
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,

(For Continuation of Caption See Inside Cover)

JOINT OPENING BRIEF FOR THIRD-PARTY DEFENDANTS-APPELLANTS THE GOODYEAR TIRE & RUBBER COMPANY AND FORD MOTOR COMPANY

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Appellant Ford Motor Company*

– against –

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

Defendant-Respondent.

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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QUESTIONS PRESENTED

1. Whether a New York court can exercise specific personal jurisdiction over Ford Motor Company (“Ford”)—a Delaware corporation with its headquarters in Dearborn, Michigan—for claims arising out of a Virginia car accident.

The Supreme Court held that it could exercise specific personal jurisdiction over Ford.

2. Whether a New York court can exercise specific personal jurisdiction over The Goodyear Tire & Rubber Company (“Goodyear”)—an Ohio corporation with its headquarters in Akron, Ohio—for claims arising out of a Virginia car accident.

The Supreme Court held that it could exercise specific personal jurisdiction over Goodyear.

PRELIMINARY STATEMENT

This is the third time this Court is called upon to clarify that the New York courts cannot exercise personal jurisdiction over Ford and Goodyear for a 2012 car accident with no connection to the State. Plaintiffs allege that they were injured in a Virginia car accident after the tread on a Goodyear tire installed by U.S. Tires and Wheels of Queens, LLC (“U.S. Tires”), on their 2002 Ford Explorer separated.

Plaintiffs sued U.S. Tires for negligence, and U.S. Tires commenced a third-party action against Ford and Goodyear.

This Virginia accident spawned three lawsuits: *Aybar v. Aybar*, *Aybar v. Goodyear Tire & Rubber Co*, and this case. In all three, Ford and Goodyear moved to dismiss the claims against them for lack of personal jurisdiction. Ford and Goodyear explained that other than Plaintiffs' and U.S. Tires's New York residence, the claims here have no link to New York. The accident occurred in Virginia; Plaintiffs sustained their alleged injuries in Virginia; and neither the Explorer nor the Goodyear tire was manufactured, designed, or first sold by either Ford or Goodyear in New York.

In *Aybar v. Aybar*, the Supreme Court held that it lacked specific jurisdiction over Ford and Goodyear, but could exercise general jurisdiction over them. *See Aybar v. Aybar*, 2016 N.Y. Slip Op. 31139(U), 2016 WL 3389890 (Sup. Ct., Queens County 2016); *Aybar v. Aybar*, 2016 N.Y. Slip Op. 31138(U), 2016 WL 3389889 (Sup. Ct., Queens County 2016). This Court reversed the Supreme Court's general-jurisdiction holding, but left in place its conclusion that it lacked specific jurisdiction over Ford and Goodyear because specific jurisdiction had not been raised by Plaintiffs or U.S. Tires in the trial court. *Aybar v. Aybar*, 169 A.D.3d 137, 144-152 (2d Dep't 2019), *leave to appeal dismissed*, 33 N.Y.3d 1044 (2019), and *leave to appeal granted*, 34 N.Y.3d 905 (2019).

Likewise, in *Aybar v. Goodyear*, the Supreme Court held that it lacked specific jurisdiction over Goodyear, but could exercise general jurisdiction over it. *Aybar v. Goodyear Tire & Rubber Co.*, 2016 N.Y. Slip Op. 33056(U), 2016 WL 11660767 (Sup. Ct., Queens County 2016). The Court explained that specific jurisdiction did not lie because “Goodyear manufactured and sold the tire out of state, and the plaintiff sustained injury out-of-state.” *Id.* at 3. And in that case, too, this Court reversed the trial court’s general-jurisdiction holding, but left in place its specific-jurisdiction one, which was not challenged on appeal. *See Aybar v. Goodyear Tire & Rubber Co.*, 175 A.D.3d 1373, 1373-74 (2d Dep’t 2019).

The Supreme Court in this case broke the trend. It correctly held that *Aybar v. Aybar* meant that it did not have general jurisdiction over Ford and Goodyear. But the Supreme Court held that it could exercise *specific*, or case-linked, jurisdiction over Ford and Goodyear under New York’s long-arm statute, CPLR 302(a)(1), and that specific jurisdiction over Ford and Goodyear complied with the federal Due Process Clause.

The Supreme Court was mistaken. Both CPLR 302(a)(1) and the Due Process Clause require that a plaintiff’s cause of action *arise out of* a non-resident defendant’s contacts. The court was right that Ford and Goodyear have some contacts with New York. But the Supreme Court failed to *connect* those contacts with U.S. Tires’s third-party cause of action. Instead, the court concluded that the

“stream of commerce” connected Ford and Goodyear’s New York contacts to U.S. Tires’s cause of action. But the stream of commerce has nothing to do with this case. The stream of commerce ends with the product’s first retail sale. Here, that was outside New York. The Supreme Court thus erred in exercising specific jurisdiction over Ford and Goodyear over a cause of action having nothing to do with New York.

The Supreme Court’s decision blurs the statutory and constitutional distinction between general and specific jurisdiction. Under both New York and federal constitutional law, the lesser contacts required for a court to exercise specific jurisdiction over a non-resident defendant is offset by the requirement that the cause of action *arise out of* those contacts. The Supreme Court brushed by that distinction. In doing so, it subverted this Court’s earlier holdings that New York courts do not have general jurisdiction over Ford and Goodyear for the causes of action arising from this Virginia accident.

This Court should reverse.

STATEMENT OF FACTS AND NATURE OF THE CASE

Plaintiffs’ accident and suit. Plaintiffs allege that on July 1, 2012, while traveling in Brunswick, Virginia, the 2002 Ford Explorer in which they were passengers left the roadway and rolled over following a tread-detachment event

involving a Goodyear tire installed on the vehicle. *See* R9, R444, R446-447.¹ Plaintiffs sued U.S. Tires—the auto service shop that had installed the tire that allegedly failed in Virginia—in the Queens County Supreme Court, asserting product-liability claims. R444-472. U.S. Tires then commenced a third-party action seeking indemnification and contribution from Ford and Goodyear. R474-482.

Neither Ford nor Goodyear had any contacts in New York with Plaintiffs, U.S. Tires, the Explorer, or the tire installed on it. Ford is a Delaware corporation with its principal place of business in Dearborn, Michigan. R491. The Explorer was not designed or manufactured in New York. *Id.* Ford assembled the vehicle at its St. Louis, Missouri plant, and first sold it to Team Ford Lincoln, an independently owned Ford dealership in Steubenville, Ohio. *Id.* Team Ford Lincoln then sold the Explorer to a retail consumer. *Id.* According to Ford’s records, the Explorer entered New York in 2009, when it was purchased by a Jose

¹ At the Supreme Court, the plaintiffs were divided into two groups: Jose Aybar, and everyone else. The groups are represented by separate counsel. Only the larger group of plaintiffs appears to have opposed Ford and Goodyear’s motions to dismiss. *See* R324-325 (plaintiffs’ opposition to Goodyear’s motion to dismiss, filed by “an attorney . . . for each of the plaintiffs in the above entitled action, except for JOSE AYBAR, who is represented by separate counsel”); R702-R703 (same, in connection with Ford’s motion to dismiss). Only that larger group, then, are plaintiffs-respondents before this Court. For ease of reading, however, this brief will refer to the larger group as “Plaintiffs.”

Velez without Ford's involvement. R964. Jose Aybar then purchased the Explorer sometime in late 2011. *Id.*

Goodyear is an Ohio corporation with its principal place of business in Akron, Ohio. R147.² The tire identified by Plaintiffs and installed by U.S. Tires was not designed or manufactured in New York. Nor could it have been, as Goodyear does not have any Wrangler AP-model tire manufacturing plants in New York. R147-148. The tire was designed in Akron, Ohio and manufactured at Goodyear's Union City, Tennessee plant. R147. Although tires do not have unique identification numbers and are not tracked the way vehicles are, Goodyear's records do not reflect that it was involved in the Explorer's tire entering New York. *Id.* Jose Aybar apparently bought the tire used and brought it to New York, where U.S. Tires inspected and installed it on the Explorer two weeks before the Virginia accident. R446-447. Goodyear had no known ties with

² The Supreme Court did not list this affidavit or Goodyear's affirmation in the list of papers considered on Goodyear's motion. *See* R9; CPLR 2219(a). But they were among the "papers and other exhibits upon which the . . . order was founded," CPLR 5526, and are therefore properly included in the record. *See Singer v. Board of Educ. of N.Y.*, 97 A.D.2d 507, 507 (2d Dep't 1983) (explaining that the Supreme Court's failure to recite the papers it considered in deciding the order on appeal does not affect the substance of the order); *see also Emigrant Funding Corp. v. Kensington Realty Grp.*, 178 A.D.3d 1020, 1022 (2d Dep't 2019) (considering on appeal papers not recited as read in the trial court's order where "there is nothing in the record to suggest that the court declined to consider the . . . papers").