

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D44077  
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\_\_\_\_\_AD3d\_\_\_\_\_

Argued - December 2, 2014

JOHN M. LEVENTHAL, J.P.  
CHERYL E. CHAMBERS  
L. PRISCILLA HALL  
COLLEEN D. DUFFY, JJ.

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2013-02346

DECISION & ORDER

Christine Carrs, etc., appellant, v Avco Corporation,  
etc., et al., defendants, Superior Air Parts, Inc.,  
respondent.

(Index No. 59133/11)

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Capuder Fazio Giacoia LLP, New York, N.Y. (Douglas Capuder, Peter M. Dreyer,  
and Daniel S. Jo of counsel), for appellant.

Alimonti Law Offices, P.C., White Plains, N.Y. (Frederick P. Alimonti and Lydia S.  
Antoncic of counsel), for respondent.

In an action, inter alia, to recover damages for wrongful death, the plaintiff appeals from an order of the Supreme Court, Westchester County (O. Bellantoni, J.), dated January 10, 2013, which granted the motion of the defendant Superior Air Parts, Inc., pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

When a motion is made to dismiss an action for lack of personal jurisdiction, the plaintiff bears the ultimate burden of proving a basis for such jurisdiction over a defendant (*see Waggaman v Arauzo*, 117 AD3d 724; *Paterno v Laser Spine Inst.*, 112 AD3d 34, 39, *affd* \_\_\_\_\_ NY3d \_\_\_\_\_, 2014 NY Slip Op 08054 [2014]). However, to defeat a CPLR 3211(a)(8) motion to dismiss, a plaintiff need only establish, prima facie, that the defendant was subject to the personal

jurisdiction of the Supreme Court (*see Weitz v Weitz*, 85 AD3d 1153; *Cornely v Dynamic HVAC Supply, LLC*, 44 AD3d 986; *Brandt v Toraby*, 273 AD2d 429).

In opposition to the motion of the defendant Superior Air Parts, Inc. (hereinafter Superior), pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against it based on lack of personal jurisdiction, the plaintiff failed to establish, prima facie, that the activities of Superior in New York subjected it to the personal jurisdiction of the Supreme Court pursuant to CPLR 301 and 302(a)(3)(i) (*see Daimler AG v Bauman*, \_\_\_\_\_ US \_\_\_\_\_, 134 S Ct 746, 759-760; *J. McIntyre Mach. v Nicastro*, \_\_\_\_\_ US \_\_\_\_\_, 131 S Ct 2780, 2788; *Asahi Metal Industry Co., Ltd. v Superior Court of Cal., Solano Cty.*, 480 US 102, 112-113; *Landoil Resources Corp. v Alexander & Alexander Servs.*, 77 NY2d 28, 33; *Laufer v Ostrow*, 55 NY2d 305, 309-310; *Frummer v Hilton Hotels Intl.*, 19 NY2d 533, 536; *Paterno v Laser Spine Inst.*, 112 AD3d at 40; *Brandt v Toraby*, 273 AD2d 429; *Cooperstein v Pan-Oceanic Mar.*, 124 AD2d 632, 634; *cf. Weitz v Weitz*, 85 AD3d 1153; *Cornely v Dynamic HVAC Supply, LLC*, 44 AD3d 986).

The plaintiff's remaining contention is without merit.

Accordingly, the Supreme Court properly granted Superior's motion pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against it.

LEVENTHAL, J.P., CHAMBERS, HALL and DUFFY, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court