



ANOTHER COURT REJECTS BUSINESS REGISTRATION AS GROUND FOR GENERAL JURISDICTION

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Earlier this year, the US District Court for the Southern District of New York dismissed three retailers from a putative class action. The district court held in *Famular v. Whirlpool Corp.*, that, even though the defendants were registered to do business and had a registered agent in New York, they were not “at home” in that state so as to confer general personal jurisdiction over them.¹

Background. Consumers filed a putative class action against Whirlpool and three retailers, claiming misrepresentations related to the energy-efficiency ratings of certain Whirlpool washing machines. The retailers had stores, were registered to do business, and had designated agents in New York, but none was incorporated nor had its principal place of business in the state. All defendants filed motions to dismiss for want of personal jurisdiction. Whirlpool conceded specific personal jurisdiction. The lack of specific jurisdiction against the other defendants was undisputed, leaving general jurisdiction as the sole jurisdictional question for the district court.

The US Supreme Court explained in *Daimler AG v. Bauman* that, absent exceptional circumstances, a defendant is “at home” and thus subject to general personal jurisdiction in two places: its state of incorporation and its principal place of business.²

Analysis. In *Famular*, no defendant was incorporated nor had a principal place of business in New York, and plaintiffs did not argue this was an exceptional case. These facts should have warranted a straightforward application of *Daimler*. But plaintiffs argued that, notwithstanding *Daimler*, defendants consented to general jurisdiction by registering to do business and appointing a registered agent to receive service of process in New York. Although the US Court of Appeals for the Second Circuit has expressly declined to decide whether this consent-by-registration theory of jurisdiction survived *Daimler*, the district court properly relied on guidance in *Daimler* itself and Second Circuit authorities warning against “an overly expansive view of general jurisdiction” after *Daimler* to hold that a defendant cannot consent to general jurisdiction solely by registering and appointing a registered agent in the state.³ The district court’s reasoning is sound and comports with the spirit of *Daimler* in limiting general jurisdiction only to where the defendant is at home. The Supreme Court recognized no exception for places where a company is registered and, in fact, suggested that just because a defendant does business in a state does *not* subject it to general jurisdiction. To adopt consent-by-registration could create an exception that swallows the rule, and the district court properly rejected that potential outcome.

¹ *Famular v. Whirlpool Corp.*, -- F. Supp.2d --, No. 16 CV 944 (VB), 2017 WL 280821 (S.D.N.Y. Jan. 19, 2017).

² *Daimler AG v. Bauman*, 134 S. Ct. 746, 761 (2014).

³ See *Famular*, 2017 WL 280821 at *4 (quoting *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 627 (2d Cir. 2016)).