

NEW YORK COURT OF APPEALS ROUNDUP

‘AYBAR’ RESOLVES GENERAL JURISDICTION ISSUE FOR NEW YORK

WILLIAM T. RUSSELL, JR. AND LINTON MANN III
SIMPSON THACHER & BARTLETT LLP

October 19, 2021

In *Aybar v. Aybar*, the Court of Appeals considered whether a foreign corporation consents to general jurisdiction by New York courts when the corporation registers to do business and designates a local agent for service of process in New York in accordance with the requirements of New York’s Business Corporation Law (BCL).

In a majority opinion written by Judge Madeline Singas and joined by Chief Judge Janet DiFiore and Judges Eugene Fahey, Michael Garcia and Anthony Cannataro, the court ruled that a foreign corporation’s compliance with the relevant BCL provisions constitutes consent to service of process in New York, but does not constitute consent to general jurisdiction by New York courts.

Background

Jose Aybar Jr., a New York resident, owned a Ford Explorer with Goodyear tires. The vehicle was purchased from a third party in New York and registered with the New York Department of Motor Vehicles. Ford did not sell, design, or manufacture the vehicle in New York. Goodyear designed, manufactured, and initially sold the tires for the vehicle in other states. In July 2012, while Aybar was driving in Virginia, the vehicle crashed after its Goodyear tire allegedly failed, resulting in the death of three passengers and severe injuries to three other passengers. All passengers were New York residents.

The surviving passengers and the estates of the decedent passengers filed suit in New York Supreme Court, Queens County against Aybar, Ford, Goodyear and others alleging, in part, that the accident was caused by Ford’s and Goodyear’s negligence. Ford and Goodyear are not incorporated in New York and do not maintain their principal places of business in New York, but they are registered to do business in New York and both appointed in-state agents for service of process in accordance with the BCL.

Ford and Goodyear moved to dismiss the complaint on the ground that New York courts lacked personal jurisdiction. In opposition, plaintiffs argued that both foreign corporations knowingly consented to general jurisdiction in New York by registering to do business in New York and appointing in-state agents for service of process. Plaintiffs cited as support the Court of Appeal’s 1916 decision in *Bagdon v. Philadelphia & Reading Coal & Iron Co.*, 217 N.Y. 432 (1916), which has been interpreted as holding that foreign corporations that have complied with registration and designation statutes have thereby contractually consented to general jurisdiction in New York and service of process on a designated agent.

Citing *Bagdon*, the Supreme Court denied the motions to dismiss holding, in part, that Ford and Goodyear consented to general jurisdiction by registering to business in New York and designating a local agent for service of process.

The Appellate Division, Second Department reversed and granted the motions to dismiss. The Second Department recognized that *Bagdon* has long been understood to hold that a foreign corporation's registration in New York and appointment of local agents for service of process constituted consent to general jurisdiction.

However, the Second Department determined that "*Bagdon* must be understood within the historical context in which it was decided" and "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" in light of more recent U.S. Supreme Court precedent clarifying and limiting the permissible grounds for general jurisdiction. *Aybar v. Aybar*, 169 A.D.3d 137, 147-48 (2d Dept. 2019). The Court of Appeals granted plaintiffs leave to appeal.

The Court's Analysis

The majority began its analysis by clarifying that "[t]he sole issue before us, as presented by the parties, is whether Ford and Goodyear consented to general jurisdiction in New York by registering to do business here and appointing a local agent for service of process, in compliance with the Business Corporation Law." The majority then analyzed the text of the BCL.

According to the majority, the relevant statutory provisions "plainly require that, in order to do business in New York, a foreign corporation must register and designate an in-state agent for service of process. The statute does not, however, condition the right to do business on consent to the general jurisdiction of New York courts or otherwise afford general jurisdiction to New York courts over foreign corporations that comply with these conditions."

Applying the maxim that a court must give effect to the plain meaning of the statute's language, the majority held that the BCL cannot be read to provide that a foreign corporation consents to general jurisdiction in New York when it follows the BCL's requirements to register to do business here and designate a local agent for service of process.

The majority next turned to plaintiffs' interpretation of *Bagdon*. In *Bagdon*, a New York resident was injured while working in Pennsylvania for a Pennsylvania corporation. The foreign corporation agreed to compensate the plaintiff for his injuries and the plaintiff later brought suit in New York asserting a breach of that contractual promise.

The Pennsylvania corporation was registered to do business in New York and had designated a local agent for service of process in compliance with the then-existing registration statutes. When the corporation's motion to dismiss for lack of jurisdiction made its way to the Court of Appeals, the court "ultimately held that the effect of the in-state service on the defendant's designated agent was to provide New York courts with what we would now term 'general jurisdiction' or, as Judge Cardozo described it in the parlance of the time, the defendant was 'subject to the rule that transitory causes of action are enforceable wherever the defendant may be found.'"

The majority interpreted *Bagdon* to hold that jurisdiction existed not because the defendant consented to it, but because the U.S. Supreme Court's approach to general jurisdiction at the time permitted the exercise of jurisdiction over a foreign corporation when it was served with process in-state.

Similar to the Second Department, the majority rejects broader interpretations of *Bagdon* as failing to acknowledge the historical context in which the case was decided. The majority explains that "Supreme Court jurisprudence defining the contours of the personal jurisdiction analysis has evolved significantly over time."

The Supreme Court's decision in *Pennoyer v. Neff*, 95 U.S. 714 (1877), governed at the time *Bagdon* was decided and, under *Pennoyer*, a court could exercise jurisdiction over any defendant who was present within the court's territorial jurisdiction. Decades later, in *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945), the Supreme Court expanded the permissible exercise of a court's jurisdiction by holding that a court could 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." *International Shoe*, 326 U.S. at 316 (internal quotations omitted).

The majority observed that *International Shoe* crystallized the two categories of personal jurisdiction that are now recognized—general jurisdiction and specific jurisdiction. General jurisdiction allows a court to exercise jurisdiction over a defendant in connection with a suit arising from events occurring anywhere in the world, whereas specific jurisdiction exists only where the suit arises out of or is related to the defendant's contacts with the forum state.

Relying on *Daimler AG v. Bauman*, 571 U.S. 117 (2014) and *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011), the majority recognized that since *International Shoe*, there has been a shift in modern jurisdiction theory where general jurisdiction plays a reduced role and the Supreme Court has generally refused to extend general jurisdiction beyond traditionally recognized limits.

The majority further highlighted that a foreign corporation's place of incorporation and principle place of business are criterion for determining general jurisdiction and courts may assert general jurisdiction over a foreign corporation when its affiliations with the state are so continuous and systematic that the corporation is essentially at home in the forum state.

Finally, the majority acknowledged the Supreme Court's admonition that it would be an "exceptional case" where "a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State."

Recognizing that *Bagdon* was decided in 1916 at the time of *Pennoyer* and long before *International Shoe* and its progeny, the majority held that the analysis necessary to determine the effect of service of process on an in-state agent is not the same now as it was when Judge Cardozo considered the issue in *Bagdon*.

In *Bagdon*, a foreign corporation's consent to service of process was sufficient to establish general jurisdiction because, at the time, service on an in-state agent of a corporation doing business in New York was sufficient to permit jurisdiction over the corporation under then-existing Supreme Court precedent. The majority does not read *Bagdon* to independently conflate statutory consent to service with consent to

general jurisdiction, and they decline to do so in this case. The majority accordingly affirmed the Second Department’s order and ruled that “under existing New York law, a foreign corporation does not consent to general jurisdiction in this state merely by complying with the Business Corporation Law’s registration provisions.”

The Dissent

Judge Rowan D. Wilson, joined by Judge Jenny Rivera, wrote a lengthy dissent arguing that the clear legislative intent was to grant New York courts general jurisdiction over foreign corporations that register to do business and consent to service of process despite the lack of explicit text in the statute.

The dissent further argues that the Supreme Court’s jurisprudence on general and specific jurisdiction is irrelevant to this case because those decisions do not alter the ability of a plaintiff to obtain jurisdiction by consent, and the majority’s reinterpretation of *Bagdon* is inconsistent with more than 100 years “of jurisprudence firmly notifying businesses that registration to do business in our state subjects them to personal jurisdiction here.”

Conclusion

As the majority acknowledges in a footnote, every state has enacted business registration statutes that vary in language and effect. “Interpreting their own statutes or common law, courts in other states have reached correspondingly diverse conclusions concerning whether registration and designation of an agent for service of process within the state constitutes consent to general jurisdiction.” In her first opinion writing for the court, and in the wake of evolving jurisprudence from the Supreme Court, Judge Singas has now resolved this important question for New York.

William T. Russell Jr. and Linton Mann III are partners at *Simpson Thacher & Bartlett*.

This article is reprinted with permission from the October 19, 2021 issue of New York Law Journal. © 2021 ALM Media Properties, LLC. Further duplication without permission is prohibited. All rights reserved.