

**SUPREME COURT OF THE STATE OF NEW YORK**  
*Appellate Division, Fourth Judicial Department*

**1252**

**CA 19-01354**

PRESENT: SMITH, J.P., PERADOTTO, NEMOYER, WINSLOW, AND DEJOSEPH, JJ.

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KIMBERLY COLE, INDIVIDUALLY AND AS EXECUTRIX  
OF THE ESTATE OF MARK COLE, DECEASED,  
PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

SAFETY-KLEEN SYSTEMS, INC., ET AL., DEFENDANTS,  
AND BRENNTAG NORTHEAST, LLC, DEFENDANT-APPELLANT.

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MONTGOMERY MCCrackEN WALKER & RHOADS LLP, PHILADELPHIA, PENNSYLVANIA  
(ALBERT L. PICCERILLI, OF THE PENNSYLVANIA AND NEW JERSEY BARS,  
ADMITTED PRO HAC VICE, OF COUNSEL), FOR DEFENDANT-APPELLANT.

LOCKS LAW FIRM PLLC, NEW YORK CITY (JANET C. WALSH OF COUNSEL), FOR  
PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Onondaga County  
(Gregory R. Gilbert, J.), entered June 24, 2019. The order denied the  
motion of defendant Brenntag Northeast, LLC, to dismiss the third  
amended complaint against it.

It is hereby ORDERED that the order so appealed from is  
unanimously affirmed without costs.

Memorandum: Brenntag Northeast, LLC (defendant) appeals from an  
order denying its motion to dismiss the third amended complaint  
against it for lack of personal jurisdiction (see CPLR 3211 [a] [8]).  
Defendant's sole contention is that the New York courts cannot  
constitutionally exercise personal jurisdiction over it because the  
tortious act allegedly occurred outside New York. We reject that  
contention. CPLR 302 (a) (3) authorizes personal jurisdiction under  
certain circumstances in which the tortious act occurs outside New  
York, and defendant does not dispute plaintiff's assertion that CPLR  
302 (a) (3) (ii) applies here. Moreover, it is well established that  
exercising personal jurisdiction under CPLR 302 (a) (3) will  
contravene the Federal Constitution only in " 'rare' " cases (*D&R  
Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d 292,  
300 [2017], quoting *Rushaid v Pictet & Cie*, 28 NY3d 316, 331 [2016],  
*rearg denied* 28 NY3d 1161 [2017]; see *Williams v Beemiller, Inc.*, 33  
NY3d 523, 535 [2019, Feinman, J., concurring]), and defendant does not  
argue that it lacks the minimum contacts with New York necessary to  
satisfy the demands of the Federal Constitution (*cf. Williams*, 33 NY3d

at 527-531).

Entered: December 23, 2020

Mark W. Bennett  
Clerk of the Court