

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2019 CA 0738

CAMSOFT DATA SYSTEMS, INC.

VERSUS

**SOUTHERN ELECTRONICS SUPPLY, INC.
AND ACTIVE SOLUTIONS, LLC**

Judgment Rendered: JUL 02 2019

**Appealed from the Nineteenth Judicial District Court
Parish of East Baton Rouge
State of Louisiana**

Case No. 582,741

The Honorable Janice Clark, Judge Presiding

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BEFORE: CRAIN, THERIOT and HOLDRIDGE, JJ.

THERIOT, J.

In this appeal, Dell, Inc. and Dell Marketing, L.P. (sometimes referred to collectively as “Dell”) seek review of the trial court’s judgment denying their Motion for Partial Summary Judgment on CamSoft’s Claim for Punitive Damages. For the following reasons, we reverse the trial court’s judgment denying the motion for partial summary judgment, grant Dell’s motion, and dismiss CamSoft’s claim for punitive damages against Dell.

FACTS AND PROCEDURAL HISTORY

The facts and procedural history are laid out in more detail in this court’s opinion in **CamSoft Data Systems, Inc. v. Southern Electronics Supply, Inc.**, 2019-0730 (La. App. 1st Cir. 7/2/19)(unpublished), which is also being issued this date.

Relevant hereto, CamSoft Data Systems, Inc. (“CamSoft”) filed a First Supplemental and Amended Master Petition for Declaratory Judgment, Supplemental Relief, Punitive and Compensatory Damages, and Attorneys’ Fees on August 31, 2016, seeking punitive damages, court costs, and attorney’s fees from Dell pursuant to La. Civ. Code art. 3546. In response, Dell filed a motion for partial summary judgment, contending that punitive damages were not available under Louisiana law. After a hearing, the trial court signed a judgment on April 2, 2019, denying Dell’s motion for partial summary judgment on the punitive damages claim. From this judgment, Dell appeals pursuant to La. R.S. 51:135.¹

SUMMARY JUDGMENT AND THE STANDARD OF REVIEW

A motion for summary judgment is a procedural device used to avoid a full scale trial when there is no genuine issue of material fact. **M/V Resources LLC v. Louisiana Hardwood Products LLC**, 2016-0758, p. 8 (La. App. 1st Cir.

¹ As set forth in La. R.S. 51:135, all interlocutory judgments in cases involving antitrust claims shall be appealable within five days and shall be heard and determined within twenty days after the appeal is lodged.

7/26/17), 225 So.3d 1104, 1109, writ denied, 2017-1748 (La. 12/5/17), 231 So.3d 624. A motion for summary judgment is properly granted if, after an opportunity for adequate discovery, the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. Code Civ. P. art. 966(A)(3). The burden of proof rests with the mover. Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. La. Code Civ. P. art. 966(D)(1). In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. **M/V Resources LLC**, 2016-0758 at p. 9, 225 So.3d at 1109.

A fact is material if it potentially ensures or precludes recovery, affects a litigant's ultimate success, or determines the outcome of the legal dispute. A genuine issue of material fact is one to which reasonable persons could disagree. If reasonable persons could reach only one conclusion, there is no need for trial on that issue and summary judgment is appropriate. **Doyle v. Lonesome Development, Limited Liability Company**, 2017-0787, p. 6 (La. App. 1st Cir. 7/18/18), 254 So.3d 714, 718-19, writ denied, 2018-1369 (La. 11/14/18), 256 So.3d 291, quoting **Jackson v. City of New Orleans**, 2012-2742, pp. 5-6 (La. 1/28/14), 144 So.3d 876, 882, cert. denied, — U.S. —, 135 S.Ct. 197, 190 L.Ed.2d 130 (2014). Because it is the applicable substantive law that determines

materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to the case. **Succession of Hickman v. State Through Board of Supervisors of Louisiana State University Agricultural and Mechanical College**, 2016-1069, p. 5 (La. App. 1st Cir. 4/12/17), 217 So.3d 1240, 1244.

Although summary judgments are now favored, factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion, and all doubt must be resolved in the opponent's favor. **Quality Environmental Processes, Inc. v. Energy Development Corporation**, 2016-0171, p. 14 (La. App. 1st Cir. 4/12/17), 218 So.3d 1045, 1059.

DISCUSSION

CamSoft recognizes that Louisiana law does not authorize punitive damages for the claims asserted in its petition.² In Louisiana, punitive damages are only authorized in particular situations; this shows that the state has a general policy against punitive damages. **Arabie v. CITGO Petroleum Corp.**, 2010-2605, p. 15 (La. 3/13/12), 89 So.3d 307, 318 n.3.

While none of CamSoft's alleged causes of action specifically authorize the recovery of punitive damages, CamSoft notes that Texas law allows for recovery of punitive damages. See Texas Civil Practice & Remedies Code § 41.003.³

² CamSoft's action against Dell is based on the following theories of recovery: (1) conspiracy to commit intentional torts; (2) conspiracy to violate Louisiana's Uniform Trade Secrets Act, La. R.S. 51:1431, *et seq.*; (3) conspiracy to violate Louisiana's Antitrust Act, La. R.S. 51:121, *et seq.*; and (4) conspiracy to violate Louisiana's Unfair Trade Practices and Consumer Protection Law, La. R.S. 51:1401, *et seq.* None of CamSoft's theories of recovery specifically authorize an award of punitive damages.

³ See Texas Civil Practice & Remedies Code § 41.003, which provides:

- (a) Except as provided by Subsection (c), exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from:
 - (1) fraud;
 - (2) malice; or
 - (3) gross negligence.
- (b) The claimant must prove by clear and convincing evidence the elements of exemplary damages as provided by this section. This burden of proof may not be

CamSoft asserts that Texas law should apply given that Texas is where Dell's wrongful conduct allegedly occurred and where one of the Dell entities, Dell Marketing, L.P., is domiciled.

With regard to punitive damages under Louisiana law, La. Civ. Code art. 3546 provides:

Punitive damages may not be awarded by a court of this state unless authorized:

(1) By the law of the state where the injurious conduct occurred and by either the law of the state where the resulting injury occurred or the law of the place where the person whose conduct caused the injury was domiciled; or

(2) By the law of the state in which the injury occurred and by the law of the state where the person whose conduct caused the injury was domiciled.

Thus, under La. Civ. Code art. 3546, punitive damages can be awarded if any two of the following three factors are met: (1) punitive damages are authorized by the law of the state where the injurious conduct occurred; (2) punitive damages are authorized by the law of the state where the injury occurred; or (3) punitive damages are authorized by the law of the state where the person who caused the injury was domiciled.

CamSoft does not dispute that the resulting injury occurred in Louisiana, conceding that the second factor listed above is not met. CamSoft contends, however, that the first and third factors above are met insofar as: one of the Dell

shifted to the defendant or satisfied by evidence of ordinary negligence, bad faith, or a deceptive trade practice.

(c) If the claimant relies on a statute establishing a cause of action and authorizing exemplary damages in specified circumstances or in conjunction with a specified culpable mental state, exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the damages result from the specified circumstances or culpable mental state.

(d) Exemplary damages may be awarded only if the jury was unanimous in regard to finding liability for and the amount of exemplary damages.

(e) In all cases where the issue of exemplary damages is submitted to the jury, the following instruction shall be included in the charge of the court:

"You are instructed that, in order for you to find exemplary damages, your answer to the question regarding the amount of such damages must be unanimous."

entities, Dell Marketing, L.P., is domiciled in Texas, which allows for punitive damages; and Dell's injurious conduct allegedly occurred in Texas.

Dell disputes CamSoft's analysis regarding the award of punitive damages insofar as Dell asserts that it should be considered a Louisiana domiciliary under La. Civ. Code art. 3548. This Article provides:

For the purposes of this Title, and provided it is appropriate under the principles of Article 3542, a juridical person that is domiciled outside this state, but which transacts business in this state and incurs a delictual or quasi-delictual obligation arising from activity within this state, shall be treated as a domiciliary of this state.

Dell maintains that it meets the requirements to be considered a Louisiana domiciliary under Article 3548 because it transacts business in Louisiana and CamSoft's suit is based on Dell's alleged activities occurring in Louisiana.

While Dell Marketing, L.P., is incorporated in and domiciled in Texas,⁴ it is also undisputed that Dell transacts business in Louisiana.⁵ However, the parties dispute whether "the delictual or quasi-delictual obligation" and "injurious conduct" arose from Dell's activities within Louisiana. Accordingly, we apply the principles set out in La. Civ. Code art. 3542 to determine whether it would be appropriate to consider Dell a Louisiana domiciliary under Article 3548. See Arabie, 2010-2605 at pp. 8-11, 89 So.3d at 314.

Louisiana Civil Code article 3542 states:

Except as otherwise provided in this Title, an issue of delictual or quasi-delictual obligations is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue.

That state is determined by evaluating the strength and pertinence of the relevant policies of the involved states in the light of: (1) the pertinent contacts of each state to the parties and the events giving rise

⁴ Additionally, CamSoft avers that Dell, Inc. is domiciled in Delaware, and Delaware also allows punitive damages. However, CamSoft does not assert that any tortious conduct occurred in Delaware.

⁵ Specifically, Heather M. Archer, Dell's contract manager in the state and local government group, discussed her role as liaison between Dell and a number of states, including Louisiana, in negotiating agreements with state and local governments.

to the dispute, including the place of conduct and injury, the domicile, habitual residence, or place of business of the parties, and the state in which the relationship, if any, between the parties was centered; and (2) the policies referred to in Article 3515, as well as the policies of deterring wrongful conduct and of repairing the consequences of injurious acts.

The objective of Article 3542, as noted in the Article, is to identify the state whose policies would be most seriously impaired if its law were not applied. **Arabie**, 2010-2605 at p. 10, 89 So.3d at 315. To accomplish this, the statute lists several non-exclusive factors to be considered in determining choice of law questions: (1) the pertinent contacts of each state to the parties; (2) their contacts to the events giving rise to the dispute, including the place of conduct and injury; (3) the domicile, habitual residence, or place of business of the parties; (4) the state in which the relationship between the parties was centered; (5) application of which state's law would best deter wrongful conduct; (6) application of which state's law would best repair the consequences of injurious acts; (7) the relationship of each state to the parties and the dispute; and (8) the policies and needs of the interstate system, including the policies of upholding the justified expectation of the parties and of minimizing the adverse consequences that might follow from subjecting a party to the law of more than one state. **Arabie**, 2010-2605 at p. 10, 89 So.3d at 315-16.

In its reasons for judgment, the trial court indicated that it "is of the opinion Dell actively participated in the schematic design which it knew or should have known that it was [illicit]" and that "its executive officers did operate out of Texas, Louisiana and California." However, the trial court did not discuss the contacts by using the factors addressed in Article 3542. See Arabie, 2010-2605 at p. 11, 89 So.3d at 316. Although the factors listed in Article 3542 are merely "illustrative," the factors are also "the most important factual contacts" to which a court should turn in determining choice of law questions. **Id.**

Regarding the first factor, the pertinent contacts of each state to the parties, the trial court indicated that Dell's executive officers operated out of multiple states, including Texas, Louisiana, and California. CamSoft asserts that it has supported its punitive damage claims by outlining a commercial bribery scheme and RICO enterprise made possible by Dell corporate executives with offices in Texas and California. CamSoft avers that the executives' managerial decisions outside of Louisiana paved the way for the underlying commercial bribery scheme and RICO enterprise to occur by devising a way to avoid governmental regulator scrutiny. CamSoft asserts that those Dell officials who conspired to illegally place the wireless networking equipment, cameras, and installation services as part of Dell's WSCA contract included, among others, Charles Boorman, whose office is in Texas,⁶ and Steve Reneker, whose office is in California.

However, the alleged bribery scheme involved the selling of video surveillance systems throughout Louisiana. The fact that Dell officials took actions in Texas that may have impacted the conspiracy does not change the fact that the alleged conspiracy itself occurred in Louisiana and involved Louisiana public officials, who are also Louisiana residents. The Louisiana Participating Addendum to the WSCA contract is the vehicle that allowed Dell to provide equipment to Louisiana cities at the request of the state of Louisiana. The WSCA contract was a Louisiana state purchasing contract entered into in Louisiana by Dell and the Louisiana Office of State Procurement and must be governed by Louisiana law. While CamSoft avers that Dell managed the contracts, invoices, and overall business relationship from Texas, both Kim Fury, a sales director for Dell, and Mr. Reneker, the Chief Information Officer hired by Dell for business development for state and local government, met with parties, including the alleged co-conspirators, in Louisiana. In his deposition, Mr. Reneker acknowledged that

⁶ CamSoft also avers that Heather M. Archer's office is located in Texas.

he was in New Orleans on several occasions. As such, we conclude that the first factor concerning pertinent contacts in each state weighs in favor of application of Louisiana law.

With respect to the second factor, the place of conduct and injury, CamSoft suggests that Dell presented no evidence that the contacts to the events giving rise to the instant case occurred only in Louisiana. However, as noted in **Arabic**, in determining where injurious conduct occurred, management or corporate level decisions must outweigh local tortious activity in order for the location of the corporate or management decision to be considered the locale of the injurious conduct. **Arabic**, 2010-2605 at pp. 12-13, 89 So.3d at 317. While some of Dell's decisions may have occurred in Texas, it is undisputed, as noted above, that the conspiracy was focused in Louisiana and that the injury to CamSoft occurred in Louisiana. Accordingly, this factor weighs in favor of the application of Louisiana law.

The third factor, concerning the domicile, habitual residence, or place of business of the parties, weighs in favor of the application of Texas law. Dell Marketing, L.P., is headquartered in Texas, is subject to Texas law, and pays taxes in Texas. Further, most of its employees work and live in Texas, and Texas benefits most from Dell's location in Texas. As such, this factor weighs in favor of application of Texas law.

The fourth factor, the state in which the relationship between the parties was centered, favors Louisiana, as acknowledged by CamSoft. Accordingly, this factor weighs in favor of applying Louisiana law.

The fifth factor, which state's law would best deter wrongful conduct, would appear to favor the imposition of punitive damages, the purpose of which is to punish wrongful conduct. As noted in **Arabic**, 2010-2605 at p. 15, 89 So.3d at

318, however, the strength of this factor is diminished by Louisiana's policy disfavoring punitive damages in general. As a result, this factor is neutral.

The sixth factor, which state's law would best repair the consequences of injurious acts, has no bearing. CamSoft, if it proves its allegations against Dell at trial, can be made whole through the award of compensatory damages. See Arabie, 2010-2605 at p. 15, 89 So.3d at 318. As such, this factor is neutral.

The seventh factor, the relationship of each state to the parties and the dispute, is addressed in some of the factors above. While Dell Marketing, L.P. is based in Texas and some of its decisions may have been made by personnel in Texas, the alleged conspiracy itself was centered in Louisiana. Further, CamSoft's damages occurred in Louisiana, and CamSoft filed suit arising therefrom in Louisiana. Accordingly, this factor weighs in favor of applying Louisiana law.

The eighth factor considers the policies and needs of the interstate system, including the policies of upholding the justified expectation of the parties and of minimizing the adverse consequences that might follow from subjecting a party to the law of more than one state. CamSoft avers that while Louisiana wants to ensure a fair and competitive business market, there is no doubt that Texas wants the same. CamSoft maintains that a judgment against Dell, albeit in Louisiana, assessing it punitive damages under Texas law will send the message both to Dell and its competitors that proprietary information is sacrosanct and is expected to remain confidential. However, Texas does not have an overriding interest in applying their laws to corporate domiciliaries when decisions, even if made in Texas, have no effect in Texas. Rather, their decisions, as part of a bigger purported conspiracy, caused injuries in Louisiana.

Accordingly, applying the factors set forth in La. Civ. Code art. 3542, we conclude that Dell should be considered a domiciliary of Louisiana under La. Civ. Code art. 3548. Therefore, punitive damages are not available under Article 3546.

Even so, we recognize the escape clause provided in La. Civ. Code art. 3547, which provides:

The law applicable under Articles 3543-3546 shall not apply if, from the totality of the circumstances of an exceptional case, it is clearly evident under the principles of Article 3542, that the policies of another state would be more seriously impaired if its law were not applied to the particular issue. In such event, the law of the other state shall apply.

CamSoft contends that Article 3547 should be applied because Texas has an interest in deterring bad behavior by punishing its corporate citizens for gross misconduct so as to deter them from future wrongful behavior. However, considering the analysis above with regard to application of the factors in Article 3542, it is not “clearly evident” that Texas’s policies would be more seriously impaired if its laws were not applied to this issue. Therefore, under the undisputed facts herein, CamSoft is not entitled to recover punitive damages under Louisiana’s conflict of laws articles.

CONCLUSION

For the above and foregoing reasons, the April 2, 2019 judgment denying the Motion for Partial Summary Judgment on CamSoft’s Claim for Punitive Damages filed by Dell, Inc. and Dell Marketing, L.P., is reversed. The Motion for Partial Summary Judgment on CamSoft’s Claim for Punitive Damages filed by Dell, Inc. and Dell Marketing, L.P., is granted, and the claims of CamSoft Data Systems, Inc. against Dell, Inc. and Dell Marketing, L.P. for punitive damages are dismissed in their entirety, with prejudice. Costs of this appeal are assessed against CamSoft Data Systems, Inc.

REVERSED AND RENDERED.