SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

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

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.

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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,

Docket No.: 2019-12110

Queens County Clerk's

Index No.: 703632/17

AFFIRMATION IN OPPOSITION

- and -

GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD,

Third-Party Defendant.

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LESTER CHANIN, an attorney duly admitted to practice law before the Courts of this State and aware of the penalties of perjury, hereby affirms the following:

1. I am of counsel to the law firm of FARBER BROCKS & ZANE L.L.P., attorneys for Defendant- Respondent U.S. Tires and Wheels of Queens, LLC ("U.S. Tires"), in the above-captioned action. I am fully familiar with the facts and circumstances at issue herein.

2. This Affirmation is submitted in opposition to the motion by the Third-Party Defendants-Appellants The Goodyear Tire & Rubber Company ("Goodyear") and Ford Motor Company ("Ford"), seeking to reargue this Court's November 2, 2022 Decision and Order (the "November 2, 2022 Order"), which affirmed the Supreme Court of New York, Queens County's Order dated September 25, 2019 (the "September 25, 2019 Order") (R.8-13), pursuant to CPLR R. 2221 and 22 NYCRR § 1250.16(d)(2) and seeking leave to appeal to the Court of Appeals, pursuant to CPLR § 5602 and 22 NYCRR § 1250.16(d)(3).

3. Contrary to Ford and Goodyear's contentions, this Court's extremely thorough and well-reasoned November 2, 2022 Order neither misapprehended the relevant facts or law and was correctly decided. Nor does it raise a novel issue worthy of appeal to the Court of Appeals. Therefore, neither reargument nor leave to appeal to the Court of Appeals are warranted and the motion should be denied in its entirety.

4. In making their arguments, Ford and Goodyear lose sight of the courts' broad interpretation of the "articulable nexus" standard, pursuant to CPLR § 302(a)(1), necessary for specific personal jurisdiction under the New York Long Arm Statute.

5. In *Qudsi v. Larios*, 173 A.D.3d 920, 922-923 (2d Dep't 2019), this Court explained how the second prong of the CPLR §302(a)(1) test operates:

> In order to satisfy the second prong of the jurisdictional inquiry, there must be an "articulable nexus" (*McGowan v Smith*, 52 NY2d at 272) or a "substantial relationship" (*Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467 [1988]) between a defendant's New York activities and the cause of action sued upon.

Id., 173 A.D.3d at 923.

6. The "articulable nexus" standard does not require a "causal link" between the claim and the defendant's New York contacts. Id. The nexus requirement is "relatively permissive" and does not require causation, but merely "a

relatedness between the transaction and the legal claim such that the latter is not completely unmoored from the former, regardless of the ultimate merits of the claim." *Licci v. Lebanese Can. Bank, SAL*, 20 N.Y.3d 327, 339 (2012). The claim need only be "in some way arguably connected to the transaction." Id. at 340.

7. The connection requirement of CPLR §302(a)(1) is satisfied so long as the product is marketed in New York, even if the specific product that caused the injury was not sold in New York initially. In *Rushaid v. Pietet & Cie*, 28 N.Y.3d 316 (2016), the Court of Appeals found that the statute's nexus requirement was satisfied when the bank accounts in New York were part of a larger fraud scheme conducted by the defendants that took place elsewhere, just like the sale of the Ford Explorer and Goodyear tire were part of a nationwide marketing for those products. *Id. See also Singer v. Walker*, 15 N.Y.2d 443 (1965) (foreign manufacturer was subject to jurisdiction under 302(a)(1) where a New York retailer sold one of its hammers to the plaintiff who was injured in an accident that occurred out of state); *Tonns v. Spiegel's*, 90 A.D.2d 548 (2d Dep't 1982) (court found jurisdiction under 302(a)(1) when the defendant was an out of state manufacturer who made a defective product sold to the plaintiff through a New York retailer); *EMI Christian Music Grp. v. MP3tunes, LLC*, 840 F.3d 79 (2d Cir. 2016) (evidence of the intent to market a product nationwide sufficient for minimum contacts in New York).

8. Despite Ford and Goodyears many protestations, there is certainly "a relatedness between the transaction and the legal claim such that the latter is not completely unmoored from the former" under the circumstances of this case. *See Licci*, 20 N.Y.3d at 339.

9. In the November 2, 2022 Order, this Court correctly found that "U.S. Tires demonstrated that Goodyear's and Ford's activities in New York have a sufficient connection with the claims herein," rejecting Ford and Goodyear's counterarguments. *Aybar v. US Tires & Wheels of Queens, LLC,* ---N.Y.S.3d---, 2022 WL 16626087, slip op. at *6 (Nov. 2, 2022).

10. As the Court correctly ruled:

> Also unpersuasive is their argument that, because they did not design, manufacture, or sell the vehicle or the tire in New York, their transactions in New York are entirely "unmoored" from the claims herein. Ford and Goodyear purposely availed themselves of the New York market to sell motor vehicles and tires. By doing so, and on such a grand scale as befitting titans in their respective industries, such as Ford and Goodyear, they would undoubtably benefit from the sale of replacement parts and services from third-party companies. Here, the inspection and installation of those parts in New York was allegedly done so negligently, and the third-party claims for indemnification and contribution are therefore, tethered.

Id.

11. Despite their extensive and long-standing commercial involvement in New York, Ford and Goodyear disingenuously maintain, as they did in their initial

Briefs, that: "This litigation does not arise out of any of Ford and Good Year's contacts. All of Ford and Goodyear's allegedly relevant conduct ... took place outside of New York." *See* Ford's Memorandum of Law, at 12 (citations and quotations omitted); Goodyear's Memorandum of Law, at 13 (citations and quotations omitted).

12. Ford and Goodyear ask this Court to turn a blind eye and willfully ignore the reality of the modern economy in the State of New York and their extraordinarily profound influence over it, including transactions such as U.S. Tires' transaction with the Aybars. To a certainty, without their extensive involvement and facilitating role in New York, the transaction between the U.S. Tires and the Aybars would never have occurred.

13. Over many, many decades, at a cost of many millions of dollars *in the State of New York*, Appellants have deliberately and painstakingly created the essential infrastructure and conditions *in the State of New York* that led to the transaction between U.S. Tires and the Aybars. Without these conditions deliberately created by Ford and Goodyear *in the State of New York* the transaction at issue in this litigation would not and could not have taken place.

14. Ford and Goodyear admit that they: purposefully market, promote, advertise and sell their products in New York, which it is undisputed are the exact same products at issue in this litigation. *See* Appellant's Brf., at 11. Yet, they

illogically argue that they played no part in the transaction at issue, even though it is obvious that they deliberately facilitated it. With the expenditure of millions and millions of dollars *in New York*, Ford and Goodyear have created the commercial support system which unquestionably facilitated the transactions between U.S. Tires and the Plaintiffs. Without Ford and Goodyear's blanketing the New York airwaves, newspapers, magazines, social media, etc. with their marketing and advertising messages; their many dealerships, stores and other commercial establishments selling their products, their selling of all manner of replacement parts and servicing of their products in New York, the transactions at issue in this litigation would not and could not have taken place.

15. Given their profound influence on the economy of New York, Ford and Goodyear's contention that the transaction at issue was entirely divorced from their massive efforts to promote and facilitate such transactions rings hollow.

16. Because the transaction between U.S. Tires and the Aybars was clearly not "merely coincidental," the "necessary relatedness" needed for specific personal jurisdiction over Ford and Goodyear exists. *See Licci v. Lebanese Canadian Bank,* 20 N.Y.3d at 340.

17. Moreover, Ford and Goodyear completely ignore the other compelling arguments supporting affirmance. If they had their way and got the third-party action dismissed, U.S. Tires, a miniscule company compared to them, could not be

made whole without bringing two separate actions in distant foreign states against Ford and Goodyear where each of their principal places of business are or where they manufactured or sold the products at issue. The cost of doing this would be absolutely prohibitive.

18. Equally concerning, if the third-party action were dismissed there would be a real danger of inconsistent rulings. The New York court where this case is venued could reach one result regarding the relative culpability of U.S. Tires, Ford and Goodyear, but that adjudication would not be binding on Ford or Goodyear in foreign forums, which could reach wholly inconsistent rulings.

19. Moreover, the cost of litigating the exact same issues in three different forums would be a gross waste of judicial resources.

20. These factors are unique to third-party actions, compelling a different result from the many cases relied on by Ford and Goodyear, which did not involve third-party actions.

21. The only case Ford and Goodyear discuss that involved a third-party action was *McGowan v. Smith,* 52 N.Y.2d 268 (1981), but that case is completely distinguishable. In *McGowan,* the third-party defendant was a Japanese company (Mogi) with extremely limited contact in New York. As the court described it, Mogi had a mere "transitory physical presence in the State", which was apparently based

entirely on "its efforts to conduct general marketing research within its borders ...." *Id.,* 52 N.Y.2d at 272, 273.

22. In dramatically stark contrast, Ford and Goodyear have for many decades had an enormous presence and commercial involvement in the State of New York, including in the sale and servicing of the very products involved in this case. Unlike Mogi, at an astronomical cost, Ford and Goodyear have systematically created the conditions that led to U.S. Tires' servicing their products -- purchased second hand in New York by New York residents -- in the State of New York.

CONCLUSION

23. For all of the foregoing reasons, therefore, Ford and Goodyear have not and cannot establish that this Court overlooked or misapplied the law; nor can they establish that this matter presents issues of public import calling for the the Court of Appeals review the November 2, 2022 Order.

24. Accordingly, it is respectfully requested that this Court deny Ford and Goodyear's motion in its entirety and uphold the September 25, 2019 Order.

WHEREFORE, it is respectfully requested that this Court deny Ford and Goodyear's motion in its entirety together with such other and further relief that this Court deems just and proper.

Dated: Garden City, New York
December 9, 2022

LESTER CHANIN