

**STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY**

Derrick Vezina)	State File No. M-13056
)	
v.)	By: Margaret A. Mangan
)	Hearing Officer
)	
White Mountain Cable)	For: Steve Janson
Construction Corp.)	Commissioner
)	
)	Opinion No. 16SJ-00WC

RULING ON PARTIES' MOTIONS FOR SUMMARY JUDGMENT

APPEARANCES:

Attorney Steven A. Adler for the claimant
Attorney Tammy Besaw Denton for the defendant

ISSUE:

1. Did claimant's acceptance of White Mountain's offer create an employment contract in Vermont or elsewhere?
2. May Vermont assert jurisdiction over the adjudication of this claim?

Both parties have filed motions for summary judgment.

FACTS FOR PURPOSES OF THIS MOTION ONLY:

1. On March 26, 1997, claimant, a Vermont resident, personally submitted an application for employment with the defendant, White Mountain Cable Construction Corp., at its headquarters in Epsom, New Hampshire. At that time claimant did not have the necessary valid driver's license.
2. Subsequent to March 26, 1997, claimant obtained a valid driver's license and telephoned the defendant's Human Resources Manager, Thomas Bourgault, with this information.
3. On April 3, 1997, during a telephone conversation, defendant offered and claimant accepted an employment position as a "ground man." After that conversation, claimant started work in Ipswich, Massachusetts. Claimant asserts that he was in Vermont during that conversation.
4. On March 12, 1999 claimant in the course of his employment, injured his hand on a hotel door in Hyannis, Massachusetts.

5. Defendant performs business in Vermont and leases or uses warehouses in Vermont.

CONCLUSIONS OF LAW:

1. “Where both parties seek summary judgment, each is entitled to the benefit of all reasonable doubts and inferences in determining whether a genuine issue of material fact exists when the opposing party’s motion is being judged.” *Toys, Inc. v. F.M. Burlington Co.*, 155 Vt. 44, 582 A.2d 123, 125 (1990).
2. Claimant asserts that Vermont has proper jurisdiction over this matter pursuant to 21 V.S.A. §§ 619¹ and 620². He argues that since he accepted the defendant’s job offer over the telephone in Vermont he was hired in Vermont pursuant to §619; therefore, Vermont has proper jurisdiction.
3. In the alternative, claimant argues that § 620 also supports jurisdiction in Vermont because Vermont can reasonably determine the rights of the claimant, defendant has substantial and sufficient contacts with Vermont, and defendant would use Vermont courts for its benefit and protection if need be.
4. The defendant argues that plaintiff was hired outside Vermont because the employment contract could only be accepted by performance, and claimant accepted the offer by showing up for work in Ipswich, Massachusetts. Defendant also argues that asserting jurisdiction pursuant to § 620 would violate defendant’s Due Process rights under the Fourteenth Amendment because defendant does not have the requisite minimum contacts with Vermont.
5. Claimant and defendant agree that an offer for employment was extended on April 3, 1997 by the defendant over the phone to the claimant; however, they disagree regarding the method of acceptance, i.e., whether it was by promise or performance. This is a genuine difference of a material fact. Contract formation has a substantial bearing on the issue of jurisdiction. Although not dispositive, the place of contract is relevant regarding the defendant’s contacts with Vermont. The place of contract shows whether or not defendant availed itself of Vermont, benefited from Vermont laws, and could reasonably expect to be haled into a Vermont court. Both parties differ as to the factual circumstances surrounding the formation of the employment contract. Based on the evidence, reasonable minds could differ as to whether the contract was accepted by an oral promise over the telephone in Vermont, or whether the contract was accepted by performance when the claimant began performing in Ipswich, Massachusetts.

¹ **Injuries outside of state** If a worker who has been hired in this state receives personal injury by accident arising out of and in the course of such employment, he shall be entitled to compensation according to the law of this state even though such injury was received outside of this state. (Amended 1981, No. 165 (Adj. Sess.), § 1.)

² **Worker hired outside of state** If a worker who has been hired outside of this state is injured while engaged in his employer’s business and is entitled to compensation for such injury under the law of the state where he was hired, he shall be entitled to enforce against his employer his rights in this state, if his rights are such that they can be reasonably determined and dealt with by the commissioner and the court in this state. (Amended 1981, No. 165 (Adj. Sess.), § 1.)

6. Next is the issue of jurisdiction. In order for Vermont to assert jurisdiction over this matter pursuant to either § 619 or § 620, the defendant's Due Process rights under the Fourteenth Amendment must be satisfied. "Due process requirements are satisfied when *in personam* jurisdiction is asserted over a nonresident corporate defendant that has 'certain minimum contacts with [the forum] such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" *Helicopteros Nacionales De Colombia, S. A. v. Hall et al.*, 466 U.S. 408, 414 (1984) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). When a state exercises personal jurisdiction over a defendant for a suit not "arising out of" nor "related to" the defendant's contacts with the forum state, these contacts must be "systematic" and "continuous." *Id.* at 415, See also, *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). This is known as general jurisdiction, See Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 S. Ct. Rev. 77, 80-81.
7. A general jurisdiction analysis must be applied in this case regardless of what statute is applicable because the claimant's injury was not a result of the defendant's contacts with Vermont. In other words, claimant was hurt in Massachusetts; therefore, the injury did not "arise out of" nor "relate to" the defendant's contacts with Vermont. Although it is unclear where claimant was hired and under what method he accepted the job offer, i.e., by performance or the promise to perform, this decision does not turn on whether the contract was a bilateral or unilateral agreement.
8. The dispositive issue is whether defendant had the requisite minimum contacts with Vermont satisfying the requirements of Due Process. In *Helicopteros Nacionales De Colombia, S. A. v. Hall et al.*, 466 U.S. 408 (1984), the Supreme Court held that the defendant, a Colombian corporation, did not have "systematic" and "continuous" contacts with the forum state, Texas, necessary to establish jurisdiction over the defendant for a suit unrelated to those contacts. The defendant's contacts with Texas in that case were as follows: It sent its CEO to Houston for contract negotiations, accepted Houston drawn checks, purchased equipment and services from Texas company, and sent personnel to Texas for training. *Id.* at 416. Conversely, in *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), the Court upheld general jurisdiction over a Philippine mining company in the forum state based upon defendant's "systematic" and "continuous" contacts. The defendant in that case maintained an office in the forum state with an administrative staff, kept company files there, conducted business correspondence, dispersed salaries, maintained company bank accounts, held directors' meetings and carried out business functions in the forum state.
6. In the case at hand, it is unclear exactly what the defendant's contacts with Vermont were and how much contact the defendant had in Vermont. Defendant has conducted some business in Vermont, but the amount and the consistency of that business is ambiguous. The defendant has appointed an agent of service in Vermont, but it is unclear for what purpose. Was it because they anticipated possible litigation? The use or leasing of warehouses in Vermont is also significant; however, the consistency and purpose of these warehouses is also not part of the record. In order for the defendant to be haled into a Vermont court for activities unrelated to its contact with Vermont, there must be "systematic" and "continuous" contacts, such as the contacts demonstrated in *Perkins*. There is a factual dispute as to the precise nature and volume of the defendant's overall

contacts with Vermont. Based on the evidence, reasonable minds could differ as to whether the contacts were “systematic” and “continuous.”

7. Accordingly, because there are questions of material fact on the issues of personal jurisdiction and contract formation, both motions for summary judgment must be denied.

ORDER:

Based on the foregoing Findings of Fact and Conclusions of Law, defendant’s motion for summary judgment is DENIED and Claimant’s motion for summary judgment is DENIED.

Dated at Montpelier, Vermont, this 29th day of June 2000.

Steve Janson
Commissioner