

Aybar v Goodyear Tire & Rubber Co.
2016 NY Slip Op 33056(U)
May 25, 2016
Supreme Court, Queens County
Docket Number: 706908/2015
Judge: Thomas D. Raffaele
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DNY
5/25/16

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE THOMAS D. RAFFAELE IA Part 13
Justice

	x	Index
JOSE AYBAR,		Number 706908/2015
Plaintiff,		Motion
		Date January 11, 2016
-against-		Motion Sequence No. 1

THE GOODYEAR TIRE & RUBBER
COMPANY, and GOODYEAR DUNLOP
TIRE NORTH AMERICA, LTD.,

Defendants.

FILED
MAY 31 2016
COUNTY CLERK
QUEENS COUNTY

x

The following papers numbered 1 to 9 read on this motion by defendant Goodyear Tire & Rubber Co. for an order pursuant to CPLR 3211(a)(8) dismissing the complaint against it.

	Papers <u>Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	1
Answering Affidavits - Exhibits.....	2
Reply Affidavits.....	3
Memoranda of Law	

Upon the foregoing papers it is ordered that the motion is denied.

There are two related cases pending in the New York State Supreme Court, County of Queens: (1) *Aybar v The Goodyear Tire & Rubber Company*, Index No.706908/15 and (2) *Aybar v. Aybar*, Index No. 706909/15. Defendant Goodyear has submitted similar motions in both cases for the purpose of challenging basis jurisdiction. The Ford Motor Company has also submitted a similar motion challenging basis jurisdiction in *Aybar v Aybar*, Index No. 706909/15.

In 2011, plaintiff Jose Aybar, a resident of New York State, purchased a used Ford Explorer motor vehicle equipped with a Goodyear Wrangler AP Tire from Jose Velez, another resident of this state. The Goodyear Tire & Rubber Co. (Goodyear), a foreign corporation registered with the New York State Department of State, manufactured the Wrangler tire. On July 1, 2012, as Jose operated the Ford Explorer northbound on Interstate Highway 85 in the County of Brunswick, Virginia, the vehicle allegedly became unstable because of the failure of the Wrangler tire, and the vehicle rolled over several times. Anna Aybar, Orlando Gonzalez, Kayla Cabral, and Noelia Oliveras, Crystal N. Cruz-Aybar, and Tiffany Cabral passengers in the vehicle, were injured and/or killed. On or about July 1, 2015, this action for, *inter alia*, negligence and strict products liability ensued.

The plaintiff's attorney, relying on an internet search, further alleges: (1) Goodyear has owned and operated a chemical plant in Niagara, New York since the 1940's; (2) Goodyear has been the exclusive supplier of tires and related products for the New York City Transit Authority bus fleet since 1987; (3) Goodyear maintains at least 180 authorized Goodyear dealers for its products within New York State; (4) Goodyear owns and operates numerous service centers in New York State which employ many residents of the state. Defendant Goodyear does not deny these allegations.

Goodyear alleges the following: It is an Ohio corporation with its principal place of business located on East Market Street, Akron, Ohio. Goodyear manufactured the tire used on Jose's car in Union City, Tennessee in 2002, and at some point after the company first sold the tire, Jose acquired it and brought the used tire to New York where a party unrelated to Goodyear inspected it and installed it approximately two weeks before the accident.

Defendant Goodyear has moved to dismiss the complaint against it for lack of in personam jurisdiction, relying on *Daimler A.G. v Bauman* (134 S Ct. 746 [2014]). In *Bauman*, Argentinian residents brought an action against Daimler, A.G., a German corporation, under the Alien Tort Statute and the Torture Victims Protection Act, alleging that its wholly-owned Argentinian subsidiary helped state security forces to kidnap, detain, torture, and kill the plaintiffs or their relatives during Argentina's "Dirty War." The United States Supreme Court held that due process did not permit the exercise of general jurisdiction over the parent corporation, which had a subsidiary operating in California. The Supreme Court drew a distinction between specific jurisdiction and general jurisdiction. Specific jurisdiction concerns adjudicatory authority where the suit arises out of or relates to the defendant's contacts with the forum. General jurisdiction in substance concerns adjudicatory authority in cases arising anywhere, and "[t]he paradigm all-purpose forums for general jurisdiction are a corporation's place of incorporation and

principal place of business ***.” (*Daimler AG v Bauman*, *supra*, 749.) Another forum may assert general jurisdiction over foreign sister-state or foreign-country corporations to hear any and all claims against them when their affiliations with the state are so continuous and systematic as to render them essentially at home in the forum state. (*Daimler AG v Bauman*, *supra*.) General jurisdiction requires affiliations so continuous and systematic as to make the foreign corporation essentially at home in the forum state, i.e., similar to a domestic enterprise in that state. (*Daimler AG v Bauman*, *supra*.)

In determining whether a court of New York has personal jurisdiction over a non-domiciliary, a two-step analysis must be employed. First, the court must inquire whether there is a statute which confers jurisdiction over the non-domiciliary, and, second, the court must inquire whether the exercise of jurisdiction meets due process standards. (*See Darrow v Deutschland*, 119 AD3d 1142; *Andrew Greenberg, Inc. v. Sirtech Canada, Ltd.*, 79 AD3d 1419.)

In the case at bar, CPLR 302, “Personal jurisdiction by acts of non-domiciliaries,” New York State’s long arm statute, does not provide a basis for the assertion of in personam jurisdiction over defendant Goodyear in regard to the causes of action for strict products liability, negligence, and breach of warranty, and *Bauman’s* effect on the statute need not be considered here as far as those causes of action are concerned. CPLR 302 applies to “a cause of action arising from any of the acts enumerated in this section.” Insofar as the causes of action for strict products liability, negligence, and breach of warranty are concerned. Goodyear manufactured and sold the tire out of state, and the plaintiff sustained injury out-of state. (*See*, CPLR 302 (a)(1) and (3); *Jacobs v 201 Stephenson Corp.*, -AD3d-, -NYS3d- 2016 WL 1355693.) In regard to the cause of action based on General Business Law §349, which prohibits deceptive acts and practices in the conduct of business, plaintiff Aybar alleges that Goodyear committed a tortious act within the state (*see*, CPLR 302[a][2]) by concealing information and by failing to warn consumers about the dangers of the tire.

The assertion of the cause of action based on GBL§349 raises jurisdictional issues which the court will not grapple with, since they are academic in light of the remainder of this decision.

CPLR 301, “Jurisdiction over persons, property or status,” is New York’s statute for general jurisdiction, and it provides that “[a] court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore.” A foreign corporation is subject to the jurisdiction of New York courts under CPLR 301 “if it has engaged in such a continuous and systematic course of doing business here that a finding of its presence in this jurisdiction is warranted.” (*Landoil Res. Corp. v Alexander &*

Alexander Servs., Inc., 77 NY2d 28, 33 [internal quotation marks and citations omitted]). In view of defendant Goodyear's extensive activities in this state since approximately 1924, a finding of "a continuous and systematic course of doing business" in New York can easily be made. "Even if this statutory standard is met, however, the Due Process Clause of the 14th Amendment limits the exercise of general jurisdiction to those cases in which a corporation's affiliations with the State are so continuous and systematic as to render [it] essentially at home in the forum State." (*Hood v Ascent Med. Corp.*, 2016 WL 1366920 [SDNY] [internal quotation marks and citations omitted]; see, *Goodyear Dunlop Tires Operations, S.A. v Brown*, 131 S.Ct. 2846. [HN 5: "foreign subsidiaries of United States tire manufacturer were not subject to general jurisdiction in North Carolina courts in action arising from bus accident in France allegedly caused by tire that was manufactured and sold abroad, although some of the tires made abroad by the foreign subsidiaries had reached North Carolina through the stream of commerce"].) There are New York State appellate cases decided after *Bauman* which have found a lack of general jurisdiction over the defendants. (See, *B & M Kingstone, LLC v Mega Int'l Commercial Bank Co.*, 131 AD3d 259; *D & R Glob. Selections, S.L. v Pineiro*, 128 AD3d 486; *Magdalena v Lins*, 123 AD3d 600.)

This court has concluded that neither *Goodyear Dunlop Tires Operations, S.A. v Brown* (*supra*), nor *Daimler A.G. v Bauman* (*supra*), nor the New York State appellate cases require the dismissal of the case at bar. In *Goodyear Dunlop Tires Operations, S.A. v Brown* (*supra*), the estates of two minor North Carolina residents who died in a bus accident that occurred in France brought an action in a North Carolina state court against several subsidiaries of a United States tire manufacturer, including subsidiaries organized and operating in Luxembourg, Turkey, and France. The United States Supreme Court held that the North Carolina court lacked both specific and general jurisdiction over the foreign subsidiaries. The foreign subsidiaries were not registered to do business in North Carolina; had no place of business, employees, or bank accounts there; did not design, manufacture, or advertise their products in North Carolina; and did not solicit business in the state or sell or ship tires to North Carolina customers. The plaintiffs tried to argue that the North Carolina court had jurisdiction because "a small percentage of their [the subsidiaries'] tires were distributed in North Carolina by other Goodyear USA affiliates" (*Goodyear Dunlop Tires Operations, S.A. v Brown, supra*, 2848), and The North Carolina Court of Appeals decided that the state court had general jurisdiction over the foreign subsidiaries, whose tires had reached North Carolina through the stream of commerce. The United States Supreme Court reversed with an opinion that stated "[c]onfusing or blending general and specific jurisdictional inquiries," the North Carolina courts had erroneously found jurisdiction (*Goodyear Dunlop Tires Operations, S.A. v Brown, supra*, 2851.) In reference to the tenuous relationship between the foreign subsidiaries and North Carolina, the Supreme Court stated: "A connection so

limited between the forum and the foreign corporation, we hold, is an inadequate basis for the exercise of general jurisdiction.” (*Goodyear Dunlop Tires Operations, S.A. v Brown*, *supra*, 2851.) In sharp contrast, plaintiff Aybar has alleged without contradiction, *inter alia*, that defendant Goodyear has operated numerous stores in this state since approximately 1924 and has employed thousands of workers in those stores. Goodyear has an organization of facilities in this state engaged in day-to-day activities. Defendant Goodyear’s activities within New York have been so continuous and systematic as to render it subject to the general jurisdiction of this state’s courts. This court notes that in *Goodyear Dunlop Tires Operations, S.A. v Brown*, (*supra*), the parent corporation, which operated plants in North Carolina and regularly engaged in commercial activity there, did not contest the North Carolina court’s jurisdiction over it.

The New York State appellate cases decided after *Bauman* which found a lack of general jurisdiction over the defendants are distinguishable from the case at bar because of the level of Goodyear’s activities within New York. In *B & M Kingstone, LLC v Mega Int’l Commercial Bank Co.* (*supra*, 264), the Appellate Division, First Department, held that “under *Daimler*, New York does not have general jurisdiction over Mega’s worldwide operations,” the Mega International Commercial Bank Company being an international banking corporation, organized under the laws of Taiwan, with its principal place of business located there, and having 128 branches worldwide, only one of which was in New York. But the court found that there was jurisdiction (as discussed below, apparently not general jurisdiction) to compel compliance with information subpoenas arising from the bank’s registration with the Superintendent of the Department of Financial Services and filing of a written instrument appointing the superintendent as an agent for service of process. “Mega consented to the necessary regulatory oversight in return for permission to operate in New York, and therefore is subject to jurisdiction requiring it to comply with the appropriate Information Subpoenas ***.” (*B & M Kingstone, LLC v Mega Int’l Commercial Bank Co.*, *supra*, 265 [internal quotation marks and citation omitted].) In *D & R Glob. Selections, S.L. v Pineiro* (*supra*), the Appellate Division, First Department held that the New York court did not have general jurisdiction pursuant to CPLR 301 or specific jurisdiction pursuant to CPLR 302 over a Spanish winery, but the appellate court mentioned only the winery’s visits to this state to promote its products as a contact with New York. In *Magdalena v Lins* (*supra*), the Appellate Division, First Department held that the New York court had no jurisdiction over the defendants, mentioning only an apartment in this state which a defendant owned but did not live in (his daughters did) as the only contact with New York.

In view of the foregoing, this court finds that defendant Goodyear’s activities with the State of New York have been so continuous and systematic that the company is essentially at home here. (See, *Daimler A.G. v. Bauman*, *supra*.)

There is another reason for finding general jurisdiction over defendant Goodyear. In New York, it has long been the rule that a foreign corporation may consent to general jurisdiction in this state under CPLR 301 by registering as a foreign corporation and designating a local agent for service of process. (See, *Bagdon v Philadelphia & Reading Coal & Iron Co.*, 217 NY 432.) “[W]here a foreign corporation has expressly appointed the New York Secretary of State (or some other person within the state) as its agent for service of process, the plaintiff’s cause of action need not have arisen out of any business conducted by the foreign corporation in New York.” (Alexander, Practice Commentaries, McKinney’s Con. Law of NY, Book 7B, C301:6[c], p21.) After *Bauman*, the courts have split on the question of the constitutional validity of basing general jurisdiction on such registration statutes. (See, Alexander, 2015 Practice Commentaries, McKinney’s Con. Law of NY, Book 7B, C301:8[c].) There is no New York state court appellate authority directly on point. In *B & M Kingstone, LLC v Mega Int’l Commercial Bank Co.* (*supra*), the appellate court relied on Banking Law §200 which provides in substance that, *inter alia*, no foreign banking corporation shall conduct business in this state unless it filed with the Superintendent of Banking a written instrument appointing him as its agent “upon whom all process in any action or proceeding against it on a cause of action arising out of a transaction with its New York agency or agencies or branch or branches, may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state ***.” (Emphasis added.) Banking Law §200 concerns a limited jurisdiction, while other state registration statutes have been interpreted as conferring general jurisdiction over a foreign corporation. The court notes parenthetically Alexander’s observation that “[i]t would have been helpful if the [*Mega*] court had clarified how the suit at issue – a special proceeding to enforce an information subpoena– arose out of a transaction with the New York branch.” (Alexander, Practice Commentaries [2015], McKinney’s Cons Laws of NY, Book 7B, p5.)

Other registration and/or appointment statutes, e.g., Business Corp. Law §§304 and 1304, have been interpreted as conferring general jurisdiction over foreign corporations. (See, e.g., *Doubet LLC v Trustees of Columbia Univ. in City of New York*, 99 AD3d 433; *Augsbury Corp. v Petrokey Corp.*, 97 AD2d 173; *Bailen v Air & Liquid Systems Corp.*, 2013 WL 1369452 [N.Y.Sup].) *Bauman* does not expressly address general jurisdiction based on such statutes, but the case’s implication for such jurisdiction has become a matter of controversy. This court agrees with those courts that hold that general jurisdiction based on consent through registration and appointment survives *Bauman*. “When,*** the basis for jurisdiction is the voluntary compliance with a state’s registration statute, which has long and unambiguously been interpreted as constituting consent to general jurisdiction in that state’s courts, the corporation can have no uncertainty as to the jurisdictional consequences of its actions.” (*Acorda Therapeutics*,

Inc. v Mylan Pharm. Inc., 78 F Supp 3d 572, 591 [D. Del. 2015], *aff'd* on other grounds,, 2016 WL 1077048 [Mar. 18, 2016].) In New York, foreign corporations have been on notice since 1916 that registration to conduct business in this state amounts to consent to general jurisdiction here, and they can always cancel their registration if their business interests lead them to do so.

The instant motion lacks merit. This court has jurisdiction over defendant Goodyear because of the degree of its systematic and continuous activity in New York and because of its registration to do business in New York.

Dated: May 25, 2016


Thomas D. Raffaele, J.S.C.

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