IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mavrakis v. TELUS International (Cda) Inc.,* 2025 BCSC 378

Date: 20250306
Docket: S244767
Registry: Vancouver

Between:

Sarah Mavarakis

Plaintiff

And

TELUS International (Cda) Inc.

Defendant

Before: The Honourable Mr. Justice Coval

Reasons for Judgment

Counsel for the Plaintiff:	D.A. Crawford, K.C. L. Stansfield
Counsel for the Defendant:	K.L. Kay M. Shahid
Place and Dates of Hearing:	Vancouver, B.C. November 29, 2024 and January 20, 2025
Place and Date of Judgment:	Vancouver, B.C. March 6, 2025

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Introduction

[1] TELUS International (Cda) Inc. applies for a stay of these proceedings under s. 7(2) of the *Arbitration Act*, S.B.C. 2020, c. 2, or for jurisdiction to be declined under s. 11(1) of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 [*CJPTA*].

[2] Ms. Mavrakis is an American citizen who lives in Virginia. In January 2024, she resigned from her position as an account director with TELUS and took a job with a competitor. TELUS commenced an arbitration against her in Virginia for breach of her employment agreement and economic torts. In these British Columbia proceedings, she seeks a declaration that her contractual restrictive covenants, which are subject to British Columbia law, are invalid and unenforceable.

[3] TELUS seeks a stay on the basis that Ms. Mavrakis's employment agreement requires disputes relating to her employment to be arbitrated in Virginia. It relies on the Virginia arbitrator's recent decision that the parties' disputes fell within the arbitration provisions of her employment agreement. Alternatively, TELUS submits that jurisdiction should be declined because this is fundamentally a Virginia dispute. That is where Ms. Mavrakis lives and worked for TELUS, where the impugned actions and alleged losses occurred, and where the parties are already arbitrating these and other issues between them.

[4] Ms. Mavrakis argues that, despite the arbitrator's decision to the contrary, the validity of the restrictive covenants in her employment agreement should be decided by this Court because they are subject to BC law and fall outside the agreement's arbitration provisions.

[5] For the reasons that follow, I agree with TELUS that the action should be stayed under s. 7(2) of the *Arbitration Act*, and jurisdiction declined under s. 11(1) of the *CJPTA*.

Parties

[6] Ms. Mavrakis lives in Chantilly, Virginia. She was employed by TELUS International AI Inc. (“TELUS AI”), a Delaware company, as an account manager from July 2021 to January 18, 2024.

[7] The TELUS group of companies (“TELUS”) is in the business of global telecommunications.

[8] TELUS International Canada Inc. (“TELUS Canada”) is a British Columbia company with its head office in Vancouver, and business operations throughout the world. It is not a party to the Virginia Arbitration.

Employment Agreement

[9] On July 21, 2021, Ms. Mavrakis signed an employment agreement with TELUS AI. It is a straightforward three-page document with three schedules.

[10] It says that her position of account manager is to be performed from her home office in Chantilly, and includes a governing law clause implementing Virginia law.

[11] Schedule A is a Team Member Confidentiality and Intellectual Property Agreement, which says at Recital B:

> It is essential to the success of TELUS that I protect the Confidential Information of TELUS and TELUS’ Associates.

[12] Schedule A says that it is to be governed and interpreted in accordance with the laws of the state in which Ms. Mavrakis was last employed, being Virginia.

[13] Schedule B is a Software Licensing, Information Protection and Non-Disclosure Agreement. It includes a commitment from Ms. Mavrakis not to copy, disclose or use sensitive, personal, confidential or proprietary or critical information, except to perform her job responsibilities.

[14] Schedule C is entitled “Mutual Agreement to Arbitrate Claims” (“Arbitration Agreement”). The employment contract itself says this about the Arbitration Agreement:

> The arbitration agreement, which provides that you and TELUS International will submit any covered dispute to binding arbitration, should be read carefully, signed and returned to the company.

Arbitration Agreement

[15] The Schedule C Arbitration Agreement says that both parties agree “to resolve any differences between us (except as specifically excepted below) through the binding arbitration procedures explained below.”

[16] It describes the claims covered and not covered by the Agreement in broad terms, as follows:

> **Claims Covered by this Agreement.** To the maximum extent allowed by law, the Company and I mutually consent to the resolution by binding arbitration of all claims or causes of action, except as provided below, that the Company may have against me or that I may have against the Company or the Company’s current and former owners, partners, members, officers, directors, employees, representatives and agents, all parent companies, subsidiaries and affiliated entities, all benefit plans and benefit plan sponsors, fiduciaries, administrators, and all successor and assigns of any of them under any federal, state and local law including, but not limited to: claims for breach of any contract or covenant; tort claims; claims for discrimination or harassment of any kind under law; claims for retaliation; claims for violation of public policy; claims for unpaid wages or other wage claims including, but not limited to, claims for overtime pay, meal and rest periods, pay stub violations, minimum wage, back wages, sick leave and vacation leave; claims for violation of any federal, state, local or other law, statute regulation or ordinance, including, but not limited to, all claims arising under Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Americans with Disabilities Act of 1990, as amended, the Fair Labor Standards Act, the Equal Pay Act, the Family and Medical Leave Act.
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> …
>
> **Claims Not Covered by this Agreement.** I understand that I may bring issues to the attention of federal, state or local government agencies which, if the law allows, can seek relief against the Company on my behalf. Also, this Agreement shall not prohibit the Company or me from filing a claim against the other with any federal, state or local government agency.
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> [Emphasis added.]

[17] Regarding arbitration procedures, it says that any arbitration would: (a) be conducted under the rules of the Judicial Arbitration and Mediation Services, Inc. (commonly referred to as "JAMS"); (b) take place in the county where Ms. Mavrakis last worked (which was a county in Virginia); and, (c) be conducted by a neutral arbitrator selected by the mutual agreement of the parties.

[18] The Arbitration Agreement gives the arbitrator broad authority to decide disputes about the Agreement's scope:

> The arbitrator shall have the exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement including, but not limited to, any claim that all or any part of this Agreement is void or voidable.

RSU Award Agreement and Restrictive Covenants

[19] As part of her 2023 employee compensation, Ms. Mavrakis was offered restricted share units under the terms of TELUS's 2021 Omnibus Incentive Plan Form of Restricted Share Unit Award Agreement ("RSU Award Agreement").

[20] The RSU Award Agreement contained the broad non-competition and non-solicitation clauses in issue, which applied for a period of six months immediately following termination of employment ("Restrictive Covenants").

[21] By letter of March 17, 2023, Ms. Mavrakis was told that, to receive the shares, she must accept the terms and conditions of the RSU Award Agreement. On April 10, 2023, she signed the RSU Award Agreement by means of an online "click-through" agreement, which allowed her to "click her acceptance" on the final page.

[22] Ms. Mavrakis's evidence is that she was unaware of the Restrictive Covenants when she accepted the RSU Award Agreement, and that, if she had known of them, she would not have accepted the shares. She alleges her consent to the Restrictive Covenants was obtained by "subterfuge".

[23] The RSU Award Agreement, between Ms. Mavrakis and TELUS Canada, contained the following BC governing law clause:

> 17. **Governing Law**. The interpretation, performance and enforcement of the RSUs and this Agreement shall be governed by the laws of the Province of British Columbia and the federal laws of Canada applicable therein, without regard to principles of conflicts of law. To the extent any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable or invalid for any reason, the remaining provisions of this Agreement shall remain in full force and effect.

[24] There are additional references to a "court of competent jurisdiction" in the RSU Award Agreement's "blue pencil" and "enforceability" clauses. It also contains an entire agreement clause, stating that the RSU Award Agreement, and associated 2021 Omnibus Incentive Plan, constitute the entire agreement between the parties regarding their subject matter, and superseded all other agreements relating to that subject matter. The 2021 Plan also contained a BC governing law clause.

Ms. Mavrakis Joins Welocalize

[25] On January 5, 2024, Ms. Mavrakis resigned from her employment with TELUS AI, effective January 18, 2024. Later that month, TELUS AI learned she had taken a position with its competitor, Welocalize.

[26] In a press release of May 21, 2024, Welocalize announced the formation of "Welo Data", with Ms. Mavrakis as its vice-president. The release described its business as assisting technology companies with their AI models, which TELUS AI alleges was substantially the same work Ms. Mavrakis performed for that company.

TELUS Sues in Delaware and Virginia

[27] On June 28, 2024, TELUS AI sued Welocalize in Delaware seeking injunctive relief and damages. Welocalize is the sole defendant in the Delaware Action.

[28] On July 5, 2024, TELUS AI commenced the Arbitration against Ms. Mavrakis under the JAMS process. Its allegations against Ms. Mavrakis included that she had:

a) managed the largest customer relationship in its AI division and had access to some of TELUS's most valuable confidential information, including customer information, sales and marketing strategies, and future plans;

b) used, and disclosed to Welocalize, TELUS's confidential information and trade secrets to develop and market Welo Data to TELUS's customers, contrary to her confidentiality obligations; and

c) violated the Restrictive Covenants, misappropriated trade secrets, and engaged in tortious interference with contract and business relations.

[29] The relief sought included:

a) permanent injunctive relief barring Ms. Mavrakis from misappropriating TELUS's trade secrets, soliciting TELUS customers, and breaching her contractual obligations to TELUS;

b) tolling the restrictive periods set forth in the RSU Award Agreement based on Ms. Mavrakis's ongoing breach of her Restrictive Covenants; and

c) monetary damages to TELUS for Ms. Mavrakis's breach of contract, misappropriation of TELUS's trade secrets, and tortious interference with TELUS's contractual and business relations.

Ms. Mavrakis's Notice of Civil Claim

[30] On July 18, 2024, approximately two weeks after TELUS AI began the Arbitration, Ms. Mavrakis filed this Notice of Civil Claim.

[31] The only relief sought is a declaration that the Restrictive Covenants are void and unenforceable. The material facts pleaded in support are that the Covenants do not protect legitimate proprietary interests, are ambiguous and excessive in length of time and geographic scope, and overbroad.

[32] The Claim does not seek a stay of the Arbitration or address the other claims made by TELUS AI against her in the Arbitration.

[33] On September 11, 2024, TELUS Canada filed this application.

Arbitrator's Jurisdiction Decision

[34] On July 30, 2024, Ms. Mavrakis's U.S. counsel notified JAMS of her claim in this court and her jurisdictional objections to the Virginia Arbitration.

[35] On August 29, 2024, JAMS advised it would proceed with administration of the Arbitration, absent a court order or party-agreement stating otherwise. It said this

about the Arbitrator's authority to determine jurisdiction and arbitrability issues as a preliminary matter:

> …Under the JAMS Rules, jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which arbitration is sought, and who are proper parties to the arbitration, shall be submitted to and ruled on by the arbitrator. The arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter. See JAMS Employment Arbitration Rule 11(b).

[36] On October 9, 2024, Judge Henry Pitman, retired magistrate judge from the Southern District in New York, was appointed as Arbitrator.

[37] He heard Ms. Mavrakis's application to dismiss the Arbitration on the basis that the dispute should be litigated in British Columbia. She argued that the Arbitrator lacked jurisdiction to decide whether TELUS AI's claims against her were arbitrable due to the references to "court of competent jurisdiction" in the RSU Award Agreement, which she submitted constituted a forum selection clause.

[38] On November 26, 2024, Arbitrator Pitman released his jurisdiction decision. He concluded that the Arbitration Agreement gave him the express jurisdiction to determine whether TELUS AI's claims were arbitrable, and that they all fell within the scope of the Arbitration Agreement. He therefore denied Ms. Mavrakis's application to dismiss the Arbitration.

[39] As part of his decision, he found that the Arbitration Agreement clearly and unmistakably provided for the arbitrator to decide issues of arbitrability, both by its express language and its incorporation of the JAMS rules and procedures. He further held that the RSU Award Agreement choice-of-law provision was neither an overriding forum selection clause nor inconsistent with the delegation of authority to the arbitrator in the Arbitration Agreement.

[40] Regarding the scope of claims falling within the Arbitration Agreement, he found contractual ambiguity:

> ... Although it contains very broad language -- conferring jurisdiction on the arbitrator "[t]o the maximum extent permitted by law" -- it also appears to limit its scope to claims arising under "federal, state or local law." Because the

> latter formulation is commonly used to refer to the laws of the United States and its subdivisions, the Arbitration Agreement has language that both broadens and narrows its scope.

[41] He resolved that ambiguity by means of the "heavy presumption" in United States law in favour of arbitrability, such that, when the scope of an arbitration clause was open to question, arbitrability should prevail. He stated:

> The Arbitration Agreement is susceptible to an interpretation that includes disputes governed by foreign law. As noted above, it contains broad language and does not include disputes governed by foreign law in its identification of excluded disputes. Because there is a construction of the Arbitration Agreement that brings the parties' dispute within the agreement to arbitrate, Respondent's motion to dismiss the arbitration is denied.

Governing Law

Stays under the *Arbitration Act*

[42] Section 7 of the *Arbitration Act* requires a stay of proceedings if a matter has been agreed to be arbitrated, unless the arbitration agreement is void, inoperative or incapable of being performed.

[43] It says:

> 7 (1) If a party commences legal proceedings in a court in respect of a matter agreed to be submitted to arbitration, a party to the legal proceedings may, before submitting the party's first response on the substance of the dispute, apply to that court to stay the legal proceedings.
>
> (2) In an application under subsection (1), the court must make an order staying the legal proceedings unless it determines that the arbitration agreement is void, inoperative or incapable of being performed.

[44] There are three prerequisites to a stay under s. 7(1) (*Touvongsa v. Lahouri*, 2024 BCCA 405, para. 18):

> (a) a party to an arbitration agreement has commenced legal proceedings against another party to the agreement;
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> (b) the proceedings must be in respect of a matter agreed to be submitted to arbitration; and
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> (c) the application must be brought without undue delay, i.e. before the applicant takes a step in the proceeding.

[45] Under the "competence-competence principle", an arbitral tribunal has the authority to determine its own jurisdiction, and generally should be the one to do so in the first instance. This principle is to be displaced only in "abnormal or unusual circumstances" (*Touvongsa*, para. 20).

[46] Application of the competence-competence principle in a s. 7 application was summarized in *Tahmasebpour v. Freedom Mobile Inc*., 2024 BCSC 726:

> [19] In making a stay application under s. 7, a defendant need only satisfy the court that there is an "arguable case" that an arbitrator has jurisdiction over parties and the dispute: *Clayworth v. Octaform Systems.,* 2020 BCCA 117 at paras. 21-30. If an arguable case is made out, it must be left to the arbitrator to ultimately decide that jurisdictional question: *Peace River Hydro Partners v. Petrowest Corp.* 2022 SCC 41 at para. 39.
>
> [20] The "arguable case" standard is a relatively low bar and will be met unless there is "no nexus between the claims and the matters reserved for arbitration". Any "legitimate question of the scope of the arbitration jurisdiction" is to be deferred to the arbitrator: *Clayworth* at para. 30; *Peace River Hydro*, para. 85.
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> [21] If the issue of jurisdiction turns on a pure question of law, that question may be determined by the court. However, where it turns on a question of fact or mixed fact and law, the court should only decide that issue if it can do so with a superficial regard to the record before it; otherwise, the question should be referred to the arbitrator: *Peace River Hydro,* para. 42; *Spark Event Rentals v. Google LLC*, 2024 BCCA 148, paras. 15-18; *3-Sigma Consulting Inc. v. Ostara Nutrient Recovery Technologies Inc*., 2023 BCSC 100 at para 19. To make findings based on a "superficial" review of the record, the facts must either be evident on the face of the record or undisputed by the parties: *Uber Technologies Inc. v. Heller*, 2020 SCC 16, para. 36.
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> [22] As the Court of Appeal very recently confirmed, the question of whether the arbitration clause is void, inoperative or incapable of being performed is also to be referred to the arbitrator for determination unless that question can be clearly answered on a superficial regard to the record: *Spark Event Rentals,* paras. 15-18, 41, 47.
>
> [23] Alternatively, the court may substantively address the questions of jurisdiction, validity, operability, or ability to perform the arbitration agreement if it is shown on a limited assessment of the evidence that there is a real prospect that referring those questions to arbitration would result in the issues never being resolved: *Spark Event Rentals* paras. 19-23 and 40. Only if this threshold is met on a limited review of the evidence can the court then embark on a thorough analysis of the evidence to determine the issues of jurisdiction or enforceability substantively: *Spark Event Rentals,* para. 24 and 45.

(See also *Wiederhold v. Aspen Technology, Inc.*, 2024 BCSC 1731, paras. 17-18.)

[47] In cases involving mixed questions of fact and law, the jurisdictional issue must be referred to arbitration, unless the relevant factual questions require only a "superficial consideration of the documentary evidence in the record" (*Touvongsa*, para. 21). Such a consideration is "not inconsistent with a searching analysis of legal questions, provided that the necessary facts engaged in the analysis are evident or not legitimately disputed" (*Spark,* para. 18)

Convenient Forum

[48] Section 11 of the *CJPTA* says this about the discretion to decline jurisdiction in favour of a more appropriate forum:

> **Discretion as to the exercise of territorial competence**
>
> **11** (1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.
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> (2) A court, in deciding the question of whether it or a court outside British Columbia is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including
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> (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,
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> (b) the law to be applied to issues in the proceeding,
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> (c) the desirability of avoiding multiplicity of legal proceedings,
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> (d) the desirability of avoiding conflicting decisions in different courts,
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> (e) the enforcement of an eventual judgment, and
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> (f) the fair and efficient working of the Canadian legal system as a whole.

Analysis

Does the Arbitrator's Decision Necessitate a Stay?

[49] TELUS says a s. 7 stay is required because the Arbitrator has decided that the Restrictive Covenant issues fall within the Arbitration Agreement. Under the competence-competence principle, this court should respect that decision rather than embark on its own jurisdictional assessment. TELUS says that Ms. Mavrakis's

route to challenging the Arbitrator's decision is in Virginia, under Virginia law, which it appears she has chosen not to do.

[50] Ms. Mavrakis submits that the Arbitrator's decision should not deter this Court from performing its own s. 7 assessment of whether a stay is appropriate.

[51] Neither party found authority grappling with this issue in the context of a foreign arbitrator having already taken jurisdiction over the subject matter of the s. 7 stay application.

[52] Ms. Mavrakis relied on *Teck Cominco Metals Ltd. v. Lloyd's Underwriters*, [2009] 1 S.C.R. 321, para. 29. In the context of a convenient forum analysis, the Court held that policy considerations do not support making a foreign court's prior assertion of jurisdiction an overriding and determinative factor. Doing so, the Court said, would encourage a "first-to-file system", where parties might rush to commence what they viewed as favourable proceedings while trying to delay the alternative. This would create counterproductive incentives and considerations that had little if anything to do with where a dispute was appropriately decided.

[53] I agree with Ms. Mavrakis that these same "first-to-file" concerns appear to apply in this situation. Therefore, while the Arbitrator's finding of jurisdiction is a relevant consideration, in my view a s. 7 stay should not automatically result. This conclusion is supported by the consideration that, when an arbitrator has ruled on jurisdiction under the BC *Arbitration Act*, the decision can still be challenged in court under s. 23(7).

[54] TELUS points to *Sefcikova v. Monkhouse Law Professional Corporation*, 2023 ONSC 7091, at para. 37. The court granted a stay because the plaintiff failed to apply to review the arbitrator's jurisdiction decision under s. 17(8) of the Ontario *Arbitration Act*, 1991, S.O. 1991, c. 1710 (the equivalent of s. 23(7) of the BC *Arbitration Act*). In my view, however, the party failing to follow the correct process under the Ontario statute for reviewing an arbitral decision is a different situation

than the question of how to deal under s. 7 with a foreign arbitrator's decision taking jurisdiction.

[55] The same point applies to the second case relied on by TELUS, *Can-Faith Enterprises Inc. v. 0932784 B.C. Ltd.*, 2019 BCSC 1322. The court held that an arbitrator's decision that a commercial lease had been validly renewed was not subject to review by the court because: (a) that question fell within the arbitration clause in the lease; and (b) the defendants had not applied for leave to review the arbitrator's decision as a question of law under the *Arbitration Act*.

Does a Superficial Review Indicate No Arbitral Jurisdiction?

[56] I turn to the question of whether a s. 7 stay should be ordered under the legal framework summarized in paras. 42-47 above.

[57] Ms. Mavrakis argues that the express language of the Arbitration Agreement limits its scope to claims arising under "federal, state or local law", thereby excluding claims under the Restrictive Covenants which are expressly governed by the law of British Columbia.

[58] I agree with TELUS, however, that there is at least an arguable case that the Restrictive Covenant claims fall within the Arbitration Agreement, and that, in this situation of mixed law and fact, a superficial review of the record does not demonstrate the intention for claims based on the Restrictive Covenants to fall outside of the Arbitration Agreement. I base these conclusions on the following, much of aligns with the decision of the Arbitrator.

[59] First, the claims covered by the Arbitration Agreement are broadly defined. The agreement says that Ms. Mavrakis and TELUS AI, and/or any related or affiliated entity (which would include TELUS Canada), agree "to resolve any differences between us (except as specifically excepted below) through the binding arbitration procedures explained below".

[60] The claims expressly covered by the agreement include: “To the maximum extent allowed by law, … all claims or causes of action, except as provided below, that the Company may have against [Ms. Mavrakis] or that [she] may have against the Company”. Among the specifically included claims are “breach of any contract or covenant; tort claims”.

[61] Second, I agree with TELUS there is a reasonable argument that the Arbitration Agreement expressly extends to claims for violation of “other laws” which would include claims regarding the Restrictive Covenant.

[62] For convenience, I repeat the key clause:

> **Claims Covered by this Agreement.** To the maximum extent allowed by law, the Company and I mutually consent to the resolution by binding arbitration of all claims or causes of action, except as provided below, that the Company may have against me or that I may have against the Company or the Company’s current and former owners, partners, members, officers, directors, employees, representatives and agents, all parent companies, subsidiaries and affiliated entities, all benefit plans and benefit plan sponsors, fiduciaries, administrators, and all successor and assigns of any of them under any federal, state and local law including, but not limited to: claims for breach of any contract or covenant; tort claims; claims for discrimination or harassment of any kind under law; claims for retaliation; claims for violation of public policy; claims for unpaid wages or other wage claims including, but not limited to, claims for overtime pay, meal and rest periods, pay stub violations, minimum wage, back wages, sick leave and vacation leave; claims for violation of any federal, state, local or other law, statute regulation or ordinance, including, but not limited to, all claims arising under Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, the Americans with Disabilities Act of 1990, as amended, the Fair Labor Standards Act, the Equal Pay Act, the Family and Medical Leave Act.
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> …
>
> **Claims Not Covered by this Agreement.** I understand that I may bring issues to the attention of federal, state or local government agencies which, if the law allows, can seek relief against the Company on my behalf. Also, this Agreement shall not prohibit the Company or me from filing a claim against the other with any federal, state or local government agency.
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> [Emphasis added.]

[63] On TELUS’s reading, the first portion of the clause underlined above describes the TELUS entities that are covered by the Arbitration Agreement. Thus,

these words “under any federal, state and local law” refer back to the words immediately before, being “…and all successors and assigns of any of them.” It is the second underlined portion which describes the claims covered by the Arbitration Agreement, and includes claims for violation of “other laws”.

[64] Ms. Mavrakis argues that such ambiguity in the Arbitration Agreement should be decided in her favour based on the principle of *contra proferentem.* In my view, however, it is unclear whether that position would prevail. TELUS provided authority that, where an arbitration clause is capable of more than one interpretation, the court should favour resolution by arbitration (*Monimos Equities & Development Inc. v. Esquimalt Dockyard Branch 172 of the Canadian Legion*, 2016 BCSC 2057, para. 22. See also Geoff R. Hall, *Canadian Contractual Interpretation Law*, 4th ed. (LexisNexis Canada Inc., 2020), at s. 9.2.4. Ms. Mavrakis provided no cases where *contra proferentem* defeated that arbitration principle except within the consumer protection context.

[65] Third, the clause describing claims excluded from arbitration does not refer to claims brought under foreign law or otherwise capture claims based on the Restrictive Covenants.

[66] Fourth, and finally, there are facts in dispute which may need to be determined to assess jurisdiction, such as whether Ms. Mavrakis received the Omnibus Incentive Plan when accepting the RSU Award Agreement, and whether she read or should be considered to have read the RSU Award Agreement.

[67] For these reasons, I find that it is for the Virginia arbitrator, rather than this court, to determine the jurisdictional issue of whether the Restrictive Covenants fall within the Arbitration Agreement . The Arbitrator having found that they do, TELUS is granted its stay under s. 7.

Is BC or Virginia the Convenient Forum?

[68] I agree with TELUS that Ms. Mavrakis's action should also be stayed under s. 11(1) of the *CJPTA* because the Virginia Arbitration is clearly the more appropriate forum for this dispute.

[69] Mindful of the factors to be considered under s. 11(1), I say this for three main reasons.

[70] First, under *CJPTA* s. 11(2)(f), I agree with TELUS's submission that this is fundamentally a US dispute involving US parties and US conduct. Ms. Mavrakis is a US citizen, who worked for TELUS from her home in Virginia throughout the time of her employment. On the evidence, she has no connection to British Columbia or Canada. The TELUS entity that employed her is a US company. She was supervised by US managers. Her impugned conduct and the alleged losses suffered by TELUS AI (a Delaware corporation) all occurred in Virginia.

[71] Second, under s. 11(2)(a), it is more convenient and cost-effective for the parties and their witnesses to have this dispute determined in the Virginia Arbitration. Key witnesses are in, or near, Virginia, including: Ms. Mavrakis; Ms. Noreen Sendelbach, TELUS's vice-president of Human Resources who was TELUS's witness on this application; and, Ms. Siobhan Hanna, TELUS AI's former vice-president of Sales & Marketing, and Ms. Mavrakis's former supervisor who accompanied her from TELUS to Welocalize.

[72] Third, under s. 11(2)(c) and (d), the stay avoids a multiplicity of proceedings between the parties and conflicting findings and decisions in different proceedings. The remedy sought in this action regarding the Restrictive Covenants is just one piece of the broader issues in the US Arbitration, and it certainly appears that the Virginia Arbitration would proceed even if Ms. Mavrakis were successful in invalidating the Restrictive Covenants in these proceedings.

[73] The potential overlapping issues include the factual matrix surrounding the parties' agreements, the interpretation and application of those agreements, and

perhaps Ms. Mavrakis's credibility regarding her evidence of being unaware that the Restrictive Covenants were included in the RSU Award Agreement and that she would not have agreed to them falling within of the Virginia Arbitration.

[74] Fourth, under s. 11(2)(f), the Arbitrator has taken jurisdiction over this aspect of the parties' dispute and Ms. Mavrakis has not appealed that decision in Virginia.

[75] In my view, these considerations clearly outweigh the factors favouring BC as the jurisdiction to decide the validity of the Restrictive Covenants. The most important of those factors being:

a) TELUS Canada is a BC company situated in Vancouver;

b) BC law governs the interpretation and enforceability of the Restrictive Covenants;

   I agree with TELUS, however, that the applicable BC law can be proven relatively straightforwardly in the Virginia Arbitration by expert evidence; and

c) In these fast-tracked BC proceedings, Ms. Mavrakis can obtain an expedited decision of whether the Restrictive Covenants were valid and enforceable and, if they were not, that would dramatically simplify the Virginia Arbitration.

   In my view, however, it is speculative whether such a decision could be quickly achieved or how significant that would be for the Virginia Arbitration, particularly when the Arbitrator himself has taken jurisdiction over that same issue. Furthermore, it may be possible for Ms. Mavrakis to purse a preliminary determination of enforceability of the Restrictive Covenants in the Arbitration itself.

[76] In sum, I find the Virginia Arbitration to be a clearly more appropriate forum to determine enforceability of the RSU Restrictive Covenants. For the same conclusion in similar circumstances, see *Multiactive Software Inc. v. Advanced Service Solutions Inc.*, 2003 BCSC 643, para 29.

Conclusion

[77] This action is stayed under s. 7(2) of the *Arbitration Act*, and jurisdiction is declined under s. 11(1) of the *CJPTA*.

"Coval J."