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2018 IL App (5th) 150529-U

NOTICE
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NO. 5-15-0529

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

IRENE JEFFS, Individually and as Special)	Appeal from the
Administrator for the Estate of Dale E. Jeffs,)	Circuit Court of
Deceased,)	Madison County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 15-L-533
)	
FORD MOTOR COMPANY,)	Honorable
)	Stephen A. Stobbs,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justice Moore concurred in the judgment.
Justice Goldenhersh dissented.

ORDER

¶ 1 *Held:* Where the exercise of general jurisdiction over the appellant, Ford Motor Company (Ford), would violate due process, the trial court's denial of Ford's motion to dismiss for lack of personal jurisdiction is reversed and the case is remanded with directions that the trial court dismiss the claim against Ford.

¶ 2 The appellant, Ford Motor Company (Ford), appeals an order from the circuit court of Madison County denying its motion to dismiss for lack of personal jurisdiction. On appeal, Ford raises two issues: (1) whether Ford is at home in the state of Illinois such that Illinois courts may exercise general personal jurisdiction over it and (2) whether Ford

validly consented to being subject to general personal jurisdiction in Illinois. For the following reasons, we reverse and remand with directions.

¶ 3

BACKGROUND

¶ 4 The plaintiff, Irene Jeffs, individually and as special administrator for the estate of her husband, Dale Jeffs, brought this suit against 38 defendants, including Ford, for injuries her husband sustained from asbestos exposure. The plaintiff's husband worked as a union insulator for various contractors at a variety of job sites in several states. He was diagnosed with mesothelioma in January 2015 and died on September 24, 2015. Relative to this appeal, the plaintiff alleged that her husband's exposure to asbestos at a Ford plant in Michigan contributed to his mesothelioma and other asbestos-related injuries.

¶ 5 Ford filed a motion to dismiss the complaint for lack of personal jurisdiction, asserting that Illinois lacked both general and specific personal jurisdiction over it. Ford is a Delaware corporation that is headquartered in Michigan.

¶ 6 The trial court denied Ford's motion to dismiss, finding that Illinois had general jurisdiction over Ford. The court found that:

"[Ford] has a certificate of authority to conduct business in Illinois, owns real property in Illinois, has authorized Dealers advertising, soliciting, servicing, and selling vehicles to Illinois residents, employs people in Illinois, and maintains a registered agent to accept service of process in Illinois. Ford voluntarily conducts regular business in this State and has done so since 1922. Ford has litigated numerous cases in the State of Illinois, including asbestos personal injury cases in this Circuit, without asserting any objection to personal jurisdiction."

¶ 7 Based on these findings, the trial court ruled that Ford conducts "substantial, not *de minimus*, business in Illinois." The court then discussed whether exercising personal jurisdiction over this defendant would comport with the notions of fair play and substantial justice. In making its determination, the court found that Ford consented to the jurisdiction of Illinois because it was authorized, licensed, and doing business in Illinois since 1922. The court further noted that, in Illinois, Ford had 156 dealerships, sold 102,000 cars in 2014, owned property, and employed 5500 people. Based on its consideration of these facts, the court denied Ford's motion to dismiss.

¶ 8 Ford filed a timely petition for leave to appeal with this court, which was denied. Ford then filed a petition for leave to appeal with the Illinois Supreme Court. On May 25, 2016, the supreme court entered a supervisory order denying the petition and directing this court to vacate its previous order and allow Ford's petition for leave to appeal. On July 6, 2016, this court granted Ford's petition for leave to appeal.

¶ 9 In addition to the briefs, the American Association for Justice has filed an *amicus curiae* brief in support of the plaintiff, and the Chamber of Commerce of the United States and the Coalition for Litigation Justice, Inc., have filed *amicus curiae* briefs in support of Ford.

¶ 10 ARGUMENT

¶ 11 On appeal, Ford argues that, under *Daimler AG v. Bauman*, it should not be subject to general jurisdiction in Illinois because it is not essentially at home in this state. See *Daimler AG v. Bauman*, 571 U.S. 117 (2014). The plaintiff argues that (1) Ford has consented to the general jurisdiction of Illinois; (2) under the rule stated in *Daimler*, Ford

is essentially at home here; and (3) Illinois has specific jurisdiction over this case.¹ After all briefs were filed, this court granted two motions to cite additional authority, one from each side. Ford's motion cited *Aspen American Insurance Co. v. Interstate Warehousing, Inc.*, 2017 IL 121281, which we find controlling and informative as to the narrow definition of general personal jurisdiction in this state. Therefore, in applying this case, we conclude that Ford should not be subject to general personal jurisdiction in the state of Illinois.

¶ 12 It is plaintiff's burden to make a *prima facie* showing that a court may exercise personal jurisdiction over a nonresident defendant. *Id.* ¶ 12. As in this case, where the circuit court's determination is based solely on documentary evidence, this court's review is *de novo*. *Id.* Any conflicts within the pleadings and supporting affidavits will be resolved in plaintiff's favor. *Id.* However, uncontroverted evidence offered by defendant may defeat jurisdiction. *Id.*

¶ 13 We first address the issue raised as to whether Ford consented to being subject to general jurisdiction in Illinois by registering to do business under section 13.10 of the Business Corporation Act of 1983 (Act) (805 ILCS 5/13.10 (West 2014)) and maintaining a registered agent for service of process. The Illinois Supreme Court addressed this issue in *Aspen American Insurance Co.* and found that:

"Finally, plaintiff argues that, because defendant has registered to do business in Illinois under the Business Corporation Act of 1983 (Act) (805 ILCS

¹We will not address the specific jurisdiction issue because, in his deposition, the plaintiff's husband stated that the Ford Rouge plant he worked at was in Detroit, Michigan. Thus, the conduct giving rise to the claim, *i.e.*, asbestos exposure, did not occur in Illinois.

5/1.01 *et seq.* (West 2012)), and because defendant has a registered agent in Illinois for service of process, it has 'subjected itself to the jurisdiction and laws of Illinois.' That is, plaintiff maintains that, by registering to do business in Illinois, defendant has effectively consented to the exercise of general jurisdiction in this state and thereby obviated any due process concerns. Again, we disagree.

None of the foregoing provisions [of the Act] require foreign corporations to consent to general jurisdiction as a condition of doing business in Illinois, nor do they indicate that, by registering in Illinois or appointing a registered agent, a corporation waives any due process limitations on this state's exercise of general jurisdiction. Indeed, the Act makes no mention of personal jurisdiction at all."

Aspen American Insurance Co., 2017 IL 121281, ¶¶ 22-24.

Therefore, because any argument that registering under the Act and maintaining an agent amounts to consent or waiver of jurisdiction fails under *Aspen*, we move to a due process analysis.

¶ 14 In Illinois, the exercise of personal jurisdiction over a nonresident defendant is permitted by the "long-arm" statute in section 2-209 of the Code of Civil Procedure (735 ILCS 5/2-209 (West 2014)). Under the catchall provision contained in subsection (c) of the long-arm statute, a "court may also exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States." *Id.* § 2-209(c). As several courts have previously held, the enactment of subsection (c) rendered the long-arm statute coextensive with the due process requirements of the

Constitution of the United States. *Madison Miracle Productions, LLC v. MGM Distribution Co.*, 2012 IL App (1st) 112334, ¶ 43 (quoting *Keller v. Henderson*, 359 Ill. App. 3d 605, 612 (2005)). Therefore, the only relevant inquiry is whether under the United States Constitution due process is satisfied. *Id.*

¶ 15 The United States Supreme Court has held that, in order for a state to exercise personal jurisdiction over a nonresident defendant, the defendant must have "certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." (Internal quotation marks omitted.) *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). A state may assert either general or specific jurisdiction. *Aspen American Insurance Co.*, 2017 IL 121281,

¶ 14. Specific jurisdiction is case-specific and exists where "the plaintiff's cause of action arises out of or relates to the defendant's contacts with the forum state." *Id.* (citing *Russell v. SNFA*, 2013 IL 113909, ¶ 40, citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). Conversely, general jurisdiction is all-purpose and allows a plaintiff to pursue a claim against a defendant even if the conduct of the defendant giving rise to the claim occurred entirely outside the forum state. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011). Here, the issue is whether the court's exercise of general personal jurisdiction is appropriate against this defendant in Illinois.

¶ 16 The United States Supreme Court, as well as the Illinois Supreme Court, has held that the due process analysis for whether a defendant is subject to general personal jurisdiction does not rest on "whether a foreign corporation's in-forum contacts can be said to be in some sense continuous and systematic." (Internal quotation marks omitted.)

Daimler, 571 U.S. at 139; see also *Aspen American Insurance Co.*, 2017 IL 121281, ¶ 16. Instead, the Court in *Daimler* held that for a state to assert general jurisdiction over a foreign defendant, that defendant's affiliations with the forum must be so systematic and continuous that they are rendered to be at home in the forum state. *Daimler*, 571 U.S. at 127. A corporate defendant is considered at home in its place of incorporation and its principal place of business. *Id.* at 137. In exceptional circumstances, a corporation will be considered at home in additional forums. See *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952) (defendant who temporarily relocated to Ohio from the Philippines during World War II determined to be at home in Ohio).

¶ 17 Here, it is undisputed that Ford is incorporated in Delaware and has its principal place of business in Michigan. Therefore, Illinois courts may only exercise general personal jurisdiction over Ford if its affiliations with Illinois rise to the level of an exceptional circumstance.

¶ 18 The trial court determined that Ford conducts substantial business in Illinois. However, this is not the proper standard. A state may exercise general jurisdiction over a defendant only if the defendant is essentially at home in the forum. *Aspen American Insurance Co.*, 2017 IL 121281, ¶ 18. As Ford points out, less than 7.5% of its employees, 5% of its independent dealerships, and 4.5% of its 2014 sales were in Illinois. Ford is a large corporation that conducts major business in many states; however, this does not make Ford essentially at home in all of those forums. Ford's connections with Illinois do not rise to the level of an exceptional circumstance, *i.e.*, a wartime relocation,

and we therefore do not find that Ford is essentially at home in this state. Any exercise of general personal jurisdiction over Ford in this state would violate due process.

¶ 19 Therefore, the order of the circuit court of Madison County denying Ford's motion to dismiss is reversed and the case is remanded with directions that the trial court dismiss the claim against Ford.

¶ 20 Reversed and remanded with directions.

¶ 21 JUSTICE GOLDENHERSH, dissenting:

¶ 22 I respectfully dissent.

¶ 23 The majority disposition too narrowly applies the concept of "at home" found in *Daimler* and *Aspen*. In effect, it limits the application of "at home" to the unique wartime situation found in *Perkins*. The concept is, in fact, much broader in both *Daimler* and *Aspen*, and Ford meets it in this record.

¶ 24 The circuit court found that Ford consented to jurisdiction, noting as follows:

"Ford is authorized, licensed and has been doing business in Illinois since 1922. It has a registered agent to accept process in Illinois, and litigates without objection to personal jurisdiction, asbestos personal injury cases, and other cases, throughout this State and in this Circuit."

The circuit court further noted that in Illinois alone Ford (1) has 156 dealership, (2) sold 102,000 cars the previous year, (3) owns property, (4) employs 5500 people, (5) has a

town, Ford Heights, named after it, and (6) has invested over a half a billion dollars in Illinois in the last five years.

¶ 25 "[A] court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so "continuous and systematic" as to render them essentially at home in the forum State.' " *Daimler*, 571 U.S. at 127 (quoting *Goodyear*, 564 U.S. at 919). The affiliation with the state "must be so extensive to be tantamount to [defendant] being constructively present in the state to such a degree that it would be fundamentally fair to require it to answer in an [Illinois] court in *any* litigation arising out of *any* transaction or occurrence taking place *anywhere* in the world." (Emphases in original.) *Purdue Research Foundation v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 787 (7th Cir. 2003). This essentially means that "the foreign corporation has taken up residence in Illinois." (Internal quotation marks omitted.) *Russell*, 2013 IL 113909, ¶ 36.

¶ 26 Ford argues *Daimler* presents novel law; however, a review of *Daimler* indicates the Supreme Court emphasized prior holdings that general jurisdiction requires foreign corporations to have affiliations so "continuous and systematic" as to render them "at home" in the foreign state. *Daimler*, 571 U.S. at 127 (citing *Goodyear*, 564 U.S. at 919). Subsequent to *Daimler*, our supreme court issued its opinion in *Aspen American Insurance Co. v. Interstate Warehousing, Inc.*, 2017 IL 121281. In *Aspen*, after analyzing *Daimler*, our supreme court considered that the plaintiff filed a complaint in Cook County against defendant, Interstate Warehousing, Inc., alleging that the roof of a Michigan warehouse owned by defendant had collapsed, causing destruction of goods

owned by the plaintiff's insured. Interstate Warehousing, an Indiana corporation, moved to dismiss for lack of jurisdiction based on *Daimler*. In light of *Daimler*, our supreme court reversed the appellate court, after noting that *Daimler* indicated an exceptional case for general personal jurisdiction, separate and apart from the defendant's corporation's place of incorporation or its principal place of business may be found when the corporate defendant's activities " 'may be so substantial and of such a nature as to render the corporation at home in that State.' " *Aspen*, 2017 IL 121281, ¶ 17 (quoting *Daimler*, 571 U.S. at 139 n. 19). Accordingly, our supreme court determined:

"Accordingly, in this case, to comport with the federal due process standards laid out in *Daimler* and, in doing so, comply with subsection (c) of the long-arm statute, plaintiff must make a *prima facie* showing that defendant is essentially at home in Illinois. This means that plaintiff must show that defendant is incorporated or has its principal place of business in Illinois or that defendant's contacts with Illinois are so substantial as to render this an exceptional case." *Id.* ¶ 18.

¶ 27 In its analysis, the supreme court noted: "To be sure, plaintiff has established that defendant does business in Illinois through the warehouse in Joliet. But this fact falls far short of showing that Illinois is a surrogate home for defendant. Indeed, if the operation of the warehouse was sufficient, in itself, to establish general jurisdiction, then defendant would also be at home in all the other states where its warehouses are located." *Id.* ¶ 19.

¶ 28 Our supreme court noted that that level of activity in Illinois rendered the defendant's contacts with the state insufficient to determine it was "essentially at home."

The court further noted that it disagreed with the proposition urged by the plaintiff in *Aspen* and in the case at bar that defendants registering to do business in Illinois under the Business Corporation Act of 1983 (805 ILCS 5/1.01 (West 2012)) had subjected itself to the jurisdiction of the Illinois courts.

¶ 29 As to *Aspen*, I note that the defendant had one warehouse in Joliet, Illinois (the warehouse at issue in that case was in Michigan). While the defendant did not claim it was not doing business in Illinois via the Joliet warehouse, it took the position that the plaintiff had not met the "at home" standard under *Daimler*. In its disposition, the supreme court essentially agreed with the inadequacy of this activity constituting being "at home."

¶ 30 In *Daimler*, Argentinean citizens brought suit in California against DaimlerChrysler Aktiengesellschaft (Daimler), a German corporation headquartered in Stuttgart that manufactured Mercedes-Benz vehicles in Germany. The complaint alleged that during Argentina's "Dirty War" from 1976 through 1983, Daimler's Argentinean subsidiary, Mercedes-Benz Argentina, collaborated with state security forces to kidnap, detain, torture, and kill Mercedes-Benz Argentina workers. *Daimler*, 571 U.S. at 121. Daimler moved to dismiss the suit for lack of general personal jurisdiction. In response, the plaintiffs argued the California contacts of Daimler's United States subsidiary were sufficient to subject Daimler to general personal jurisdiction in California. *Id.* at 123. The trial court granted Daimler's motion to dismiss, but the Ninth Circuit Court of Appeals reversed. *Id.* at 124.

¶ 31 The Supreme Court reversed on the basis that even if the California contacts of Daimler's United States subsidiary were sufficient to subject Daimler to personal jurisdiction, Daimler's contacts with California were too "slim" to subject it to general jurisdiction in California's courts. *Id.* at 134. The Court emphasized that "no part of [Mercedes-Benz] Argentina's alleged collaboration with Argentinean authorities took place in California or anywhere else in the United States." *Id.* at 122. The Court also noted that Mercedes-Benz USA's relationship with Daimler was that of an independent contractor, and it had no authority to make binding obligations or to act on behalf of Daimler. *Id.* at 123-24. *Daimler* addressed "the authority of a court in the United States to entertain a claim brought by foreign plaintiffs against a foreign defendant based on events occurring entirely outside the United States." *Id.* at 120.

¶ 32 Here, plaintiff alleges events that occurred entirely within the United States. Plaintiff's decedent worked as an insulator at various jobsites, including Illinois. In his deposition, he recalled performing insulation work at numerous locations, including Ford's Dearborn, Michigan, plant and a refinery in Illinois. His father also worked as an insulator in Michigan and Florida. During the course of Dale's own employment and due to his father's employment, Dale "inhaled and was otherwise exposed to asbestos fibers emanating from certain products he and his father were working with and around which were designed, manufactured, sold, delivered, distributed, processed, applied, specified and/or installed by the Defendants." Thus, unlike *Daimler*, plaintiff's claims herein are based entirely upon events that occurred within the United States.

¶ 33 I agree with plaintiff that there is sufficient evidence showing Ford is engaged in the type of systematic business activity in Illinois that renders it "essentially at home" in Illinois and justifies a finding of general personal jurisdiction. *Daimler*, 571 U.S. at 127. Ford attempts to minimize its presence in Illinois by comparing its substantial Illinois presence with its overall global presence, relying on a footnote in *Daimler* that states: "A corporation that operates in many places can scarcely be deemed at home in all of them." *Id.* at 139 n.20. However, I am unconvinced by Ford's statistical analysis comparing its Illinois presence to its global presence, especially in light of the unique circumstances of this particular case. See *id.* at 142 (Sotomayor, J., concurring).

¶ 34 *Daimler* reaffirmed that, under *Goodyear*, general jurisdiction might, "in an exceptional case," extend beyond a corporation's state of incorporation and principal place of business to a forum where "a corporation's operations *** [are] so substantial and of such a nature as to render the corporation at home in that State." *Daimler*, 571 U.S. at 139 n.19 (citing *Perkins*, 342 U.S. 437). In *Goodyear*, the defendants were overseas subsidiaries of an American corporation, sued in North Carolina. They were not registered to do business in North Carolina; had no place of business, employees, or bank accounts in North Carolina; and did not manufacture, design, sell, or advertise their products there. The only connection to the forum was "a small percentage of [their] tires (tens of thousands out of tens of millions manufactured between 2004 and 2007) were distributed within North Carolina by other [parent company] affiliates." *Goodyear*, 564 U.S. at 921. The Court held that the defendants' "attenuated connections to the State [citation] f[e]ll far short of 'the continuous and systematic general business contacts' "

necessary to establish general jurisdiction. *Id.* at 929 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984)).

¶ 35 Compared to *Goodyear*, Ford's contacts with the forum state are substantial. The record before us shows Ford is not operating occasionally or casually within Illinois, but has been operating permanently and continuously within Illinois for almost 100 years. The trial court noted in its order denying Ford's motion to dismiss that Ford recently admitted in another Madison County asbestos case that Ford "conducts substantial business in Illinois." The following are highlights of Ford's affiliations with Illinois, but in no way exhaustive of Ford's contacts with our state.

¶ 36 First, as previously discussed, Ford registered as a foreign corporation eligible to do business in Illinois pursuant to the Act. Ford first registered in Illinois in 1922. Ford operates two manufacturing facilities in Illinois. In answers to interrogatories, Ford admitted to employing over 3000 people at its Chicago assembly plant and over 1200 at its Chicago stamping plant. Exhibit 8, a document prepared by Ford, maintains that the Chicago Assembly Plant employs 4079 people and produces the Lincoln MKS, Ford Taurus, and Ford Explorer. The plant covers 113 acres of Illinois land and was opened in 1924. Statewide, Ford employs 5500 people. Ford Heights, a suburb of Chicago, is named after the company. By its own admission, Ford has "invested over half a billion dollars in its business operations in Illinois" in the past five years. Ford has also accepted millions of dollars in tax incentives from our state and has been allotted millions more in tax incentives. Ford has 156 authorized automobile dealerships in Illinois, which service, solicit, advertise, and sell over 100,000 cars in Illinois each year.

¶ 37 Even under the more restrictive view of general jurisdiction Ford insists *Daimler* endorses, I fail to see how Ford is not subject to jurisdiction in this case. While Ford is neither incorporated nor headquartered here, its affiliations with Illinois are so "continuous and systematic as to render it essentially at home" in Illinois. *Daimler*, 571 U.S. at 127.

¶ 38 As noted above, *Aspen* was an insurer's subrogation case seeking losses sustained by an insured when the roof of a warehouse in Michigan collapsed. The defendant was incorporated in Indiana and also had its principal place of business in Indiana. Ford's contacts with Illinois are much more continuous, substantial, and systematic than the defendant's contacts in *Aspen*.

¶ 39 After careful consideration, I agree with the trial court that plaintiff's case should not be dismissed for lack of jurisdiction. I believe this is an "exceptional case" in which Ford's operations in Illinois are so substantial and of such a nature as to render it at home in Illinois. *Daimler*, 571 U.S. at 139 n.19; *Aspen*, 2017 IL 121281, ¶ 18.

¶ 40 Because of its numerous affiliations with our state, Ford is "at home" in Illinois and it is fundamentally fair to require Ford to litigate this lawsuit in Illinois. To hold otherwise would render the *Daimler-Aspen* standard of "at home" illusory and, as a practical matter, devoid of meaning and effect. To rule as the majority has renders meaningless the concept of "at home" at the core of both *Daimler* and *Aspen* as applicable in this appeal.

¶ 41 I would affirm the order of the circuit court of Madison County and remand for further proceedings.