

Consultant Cannot Be Sued in New Jersey

6.5.14

RELATED PRACTICE AREAS

Employment Law

Background

In *Baanyan Software Services v. Kunch*, 433 N.J. Super. 466 (App. Div. 2013), the Appellate Division found that a computer analyst doing consulting work for a New Jersey corporation in Illinois could not be subject to suit in New Jersey.

Plaintiff Baanyan Software Services is a multi-national software consulting company with headquarters in Edison, New Jersey. Baanyan employed defendant Hima Bindhu Kuncha as a computer systems analyst. Kuncha's services were retained pursuant to a written consulting agreement. At the time the agreement was signed, Kuncha lived in California and negotiated the contract through e-mail and telephone calls with representatives of Baanyan. An executed copy of the agreement was sent by Kuncha to Baanyan at its New Jersey headquarters. The agreement did not contain a forum selection clause.

In February 2011, as per the terms of employment, Kuncha relocated to Illinois where she provided services to two of Baanyan's clients. Kuncha never worked in New Jersey, nor did she ever provide any services for a client in New Jersey. In December 2011, Kuncha ceased working for Baanyan and began working for Halcyon, one of Baanyan's competitors.

Baayan filed suit against Kuncha alleging breach of contract, tortious interference with business relationships, breach of fiduciary obligations, unjust enrichment and fraud. Kuncha thereafter moved to dismiss for lack of personal jurisdiction. On December 7, 2012, the trial court granted Kuncha's motion to dismiss finding that there were insufficient contacts with the state of New Jersey to establish personal jurisdiction.

Baayan appealed arguing that Kuncha's contacts with New Jersey which consisted of entering into a consulting agreement with a New Jersey corporation, providing services for and accepting payments

from the New Jersey Corporation, with receipts bearing the corporation's New Jersey address and providing timesheets to the corporation, are sufficient to establish personal jurisdiction over the consultant in New Jersey.

The Court's Decision

The Appellate Division found that Baayan lacked general jurisdiction because Kuncha never resided nor did business in New Jersey and her conduct was at all times limited to the state of Illinois. The Court also found that there was no specific jurisdiction over Kuncha because: 1) there was no evidence in the record to establish that Kuncha sought employment with Baanyan in New Jersey; 2) Kuncha's telephonic and electronic communications with Baanyan did not establish "minimum contacts" with New Jersey; and 3) "to allow Baanyan, an international company, to compel an individual employee to defend against a New Jersey lawsuit, where that employee was hired to work in Illinois, and never lived in, worked in or visited New Jersey, violates principles of fair play and substantial justice."

Best Practices

This decision provides some guidance on how multi-national companies with telecommuting employees can control the location of a suit brought against former employees. While the Court did not state whether the outcome would have been different had the employment contract between Baanyan and Kunch contained a forum selection clause, an employer is better suited for asserting jurisdiction where the parties contractually agreed to a specific forum for resolving disputes. In addition, employers can require that telecommuting employees attend periodic training and meetings at the corporation's headquarters and assign clients with contacts in its home state. Indeed, a forum selection clause and more in-state contacts in this case may have brought the employee under New Jersey's jurisdiction.