

Registration and Jurisdiction After ‘Daimler’: Awaiting Clarity

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New York state law requires an out-of-state corporation doing business in New York to register with the Secretary of State. For years, New York courts held that such registration constituted “consent” to personal jurisdiction in New York for all purposes. However, since the United States Supreme Court’s landmark 2014 decision *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), which severely restricted the paradigm forums in which a corporation is subject to general jurisdiction, New York courts have disagreed regarding whether the doctrine of consent by registration survives *Daimler*. New York law has become confused, and clarity is needed for plaintiffs and defendants alike.

Corporate Defendants

New York courts have long held that “a corporation’s authorization to do business in the State [of New York] and concomitant designation of the Secretary of State as its agent for service of process is consent to personal jurisdiction.” *Corporate Jet Support, Inc. v. Lobosco Ins. Grp., L.L.C.*, No. 651976/2015, 2015 N.Y. Misc. LEXIS 4724, at *2 (Sup. Ct. Oct. 7, 2015); *Rockefeller Univ. v. Ligand Pharm. Inc.*, 581 F. Supp. 2d 461, 465 (S.D.N.Y. 2008) (courts “have found personal jurisdiction where a defendant has maintained an active authorization to do business on file with the Department of State.”). Courts have thus denied motions to dismiss for lack of personal jurisdiction by corporate defendants that are not incorporated or headquartered in New York but have registered to do business in the state. *See, e.g., Doubet LLC v. Trustees of Columbia Univ. in the City of New York*, 99 A.D.3d 443, 434-35, (1st Dep’t 2012) (“as a foreign corporation authorized to do business in New York, respondent has consented to personal jurisdiction in New York”).

In *Daimler*, the United States Supreme Court found that “only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there. For an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home. With respect to a corporation, the place of incorporation and principal place of business are paradigm bases for general jurisdiction.” *Id.* at 760 (citation, quotation marks, ellipses, and brackets omitted).

The Court rejected as “unacceptably grasping” the suggestion that a corporate defendant is subject to general jurisdiction in “every State in which a corporation engages in substantial, continuous, and systematic course of business.” *Daimler*, 134 S. Ct. at 760-61 (citation and

quotation marks omitted). Only in an “exceptional case” could a corporation be subject to general jurisdiction in a state other than its place of incorporation or principal place of business. *Id.* at 761 n.19.

Since *Daimler*, federal and state courts applying New York law have consistently dismissed defendant corporations that are neither incorporated in New York nor have their principal place of business there. *See, e.g., Sonera Holding B.V. v. Cukurova Holding A.S.*, 750 F.3d 221, 226 (2d Cir. 2014); *D&R Global Selections, S.L. v. Piñeiro*, 128 A.D.3d 486, 487 (1st Dep’t 2015).

But trial courts have been inconsistent in adjudicating motions to dismiss for lack of personal jurisdiction by corporate defendants that have registered to do business in New York but are neither incorporated nor headquartered in New York.

Court Decisions

Some decisions have held that the doctrine of consent by registration survives *Daimler*. In *Bailen v. Air & Liquid Sys. Corp.*, No. 190318/12, 2014 N.Y. Misc. LEXIS 3554 (Sup. Ct. Aug. 5, 2014), the defendant was incorporated in Delaware with its principal place of business in Nebraska, and had registered to do business in New York. In denying the motion to dismiss, the court recognized that although “*Daimler* clearly narrows the reach of New York courts in terms of its exercise of general jurisdiction over foreign entities, it does not change the law with respect to personal jurisdiction based on consent.” *Id.* at *8. The court found that the pre-*Daimler* line of cases regarding jurisdiction based on registration was still viable and held that “a New York court may exercise general personal jurisdiction over a corporation, regardless of whether it is ‘at home’ in New York, so long as it is registered to do business here as a foreign corporation and designates a local agent for service of process.” *Id.* at *9. *See also Beach v. Citigroup Alt. Invs. LLC*, No. 12-CV-7717 (PKC), 2014 U.S. Dist. LEXIS 30032, at *17-18 (S.D.N.Y. Mar. 7, 2014); *Serov v. Kerzner Int’l. Resorts, Inc.*, No. 162184/2015, 2016 N.Y. Misc. LEXIS 2818, at *11-12 (Sup. Ct. July 26, 2016) (“By taking the affirmative step of registering to do business in New York, those defendants availed themselves of the benefits of being able to do business here. Those benefits are accompanied by the reasonable expectation that they could be haled into New York courts”); *Aybar v. Aybar*, No. 706909/2015, 2016 N.Y. Misc. LEXIS 2263, at *12 (Sup. Ct. May 31, 2016) (“[t]his court agrees with those courts that hold that general jurisdiction based on consent through registration and appointment survives [*Daimler*]”).

On the other hand, some courts have held that the doctrine of registration by consent is not viable after *Daimler*. In *Chatwal Hotels & Resorts LLC v. Dollywood Co.*, 90 F. Supp. 3d 97 (S.D.N.Y. 2015), a defendant was incorporated in Missouri with its principal place of business in Georgia, but had registered to do business in New York. The court found that in light of *Daimler*, “the mere fact of [the defendant’s] being registered to do business is insufficient to confer general jurisdiction in a state that is neither its state of incorporation or its principal place of business.” *Id.* at 105. *See also Bonkowski v. HP Hood LLC*, No. 15-CV-4956 (RRM) (PK), 2016 U.S. Dist. LEXIS 116492, at *9 (E.D.N.Y. 2016) (rejecting plaintiff’s argument that defendant consented to personal jurisdiction by registering to do business in New York and criticizing *Bailen* and *Aybar* for holding otherwise).

Although neither the United States Court of Appeals for the Second Circuit nor the New York State Court of Appeals has definitively addressed this issue the Second Circuit recently cast doubt on the constitutional viability of consent by registration statutes in light of *Daimler* in two decisions (though both in dicta).

First, in *Brown v. Lockheed Martin Corp.*, 814 F.3d 619 (2d Cir. 2016), the Second Circuit held that Connecticut’s “ambiguous” registration statute was not a consent to general jurisdiction there and therefore did not reach the question of the constitutionality of such statutes. *Id.* at 640-41. However, the court noted that if the Connecticut statute did require foreign corporations to consent to personal jurisdiction, that would be a “much more difficult constitutional question about the validity of such consent after *Daimler*.” *Id.* at 640. While the Second Circuit acknowledged that “a carefully drawn state statute that expressly required consent to general jurisdiction as a condition on a foreign corporation’s doing business in the state ... might well be constitutional,” it also cautioned that “[a] state court’s assertion of jurisdiction exposes defendants to the State’s coercive power ... [and] [t]he reach of that coercive power, even when exercised pursuant to a corporation’s purported ‘consent’ may be limited by the Due Process Clause.” *Id.* at 641.

Then, in *Ritchie Capital Mgmt., L.L.C. v. Costco Wholesale Corp.*, No. 15-3294, 2016 U.S. App. LEXIS 12114 (2d Cir. July 1, 2016), the Second Circuit stated that subjecting a defendant to general personal jurisdiction based on being registered to do business in New York “may no longer be sound in light of [*Daimler*]” but ultimately declined to reach the issue because it had not been raised in the district court. *Id.* at *2 n.1.

The Second Circuit’s statements underscore a need for clarity. Due to the diverging case law, Plaintiffs asserting claims in New York courts cannot be assured that they are filing in the right court, leading to potentially wasteful litigation. In some cases, this uncertainty could lead to the expiration of the relevant statute of limitations, if a plaintiff initially files a lawsuit in the wrong court. And corporations contemplating registering to do business in New York have no certainty whether they will be subject to general jurisdiction solely by virtue of that registration. Corporations doing business in New York await clarity from the appellate courts.

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