

## Clements v. Tracor, Inc

### MEMORANDUM OPINION

BRIAN BARNETT DUFF, District Judge.

Defendant, Westmark Systems Inc. ("Westmark"), is a Texas corporation which through a maze of corporate levels employs the plaintiff, Walter A. Clements ("Clements"). Westmark is a holding company which owns Tracor Holdings Inc. ("Tracor Holdings"), which in turn owns codefendant Tracor Inc. ("Tracor"), which in turn owns Littlefuse. Plaintiff was the President and Chief Executive Officer of Littlefuse from 1980 until February of 1990. Plaintiff claims that Westmark and Tracor breached his employment contract by failing to pay him a lump sum of \$1,650,000 upon the cessation of his employment with the defendants. Westmark now moves under Federal Rule of Civil Procedure 12(b)(2) to dismiss this complaint for lack of personal jurisdiction.

### DISCUSSION

Westmark has had virtually no contact with the state of Illinois. It has not transacted any business in this state, it maintains no offices here, and none of Westmark's employees or directors live in Illinois. Westmark, however, does have one connection with Illinois. Through an intricate web of corporate infrastructure, the defendant employs the plaintiff, who works in Illinois for Littlefuse.

The plaintiff points to one letter signed by the Chief Executive Officer of Westmark ("Inman"), as the basis for this court's jurisdiction. The letter was written by the plaintiff in furtherance of his request that his employment contract be renewed. The plaintiff sent this letter from Illinois to Texas which confirmed that his employment with Littlefuse had been extended for 24 months. The letter was signed in Texas by Inman, and mailed to the plaintiff in Illinois. Outside of this contact, and the parent multi-subsidary relationship, Westmark has had no other contact with the state of Illinois.

### STANDARD GOVERNING PERSONAL JURISDICTION IN THIS COURT

This court has subject matter jurisdiction over the case because the parties are diverse, and more than \$50,000 is in controversy. See 28 U.S.C § 1332. Westmark, a Texas Corporation, maintains that it has not had sufficient contacts in Illinois for a court in this state to assert jurisdiction over it. If Illinois has no authority over the defendant, then neither does this court, for a district court sitting in diversity is bound by the rules of the state in which it sits governing jurisdiction over out-of-state defendants. See Fed.R.Civ.P. 4, *Rose v. Franchetti*, 713 F.Supp. 1203 (N.D.Ill.1989).

### ILLINOIS LONG-ARM STATUTE

The Seventh Circuit described the court's specific duties when considering a challenge based upon personal jurisdiction in *Nelson v. Park Industries, Inc.*, 717 F.2d 1120, 1123 (7th Cir.1983) (citations omitted):

To determine whether exercising personal jurisdiction is proper, a court may receive and weigh affidavits prior to trial on the merits. During this preliminary proceeding, although the burden of proof rests on the party asserting jurisdiction, if the district court's decision is based on the submission of written materials the burden of proof is met by a prima facie showing that personal jurisdiction is conferred under the relevant jurisdictional statute. Further, the party asserting

jurisdiction is entitled to the resolution in its favor of all disputes concerning relevant facts in the record.

The Illinois legislature has recently amended the Illinois long arm statute to be coextensive with the Due Process Clause of the United States Constitution ("due process"). Ill.Rev.Stat. § 110 para. 2-209 (1990). In addition, the statute has been lengthened to include a wide variety of ways in which Illinois' courts can assert jurisdiction. Relevant to this case is § 2-209(a)(7) which allows Illinois' courts to assert jurisdiction when "The making or performance of any contract or promise [is] substantially connected with this State."

## **DUE PROCESS**

The due process 'question' is whether the defendant has "purposefully established 'minimum contacts' in the forum state." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) (citation omitted). The contacts must "proximately result from actions by the defendant himself that create a 'substantial connection' with the forum state." *Id.* at 475. If "the defendant's conduct and the connection with the forum state are such that he should reasonably anticipate being haled into court there", then it is consistent with due process for the forum state to exercise jurisdiction over the defendant. *Id.* at 474. Finally, the basis of long arm jurisdiction must be directly connected to the defendant's contact with the forum state. *Asset Allocation & Management Co. v. Western Employers Insurance Co.*, 892 F.2d 566, 569 (7th Cir.1989).

The plaintiff argues that since the Illinois long arm statute has been extended to include the "making or performance of any contract or promise substantially connected with this State" § 2-209(a)(7), this court has jurisdiction. Because the performance of this contract is "substantially connected" with Illinois, there is no question that the plaintiff has satisfied this requirement. Westmark, however, correctly points out that although the Illinois long arm statute has been recently amended, the due process clause of the 14th amendment has not. Westmark contends that asserting jurisdiction in this case would violate the due process clause. If this is true, then this court would not have personal jurisdiction over Westmark.

The plaintiff has failed to focus his attention either on the relevant actor or on the relevant constitutional requirements of due process. He frames the issue as "whether the 1989 expansion of the long-arm statute confers jurisdiction on courts sitting in Illinois over an employment dispute, where virtually all employment services are employed in Illinois." The fact of the matter is that the defendant must be the party that "purposely avails itself of the privilege of conducting activities within the forum State." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). In this case, the plaintiff was the party who mailed a letter to Westmark confirming that his employment contract would be extended. Westmark merely acknowledged the contract extension. The court would further point out that when the plaintiff was hired in 1980, Westmark had less than a 20% interest in Tracor, if in fact it had any interest at all, and there is no evidence whatsoever that Westmark had anything to do with the hiring or supervision of the plaintiff. The mere acknowledgement by Westmark that plaintiff's employment agreement would be extended by sending one letter into Illinois, which it did not solicit, does not confer jurisdiction on this court. Furthermore, the parties have agreed that Delaware law will control the terms of the employment contract. A choice of law provision is one factor to consider in determining whether a state has the authority to exercise jurisdiction. *Burger King*, 471 U.S. at 482. While not dispositive, the fact that Illinois law will not control the terms of this agreement is an additional factor weighing against this court's assertion of jurisdiction. [FN5] Because the exercise of jurisdiction in this case would not comport to the due process clause, this court must dismiss Westmark from the action.

For the foregoing reasons, Westmark's motion to dismiss for lack of personal jurisdiction is granted. Westmark is dismissed. This ruling has no effect on Tracor who is still a party to this litigation.