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CA District Court: SOX and Dodd-Frank's Whistleblower Provisions Do Not Apply To Individual Employed Abroad

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On June 7, 2022, the United States District Court for the Northern District of California, relying on recent ARB decisions, held that a plaintiff who lived and worked for a Canadian subsidiary of a US company could not avail himself to the anti-retaliation provisions of SOX and the Dodd-Frank Act. *Daramola v. Oracle Am., Inc.*, No. 19-cv-07910. In so doing, the court solidified an increasingly well-defined test for what constitutes a domestic application of these statutes.

Background

Plaintiff lived in and worked in Montreal, Canada, where he worked for Oracle Canada (the "Company"). Following his resignation, Plaintiff sued the Company in the United States, alleging, *inter alia*, whistleblower retaliation in violation of SOX and Dodd-Frank. He alleged that the Company made millions of dollars selling subscriptions for software that did not exist to colleges throughout the United States. He further alleged that he was constructively discharged after he internally reported his concerns that the Company had engaged in fraud. The Company moved to dismiss on the grounds that SOX and Dodd-Frank do not apply extraterritorially.

Ruling

The court first observed that the anti-retaliation provisions in both SOX and Dodd-Frank do not apply extraterritorially, i.e., outside the United States. While the Ninth Circuit has not expressly addressed the issue, the court relied on the Second Circuit's holding in *Liu Meng-Lin v. Siemens AG*, 763 F.3d 175 (2d Cir. 2014), that the anti-retaliation provisions of SOX and Dodd-Frank do not apply outside of the United States. (See our post on *Liu* here.) Indeed, as neither statute indicates any affirmative intent to apply outside the US, there appears to be little debate on this point. See, e.g., *Villanueva v. United States Department of Labor*, No. 12-60122, 2014 WL 550817 (5th Cir. Feb. 12, 2014)[1] (See our post on *Villanueva* here.); *Ulrich v. Moody's Corp.*, No. 13 Civ. 00008 (VSB), 2014 WL 4977562, at *7 (S.D.N.Y. Sept. 30, 2014) ("There is no clear indication of extraterritorial application in…the anti-retaliation provision of the SOX Act.").

The court also held that two more-recent ARB decisions which reached the same conclusion were entitled to *Skidmore* deference. Specifically, in *Garvey v. Morgan Stanley*, ARB Case No. 2020-0034 (ARB July 16, 2021), the ARB determined that the complainant's "daily interactions" with supervisors and colleagues in the United States, and allegations that U.S. customers were being harmed, did not demonstrate "sufficient, tangible domestic contacts" to apply SOX. In *Hu v. PTC, Inc.*, ARB Case No. 2017-0068 (ARB Sept. 18, 2019), the ARB similarly held that "the location of the employee's permanent or principal worksite is the key factor to consider when deciding whether a claim is a domestic or extraterritorial application." At bottom, "an adverse action which affected an employee at a principal worksite abroad does not become territorial because the alleged misconduct occurred in the U.S., or because it had, or would have, effects on U.S. securities markets, or because the alleged retaliatory decision was made in the United States." *Id*. (See our post on *Garvey* and *Hu* here).

The court concluded that because Plaintiff lived and worked in Canada, he failed to state a claim under the SOX and Dodd-Frank anti-retaliation provisions.

Implications

This decision confirms that employees of multinational employers who live and work abroad cannot invoke the whistleblower protections of SOX and Dodd-Frank.

[1] *Villaneuva v. Core Labs. NV Saybolt de Columbia Limitada,* ARB Case No. 09-108, ALJ Case No. 2009-SOX-006, slip op. at 12 (ARB Dec. 22, 2011) ("Section 806(a)(1) does not allow for its extraterritorial application.").

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