

Clearing Up Personal Jurisdiction Consent Questions in NY

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Ever since the [U.S. Supreme Court](#)'s landmark 2014 decision [Daimler AG v. Bauman](#),^[1] New York litigants have lacked clarity as to whether an out-of-state corporation doing business in New York has “consented” to personal jurisdiction in the state by registering to do business with the secretary of state. Recently, a New York appellate court weighed in on the subject for the first time.

In *Aybar v. Aybar*, decided on Jan. 23, 2019, the Appellate Division's Second Department found that the doctrine of consent to personal jurisdiction by registration does not survive *Daimler*.

For decades, New York courts have held that a corporate defendant registered to do business in New York has “consented” to personal jurisdiction in the state, even if that defendant is not incorporated or headquartered in New York.^[2]

Daimler represented a major shift in general personal jurisdiction jurisprudence. The Supreme Court explained that for a corporation, the “paradigm forum for the exercise of general jurisdiction is ... one in which the corporation is fairly regarded as home,” the “place of incorporation and principal place of business.”^[3] “These bases afford plaintiffs recourse to at least one clear and certain forum in which a corporation may be sued on any and all claims.”^[4] Only in “an exceptional case” would “a corporation’s operations in a forum other than its formal place of incorporation or principal place of business ... be so substantial and of such a nature as to render the corporation at home in that State.”^[5]

After *Daimler*, New York state and federal courts have struggled to form a consensus regarding the continuing viability of the consent by registration doctrine, resulting in conflicting decisions.^[6] Without a definitive holding from the New York appellate courts, litigants remained in the dark as to whether New York is the proper forum to bring an action against an out-of-state corporate defendant registered do business in New York.

That changed on Jan. 23, when the Second Department decided *Aybar v. Aybar*.^[7] The litigation arose from a car accident in Virginia involving a vehicle manufactured by the [Ford Motor Company](#) with tires manufactured by [Goodyear Tire & Rubber Co.](#)^[8] The plaintiffs sued Ford and Goodyear in New York, even though neither company was incorporated in New York, and neither company’s principal place of business was in the state.^[9] Both companies, however, registered to do business in New York.^[10] The Supreme Court of Queens County, denied Ford’s and Goodyear’s respective motions to dismiss for lack of personal jurisdiction because, inter alia, Ford and Goodyear had registered to do business in New York.^[11]

The Second Department reversed, explaining that “New York’s business registration statutes do not expressly require consent to general jurisdiction as a cost of doing business in New York, nor do they expressly notify a foreign corporation that registering to do business here has such an effect.”[12] While “[t]here has been longstanding judicial construction ... by New York courts and federal courts interpreting New York law [] that registering to do business in New York and appointing an agent for service of process constitutes consent to general jurisdiction,” that doctrine “originates in the 1916 opinion of Judge [Benjamin Nathan] Cardozo in *Bagdon v. Philadelphia & Reading Coal & Iron Co.* (217 NY 432).”[13]

And in 1916, when “*Bagdon* was decided, in personam jurisdiction was still largely limited by the conceptual structure of *Pennoyer v. Neff* (95 US 714) ... and, thus, no state could exercise jurisdiction over persons or property outside of its territory ... To complicate matters, under the 19th century view, a corporation could have no legal existence outside its state of incorporation, and, thus, could be sued only in the state of incorporation, no matter how extensive its business in another state.”[14]

The Supreme Court’s 1945 decision *International Shoe Co. v. State of Washington*[15] “altered our in personam jurisdiction jurisprudence.”[16] That decision “extended the analysis beyond physical presence and authorized a state court to exercise personal jurisdiction over an out-of-state defendant if the defendant has certain minimum contacts with the state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.”[17]

“Following *International Shoe*, the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the State on which the rules of *Pennoyer* rest, became the central concern of the inquiry into personal jurisdiction.”[18]

But, after *Daimler*, “personal jurisdiction cannot be asserted against a foreign corporation based solely on the corporation’s continuous and systematic business activity in New York. The consent-by-registration line of cases is predicated on the reasoning that by registering to do business in New York and appointing a local agent for service of process, a foreign corporation has consented to be found in New York. *Daimler* made clear, however, that general jurisdiction cannot be exercised solely on such presence.”[19]

The Second Department “agree[d] with those courts that asserting jurisdiction over a foreign corporation based on the mere registration and the accompanying appointment of an in-state agent by the foreign corporation, without the express consent of the foreign corporation to general jurisdiction, would be ‘unacceptably grasping’ under *Daimler*.”[20]

The “Court of Appeals does not appear to have cited to *Bagdon* or relied upon its consent-by-registration theory since *International Shoe* was decided. We think that is a strong indicator that its rationale is confined to that era, which was dominated by *Pennoyer*’s territorial thinking, and that it no longer holds in the post-*Daimler* landscape.”[21]

The Second Department’s *Aybar* decision is welcome clarity for litigants. Hopefully, the other departments of the Appellate Division weigh in on the issue soon — and the Court of Appeals, if necessary — in order to clarify the correct filing forum for New York plaintiffs, and to assure

out-of-state defendants that, absent some other exceptional circumstance, they will not be subject to general jurisdiction in New York if they are not incorporated or headquartered in the state simply by being registered to do business in New York.

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[1] 571 U.S. 117 (2014).

[2] See, e.g., [Doubet LLC v. Trs. of Columbia Univ. in the City of New York](#), 99 A.D.3d 433, 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”).

[3] 571 U.S. at 137 (citations and quotation marks omitted).

[4] *Id.*

[5] *Id.* at 139 n.19.

[6] [Compare Amelius v. Grand Imperial LLC](#), 57 Misc. 3d 835 (Sup. Ct. N.Y. Cty. 2017) (“For the dual reasons that the statutes do not adequately apprise foreign corporations that they will be subject to general jurisdiction in the courts of this state and that foreign corporations are required to register for conducting a lesser degree of business in this state than the Supreme Court of the United States has ruled should entail general jurisdiction, this court finds that [Yelp](#) is not subject to general jurisdiction merely because it has registered to do business here.”) with [Serov v. Kerzner Int’l Resorts, Inc.](#), No. 162184/2015, 2016 N.Y. Misc. LEXIS 2818, at *11-12 (Sup. Ct. N.Y. Cty. 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 hailed into New York courts”).

[7] Nos. 2016-06194, 2016-07397, 2019 N.Y. App. Div. LEXIS 444 (2d Dep’t Jan. 23, 2019).

[8] *Id.* at *2-3.

[9] *Id.* at *3

[10] *Id.*

[11] See [Aybar v. Aybar](#), No. 706909/2015, 2016 N.Y. Misc. LEXIS 2263, at *12 (Sup. Ct. Queens Cty. May 25, 2016) (“[t]his court agrees with those courts that hold that general jurisdiction based on consent through registration and appointment survives [Daimler]”); [Aybar v. Aybar](#), No. 706909/2015, 2016 N.Y. Misc. LEXIS 2253, at *12 (Sup. Ct. Queens Cty. May 25, 2016) (same)

[12] [Aybar](#), 2019 N.Y. App. Div. LEXIS 444, at *16.

[13] *Id.* at *16-17.

[14] *Id.* at *17-18 (internal citations and quotation marks omitted).

[15] [International Shoe Co. v. State of Washington](#), 326 U.S. 310.

[16] *Id.* at *22.

[17] *Id.* (quoting [Int’l Shoe](#), 326 U.S. at 316 (internal quotation marks omitted)).

[18] *Id.* (quoting [Daimler](#), 571 U.S. at 126).

[19] *Id.* at 23 (citation omitted).

[20] *Id.* (citation omitted).

[21] *Id.* (citations omitted).