July 13, 2021 and January 11, 2022. In opposition to the Defendant’s Motion to Dismiss, Plaintiff provided the Affidavit of Plaintiff’s counsel, dated January 7, 2022, attaching copies of LG Chem’s 2018 and 2017 financial statements; import data; a Certificate of Authority and Business Registration for a subsidiary of LG Chem; and orders from a North Carolina federal district court and other South Carolina trial courts. Plaintiff also provided the Declaration of Nickie Bonenfant, dated August 10, 2021, and Appendices.

### **LEGAL STANDARD**

“The party seeking to invoke personal jurisdiction over a non-resident defendant . . . bears the burden of establishing jurisdiction.” *Power Prods. & Servs. Co., Inc. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). “Courts will take as true the allegations of the nonmoving party and resolve all factual disputes in its favor.” *Brown v. Inv. Mgmt. & Research*,

*Inc.*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996) (resolving, in plaintiff’s favor, conflicting facts set forth in affidavits from witnesses in opposing parties).

Jurisdiction may be general or specific. *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007). Plaintiff conceded at the hearing that general jurisdiction is not at issue. To establish specific jurisdiction, a plaintiff must show that both South Carolina’s long-arm statute and constitutional due process are satisfied. Due process requires that a defendant has sufficient minimum contacts with the forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005).

To satisfy due process, the Court must find that (1) the defendant has the requisite minimum contacts with the forum, without which the court does not have the power to adjudicate the action (the power prong); and (2) the exercise of jurisdiction would be “reasonable” or “fair” (the fairness prong). *See S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992).

To meet the power prong, the suit must arise out of or relate to the defendant’s contacts with the forum. *See Cockrell*, 363 S.C. at 491–94, 611 S.E.2d at 509–10; *Power Prods.*, 379 S.C. at 433–35, 665 S.E.2d at 665–67; *Ford Motor Co. v. Montana Eighth Jud. Dist.*, 141 S. Ct. 1017, 1025 (2021); *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1780 (2017). Specifically, the court must “find that the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities.” *Southern Plastics*, 310 S.C. at 260, 423 S.E.2d at 131; *Power Prods.*, 379 S.C. at 432, 665 S.E.2d at 665.

### **DISCUSSION**

The Court concludes that Plaintiff has not satisfied his burden of establishing personal jurisdiction over LG Chem, Ltd.

Plaintiff's suit arises from injuries he allegedly suffered from use of a 18650 lithium ion battery to power his electronic cigarette device. Plaintiff alleges he purchased the battery from either Defendant Planet Vape or SC E-Cigarette and that the battery was originally manufactured by LG Chem. LG Chem's motion was supported by admissible evidence that (1) it never designed, manufactured, distributed, advertised, or sold 18650 lithium ion cells for sale to or use by individual consumers as standalone, replaceable batteries; and (2) it never authorized anyone to sell its 18650 lithium ion cells directly to consumers as standalone, replaceable batteries.

**1. The allegations of Plaintiff's complaint do not establish a prima facie case of jurisdiction.**

At the pretrial stage, the plaintiff meets his burden of proving personal jurisdiction over a nonresident defendant by a prima facie showing of jurisdiction either (1) in the complaint or (2) in affidavits. *See Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508; *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012).

The Court agrees with Defendant that the allegations of Plaintiff's complaint, even if true, are not sufficient to make a prima facie showing of jurisdiction. Plaintiff did not allege or argue that LG Chem supplied 18650 lithium ion cells to a consumer market for vaping batteries in South Carolina. Instead, Plaintiff generically alleged that LG Chem conducted business in South Carolina and that LG Chem placed its lithium ion batteries and battery products into the stream of commerce with the reasonable expectation that they would be used in South Carolina. Plaintiff did not plead any jurisdictional facts specific to the particular product at issue in this suit—a 18650 lithium ion cell that was re-sold as a standalone consumer battery. Plaintiff also did not plead any facts showing a connection between his claims and any action of the Defendant directed to South Carolina. Therefore, if the Court decided the motion based solely on the pleadings, the motion should be granted.

**2. LG Chem’s evidence that it did not serve a consumer market for standalone 18650 batteries in South Carolina was uncontroverted.**

Additionally, “[w]hen a motion to dismiss attacks the allegations of the complaint on the issue of jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.” *Coggeshall*, 376 S.C. at 16, 655 S.E.2d at 478. LG Chem supported its Motion with affidavits, and Plaintiff filed his own Affidavit, Declaration, and voluminous exhibits with attachments in opposition to the Motion.

None of the facts offered by the Plaintiff in opposition supported his burden of proof on jurisdiction. LG Chem’s financial statements and the Certificate of Authority for its subsidiary do not provide evidence of any suit-related contacts between LG Chem and South Carolina. LG Chem submitted an uncontroverted affidavit showing that its subsidiary LG Chem America, Inc. (“LGCAI”), which is not a party to the case, is a separate and distinct entity with its own separate bank accounts, business records, and corporate officers, that manage and control its own day-to-day activities. (*See Reply Lee Aff.*, ¶¶ 7–8.) Plaintiff did not show that non-party LGCAI’s contacts could be imputed to LG Chem and, even if he had, he also did not show that non-party LGCAI engaged in any suit-related contacts with South Carolina.

In addition, the various charts described as import data, including those attached to the Affidavit of Plaintiff’s Counsel and those attached to the Declaration of Nickie Bonenfant, do not provide information showing any suit-related contacts between LG Chem and South Carolina. Instead, at best, if admissible,<sup>1</sup> the charts would show only that LG Chem directed unrelated

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<sup>1</sup> LG Chem objected that the records, which purport to be summaries of information maintained by the United States Department of Customs, lack authentication and foundation and are inadmissible hearsay. The Court need not decide the issue of admissibility because it agrees with Defendant that, even if admissible, the records do not provide any information that would support Plaintiff’s burden of proof. Instead, the records further support LG Chem’s admissible evidence

business to South Carolina entities, including shipment of petrochemical products such as “methyl acrylate,” “acrylic acid,” and “synthetic rubber,” as well as shipment of electric vehicle batteries to car manufacturing companies. None of Plaintiff’s exhibits reflect shipment of 18650 lithium ion cells to anyone in South Carolina, let alone anyone engaged in the consumer vaping industry.

**3. Business activities unrelated to the claims at issue do not support specific jurisdiction over LG Chem.**

At the hearing, Plaintiff argued it was enough to show that LG Chem supplied other type of lithium ion battery products (such as electric vehicle batteries) to South Carolina entities and that such activities were sufficiently “related” to his claims to satisfy constitutional due process.

The U.S. Supreme Court has repeatedly made clear that unrelated business activities in the forum state cannot support the exercise of specific jurisdiction, no matter how extensive those in-state activities are. Even sales of the **very same product** at issue cannot support the exercise of specific jurisdiction if unrelated to the litigation. *Bristol-Myers*, 137 S. Ct. at 1781 (“[E]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales.”) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 930 n.6 (2011)).

And in *Ford*, the Supreme Court took care to point out that its decision was based on Ford’s admitted in-state activities for the specific vehicles at issue—not just Ford cars, but specifically Ford Explorers and Crown Victorias. *Ford*, 141 S. Ct. at 1028 (“Ford had advertised, sold, and serviced *those two car models* in both States for many years. (*Contrast a case, which we do not address, in which Ford marketed the models in only a different State or region.*) In other words, Ford had systematically served a market in Montana and Minnesota for the very vehicles that the

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that it did not supply 18650 lithium ion cells to a consumer market in South Carolina for standalone 18650 batteries.

plaintiffs allege malfunctioned and injured them in those States.”) (emphasis added).

Therefore, the Court finds that even if Plaintiff’s exhibits were admissible, shipping petrochemical products or lithium ion batteries to manufacturers in South Carolina is not sufficiently related to Plaintiff’s personal injury claims to satisfy constitutional due process.

**4. The “stream of commerce” theory does not support the exercise of specific jurisdiction over LG Chem on the facts of this case.**

Plaintiff relied on a “stream of commerce” theory of jurisdiction as set forth in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 88, 666 S.E.2d 218, 221 (2008). Defendant argued that *Sumatra* is inconsistent with more recent U.S. Supreme Court precedents and that it is factually distinguishable in any event.

The Court need not resolve the question whether the *Sumatra* Court’s formulation of the “stream of commerce” theory of jurisdiction is consistent with more recent U.S. Supreme Court decisions because the facts of this case are materially distinguishable. *Id.* at 88, 666 S.E.2d at 221 (“The question of personal jurisdiction over a nonresident defendant is one which must be resolved upon the facts of each particular case.”).

In *Sumatra*, the Indonesian cigarette manufacturer admitted that it intended to sell its cigarettes to consumers throughout the United States, including almost seven million cigarettes sold to consumers in South Carolina in one year as the direct result of its intended chain of distribution. *Id.* at 87–92, 666 S.E.2d at 221–24. Further, in *Sumatra*, the Indonesian manufacturer sold its cigarettes to its designated distributor, which then distributed the cigarettes to South Carolina for the specific purpose of distributing them to consumers as a consumer product. *Id.* at 86, 666 S.E.2d at 220.

By contrast here, even if LG Chem was the original manufacturer of the 18650 lithium ion cells (which has not been established), Plaintiff did not allege that LG Chem distributed its 18650

lithium ion cells directly to South Carolina consumers as a standalone product, or to any distributor or other intermediary for the purpose of supplying the cells directly to South Carolina consumers as a standalone product. And LG Chem’s admissible evidence shows that LG Chem did not design, manufacture, distribute, advertise, or sell its 18650 battery cells directly to or for use by consumers, in South Carolina or anywhere else, as standalone, replaceable batteries and that it never authorized anyone else to do so either. These important facts distinguish *Sumatra* from the case here.

Further, the fact that the Plaintiff purchased and used the Defendant’s product in South Carolina is not sufficient, even if the Defendant was aware that third parties might sell its product to consumers in the state without its authorization. “[I]t is the defendant’s actions, not his expectations, that empower a State’s courts to subject him to judgment.” *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 883 (2011) (plurality op.); *Ford*, 141 S. Ct. at 1025 (the relevant “contacts must be the defendant’s own choice”).

As the South Carolina Supreme Court recognized in *Sumatra*, “[t]he foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum state. Rather, it is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there.” *Sumatra*, 379 S.C. at 89, 666 S.E.2d at 222 (emphasis added) (quoting *World-Wide Volkswagen Corp. v Woodson*, 444 U.S. 286, 297 (1980)). This standard was met in *Sumatra* in light of the volume of cigarettes the defendant admittedly distributed for sale to consumers throughout the United States, including seven million cigarettes to consumers in South Carolina. This standard is not met here, where LG Chem submitted uncontroverted evidence to establish that it did not distribute any 18650 battery cells to anyone for sale as a standalone product to consumers in South Carolina or anywhere else. (Affidavit of Hwi Jae Lee, ¶¶ 16–17, 19–21.)

**5. Because Plaintiff has not met the “power prong” of the long-arm statute, the Court need not reach the fairness prong.**

Because the power prong cannot be satisfied, the Court need not reach the fairness prong. Regardless, under the fairness prong, courts analyze factors such as “the burden on the defendant[;] . . . the forum state's interest in adjudicating the dispute; the plaintiff's interest in obtaining convenient and effective relief; the interstate judicial system's interest in obtaining the most efficient solution to controversies; and the shared interest of the several states in furthering fundamental substantive social policies.” *S. Plastics Co.*, 310 S.C. at 263, 423 S.E.2d at 132 (citing *World–Wide Volkswagen*, 444 U.S. 286). Subjecting LG Chem to specific jurisdiction in South Carolina would be constitutionally unreasonable and unfair when LG Chem has no contacts with South Carolina related to the claims at issue. Accordingly, even if the power prong were satisfied, which it is not, the exercise of specific jurisdiction over LG Chem would not comport with fundamental fairness.

**CONCLUSION**

Based on the above principles, the Court concludes that due process does not allow the exercise of personal jurisdiction over LG Chem in this case. It is undisputed that general jurisdiction is lacking. As to specific jurisdiction, Plaintiff has not shown that his claims “arise out of or relate to” any contacts formed by LG Chem with South Carolina. The Court therefore finds that Plaintiff has not met his burden of establishing that this Court can exercise personal jurisdiction over LG Chem.

It is therefore ORDERED that LG Chem, Ltd.’s Motion to Dismiss for Lack of Personal Jurisdiction is GRANTED.

It is further ORDERED that LG Chem, Ltd. is DISMISSED from this action without prejudice.

This the \_\_\_\_ day of \_\_\_\_\_, 2022.

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Roger M. Young, Sr.  
Circuit Court Judge, 9th Judicial Circuit



Charleston Common Pleas

**Case Caption:** Reid Fleming VS Planet Vape Llc The , defendant, et al

**Case Number:** 2021CP1001663

**Type:** Order/Dismissal

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134