

Advanced Security Services Evaluation and Training, LLC v. OHR Partners LTD
COA Docket # M2017-00249-COA-R3-CV

Issues

- (1) Did the defendants have sufficient contacts with Tennessee to permit a Tennessee court to exercise personal jurisdiction over them?
- (2) Did the plaintiff state a claim for which relief could be granted?

Facts

This appeal arises from a lawsuit filed by a Tennessee company in Davidson County Chancery Court against two Mauritian companies for breach of contract and unjust enrichment. The trial court dismissed the case for lack of personal jurisdiction.¹

Plaintiff, Advanced Security Services Evaluation & Training, LLC (“ASSET”) is a limited liability company (LLC) formed under Tennessee law with its principal place of business in Tennessee. ASSET provides security services via individual consultants and team services and trains law enforcement and military personnel.

Defendants, OHR Partners Limited (“OHR Partners”) and OHR Strategic Investment Fund (“OHR Strategic”) were formed under the laws of the Republic of Mauritius (“Mauritius”) and have their principal place of business in Mauritius. Defendant, Seth Bogner serves as the managing director of OHR Partners and is a member of the board for OHR Strategic. He resides in Florence, Italy and has never resided in Tennessee. OHR Partners and OHR Strategic (collectively “OHR”) assist clients in transferring assets from one country to another.

In the fall of 2015, Mr. Bogner contacted William Fantozzi², a security consultant, and asked him to provide asset recovery services for OHR. OHR Partners furnished Mr. Fantozzi with a password that gave him access to OHR Partners’ server and an OHR email address. Mr. Fantozzi used the OHR email to contact Scott Whitaker, president of ASSET, to procure ASSET’s services as a subcontractor on the project.

At Mr. Bogner’s request, ASSET provided OHR with its corporate resume, which identified ASSET as a Tennessee company. After viewing ASSET’s resume, Mr. Bogner voiced no objection to the potential contract. Through phone conversations and emails, Mr. Fantozzi engaged ASSET to provide security for the transfer of gold from Nairobi (Kenya) to Hong Kong. The parties never executed a formal, written contract. Mr. Whitaker claims that he spoke with Mr.

¹ Personal jurisdiction refers to the power of a court over the parties to a lawsuit, particularly the defendant. For the court to exercise personal jurisdiction over a defendant, the U.S. Constitution requires that the defendant have a particular connection with the state in which the court sits.

² Mr. Fantozzi is not a party. He is a citizen of the United States.

Fantozzi on the phone approximately sixty times in connection with the project and spoke with Mr. Bogner on the phone eight times in connection with the project.

ASSET performed the security services in Africa. OHR transferred money to Mr. Fantozzi who then paid ASSET. When ASSET was not paid in full for the project, it filed a complaint against OHR and Mr. Bogner in Davidson County Chancery Court for breach of contract and unjust enrichment. Defendants filed a Tenn. R. Civ. P. 12.02(2) and 12.02(6) motion to dismiss for lack of personal jurisdiction and failure to state a claim upon which relief can be granted, respectively.

Arguments

Defendants argue that OHR contracted with Mr. Fantozzi, not ASSET, and that OHR paid Mr. Fantozzi in full for the security services pursuant to its contract. Therefore, OHR could not be liable to ASSET for breach of contract or unjust enrichment. Moreover, because OHR and Mr. Bogner did not have a contract with ASSET and had never conducted business in Tennessee, they lacked the minimum contacts necessary for personal jurisdiction in Tennessee.

Plaintiff argues that Mr. Fantozzi acted as an agent for OHR when he entered into an oral contract with Plaintiff.³ Since Mr. Fantozzi's substantial contact with Plaintiff is attributable to OHR, Defendants had sufficient contacts with Tennessee to allow a Tennessee court to exercise jurisdiction over them.

The Trial Court's Decision

The trial court ruled that, while ASSET properly stated a claim against OHR for breach of contract and unjust enrichment, OHR's contacts with Tennessee were insufficient to establish personal jurisdiction. Specifically, the court found that "[t]he actions and events took place in another country and the contacts [between Mr. Bogner and ASSET] were minimal...there is Tennessee case law...holding that telephone calls into the state of Tennessee will not be sufficient to establish personal jurisdiction." The court further concluded that no "party could reasonably think that the protections and benefits in this state would apply to oral contracts causing events taking place off the coast of Africa...."

³ Agency is a legal relationship that arises when two parties agree that one (the agent) will act on the other's behalf (the principal). Generally, a principal is liable for any acts the agent performs within the scope of the agency agreement.