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CA District Court: Dodd Frank Whistleblower Provision Does Not Apply Extraterritorially

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On June 28, 2021, the United States District Court for the Northern District of California granted the Company's Rule 12(b)(6) motion to dismiss after an executive claimed he was discharged in violation of the Dodd-Frank Act's (DFA) whistleblower protection provision for alerting the Company and authorities about possible tax fraud. Airton Amorim De Almeida v. Western Digital Corp., No. 3:20-cv-04735. According to the court, the DFA whistleblower provision did not apply because the relevant events occurred in Brazil.

Background

Plaintiff, a citizen and resident of Brazil, brought suit against the company and a Brazilian entity that is wholly owned and operated by the Company. While working in Brazil for the Company, Plaintiff allegedly became concerned with potentially fraudulent conduct. He notified the SEC and the DOJ, and allegedly submitted an anonymous email to company executives alerting them of his concerns. This resulted in both an SEC investigation and an internal investigation.

About a year after lodging his complaints, Plaintiff allegedly was "duped into" participating in a phishing scam that cost the Company $2 million. As a result, the Company relieved Plaintiff of some of his responsibilities, and in 2017, his employment with the Company ended. There was some disagreement with respect to whether Plaintiff was terminated or whether there was mutual agreement to end his employment. Over two years after Plaintiff's separation, he brought suit against the Company and its wholly owned Brazilian subsidiary, alleging whistleblower retaliation in violation of the DFA. Both entities sought to dismiss Plaintiff's claims.

Ruling

The court held that because Plaintiff relied on the DFA anti-retaliation provision and that provision does not apply to alleged retaliatory conduct that takes place overseas, Plaintiff failed to state a claim. Plaintiff was a resident of a foreign country, was employed by a foreign company, and the allegedly corrupt activities took place in a foreign country. Further, any potential adverse employment action took place in Brazil.

In addition, even though the court refused to allow such extraterritorial application of the provisions under the DFA, it could rely on the following to conclude that Plaintiff failed to allege sufficient facts to give rise to a plausible inference that he suffered adverse employment actions in retaliation for whistleblowing: Plaintiff fell prey to a phishing scam, costing the Company $2 million, and the fact that over a year had elapsed between the alleged whistleblowing behavior and Plaintiff's eventual separation.

Implications

This decision confirms that the DFA whistleblower protection provision does not extend extraterritorially.

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