

REGISTRATION TO DO BUSINESS IN PENNSYLVANIA AS IMPLIED CONSENT TO GENERAL PERSONAL JURISDICTION: AN UNSETTLED QUESTION IN PENNSYLVANIA

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State and federal courts in Pennsylvania are grappling with whether an out-of-state corporation's registration to do business in Pennsylvania amounts to consent to general personal jurisdiction, with the Third Circuit and the Pennsylvania Supreme Court yet to consider the matter and the Pennsylvania Superior Court set to address the matter en banc later this year.

In 1991, the Third Circuit held in *Bane v. Netlink, Inc.* [1] that registration amounted to consent to general personal jurisdiction, but the U.S. Supreme Court has in the last decade made clear that general jurisdiction is more limited than some courts had understood. In *Daimler AG v. Bauman*, [2] the Supreme Court held that a corporation may be subject to general personal jurisdiction only where it is incorporated or where its contacts are so extensive that it is essentially "at home" there.

Some courts outside of Pennsylvania have read *Daimler* and similar, recent cases from the Supreme Court to undercut the idea that mere registration to do business amounts to consent to general jurisdiction. For example, the Delaware Supreme Court held in 2016 that, after *Daimler*, it could no longer follow its existing authority that held that registration to do business equals consent to personal jurisdiction. [3]

However, courts in Pennsylvania have not followed that approach. In *Bors v. Johnson & Johnson*, a federal judge in Philadelphia concluded that the Pennsylvania long-arm statute is different than those of other states because it indicates that

[t]he existence of any of the following relationships between a person and this Commonwealth shall constitute a sufficient basis of jurisdiction to enable the tribunals of this Commonwealth to exercise general personal jurisdiction over such person: ... (2) Corporations (i) Incorporation under or qualification as a foreign corporation under the laws of this Commonwealth ... [4]

That language prompted the Third Circuit in *Bane* to conclude that Pennsylvania had given notice to registrants that they would be subject to general personal jurisdiction, and the district judge in *Bors* decided that the U.S. Supreme Court's recent decisions did not undercut *Bane*'s holding from 1991 on that point. Simply stated, the judge in *Bors* concluded that *Daimler* did not do away with the idea of consent to personal jurisdiction and that

corporations registering to do business in Pennsylvania were on notice from the long-arm statute that, by registering, they were consenting to jurisdiction. [5]

In *Gorton v. Air & Liquid Systems Corp.*, [6] another federal judge in Pennsylvania largely agreed with the holding in *Bors* but recognized a nuanced exception. The judge concluded that the key to finding consent was the notice language quoted above, and she explained that the Pennsylvania General Assembly added that language to the long-arm statute in 1978. Thus, she held that a corporation that registered to do business in Pennsylvania on or after June 27, 1978—the effective date of the amendment to the long-arm statute — would be deemed to have consented to personal jurisdiction while one already registered by that date would not be held to have consented. [7]

The Pennsylvania Superior Court has weighed in on the issue. In *Webb-Benjamin, LLC v. International Rug Group* [8] and *Murray v. American LaFrance, LLC*, [9] the court essentially followed the reasoning of the federal court in *Bors* and concluded that registration is a form of consent to general personal jurisdiction. It did not address the distinction recognized in *Gorton*. One judge dissented in *Murray*, and she rejected the idea that the notice in the long-arm statute was sufficient to meet the due-process requirements for general personal jurisdiction. [10]

Importantly, on December 7, 2018, the Superior Court granted an en banc rehearing petition in *Murray* and, so, withdrew the earlier majority and dissenting opinions. The court has not yet scheduled the en banc argument. In any event, there can be little doubt that the case will make its way to the Pennsylvania Supreme Court.

While it would be difficult to predict how the Pennsylvania Supreme Court or the Third Circuit will decide the issue, it is worth noting that, if they disagree, it could set up a showdown in the U.S. Supreme Court. Recall that, on matters of federal law, neither the Pennsylvania high court nor the Third Circuit is bound by the decisions of the other. [11] Thus, while there is not likely to be a circuit split on the precise issue because Pennsylvania's statute is more explicit than others, the Supreme Court, if confronted with conflicting holdings between the commonwealth's highest court and the Third Circuit, might choose to accept review to bring certainty to Pennsylvania litigants.

NOTES

[1] 925 F.2d 637 (3d Cir. 1991).

[2] 134 S. Ct. 746 (2014).

[3] *Genuine Parts Co. v. Cepec*, 137 A.3d 123 (Del. 2016).

[4] *Bors v. Johnson & Johnson*, 208 F. Supp.3d 648, 653 (E.D. Pa. 2017), citing 42 Pa.C.S. § 5301.

[5] *Id.* at 653–55.

[6] 303 F. Supp.3d 278 (M.D. Pa. 2018).

[7] *Id.* at 298.

[8] 192 A.3d 1133 (Pa. Super. 2018).

[9] Nos. 2105 EDA 2016, 2106 EDA 2016, 2107 EDA 2016, 2108 EDA 2016, 2109 EDA 2016, 2110 EDA 2016, 2111 EDA 2016 (Pa. Super. Sept. 25, 2018).

[10] *Id.* (Bowes, J., dissenting).

[11] See *Hall v. Bd. of Probation and Parole*, 851 A.2d 859, 865 (Pa. 2004) ("[T]his Court has clearly indicated that [it is] not obligated to follow the decisions of the Third Circuit [Court of Appeals] on issues of federal law."); *Wisconsin Bell, Inc. v. Bridge*, 334 F. Supp.2d 1127, 1134 (W.D. Wis. 2004) (federal courts follow decisions of higher federal courts — and not state courts — on issues of federal law).

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