

Alert | Litigation



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Is a Foreign Corporation Subject to Personal Jurisdiction in Pennsylvania Merely by Registering to Do Business there? It Remains an Open Question.

On June 25, 2020, an en banc panel of the Pennsylvania Superior Court issued its long-awaited decision in *Murray v. American LaFrance, LLC*. But the Superior Court did not reach the merits of the important personal jurisdictional question many anticipated it would address — whether a foreign corporation’s registration to do business in Pennsylvania subjects it to personal jurisdiction in Pennsylvania *for all matters*, regardless of the suit’s Pennsylvania connections. Instead, the court found plaintiffs had waived the key constitutional question. In the wake of this decision, the only certainty is more litigation.

Following *Murray*, out-of-state corporations sued in Pennsylvania for conduct outside Pennsylvania may continue to challenge personal jurisdiction on the grounds that the legal framework left in place (the Superior Court’s 2018 decision *Webb-Benjamin, LLC v. Int’l Rug Group*, 192 A.3d 1133) by this en banc decision violates defendants’ constitutional rights as set forth by the U.S. Supreme Court in *Daimler AG v. Bauman*, 571 U.S. 117 (2014) and its progeny. Plaintiffs/appellants in *Murray* may seek a discretionary appeal to the Pennsylvania Supreme Court, although it seems unlikely that the Supreme Court would take the case because the Superior Court did not reach the merits. Consequently, this personal jurisdiction question may return to the Pennsylvania appellate courts in future cases. Indeed, the same issue is currently pending before the Superior Court in *Mallory v. Norfolk Southern Railway*, 802 EDA 2018.

As discussed in our February 2019 Law360 article, “[Pennsylvania Court Extends Long Arms Toward Out-of-State Companies](#),” *Webb-Benjamin*’s interpretation of the Pennsylvania corporate registration statute presents foreign corporations with a Hobson’s choice — by registering to do business in Pennsylvania, a foreign corporation risks submitting to jurisdiction in Pennsylvania for all matters; but by failing to register, that corporation cannot do business in the Commonwealth at all without violating Pennsylvania statute.

Background

In Pennsylvania, unlike nearly all other states in the union, a non-Pennsylvania corporation registered to do business in the Commonwealth becomes automatically subject to general personal jurisdiction in Pennsylvania for all matters under 42 Pa. C.S. § 5301(a)(2)(i). Many observers believe this statute runs afoul of the Due Process Clause in the 14th Amendment to the U.S. Constitution. A recent line of U.S. Supreme Court precedent holds that a corporate defendant is subject to general personal jurisdiction only where it is “at home” (generally, the state where it is incorporated or has its principal place of business), supports this view. *See, e.g., Daimler*, 571 U.S. 117; *In re Asbestos Products Liability Litigation (No. VI)*, 384 F. Supp. 3d 532, 540–41 (E.D. Pa. 2019) (“mandatory statutory regime purporting to confer consent to general jurisdiction in exchange for the ability to legally do business in a state is contrary to the rule in *Daimler* and, therefore, can no longer stand.”).

Plaintiffs who invoke the registration statute to subject out-of-state corporations to suit in Pennsylvania typically argue that voluntary registration amounts to jurisdiction by consent. But this consent by registration theory requires a company to choose between registering and agreeing to suit in Pennsylvania for all cases **or** not registering and therefore excluding itself from lawfully conducting business in Pennsylvania. This Catch-22 arguably coerces “consent” to personal jurisdiction, and does not represent a genuine consent to personal jurisdiction that the law requires. For these reasons, out-of-state defendants sued in Pennsylvania in actions arising elsewhere had successfully challenged the constitutionality of Pennsylvania’s corporate registration statute in state and federal courts.

Webb-Benjamin and Murray

In 2018, however, the Superior Court held in *Webb-Benjamin* and its companion opinion in *Murray* that Pennsylvania’s statutory scheme was constitutional because defendants consented to jurisdiction by dint of registration. Judge Mary Bowes dissented from the original *Murray* opinion, finding Pennsylvania’s statutory scheme “effectively snare[s] foreign corporations and draw[s] them into the Commonwealth’s jurisdiction,” thereby providing out-of-state defendants with further support to attack plaintiffs’ novel jurisdictional theory.

In December 2018, the Superior Court granted reargument en banc in *Murray*, vacating the original decision and lightening the step of observers who hoped an en banc panel of the Superior Court would place Pennsylvania in line with the rest of the country. The case garnered intense interest from amici and the legal community. On Halloween 2019, the parties argued the case to nine Superior Court judges. In June 2020, almost 18 months after reargument was granted, the en banc Court finally ruled. In the June 25 opinion authored by Judge Bowes and joined by seven of her colleagues (Judge Nichols noted dissent but did not offer an opinion), the court declined to rule substantively on the constitutional question, and instead found that the *Murray* plaintiff had waived the consent-by-registration issue by not raising it before the trial court.

For readers interested in Pennsylvania waiver law, the bottom line is this: if a defendant prevails on a personal jurisdiction challenge in the trial court, plaintiffs waive any argument not raised in the trial court

on the issue. Although this may seem a commonsense proposition to appellate practitioners, a long line of Pennsylvania case law holds that when the trial court disposes of a case on preliminary objections (the Pennsylvania equivalent of a motion to dismiss), a plaintiff does *not* waive on appeal arguments he did not raise in the trial court. This rule stems from the Pennsylvania procedural rules, which do not require plaintiffs to respond to preliminary objections in the form of a demurrer, i.e., defendant's claim that plaintiff's complaint fails to state a claim. The *Murray* Court, however, distinguished that line of case law based on the text of the civil rules and held a plaintiff responding to a defendant's personal jurisdiction challenge in a trial court must raise all arguments he might make on appeal or risk waiver of those he leaves out.

Conclusion

Although the court's ruling explores an interesting wrinkle in Pennsylvania waiver law, it provides litigants with no clarity on the important constitutional question, and leaves Pennsylvania courts to continue to wrestle with the tension between *Webb-Benjamin's* jurisdictional rule and the U.S. Supreme Court's due process jurisprudence.

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