

MASSACHUSETTS Lawyers Weekly

Judge: remote-working exec doesn't support jurisdiction

Tech companies feud over deal that soured

By: Pat Murphy September 10, 2020

Massachusetts courts do not have personal jurisdiction in a contract dispute between foreign tech companies based on the fact that the chief operating officer of the New Hampshire plaintiff worked remotely in Boston, a U.S. District Court judge has determined.



Transfers case

The plaintiff, Collision Communications, filed suit in federal court in Boston against Finnish company Nokia Solutions and Networks Oy.

The plaintiff argued that personal jurisdiction existed in Massachusetts because: (1) its chief operating officer, Jared Fry, worked in Boston during the relevant time period; (2) representations that Fry made during contract negotiations were central to the parties' dispute; and (3) Nokia understood that Fry worked in Boston when he participated in contract negotiations.

But in transferring the case to New Hampshire federal court, Judge Allison D. Burroughs concluded that the cited contacts did not give rise to personal jurisdiction.

"Massachusetts cannot be said to have an interest in adjudicating a dispute between a New Hampshire company, incorporated in Delaware, and a Finnish company, merely because the latter directed communications to an employee of the former who happened to be in this state," Burroughs wrote.

The 23-page decision is *Collision Communications, Inc. v. Nokia Solutions and Networks Oy*, Lawyers Weekly No. 02-357-20.

'Slippery slope' avoided?

Boston attorney Tyler E. Chapman said his client, Collision Communications, filed the case in Massachusetts because the company is a small operation run by a COO "based entirely" in Boston.

"Based on my research, I believed that was sufficient to establish jurisdiction here," Chapman said. "It was apparent to me, too, that Nokia knew that [Fry] was based in Boston and knew that it was speaking to him in Boston."

Chapman added that his client was pleased Burroughs simply transferred the case to New Hampshire rather than ordering a dismissal.

"We're perfectly happy to go forward in New Hampshire," Chapman said. "What we really care about is getting to the merits of our case."

Defendant Nokia is represented by David Himelfarb of Boston. He declined to comment at the behest of his client.

But Waltham business litigator John J. Tumilty called Burroughs' decision "an excellent road map for the analysis that you go through." He added that he would not be surprised to see more cases on the issue given the expansion of remote-working arrangements due to the pandemic.

Tumilty also cautioned that courts risk going down a "slippery slope" recognizing personal jurisdiction simply on the basis of where a remote worker resides.

Donald R. Frederico, a business litigator in Boston, said it will be interesting to see if the remote-working phenomenon results in more attempts to exercise personal jurisdiction in locations where the employee is located but the employer is not.



"Whether this case means that you can never establish personal jurisdiction through remote working or whether the facts in this case simply weren't strong enough to support personal jurisdiction is unclear."

— Donald R. Frederico, Boston



Though not surprised by the result reached in *Collision Communications*, Frederico said decisions in future cases will be needed to further refine the law on the issue.

"Whether this case means that you can never establish personal jurisdiction through remote working or whether the facts in this case simply weren't strong enough to support personal jurisdiction is unclear," he said.

Tech company squabble

According to court records, the plaintiff is a Delaware corporation with its principal place of business in Peterborough, New Hampshire. The plaintiff is in the business of creating software designed to be integrated with base stations for cellular networks owned by original equipment manufacturers such as Nokia.

The defendant is a Finnish telecommunications, information technology and consumer electronics company.

In 2015, the defendant requested that the plaintiff conduct testing in order to determine whether the plaintiff's software could be integrated with the defendant's technology. After initial testing yielded positive results, the defendant explored acquiring the plaintiff.

To that end, the parties entered into a contract whereby the defendant agreed to pay the plaintiff \$600,000 to conduct a "proof of concept" project to further develop the plaintiff's technology with an eye toward a potential

marriage with Nokia's product lines.

In early 2017, the parties first met in New Hampshire to discuss commercializing the plaintiff's software with Nokia's hardware. Planning for the release of the new technology in 2018, the parties began negotiating a contract addressing licensing rights and fees. Negotiations during the course of 2017 initially floated the defendant's payment of a software licensing fee to the plaintiff in the \$20 million to \$30 million range.

Fry, the plaintiff's COO, participated in the negotiations. An affidavit later submitted by Fry asserted that he worked "primarily" out of his home in Boston. Fry further stated that he engaged in hundreds of email and telephone communications with the defendant's employees during the period in question and that those communications formed the basis of the plaintiff's claims. Moreover, Fry averred that the defendant's employees knew at the time that he was working from Massachusetts.

On the other hand, the defendant contended that the plaintiff's president, Joe Farkas, played a substantial role in face-to-face contract negotiations conducted in both Finland and New Hampshire.

Ultimately, contract negotiations broke down in late 2018 after the defendant reduced its proposed licensing fee to \$7 million, and the plaintiff responded by suspending its development program with Nokia.

In November 2019, the plaintiff sued Nokia in federal court in Massachusetts, alleging breach of contract, breach of the covenant of good faith and fair dealing, detrimental reliance, negligent and intentional misrepresentation, quantum meruit, and unfair trade practices in violation of G.L.c. 93A.

The defendant moved to dismiss for lack of personal jurisdiction. According to the defendant, the plaintiff failed to allege sufficient contacts between the defendant and Massachusetts to establish personal jurisdiction under the Massachusetts long-arm statute, G.L.c. 223A, §3, or in accordance with due process.

Insufficient nexus

Burroughs first examined whether personal jurisdiction could be exercised pursuant to the state's long-arm statute. She rejected the plaintiff's argument that long-arm jurisdiction could be exercised under §3(a) because the defendant "transacted business" in the commonwealth.

"On the facts alleged, Defendant did not choose to work specifically with Fry over Plaintiff's New Hampshire-based employees, nor did Fry work from Massachusetts at Defendant's request or to Defendant's benefit," Burroughs wrote. "As a result, Defendant's contacts with Massachusetts are 'too fortuitous and incidental to fall within the reach of the Massachusetts long-arm statute.'"

Likewise, Burroughs concluded that the defendant did not subject itself to Massachusetts jurisdiction pursuant to §3(c) by committing a tortious act in the state. On that issue, Burroughs found distinguishable the 1st Circuit's decision in a 1972 case, *Murphy v. Erwin-Wasey, Inc.* The court in *Murphy* recognized Massachusetts' long-arm jurisdiction "[w]here a defendant knowingly sends into a state a false statement, intending that it should there be relied upon to the injury of a resident of that state."

Burroughs found Nokia's alleged actions were not intended to cause harm within the commonwealth as required by §3(c).

"The Court has 'profound reservations about extending the *Murphy* rationale' to apply to alleged harms directed to a plaintiff that is a resident of one state but that are coincidentally felt by a plaintiff's telecommuting employee in another state," Burroughs wrote.

Collision Communications, Inc. v. Nokia Solutions and Networks Oy, Lawyers Weekly No. 02-357-20 (23 pages)

THE ISSUE: Do Massachusetts courts have personal jurisdiction in a contract dispute between foreign tech companies based on the fact that the chief operating officer of the New Hampshire plaintiff worked remotely in Boston?

DECISION: No (U.S. District Court)

LAWYERS: Tyler E. Chapman of Todd & Weld, Boston (plaintiff)

David Himelfarb of McCarter & English, Boston (defense)

Finally, Burroughs recognized that even if the Massachusetts long-arm statute provided for jurisdiction, the court would still lack jurisdiction under the Due Process Clause of the 14th Amendment.

“Here, ... Defendant neither purposefully availed itself of the privilege of conducting business in Massachusetts nor reasonably anticipated being haled into court in the Commonwealth merely by communicating with one of Plaintiff’s employees, who happened to be working from Massachusetts rather than from the company’s headquarters in New Hampshire,” Burroughs wrote. “Such contacts reflect ‘the unilateral actions of another party,’ rather than Defendant.”

Rather than cure the lack of jurisdiction through dismissal, she found an appropriate remedy under 1st Circuit authority interpreting federal statutes governing a court’s authority to transfer actions.

“Both [28 U.S.C.] Sections 1406 and 1631 support transfer over dismissal in the interests of justice and to promote judicial economy,” Burroughs wrote.

Finding sufficient facts in the record indicating that New Hampshire is the appropriate venue in which to litigate the parties’ claims, Burroughs ordered the case transferred to New Hampshire.

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