Jurisdiction Of An Ontario Court To Hear A Wrongful Dismissal Claim Related To Employment In The United States



We recently came across a decision by the Ontario Superior Court which is particularly relevant to global and multinational employers with employees who may transfer between related companies in different geographic locations. The Court considered the issue of whether it had jurisdiction to hear the wrongful dismissal claim of a plaintiff employee who was originally employed in Ontario, but who, at the time her employment was terminated, was working in New York. In her claim, the employee claimed against both the Ontario entity and the entity in New York that had employed her.

Background

The defendant employers brought a motion to have the proceeding stayed or dismissed on the grounds that the Ontario Superior Court did not have jurisdiction to hear the matter or that an Ontario court was not the most appropriate forum.

The employee was employed for five years as a director of sales for Four Seasons Hotel in Toronto (Four Seasons). In 2007, she applied for and accepted a transfer to Nevis Resort (Nevis), a resort which used the Four Seasons Hotel and Resorts trademark. The transfer was structured as an assignment or transfer of her existing employment contract with Four Seasons in Ontario. Following the transfer, the employee worked out of an office in New York as the director of sales for Nevis. She continued in that role until her employment was terminated in 2011.

Decision

In the context of a jurisdictional challenge, a court will first consider whether it has *jurisdiction simpliciter* to hear the matter. If *jurisdiction simpliciter* exists, the court will then consider whether there is a more appropriate forum, considering the principles of *forum non conveniens*. Put more simply, a court will first consider whether it *has* jurisdiction to hear a matter and then consider whether it *should* exercise its jurisdiction to do so.

1.*Jurisdiction*

A court can assume jurisdiction where there is a “real and substantial connection”

between the dispute and the court being asked to assert its jurisdiction. In this case, one of the defendants, Four Seasons, is an Ontario resident and carries on business in the Province and the contract connected with the dispute was made in Ontario. Based on the foregoing, the Court was satisfied that a real and substantial connection existed with Ontario and therefore it had jurisdictionto hear the plaintiff's case. The Court then considered whether there was a more appropriate forum in which the matter should be heard.

2.*Exercise of Jurisdiction*

Once jurisdictionis established, it is up to the defendant to show that there is clearly a more appropriate forum than the one chosen by the plaintiff. In doing so, a court will typically consider:

1. the location where the contract in dispute was signed;
2. the applicable law of the contract;
3. the location of witnesses, especially key witnesses;
4. the location where the bulk of the evidence will come fro
5. the jurisdiction in which the factual matters aros
6. the residence or place of business of the parties; a
7. the loss of a legitimate juridical advantage.

The Court considered each of the foregoing in turn. Its findings, in brief, are below:

1. The employee's original contract of employment was signed in Ontario and governed by Ontario law. Further, the new contract pursuant to which her employment was transferred was prepared by Four Seasons in Toronto and signed by the employee in Ontario.
2. The applicable law of the contract governing the employee's employment in New York was not clear. Although the contract governed the employee's employment with Nevis in New York, the employee argued that the contract she signed prior to moving to New York was merely an extension of the original contract, which was governed by Ontario law.
3. The location of witnesses weighed in favour of New York, rather than Ontario, as the more appropriate forum, although the employee claimed that several witnesses were located in Ontario. The Court only discussed one such witness, the Director of Corporate Human Resources & Administration. However, that individual was only given information on the employee's employment and performance; she was not directly involved in her performance management or the termination of her employment.
4. New York is where most of the evidence would be located, since the termination was ostensibly performance-based.
5. New York is clearly where the factual matters at the core of the dispute arose.
6. The residence or place of business of the parties did not clearly point to either Ontario or New York. The employee tried to argue that she experienced difficulty crossing the border into the United States and that the witnesses could travel more easily to Ontario than she could to the United States; however, she did not provide any evidence that she had been denied entry to the country or that she would have difficulty entering the United States in the future.
7. The employee also argued that, due to the difference between the laws of Ontario and the laws of New York, she would be significantly disadvantaged if the case were to proceed in New York. In particular, she would not be entitled to any notice or payment in lieu of notice of termination under the laws of New York. Notwithstanding this difference, the Court cited other case law which suggested that juridical advantage should not be overemphasized in the *forum non*

conveniens analysis.

On balance, the Court determined that the defendants successfully established that New York is the clearly more appropriate forum.

Our Views

For employers who have offices in different legal jurisdictions and whose employees may work for the employer or an affiliate in different locations, the main take-away from this case is that, when transferring an employee between locations, the transfer should be made conditional upon the employee signing an agreement to effect the transfer. If a particular legal jurisdiction is preferred by the employer in the event of a dispute, that agreement should contain a governing law and a choice of law provision and should be clear with respect to which legal entity will be the employer. To the extent possible, the administration of the employee's employment and material employment-related decisions should be made by that entity alone.

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