

New York Supreme Court

Appellate Division—Second Department

JOSE AYBAR and JOSE AYBAR as Administrator of THE ESTATE
OF CRYSTAL CRUZ-AYBAR,

Docket No.:
2019-12110

Plaintiffs,

— and —

ORLANDO GONZALES, JESENIA AYBAR as
Administrator of THE ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR
as Legal Guardian on behalf of K.C., a minor, ANNA AYBAR and
JESENIA AYBAR as Administratrix of THE ESTATE OF T.C.,

Plaintiffs-Respondents,

— against —

U.S. TIRES AND WHEELS OF QUEENS, LLC,

Defendant-Respondent.

(For Continuation of Caption See Inside Cover)

BRIEF FOR DEFENDANT/THIRD-PARTY PLAINTIFF- RESPONDENT U.S. TIRES AND WHEELS OF QUEENS, LLC

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U.S. TIRES AND WHEELS OF QUEENS, LLC,

Third-Party Plaintiff-Respondent,

– against –

THE GOODYEAR TIRE & RUBBER COMPANY
and FORD MOTOR COMPANY,

Third-Party Defendants-Appellants,

– and –

GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD,

Third-Party Defendant.

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COUNTER QUESTIONS PRESENTED

Whether the Court below correctly denied the motion to dismiss the Third-Party Complaint against an automobile manufacturer and tire manufacturer for lack of specific personal jurisdiction over a negligence, strict products liability suit with indemnification and contributions third-party claims stemming from a rollover accident that killed three and seriously injured three based on its determination that the court has specific jurisdiction, pursuant to the New York long-arm statute, CPLR §302(a) and the due process clause of the U.S. Constitution, based on the facts in the record, including that: Plaintiffs or their decedents were all New York residents, who were returning to New York when the accident occurred due to alleged defects in the vehicle and one of its tires, as well as the servicing thereof in New York; the vehicle and tire were purchased second hand in New York; the vehicle was registered, garaged and primarily used in New York; the Third-Party Defendants-Appellants, which are registered to do business in New York with designated agents for service of process in New York, each have numerous wholly owned or contractual relationships with independent dealers who sell their products, both new and used, to residents of New York and both specifically target New York residents with their extensive advertising and marketing efforts on a continuous ongoing basis for both their new and used products.

It is respectfully submitted that the Court below correctly denied the motion, and the Order appealed from should therefore be affirmed.

Whether the Court below otherwise correctly denied the motion to dismiss the Third-Party Complaint.

It is respectfully submitted that the Court below otherwise correctly denied the motion to dismiss, and the Order appealed from should therefore be affirmed.

PRELIMINARY STATEMENT

In this action, the plaintiffs allege they and their decedents were injured in a July 1, 2012 accident when a Ford Explorer with Goodyear tires that plaintiff Jose A. Aybar (“Aybar”) was driving, with five of his family members as passengers on a return trip from Disney World to Queens, New York, where they resided, flipped over after the tread on one of the Goodyear tires separated, causing the death of three and the serious injury of three others (the “Accident”).

The Accident spawned three lawsuits, *Aybar v. Aybar* and *Aybar v. Goodyear Tire & Rubber Co.*, in which the plaintiffs brought suit against Ford Motor Company (“Ford”) and Goodyear Tire & Rubber Company (“Goodyear”), respectively, alleging products liability and defective design and manufacturing, as well as the within suit, which the plaintiffs brought against defendant/third-party plaintiff-respondent U.S. Tires and Wheels of Queens, LLC (“U.S. Tires”), a resident of Queens, New York, alleging that it negligently installed and inspected the subject tire on the Ford Explorer. U.S. Tire, in turn, impleaded Ford and Goodyear as third-party defendants in the within action.

In *Aybar v. Aybar* and *Aybar v. Goodyear*, Ford and Goodyear moved to dismiss the suits based on lack of general jurisdiction. The motions were granted by the lower court, but reversed on appeal by this Court in its January 23, 2019 Order, which did not address the issue of specific jurisdiction.

Ford and Goodyear have moved to dismiss the Third-Party Action in the within suit, claiming lack of specific personal jurisdiction under the New York long-arm statute, [CPLR §302\(a\)](#), and the due process clause of the federal Constitution. In its Order dated September 25, 2019 (the ‘September 25, 2019 Order’), the Court below correctly denied the motion based on its determination that it has specific jurisdiction over the suit based on the facts in the record.

Ford and Goodyear’s entire argument is based on their unsustainable contention that they have no connection with the transactions at issue in this litigation, while they inconsistently admit: they marketed, promoted, advertised, sold and serviced their products in New York; they have numerous wholly owned or contractual relationships with independent dealers who sell their products, new and used, to residents of New York; their goods and products are a large part of the used car and tire markets in New York; they are registered and authorized to do business in New York; and Plaintiffs and U.S. Tires are New York residents.

They admit that they manufactured the alleged defective products at issue, and cannot dispute that they established and maintained an enormous commercial

infrastructure in New York to support and promote their products (both new and used), spent many millions of dollars marketing and advertising their products (both new and used) in New York, continuously intruded into the homes, cars and other intimate surroundings of New York residents, including Mr. Aybar, with their television, radio, computer and other advertisements (in English and Spanish), beckoning to them and undoubtedly influencing them to buy their products, including the very products Mr. Aybar purchased that are the subject of this litigation.

It is a slender reed indeed for Ford and Goodyear to rest their case on the contention that they did not directly sell Mr. Aybar the products, considering that they indirectly orchestrated and promoted those very sales through their massive, pervasive commercial intrusion into this state, which they planned with great deliberation and at enormous expense, with many dollars expended in New York, seeking and benefiting from the very sales from which they now attempt to disassociate themselves, based on the false pretense that they had no involvement, no complicity.

It is no secret that automobile manufacturers such as Ford benefit enormously from the sale of their replacement parts (and likely services) for older vehicles such as the Ford Explorer at issue, many of which are purchased second hand from third parties, as here. It is common knowledge that as an automobile

ages, it requires more and more replacement parts, which are frequently purchased directly or indirectly from the manufacturer, to the great benefit of the manufacturer. Through its concerted efforts, Ford instigated the sale of the Ford Explorer to Mr. Aybar based on its New York contacts and stood to benefit from that sale in New York. It cannot now walk away from the transactions it fostered and facilitated by making hyper-technical arguments, claiming no connection to them, at the time when Mr. Aybar and the other plaintiffs seek legal redress for the injuries they sustained, for the death of their decedents stemming from those transactions.

Nor can Goodyear justifiably disassociate itself from the purchase of its used tires, which it too promoted and indirectly benefited from, including the tire at issue in this litigation.

Based upon all the relevant circumstances and the Record before this Court and the Court below, the September 25, 2019 Order should be affirmed by this Honorable Court.

COUNTER-STATEMENT OF FACTS

Since the Brief of Third-Party Defendants Ford and Goodyear blends fact, misstated fact and argument that cannot be distinguished, it is respectfully requested that this Court refer to the Counter-Statement of Facts set forth herein.

A. This Court Summarized the Motions to Dismiss in the Related *Aybar v. Aybar* Action and Some of the Facts Pertinent to General Jurisdiction

In its January 23, 2019 Opinion & Order in the joint appeal in the related action *Aybar v. Aybar*, 169 A.D.3d 137 (2d Dep’t), *lv. to app. Granted*, 33 N.Y.3d 905 (2019), *lv. to app. granted*, 34 N.Y.3d 905 (2019) this Court summarized the underlying motions in that case based on general jurisdiction and the facts thereto, which are set forth at R.590-92.

**B. Ford and Goodyear Both Concede They Conduct
“Extensive Commercial Activities in New York”**

This Court also noted in its January 23, 2019 Order in *Aybar v. Aybar*, 33 N.Y.3d 1044 (2019) that: “Ford concedes that it has extensive commercial activities in New York” and “Goodyear concedes that it has extensive commercial activity in New York.” (R.596)

C. This Court Limited Its Review in the Appeal in *Aybar v. Aybar* to General Jurisdiction, Leaving Specific Jurisdiction an Open Issue

In *Aybar v. Aybar*, this Court granted Ford and Goodyear’s motions to dismiss based on its finding that notwithstanding their extensive contacts and dealings in New York, they did not rise to the level of making them “at home” in the State sufficient for general jurisdiction. The Court, however, left open the issue of whether it has specific jurisdiction over them. The Court noted: