General Jurisdiction Trend Grows With NY High Court's Ruling

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Since the U.S. Supreme Court's 2014 landmark decision in Daimler AG v. Bauman,[1] courts around the country have been reexamining their prior holdings addressing whether a company consents to personal jurisdiction solely by registering to do business in a state — known as consent-by-registration — as plaintiffs have looked for alternative theories to circumvent the increasingly narrow scope of general jurisdiction.[2]

Last month, New York's highest court put the issue to rest in the state, holding that a foreign corporation's registration to do business pursuant to the Business Corporation Law, Section 1301(a), does not confer general jurisdiction on New York courts.

The Oct. 7 decision by the Court of Appeals of New York in Aybar v. Aybar,[3] the court's first ruling to consider the jurisdictional impact of compliance with Section 1301(a) since Daimler, resolves a post-Daimler split between New York state and federal courts[4] on the issue, and follows a growing judicial trend seeking to balance the due process concerns raised in Daimler with previous jurisdictional jurisprudence.

The decision, along with others around the country embracing Daimler's narrowing of general jurisdiction, should give corporations growing comfort that abiding with business registration statutes will not open the door to lawsuits against them in states in which they are neither incorporated nor have their principal place of business, and which otherwise have no relation to the litigation.

Background and Procedural History

Jose Aybar Jr. was in a car accident in Virginia in 2012 involving a Ford Explorer with Goodyear tires, resulting in the death of three passengers and significant injuries to three more, all of whom were New York residents. The plaintiffs sued Ford Motor Co. and Goodyear Tire & Rubber Co. in Queens County for personal injuries and wrongful death arising out of the crash.

Neither Ford nor Goodyear is incorporated or has its principal place of business in New York. Both entities registered to do business and designated local agents for service of process in New York as required by BCL Section 1301(a), New York's statute for authorizing foreign corporations to conduct business in the state.

Ford and Goodyear moved to dismiss for lack of personal jurisdiction. The plaintiffs argued that both companies consented to jurisdiction by complying with BCL Section 1301(a),[5] relying on the Court of Appeals' 1916 decision in Bagdon v. Philadelphia & Reading Coal & Iron Co.[6] and its progeny.

The trial court denied the motions, citing Bagdon and long-standing precedent that registration under Section 1301(a) constituted consent to general jurisdiction in New York.[7]

On appeal, the Second Department reversed in 2019. While acknowledging that New York courts had previously interpreted Bagdon to find that the act of registration under Section 1301(a) constituted consent to general jurisdiction,[8] the appellate court determined it necessary to reassess and clarify prior holdings in light of Daimler, writing:

[I]n view of the evolution of in personam jurisdiction jurisprudence, and, particularly the way in which Daimler has altered that jurisprudential landscape, it cannot be said that a corporation's compliance with the existing business registration statutes constitutes consent to the general jurisdiction of New York courts, to be sued upon causes of action that have no relation to New York.[9]

The First and Fourth Departments — in Fekah v. Baker Hughes Inc. and Best v. Guthrie Medical Group PC, respectively — followed the Second Department's holding later in 2019, setting the stage for the Court of Appeals' consideration of the issue.[10]

Unpacking the Court of Appeals' Decision

Judge Madeline Singas, writing for the five-judge majority and in her first opinion for the court, affirmed the Second Department's decision.

In answering the question of whether a company's compliance with BCL Section 1301(a) constituted consent to general jurisdiction in New York — the sole issue before the court — the majority held that it did not.

The court began its analysis by considering the text of the BCL, holding that nothing in the statutory language of Section 1301(a) expressly conditioned registration to do business on consent to general jurisdiction in the state. To conclude otherwise would improperly amend the statute and read into it a provision that, by the statute's plain terms, was not there.

The court next explored Bagdon in light of Daimler's "at home" requirement, explaining that Bagdon stood only for the proposition that a foreign corporation consented to being served with process on its in-state agent, not to general jurisdiction, by complying with statutory mandates.

The court clarified that it had never conflated statutory consent to service with consent to general jurisdiction, and would not do so now.

Bagdon needed to be viewed in context of the Supreme Court's then-existing approach to general jurisdiction following 1877's Pennoyer v. Neff, which afforded the state general jurisdiction over a company served with process in that state.

The court detailed the Supreme Court's significant jurisdictional evolution, beginning with Pennoyer's territorial approach, moving onto the "minimum contacts" requirement established by International Shoe Co. v. Washington in 1945, and concluding with the 2011 and 2014 decisions in Goodyear Dunlop Tires Operations SA v. Brown and Daimler AG v. Bauman, respectively, which imposed the now-ubiquitous at-home standard for conferring general jurisdiction.[11]

The Court of Appeals had not cited Bagdon in support of consent-by-registration in New York since International Shoe, further evidencing the contraction of the scope of general jurisdiction.[12]

As companies' operations now commonly expand across the country and the world, the majority confirmed that a finding of general jurisdiction in New York demands, as set forth in Daimler, that a corporation be essentially at home in the place that it is sued, or its exercise would risk becoming "unacceptably grasping."[13]

Pursuant to Daimler's mandate, a company is considered at home for the purposes of exercising general jurisdiction in (1) its state of incorporation, (2) its principal place of business, or (3) an "exceptional case" where the corporation's operations are so substantial as to render it home.

Judge Rowan Wilson, joined by Judge Jenny Rivera, wrote a lengthy dissent tracing the history of New York's prior jurisprudence and interpretation of Bagdon and cases preceding it.

The dissent argued that for more than 150 years, foreign corporations authorized to do business in New York were on notice that the courts viewed registration under BCL Section 1301(a) as sufficient to confer general jurisdiction, and that "the majority's decision to interpret the BCL anew [was] confounding."[14]

Rejecting the majority's reliance on Daimler, the dissent argued that existing precedent cleanly answered the question of whether Section 1301(a) qualified as consent-by-registration, and that nothing in Daimler precluded the kind of consent-based jurisdiction New York courts had for years found by virtue of a corporation's compliance with the state's business registration statute.

The dissent did not address how Daimler's holding could allow the kind of consent-by-registration it said existed in New York when every state in the country requires a foreign corporation doing business in that state to register and appoint an in-state agent for service of process.[15]

If registration to do business was akin to consenting to general jurisdiction, then nearly every corporation would effectively be required to consent to suit everywhere, regardless of its place of incorporation, principal place of business or degree of contacts in the state. Such a finding would be irreconcilable with the due process limits Daimler imposed and conflict with the judicial tightening of general jurisdiction since Pennoyer.

Practical Effects

Before Aybar, federal courts in New York had already incorporated Daimler into their personal jurisdiction decisions, rejecting BCL Section 1301(a) consent-by-registration arguments.

In 2020, in Chufen Chen v. Dunkin' Brands Inc., the U.S. Court of Appeals for the Second Circuit affirmed the dismissal of a complaint for lack of personal jurisdiction based on a defendant's compliance with Section 1301(a), and predicted that the Court of Appeals would soon clarify Daimler's holding to require reevaluation of New York's prior general jurisdiction jurisprudence.[16]

A little more than one year later, Aybar has done just that, giving corporations a firmer understanding of their potential exposure to litigation outside of their home states by expressly eliminating consent-by-registration in New York. Aybar's holding aligns New York with a majority of jurisdictions that have absorbed Daimler's due process requirements into their own personal jurisdiction analyses.

Notably, the New York Legislature passed A.B. 7769/S.B. 7253 in June, which would create an express statutory consent-by-registration rule, though Gov. Kathy Hochul has yet to sign the bill.

If she does, a constitutional challenge will almost certainly follow, and the issue could reach the U.S. Supreme Court in short order, given the unsettled nature of consent-by-registration jurisdiction across the country and its likely tension with Daimler.

While certain state and federal courts continue to exercise general jurisdiction based on a consent-by-registration theory, a growing number have revisited their prior precedents based on the same concerns raised by the majority in Aybar.

For this reason, it is likely that Aybar will affect decisions beyond New York's borders. Corporations and their counsel should pay close attention to whether Aybar's holding is adopted in other forums, and consider whether the ruling from New York's highest court may support their own efforts to seek dismissal of pending or soon-to-be filed litigation.

Jaclyn Grodin is counsel and Isabel Sukholitsky is an associate at Goulston & Storrs PC.

[1]Daimler AG v. Bauman, 571 U.S. 117 (2014).

[2]See, e.g., Cooper Tire & Rubber Co. v. McCall, No. S20G1368, 2021 WL 4268074, at *9 (Ga. Sept. 21, 2021); Wirth v. PHC Las Cruces Inc., No. 20-1340, 2021 WL 2805357, at *9 (D.N.M. July 6, 2021); Pattanayak v. Mastercard, Inc., No. 20-12640, 2021 WL 960856, at *4 (D.N.J. Mar. 12, 2021); Lanham v. BNSF Ry. Co., 305 Neb. 124, 134 (Neb. 2020).

[3]Aybar v. Aybar, No. 54, 2021 N.Y. Slip Op. 05393, 2021 WL 4596367 (N.Y. Oct. 7, 2021).

[4]Compare cases cited at Endnote viii, herein, with Chufen Chen v. Dunkin' Brands, Inc., 954 F.3d 492, 499 (2d Cir. 2020); George Moundreas & Co., v. Jinhai Intelligent Manufacturing Co Ltd., 20-cv-2626, 2021 WL 168930 (S.D.N.Y. Jan. 18, 2021) (rejecting argument that business registration is sufficient to confer general jurisdiction); Study Logic, LLC v. Farmer Bros. Co., 18-cv-1645, 2019 WL 3412114 (E.D.N.Y. July 29, 2019) (explaining that federal due process rights "likely constrain an interpretation that transforms a run-of-the-mill registration and appointment statute into a corporation 'consent' ... to the exercise of general jurisdiction by state courts"); In re Aso, No. 19-190, 2019 WL 3244151, at *5 (S.D.N.Y. July 19, 2019); Wilderness USA, Inc. v. DeAngelo Bros. LLC, 265 F. Supp. 3d 301, 314 (W.D.N.Y. 2017).

[5]The plaintiffs made no argument that specific jurisdiction existed over either corporation in New York.

[6]Bagdon v. Philadelphia & Reading Coal & Iron Co., 217 N.Y. 432 (N.Y. 1916).

[7]Aybar v. Aybar, No. 706909/2015, 2016 WL 3389889, at *6 (Sup. Ct. Queens Cnty. May 31, 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.").

[8]See, e.g., Wheeler v. CBL & Assocs. Props. Inc., No. 150524/2016, 2017 WL 3611295, at *2..3 (Sup. Ct. N.Y. Cnty. Aug. 17, 2017); Corp. Jet Support, Inc. v. Lobosco Ins. Grp., No.

651976/2015, 2015 WL 5883026, at *1..2 (Sup. Ct. N.Y. Cnty. Oct. 7, 2015); Bailen v Air & Liquid Sys. Corp., No. 190318/2012, 2014 WL 3885949, at *4..5 (Sup. Ct. N.Y. Cnty. Aug. 5, 2014).

[9]Aybar v. Aybar, 169 A.D.3d 137, 147 (2d Dep't 2019).

[10]Best v. Guthrie Med. Grp., P.C., 175 A.D.3d 1048 (4th Dep't 2019); Fekah v. Baker Hughes Inc., 176 A.D.3d 527 (1st Dep't 2019).

[11]Pennoyer v. Neff, 95 U.S. 714; International Shoe Co. v. State of Washington, 326 U.S. 310; Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915; Daimler, 571 U.S. 117.

[12]Aybar, 2021 WL 4596367, at *6 n.7.

[13]Id. at *6.

[14]Id. at *8.

[15]Id. at *3 n.1.

[16]Chufen Chen, 954 F.3d at 499.