DOCKET NO. HHDCV206132568S

STATE OF CONNECTICUT

v

EXXON MOBIL CORPORATION

SUPERIOR COURT

JUDICIAL DISTRICT OF HARTFORD

JULY 23, 2024

MEMORANDUM OF DECISION ON MOTION TO DISMISS

In *Talenti* v. *Morgan & Brother Manhattan Storage Co.,* 113 Conn. App. 845, 854-55, 968 A.2d 933 (2009), the court held that "when a foreign corporation complies with the requisites of General Statutes § 33–920 by obtaining a certificate of authority and complies with the requisites of General Statutes § 33–926 by authorizing a public official to accept service of process, it has consented to the exercise of jurisdiction over it by the courts of this state. . . . [and] nothing in [General Statutes] § 33–929 (f) limits the court's exercise of personal jurisdiction over the corporation." (Citations omitted.) Based on that conclusion, the court held further that "[a]s the defendant has consented to jurisdiction, the exercise of jurisdiction by the court does not violate due process. Therefore, the court does not need to undertake an analysis of any constitutional due process issues." Id., 856 n.14. Both conclusions have been either criticized, derogated as dicta, or both. In the present case the court is asked to follow *Talenti*, buttressed by the Supreme Court's decision in *Mallory* v. *Norfolk Southern Railway Co.*, 600 U.S. 122, 143 S.Ct. 2028, 216 L.Ed.2d 815 (2023), and hold that because the defendant, Exxon Mobil Corporation, is registered to do business in Connecticut as a foreign corporation, it is subject to personal jurisdiction in this state and that the court need not address any due process concerns raised by the defendant.

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The Appellate Court's holdings in *Talenti* are not dicta. The court is bound by the *Talenti* court's conclusion that by registering to do business in Connecticut as a foreign corporation the defendant has consented to jurisdiction. With respect to the necessity of a due process analysis, although the *Talenti* court's conclusion conflicts with the Appellate Court's own precedent on that question, Supreme Court and other federal caselaw establish that a due process analysis is unnecessary. Although the court concludes that under *Talenti* the defendant is subject to personal jurisdiction in Connecticut, considering the substantial criticisms that other courts have directed to both holdings in the *Talenti* case, the court also undertakes a traditional jurisdictional analysis to determine whether the long arm statute for foreign corporations applies to the defendant in this case and, if so, whether exercising jurisdiction over the defendant comports with due process. The court concludes there is jurisdiction under that analysis as well.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, the state of Connecticut, commenced this action in September, 2020 under the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq., alleging that the defendant has engaged in a "systematic campaign of deception" concerning the impact of its fossil fuel products on the earth's climate. In its amended complaint the plaintiff alleges that the defendant has contributed to climate change by selling fossil fuels and petroleum products "that emit large quantities of greenhouse gases responsible for trapping atmospheric heat that causes global warming." The plaintiff claims that the defendant "knew decades ago that the release of greenhouse gases, including carbon dioxide ("CO2"), when fossil fuels are combusted, was a substantial factor in causing global warming." As early as the 1950s and 1960s the defendant allegedly was aware that the combustion of fossil fuels was impacting the

climate, and by the early 1980s the defendant was able to predict "the concentration of carbon dioxide in the atmosphere and the corresponding temperature increase for the year 2020."

The plaintiff alleges that despite the defendant's knowledge of the harmful effects of its fossil fuel products, it "continuously advertised and sold those products at multiple locations in Connecticut" throughout the 1970s and up to the present day. While doing so, according to the plaintiff, the defendant engaged in a "campaign to deceive Connecticut consumers about the harmful climatic effects of its fossil fuel products. . . ." The plaintiff alleges that the defendant carried out this campaign in "advertisements, public speeches, articles, media statements and published writings during the last five decades. . . [which] knowingly deceived consumers by systematically and routinely misrepresenting and/or omitting information about ExxonMobil's products' effects on the climate, its knowledge about the effect of its products on the climate, and scientific consensus about the effects of [its] products on the climate." The defendant also is alleged to have funded and collaborated with third party groups who spread disinformation about the effects of fossil fuel products on the climate. The plaintiff alleges that these actions were "in furtherance of ExxonMobil's objective to sell product in Connecticut's marketplace."

The plaintiff cites "national advertising campaigns" targeting consumers throughout the country, including in Connecticut. These campaigns have included "advertorials in *The New York Times*. . . a national newspaper that has historically targeted and continues to specifically target the tri-state (Connecticut, New York, New Jersey) area. . . ." With a circulation of "tens of thousands of readers in Connecticut," by advertising in The New York Times, as well as in other national publications that are read by Connecticut consumers, the defendant is alleged to have "knowingly availed itself of Connecticut's marketplace." The plaintiff claims the defendant has otherwise "intentionally reached Connecticut consumers through print, television, radio and

online platforms including social media. . . ." and the defendant's efforts have "deprived Connecticut consumers of accurate information about their purchasing decisions." An uncontested affidavit from Jeff Bricker, the defendant's Business Development Manager for U.S. Retail, states that "none of ExxonMobil's advertising campaigns are prepared specifically for Connecticut."

The defendant is a New Jersey corporation with its principal place of business in Texas. It is registered to do business in Connecticut as a foreign corporation and maintains a registered agent for service of process in Connecticut. The defendant was formed in 1999 by the merger of Exxon Corporation and Mobil Oil Corporation and the complaint targets the knowledge and conduct of both predecessor corporations, as well as other affiliated entities. The complaint alleges that the defendant has continuously sold its products in Connecticut throughout the 1970s and up to the present day. During this period, the defendant has allegedly sold its products at company-owned gas stations and through branded wholesalers. The defendant allegedly operated numerous retail gas stations in Connecticut through 1999, when a settlement with the Federal Trade Commission resulted in the defendant's divestiture of those businesses. The company continues to maintain branded franchises throughout the state. The Bricker affidavit states, "At no point in the last twelve years has ExxonMobil (1) sold fossil fuel-derived products to consumers in Connecticut, or (2) owned or operated a single retail store or gas station in the state." The branded franchise gas stations in Connecticut are "supplied by authorized independent branded wholesalers." The complaint references a branding agreement between the defendant and Alliance Energy, LLC, to maintain the Mobil brand name for 88 retail stations located in Connecticut. According to the Bricker affidavit, the defendant "supplies routine support services to operators of service stations in Connecticut, but does not control the

operations, staffing, or sales of any service station." It provides the independent branded wholesalers with "brand guidelines. . . for the benefit of service station operators and reserves the right to review trademark usage for compliance." From 1973 until 2007 the defendant owned and operated an industrial plant in Stratford, Connecticut that manufactured and sold products to industrial customers, not to consumers.

The plaintiff alleges that the defendant's activities impacted Connecticut and its citizens in several ways. They have allegedly harmed the natural environment in the state, including but not limited to the state's "lands, waters, coastlines, infrastructure, fish and wildlife, natural resources and critical ecosystems." They have allegedly caused "sea level rise, flooding, drought, increases in extreme temperatures and severe storms, decreases in air quality, contamination of drinking water, increases in the spread of diseases, and severe economic consequences." Every purchase of the defendant's products in the state is a result of the defendant's "affirmative misrepresentations, omissions of material fact, and half-truths" concerning the contribution made by those products to climate change in Connecticut and elsewhere, according to the plaintiff. The plaintiff claims that the defendant's "campaign of deception has undermined and delayed the creation of alternative technologies, driven by informed consumer choice, which could have avoided the most devastating effects of climate change, and it has stifled an open marketplace for renewable energy, thereby leaving consumers unable to reasonably avoid the detrimental consequences of fossil fuel combustion." The defendant's conduct is alleged to have "delayed the needed transition to clean energy in Connecticut. . . . [causing] a significant negative financial impact on the people of the State of Connecticut." Connecticut consumers allegedly have suffered or will suffer harm due to "an increase in illness, infectious disease and death" and the state's infrastructure has been damaged

and will continue to suffer damage, causing "serious detrimental economic impacts on the State of Connecticut, its people, businesses and municipalities. . . ."

Following the commencement of this action in September, 2020, the defendant removed the case to federal court. The district court remanded the case to this court on June 2, 2021 (*Connecticut* v. *Exxon Mobil Corp.*, United States District Court, Docket No. 3:20-cv-1555 (JCH) (2021 WL 2389739), a decision affirmed on appeal on September 27, 2023. *Connecticut* v. *Exxon Mobil Corp.*, 83 F.4th 122 (2d Cir. 2023). The plaintiff filed an amended complaint on November 20, 2023 and the defendant moved to dismiss the action based on a lack of personal jurisdiction on December 14, 2023. The motion was briefed by the parties and argued on March 25, 2024. No jurisdictional discovery was sought and no evidentiary hearing was requested by either party. The court relies on the facts as they appear in the record and are recited herein, without foreclosing the development of additional jurisdictional facts as the case progresses.

DISCUSSION

I. Procedural Standards

"A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction. . . . When, as in the present case, the defendant challenging the court's personal jurisdiction is a foreign corporation or a nonresident individual, it is the plaintiff's burden to prove the court's jurisdiction." (Citations omitted; internal quotation marks omitted.) *North Sails Group, LLC* v. *Boards & More GmbH*, 340 Conn. 266, 269, 264 A.3d 1 (2021). "When a defendant challenges personal jurisdiction in a motion to dismiss, the court must undertake a two part inquiry to determine the propriety of its exercising such jurisdiction over the defendant. The trial court must first decide whether the applicable state [long arm] statute authorizes the assertion of jurisdiction over the [defendant]. If the statutory requirements [are]

met, its second obligation [is] then to decide whether the exercise of jurisdiction over the [defendant] would violate constitutional principles of due process." Id., 273.

"In deciding a jurisdictional question raised by a motion to dismiss, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader. . . . In most instances, the motion must be decided on the complaint alone. However, when the complaint is supplemented by undisputed facts established by affidavits submitted in support of the motion to dismiss. . . the trial court, in determining the jurisdictional issue, may consider these supplementary undisputed facts and need not conclusively presume the validity of the allegations of the complaint. . . Rather, those allegations are tempered by the light shed on them by the [supplementary undisputed facts]. . . If affidavits and/or other evidence submitted in support of a defendant's motion to dismiss conclusively establish that jurisdiction is lacking, and the plaintiff fails to undermine this conclusion with counteraffidavits . . . or other evidence, the trial court may dismiss the action without further proceedings." (Citations omitted; internal quotation marks omitted.) Id., 269-70.

The parties have not presented any factual disputes to the court in connection with the defendant's motion to dismiss. The court therefore "takes the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader. . . . [but] tempered by the light shed on them" by the Bricker affidavit. Id., 269. In some respects the parties draw different inferences bearing on the jurisdictional issues, particularly concerning the significance of the New York Times advertorials. Additional details concerning the jurisdictional facts may also emerge. For this reason and because the court has not conducted an evidentiary hearing, the court reserves the

jurisdictional issue for final determination at the time of trial, applying a preponderance of the evidence standard to any disputed facts impacting the court's analysis of issues raised under the long arm statute and Due Process. At present, the court applies a prima facie standard on the defendant's motion to dismiss.[1] *Designs for Health, Inc.* v. *Miller*, 187 Conn. App. 1, 11-14, 201 A.3d 1125 (2019).

II. Statutory Basis for Jurisdiction

Because the defendant is a foreign corporation, the statutory basis for jurisdiction derives from Chapter 601 of the General Statutes governing business corporations. Part XVI of Chapter 601 (General Statutes §§ 33-920 to 33-944) deals specifically with foreign corporations.

General Statutes § 33-920 (a) provides that a foreign corporation "may not transact business in this state until it obtains a certificate of authority from the Secretary of State. . . ." General Statutes § 33-922 (a) provides that a foreign corporation "may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of the State for filing. The application shall set forth. . . (5) the address of its registered office in this state and the name of its registered agent at that office. . . ." Pursuant to General Statutes § 33-924 (b), a foreign corporation registered to do business in Connecticut "has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by sections 33-600 to 33-998, inclusive, is subject to the same duties, restrictions, penalties and liabilities imposed on, a domestic corporation of like character." General Statutes § 33-926 (a) requires that "[e]ach foreign corporation authorized to transact business in this state shall continuously maintain in this state: (1) A registered office that may be the same as any of its

[1] For clarity, left to the existing record, the court would find the facts as set forth herein under a preponderance of the evidence standard. These facts are, however, without prejudice to further development and contest at the time of trial.

places of business; and (2) a registered agent at such registered office. . . ." General Statutes § 33-929 (a) provides that "[t] he registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the foreign corporation. When the registered agent is other than the Secretary of the State and his successors in office, service may be effected by any proper officer or other person lawfully empowered to make service by leaving a true and attested copy of the process, notice or demand with such agent or, in the case of an agent who is a natural person, by leaving it at such agent's usual place of abode in this state." According to the complaint, the defendant has complied with these statutes and appointed as its registered agent for service of process, Corporation Service Company, 100 Pearl Street, Hartford, Connecticut. The record reflects that service upon the defendant was made on its registered agent.

General Statutes § 33-929 is captioned "Service of process on foreign corporation." In addition to providing for service upon a registered agent under subsection (a), the statute addresses circumstances pursuant to which a foreign corporation is "subject to suit" in Connecticut. Section 33-929 (e) provides that "[e]very foreign corporation which transacts business in this state in violation of section 33-920 shall be subject to suit in this state upon any cause of action arising out of such business." Section 33-929 (f) provides:

> Every foreign corporation shall be subject to suit in this state, by a resident of this state or by a person having a usual place of business in this state, whether or not such foreign corporation is transacting or has transacted business in this state and whether or not it is engaged exclusively in interstate or foreign commerce, on any cause of action arising as follows: (1) Out of any contract made in this state or to be performed in this state; (2) out of any business solicited in this state by mail or otherwise if the corporation has repeatedly so solicited business, whether the orders or offers relating thereto were accepted within or without the state; (3) out of the production, manufacture or distribution of goods by such corporation with the

> reasonable expectation that such goods are to be used or consumed in this state and are so used or consumed, regardless of how or where the goods were produced, manufactured, marketed or sold or whether or not through the medium of independent contractors or dealers; or (4) out of tortious conduct in this state, whether arising out of repeated activity or single acts, and whether arising out of misfeasance or nonfeasance.

The defendant maintains that none of the statutes in Part XVI of Chapter 601 afford a statutory basis for the court's exercise of personal jurisdiction over the defendant. The plaintiff argues that the court has jurisdiction by virtue of the defendant's compliance with §§ 33-920 and 33-926 and, alternatively, because the facts satisfy the requirements of § 33-929 (f).

A. Consent to Jurisdiction Pursuant to §§ 33-920, 33-926 and 33-929

Relying upon *Talenti* v. *Morgan & Brother Manhattan Storage Co.,* supra and *Wallenta* v. *Avis Rent a Car System, Inc.*, 10 Conn. App. 201, 522 A.2d 820 (1987), the plaintiff argues that compliance with §§ 33-920 and 33-926 constitutes implicit consent to jurisdiction in Connecticut, on any cause of action, in accordance with § 33-929. No statute within Part XVI of Chapter 601 explicitly states that by obtaining a certificate of authority to do business in Connecticut and appointing an agent for service of process, a foreign corporation agrees that it shall be subject to the jurisdiction of Connecticut courts on any cause of action. *Talenti* and *Wallenta* conclude, however, that a foreign corporation's registration to do business constitutes consent to jurisdiction under these statutes.

In *Wallenta*, the court applied the predecessor to § 33-929, General Statutes § 33-411,[2] in a case where the plaintiff was an injured passenger in a motor vehicle rented in Alabama by a

[2] Neither party has argued that the differences between § 33-411 and § 33-929 are material for purposes of determining whether compliance with the registration statutes constitutes consent to personal jurisdiction. Section 33-411 provided, in full, as follows.

> (a) Any process, notice or demand in connection with any action or proceeding required or permitted by law to be served upon a foreign corporation authorized to transact business in this state which is subject to the

provisions of section 33-400 may, when timely made, be served upon such corporation by any proper officer or other person lawfully empowered to make service, as follows: (1) When the secretary of the state and his successors have been appointed such corporation's agent for service of process, by leaving two true and attested copies thereof together with the required fee at the office of the secretary of the state or depositing the same in the United States mails, by registered or certified mail, postage prepaid, addressed to such office. The secretary of the state shall file one copy of such process and keep a record of the date and hour of such receipt. He shall, within two business days after such service, forward by registered or certified mail the other copy of such process to the corporation at the address of its executive offices as last shown on his records or at such other address as has been designated as provided in subsection (b) of section 33-300. Service so made shall be effective as of the date and hour received by the secretary of the state as shown on his record; (2) when an agent other than the secretary of the state and his successors has been appointed such corporation's agent for service of process, by serving the same upon such agent. If it appears from the records of the secretary of the state that such corporation has failed to maintain such agent for service of process, or if it appears by affidavit attached to the process, notice or demand of the officer or other person directed to serve any process, notice or demand upon such corporation's agent appearing on the records of the secretary of the state that such agent cannot, with reasonable diligence, be found at the address shown on such records, service of such process, notice or demand on such corporation may be made by such officer or other proper person by: (A) Leaving a true and attested copy thereof, together with the required fee, at the office of the secretary of the state or depositing the same in the United States mails, by registered or certified mail, postage prepaid, addressed to such office, and (B) depositing in the United States mails, by registered or certified mail, postage prepaid, a true and attested copy thereof, together with a statement by such officer that service is being made pursuant to this section, addressed to such corporation at the address of its executive offices as last shown on the records of the secretary of the state or at such other address as has been designated as provided in subsection (b) of section 33-300. The secretary of the state shall file the copy of each process, notice or demand received by him as provided in subdivision (2) of this subsection and keep a record of the day and hour of such receipt. Service so made shall be effective as of such day and hour.

(b) Every foreign corporation which transacts business in this state in violation of section 33-395 or 33-396 shall be subject to suit in this state upon any cause of action arising out of such business.

(c) Every foreign corporation shall be subject to suit in this state, by a resident of this state or by a person having a usual place of business in this state, whether or not such foreign corporation is transacting or has transacted business in this state and whether or not it is engaged exclusively in interstate or foreign commerce, on any cause of action arising as follows: (1) Out of any contract made in this state or to be performed in this state; or (2) out of any business solicited in this state by mail or otherwise if the corporation has repeatedly so solicited business, whether the orders or offers relating thereto were accepted within or without the state; or (3) out of the production, manufacture or distribution of goods by such corporation with the reasonable expectation that such goods are to be used or consumed in this state and are so used or consumed, regardless of how or where the goods were produced, manufactured, marketed or sold or whether or not through the medium of independent contractors or dealers; or (4) out of tortious conduct in this state, whether arising out of repeated activity or single acts, and whether arising out of misfeasance or nonfeasance.

(d) In any action brought (1) under subsection (b) or (c) of this section or (2) under subsection (e) of section 33-371, or in any foreclosure or other action involving real property located in this state in which a foreign corporation, although not transacting business in the state, owns or claims to own an interest, the secretary of the state shall be deemed the agent of the corporation in this state and service of process on such corporation shall be made as provided in subsection (a) of this section, except that the secretary of the state shall address the copy thereof to the corporation at the address of its executive offices or, if it has no such office, to such corporation's last office as shown in the official registry of the state or country of its incorporation, which address shall be set forth in the writ or other process. Upon service being so made, the court may proceed to a hearing at the first term or session, or thereafter, as it deems proper.

national car rental company that was registered to do business in Connecticut. The company contested personal jurisdiction. The court first contrasted § 33-411 (b) with § 33-411 (c).[3] Subsection (b) applied to foreign corporations transacting business in the state without having obtained a certificate of authority to do so. In those circumstances, a foreign corporation was "subject to suit in this state upon any cause of action arising out of such business." General Statutes § 33-411 (b). Subsection (c) applied "whether or not such foreign corporation is transacting or has transacted business in this state. . . ." General Statutes § 33-411 (c). Recognizing this distinction, the court observed that a foreign corporation's registration to conduct business in the state "confers jurisdiction over some causes of action without regard to whether a foreign corporation is transacting business here and without regard to any causal connection between the plaintiff's cause of action and the defendant's presence in this state." *Wallenta* v. *Avis Rent a Car System, Inc.*, supra, 10 Conn. App. 206. The court cited *Lombard Bros., Inc.* v. *General Asset Management Co.*, 190 Conn. 245, 251-54, 460 A.2d 481 (1983), where the court made the same observation but connected it directly to the "various subparts of subsection (c)" spelling out the limited circumstances that may give rise to a cause of action for which a registered foreign corporation would be "subject to suit" in Connecticut, whether or not it transacts business in the state. In *Wallenta*, the court disregarded that connection, resting on the idea that registered foreign corporations are subject to suit in Connecticut even when the cause of action asserted against it is unconnected to the transaction of business in the state.

In *Wallenta*, instead of turning to the limited, specified circumstances set forth in § 33-411 (c), the court turned to § 33-411 (a) and opined that subsection (b) aims to place an

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(e) Nothing in this section shall limit or affect the right to serve any process required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

[3] Former § 33-411 (b) corresponds to § 33-929 (e) and former § 33-411 (c) corresponds to § 33-929 (f).

unregistered foreign corporation transacting business in Connecticut in the same position as one that is registered. From there the court reasoned that "it is logical to conclude that General Statutes § 33–411(a) means that a foreign corporation which has appointed an agent for service of process because it has acknowledged that it is conducting business within this state will be subject to suit in this state upon any cause of action arising out of such business." *Wallenta* v. *Avis Rent a Car System, Inc.*, supra, 10 Conn. App. 206-07. The court saw "no good reason to provide a greater shield to foreign corporations which have acknowledged they do business here than to corporations which have not acknowledged the same or which, in fact, do not ordinarily transact business in this state." Id, 207.

Although the court in *Wallenta* at first appeared to limit the scope of jurisdiction to causes of action arising out of business conducted in the state, the court went further to say that "such business" did not have to involve the business of renting cars in Connecticut, but merely the "general business" of renting cars to Connecticut residents wherever that business might be conducted. Id. "The courts of this state have the authority to determine whether personal jurisdiction may be asserted against a foreign corporation doing business here arising out of a cause of action for activities which occurred in another state and which were unconnected to the activities of the corporation here." Id. Citing the Restatement (Second), Conflict of Laws § 44,[4]

[4] Restatement (Second), Conflict of Laws § 44 provides: "A state has power to exercise judicial jurisdiction over a foreign corporation which has authorized an agent or a public official to accept service of process in actions brought against the corporation in the state as to all causes of action to which the authority of the agent or official to accept service extends." In *Wallenta*, the court cites comment (a) to this section, which states, "By authorizing an agent or public official to accept service of process in actions brought against it, the corporation consents to the exercise by the state of judicial jurisdiction over it as to all causes of action to which the authority of the agent or official extends. This consent is effective even though no other basis exists for the exercise of jurisdiction over the corporation." The court in *Wallenta* did not reference comment (c) which specifies that the scope of the agent's authority is, in part, a function of the terms of the statute. Comment (c) does also state, however, that "[b]y qualifying under one of these [registration] statutes, the corporation renders itself subject to whatever suits may be brought against it within the terms of the statutory consent as interpreted by the local courts provided that this interpretation is one that may fairly be drawn from the language of the enactment."

the court held, "Since the defendant consented to the personal jurisdiction of this state, the plaintiff did not have to allege facts to establish that the defendant had made itself amenable to suit here. . . . The allegation that the defendant was licensed to do business in this state was sufficient to show that this state had authorized the assertion of jurisdiction over the defendant, and that the defendant had consented to that assertion of jurisdiction." Id., 208. In reaching this conclusion, the court appears to have untethered the jurisdictional inquiry concerning a registered foreign corporation from the limits imposed by § 33-411 (c).

In *Talenti*, nonresident individual plaintiffs brought an action against a foreign corporation, headquartered in Connecticut,[5] arising out of the alleged wrongful discharge of one of the plaintiffs, an employee of the company, at the defendant's corporate headquarters. The plaintiff's discharge was immediately followed by the distribution of an email, sent by the defendant from the same location to all its employees in Connecticut, New York and New Jersey, advising that the plaintiff had failed a drug test. The defendant moved to dismiss on the grounds that the plaintiffs could not invoke the long arm statute governing foreign corporations, then and now General Statutes § 33-929,[6] because the plaintiffs were not Connecticut residents. Section

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[5] Pursuant to General Statutes § 33-602 (18) a foreign corporation is "a corporation incorporated under a law other than the law of this state."

[6] § 33-929. Service of process on foreign corporation (footnote continued on page 15)

(a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the foreign corporation. When the registered agent is other than the Secretary of the State and his successors in office, service may be effected by any proper officer or other person lawfully empowered to make service by leaving a true and attested copy of the process, notice or demand with such agent or, in the case of an agent who is a natural person, by leaving it at such agent's usual place of abode in this state.

(b) A foreign corporation may be served by any proper officer or other person lawfully empowered to make service by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation: (1) Has no registered agent or its registered agent cannot with reasonable diligence be served; (2) has withdrawn from transacting business in this state under section 33-932; or (3) has had its certificate of authority revoked under section 33-936.

33-929 (f) provides that foreign corporations are subject to suit "by a resident of this state" when the other requirements of that subsection are met. See *Matthews v. SBA, Inc.*, 149 Conn. App. 513, 555, 89 A.3d 938 (2014) ("explicit language of § 33–929 (f) empowers only 'a resident of this state' or a 'person having a usual place of business in this state' to sue a foreign corporation in a Connecticut court."). Absent a statutory basis for the exercise of jurisdiction, the defendant

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(c) When the Secretary of the State and his successors in office have been appointed a foreign corporation's registered agent, a foreign corporation may be served by any proper officer or other person lawfully empowered to make service by leaving two true and attested copies thereof together with the required fee at the office of the Secretary of the State or depositing the same in the United States mail, by registered or certified mail, postage prepaid, addressed to said office. The Secretary of the State shall file one copy of such process and keep a record of the date and hour of such receipt. He shall, within two business days after such service, forward by registered or certified mail the copy of such process to the corporation at the address of its principal office as last shown on his records.

(d) Service is effective under subsection (b) of this section at the earliest of: (1) The date the foreign corporation receives the mail; (2) the date shown on the return receipt, if signed on behalf of the foreign corporation; and (3) five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postage prepaid and correctly addressed. In the case of service on the Secretary of the State, service so made shall be effective as of the date and hour received by the Secretary of the State as shown on his records.

(e) Every foreign corporation which transacts business in this state in violation of section 33-920 shall be subject to suit in this state upon any cause of action arising out of such business.

(f) Every foreign corporation shall be subject to suit in this state, by a resident of this state or by a person having a usual place of business in this state, whether or not such foreign corporation is transacting or has transacted business in this state and whether or not it is engaged exclusively in interstate or foreign commerce, on any cause of action arising as follows: (1) Out of any contract made in this state or to be performed in this state; (2) out of any business solicited in this state by mail or otherwise if the corporation has repeatedly so solicited business, whether the orders or offers relating thereto were accepted within or without the state; (3) out of the production, manufacture or distribution of goods by such corporation with the reasonable expectation that such goods are to be used or consumed in this state and are so used or consumed, regardless of how or where the goods were produced, manufactured, marketed or sold or whether or not through the medium of independent contractors or dealers; or (4) out of tortious conduct in this state, whether arising out of repeated activity or single acts, and whether arising out of misfeasance or nonfeasance.

(g) In any action brought under subsection (e) or (f) of this section, or in any foreclosure or other action involving real property located in this state in which a foreign corporation, although not transacting business in this state, owns or claims to own an interest, service of process on such corporation may be made as provided in subsection (b) of this section, except that the service shall be addressed to the corporation at its principal office or, if it has no such office or the address of such office is not known, to such corporation's last office as shown in the official registry of the state or country of its incorporation, which address shall be set forth in the writ or other process.

(h) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

argued, the court lacked personal jurisdiction over the defendant. The plaintiffs argued that because they served two of the defendant's officers at their Connecticut residence and at corporate headquarters respectively, the court acquired jurisdiction pursuant to General Statutes § 52-57 (c), which governs the service of process on private corporations other than foreign corporations. Section 33-929, including the residency requirement set forth in subsection (f), was not applicable according to the plaintiffs.

The court first concluded there was jurisdiction under the foreign corporation statutes in Part XVI of Chapter 601. Citing *Wallenta*, and again disregarding the limits imposed by § 33–920 (f), the court held that "when a foreign corporation complies with the requisites of General Statutes § 33–920 by obtaining a certificate of authority and complies with the requisites of General Statutes § 33–926 by authorizing a public official to accept service of process, it has consented to the exercise of jurisdiction over it by the courts of this state." (Footnotes omitted.) *Talenti* v. *Morgan & Brother Manhattan Storage Co.*, supra, 113 Conn. App. 854-55. "[N]othing in § 33–929 (f) limits the court's exercise of personal jurisdiction over the corporation. . . . the defendant has voluntarily consented to the personal jurisdiction of it by the courts of this state." Id., 855. The court also agreed with the plaintiffs that § 52-57 (c) provided a basis for the assertion of personal jurisdiction. Id., 856.

Faced with these decisions, the defendant argues that the court's conclusion in *Talenti,* that registration as a foreign corporation constitutes voluntary consent to personal jurisdiction unencumbered by the limitations set forth in § 33–929 (f), is nonbinding dictum and the defendant attempts to distinguish *Wallenta*.[7] The defendant reads *Wallenta* to authorize, under §

[7] *Wallenta* is distinguishable to the extent that, after concluding there was a statutory basis for the assertion of jurisdiction, it remanded the case to the trial court for purposes of conducting a due process analysis. *Wallenta* v. *Avis Rent a Car System, Inc.*, supra, 10 Conn. App. 208-09. In *Talenti*, the court held no due process analysis was

33–411 (a), the assertion of jurisdiction over a registered foreign corporation beyond the specific circumstances identified in § 33–411 (c). Apart from those circumstances, according to the defendant's reading of *Wallenta*, a foreign corporation that not only is registered but actually conducts business in the state, is subject to jurisdiction under § 33–411 (a), but only for causes of action arising out of that business. At one point in *Wallenta* the court does say that under § 33–411 (a) a registered foreign corporation that "has acknowledged that it is conducting business within this state will be subject to suit in this state upon *any cause of action arising out of such business*." (Emphasis added.) *Wallenta* v. *Avis Rent a Car System, Inc.*, supra, 10 Conn. App. 206-07. The court goes on to say, however, that by registering to conduct business a foreign corporation acknowledges that it is doing business in the state and is subject to suit for causes of action that are "unconnected to the activities of the corporation here. . . ." and a plaintiff does "not have to allege facts to establish that the defendant had made itself amenable to suit here." Id., 207-08.

As to *Talenti*, the defendant dismisses as dictum the court's conclusion that by registering to conduct business and authorizing an agent to accept service of process, a foreign corporation "has consented to the exercise of jurisdiction over the corporation." *Talenti* v. *Morgan & Brother Manhattan Storage Co.*, supra, 113 Conn. App. 854-55. The defendant argues this holding is dictum because, based on the facts of the case, there were other grounds upon which the court could have concluded the exercise of jurisdiction was proper. The facts do reflect that the defendant in *Talenti* was headquartered in Connecticut and much of the alleged tortious conduct occurred in Connecticut, the record thus affording a basis for both general and specific

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required because the defendant had voluntarily consented to jurisdiction. *Talenti* v. *Morgan & Brother Manhattan Storage Co.*, supra, 113 Conn. App. 856 n.14. The court will separately address the question whether a due process analysis is required notwithstanding consent to statutory jurisdiction.

jurisdiction. For whatever reason, the court chose not to rely on those grounds and instead held, relying on *Wallenta*, that simply by registering to do business, "the defendant has voluntarily consented to the personal jurisdiction of it by the courts of this state." Id., 856. Contrary to the defendant's suggestion, this court cannot dismiss this holding as dictum.

Dictum is a statement in a judicial opinion that does not express the court's resolution of an issue before it. "[A] court's discussion of matters necessary to its holding is not mere dictum. . . . Dictum includes those discussions that are merely passing commentary. . . those that go beyond the facts at issue . . . and those that are unnecessary to the holding in the case. . . . [I]t is not dictum [however] when a court . . . intentionally takes up, discusses, and decides a question germane to, though not necessarily decisive of, the controversy. . . . Rather, such action constitutes an act of the court [that] it will thereafter recognize as a binding decision." (Citation omitted; internal quotation marks omitted.) *Cruz* v. *Montanez*, 294 Conn. 357, 376-77, 984 A.2d 705 (2009). The defendant's focus on the facts of *Talenti* is understandable. In *Talenti*, at least on the surface, it appears there were grounds for concluding that § 33–929 (f) (4) provided a basis for finding statutory jurisdiction for "tortious conduct in this state," and that the presence of the defendant's headquarters in Connecticut dispensed with any potential due process challenges. The court, however, deliberately chose to base its decision on different grounds -- the defendant's voluntary consent to jurisdiction by virtue of its registration. Right or wrong, that was the court's holding. The fact that the court could have reached the same result based on a different holding does not render the holding it relied upon dictum. Nor does the court's alternative holding, that service pursuant to § 52-57 (c) supported the same result, render the principal ground dictum. "[W]here there are two grounds, upon either of which an appellate court may rest its decision, and it adopts both, the ruling on neither is obiter [dictum], but each is the judgment of the court,

and of equal validity with the other." (Internal quotation marks omitted.) *Rosenthal Law Firm, LLC* v. *Cohen*, 190 Conn. App. 284, 291-92, 210 A.3d 579 (2019), quoting *United States v. Title Ins. & Trust Co.*, 265 U.S. 472, 486, 44 S. Ct. 621, 68 L.Ed. 1110 (1924).

The Appellate Court's decisions concluding that a foreign corporation's registration to conduct business in the state constitutes consent to jurisdiction on any cause of action have been criticized. Most pointedly, in *Brown* v. *Lockheed Martin Corp.*, 814 F.3d 619 (2d Cir. 2016), the Second Circuit criticized *Talenti's* construction of Connecticut's foreign corporation registration statutes. Construing § 33–929, the court maintained that the statute "provides for service of process on foreign corporations, and appears designed to confer what can fairly be characterized as specific jurisdiction in primarily two provisions: § 33–929 (e) (unregistered corporation 'subject to suit' in the state with respect to causes of action 'arising out of' its business in the state) and § 33–929 (f) (corporations 'subject to suit in the state' on listed causes of action related to in-state matters). Section 33–929 nowhere expressly provides that foreign corporations that register to transact business in the state shall be subject to the 'general jurisdiction' of the Connecticut courts or directs that Connecticut courts may exercise their power over registered corporations on any cause asserted by any person. Indeed, it appears to limit the ability of out-of-state plaintiffs to proceed against foreign corporations registered in Connecticut even with respect to certain listed matters bearing a connection to Connecticut." Id., 634. See also *Peeples* v. *State Farm Mutual Auto. Ins. Co.*, Superior Court, judicial district of Stamford, Docket No. CV-18-6036595-S (Aug. 8, 2019) (2019 WL 4201550, *5) ("Subsections (a) through (d) and subsections (g) and (h) address service of process and agents for service. Subsections (e) and (f), by contrast, address jurisdiction—entities coming within the scope of those subsections are 'subject to suit in this state.'").

This court agrees that the Appellate Court's analysis of § 33–929 attributes a jurisdictional function to § 33–929 (a) that is not apparent from the language of the statute. The premise for doing so was the court's logic that registered foreign corporations should be treated no differently than unregistered corporations that conduct business in Connecticut despite their failure to register. *Wallenta* v. *Avis Rent a Car System, Inc.*, supra, 10 Conn. App. 206-07. The only way to ground that logic in the statute was to construe subsection (a), authorizing service of process on a registered foreign corporation's agent "in connection with any action or proceeding required or permitted by law. . ." as a source of statutory long arm jurisdiction. General Statutes § 33–411 (a), now codified as § 33–929 (a).[8] The result may be logical, but the legislature's logic appears to differ. The statute does treat registered and unregistered foreign corporations differently. As the court pointed out in *Brown*, one obvious difference is that § 33–929 (f) limits the class of plaintiffs who may sue a registered foreign corporation by imposing a residency requirement. *Brown* v. *Lockheed Martin Corp.*, supra, 814 F.3d 634; see *Matthews v. SBA, Inc.*, supra, 149 Conn. App. 555. No such restriction is placed on plaintiffs suing unregistered foreign corporations transacting business in Connecticut under § 33–929 (e). Attributing a jurisdictional function to subsection (a) also calls the utility of subsection (f) into question. "[I]f the mere maintenance of a registered agent to accept service under § 33–926 effected an agreement to submit to general jurisdiction, it seems to us that the specific jurisdiction provisions of the long-arm statute, § 33–929 (for registered corporations), wouldn't be needed except with regard to *un*registered corporations: Registered corporations would be subject to jurisdiction with regard to all matters simply by virtue of process duly served on its appointed agent. And the restrictions imposed by § 33–929 (f) on the class of plaintiffs entitled to avail themselves of the long-arm

[8] Section 33-929 (a) also authorizes service of process on a foreign corporation's agent "required or permitted by law to be served on the foreign corporation."