

availed itself of the protections of the State of Florida. Chrysler Canada assembled the subject Chrysler 300 M for Chrysler United States, which distributes nationally in the United States, and therefore Chrysler Canada invoked the benefits and protections of those states, including Florida. *World-Wide Volkswagen Corp.*, 444 U.S. [286,] 297, 100 S.Ct. 559 [1980]. Therefore, ‘it is not unreasonable to subject [defendant] to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others.’ *Id.*”)

As in the many foregoing cases, Ford and Goodyear manufactured, marketed and advertised the Ford Explorer and tire at issue by specifically targeting New York residents with their products, directly enticing Mr. Aybar to purchase those products in New York in the second hand market. They promoted the sale of their used products in New York and benefited from those sales. They created an enormous infrastructure for marketing, servicing and repairing those products in New York to foster those sales. With an extraordinary amount of deliberation, care, effort and expense in the State of New York, Ford and Goodyear created, orchestrated, nurtured and sustained the commercial environment or conditions needed to induce Mr. Aybar to purchase the Ford Explorer and Goodyear tire at issue.

That they did not directly sell the products or pull the proverbial trigger themselves, is of no moment given their culpability for launching the

instrumentalities of alleged harm targeted at New York residents, combined with their extensive in-state involvement in doing everything in their power to promote and facilitate those sales, from which they stood to benefit, albeit indirectly.

The New York cases Ford and Goodyear rely on are either not controlling or distinguishable. The cases they cite from other jurisdictions are distinguishable and/or not persuasive, in contrast to the cases cited by U.S. Tires herein. For example, in [*Erwin v. Ford Motor Co.*, 2016 WL 7655398 \(M.D. Fla. Aug. 31, 2016\)](#), unlike the instant case, the plaintiff was a resident of Ohio and lived only part-time in the forum state, Florida. Moreover, unlike the instant case, the plaintiff did not purchase the vehicle in the forum state. Finally, the claim did not arise out of Ford's advertising in the forum state, since the vehicle was purchased in Ohio, in contrast to the facts of the instant case.

The decision in [*Schmitgal v. Twohig*, 2019 WL 4689228 \(D.S.C. Sept. 26, 2019\)](#) was subsequently vacated and dismissed based on lack of subject matter jurisdiction. [*Id.*, 2020 WL 2468754 \(D.S.C. May 13, 2020\)](#).

[*Kommer v. Ford Motor Co.*, 2019 WL 2895384 \(N.D.N.Y. June 19, 2019\)](#) was a class action suit, which is fundamentally different from the instant action. None of the claims in [*Kommer*](#) involved New York state law, in stark contrast to the instant action. Only one of the four putative plaintiffs in [*Kommer*](#) was a New York resident. Whereas, Ford and Goodyear concede that the plaintiffs in the

within action are New York residents. Appellant's Brf., at 11. Additionally, none of the vehicles at issue in *Kommer* were sold in New York. Whereas, the Ford Explorer and tire at issue in the within action were sold in New York, albeit second hand, which is a distinction between the instant action and *Gaillet v. Ford Motor Co.*, 2017 WL 1684639 (E.D. Mich. May 3, 2017) as well.

In *Progressive County Mutual Insurance Co. v. Goodyear Tire & Rubber Co.*, 2019 WL 846056 (S.D. Miss. Feb. 21, 2019), the plaintiff purchased the tire at issue in a state other than the forum state. Whereas, in the instant case, Aybar purchased the Goodyear tire at issue in New York.

Cahen v. Toyota Motor Corp., 147 F.Supp. 955, 962 (N.D. Cal. 2015), *aff'd on other grounds*, 717 Fed.Appx. 720 (9th Cir. 2017) too is very dissimilar to the instant action. It is a putative class action. It did not involve personal injuries, but rather economic injuries. Only one of the plaintiffs in *Cahen* resided in the forum state (California). The out-of-state plaintiffs did not assert claims based on California law. Therefore, they were dismissed from the suit.

B. Ford and Goodyear Have Not and Cannot Meet Their Burden of Demonstrating that Traditional Notions of Fair Play and Substantial Justice Would Render Jurisdiction Unreasonable

Ford and Goodyear "minimum contacts" with New York having been established, the burden is on them to "present a compelling case that the presence

of some other considerations would render jurisdiction unreasonable.’’ *D & R Glob. Selections, S.L. v. Bodega Olegario Falcon Pineiro*, 29 N.Y.3d 292, 300, 78 N.E.3d 1172, 1177–78 (2017) (quoting *LaMarca v. Pak–Mor Mfg. Co.*, 95 N.Y.2d 210, 216 (2000) (citation and internal quotation marks omitted). In other words, they have the burden of demonstrating that for the court to exercise personal jurisdiction over them would violate “traditional notions of fair play and substantial justice.”

It should be noted that in addition to holding that the court had specific jurisdiction over the defendant, consistent with due process, the above cases, *supra*, at 43-55, explicitly or implicitly held that their exercise of specific jurisdiction of the defendant(s) comports with traditional notions of fair play and substantial justice.

Ford and Goodyear, however, have not even attempted to make that showing. Therefore, it is respectfully submitted that the Court should affirm the September 25, 2019 Order, finding that the Court below has personal jurisdiction over them.

CONCLUSION

For all the foregoing reasons, as well as those set forth in U.S. Tires' papers below, it is respectfully requested that this Honorable Court affirm the September 25, 2019 Order denying Ford and Goodyear's motion to dismiss the action based on lack of specific personal jurisdiction.

Dated: Garden City, New York
 July 6, 2020

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