

IN THE BUSINESS COURT FOR DAVIDSON COUNTY, TENNESSEE

ENHANCEWORKS, INC.

Plaintiff,

v.

DROPBOX, INC.,

Defendant.

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2018 JUN 26 PM 3:59

CASE NO. 18-241-BC

FOG II

ORDER

This cause came on to be heard on June 8, 2018, before the Honorable Joe P. Binkley, Jr., Judge of the Fifth Circuit Court for Davidson County Tennessee and Judge of the Business Court of Tennessee on the specially appearing Defendant's Motion to Dismiss for Lack of Personal Jurisdiction.

This lawsuit has been filed by EnhanceWorks, Inc., a corporation organized under the laws of Delaware with its principal place of business in Nashville, Tennessee. EnhanceWorks, Inc. is a technology company started by its CEO, Charlie Corts, who is a resident of Nashville, Tennessee. EnhanceWorks was created for the purpose of furthering Mr. Corts' efforts to develop and bring to market an application known as Expo. Expo is an application designed to work in conjunction with existing products and applications to provide better utilization and a customizable experience for end users of those existing products and applications.

The Defendant, Dropbox, Inc., is a corporation organized under the laws of Delaware with its principal place of business in San Francisco, California. Dropbox is a technology company specializing in cloud storage products.

The Plaintiff's claims in this lawsuit include a breach of contract, negligent and intentional misrepresentation, and unfair competition, among others. The claims arise out of

communications between Charlie Corts and Dropbox Board of Directors member Robert "Bob" Mylod, who is a resident of Birmingham, Michigan, regarding the efficacy and viability of EnhanceWorks' application Expo on the market and whether Dropbox would be interested in partnering with EnhanceWorks or purchasing the Expo concept. The Plaintiff alleges that he submitted Expo and its documentation to Dropbox and its employees reviewed that material. After Dropbox reviewed the Expo documentation, Mr. Mylod, on behalf of Dropbox, told the Plaintiff that Dropbox was not interested in the product. The Plaintiff alleges that this communication was an intentional misrepresentation designed to discourage Mr. Corts from further development of Expo while Dropbox was utilizing Mr. Corts' ideas and design for Dropbox's own purpose towards a similar product released some years later by Dropbox called Showcase.

The Defendant, appearing specially, moves for dismissal of the Plaintiff's lawsuit for lack of personal jurisdiction.

FACTS

EnhanceWorks' CEO Charlie Corts developed his idea for Expo sometime in or around 2012. He worked diligently towards full realization of the application and it was ultimately released and available to the public beginning on March 7, 2014.

Thereafter, Mr. Corts began to present Expo and his business model at conferences and to existing companies in an effort to seek investors, partners, and/or buyers of the application. Mr. Corts used his industry and personal connections to pitch Expo to industry professionals and other potential business partners.

In early 2015, an acquaintance of Mr. Corts, non-party Paul Francis, contacted Dropbox board member Bob Mylod to determine whether Mr. Mylod, on behalf of Dropbox, would be

interested in reviewing documents and information related to Expo as a potential partner, investor, or purchaser or to provide feedback on the application. Mr. Mylod agreed to review an Expo demonstration and speak with Mr. Corts. Mr. Francis then forwarded the Expo demonstration and documentation, all of which was labeled "CONFIDENTIAL – DO NOT DISTRIBUTE." Paul Francis then put Mr. Corts and Mr. Mylod in touch via email on March 18, 2015.

The initial introduction email from Mr. Francis¹ states "Charlie [Corts]: I am contacting you by e-mail with Bob Mylod. Bob had a chance to look at your demo and speak to one or two people at Dropbox about the idea. He would be happy to talk to you to give you some feedback."

Mr. Corts then asks Mr. Mylod for "[a]ny advice or insights you might have" and "a quick phone call in the next week or two" to discuss Expo. Mr. Mylod and Mr. Corts exchanged emails, which resulted in scheduling a phone conference for March 20, 2015 at 11:30AM EST.

On March 20, 2015, Mr. Corts, who was present in Tennessee, called Mr. Mylod but was unable to reach him. At 11:37AM EST, Mr. Corts sent Mr. Mylod an email stating "I just left you a voicemail. Feel free to give me a call if you still have time to chat this morning." Sometime later, Mr. Mylod, located out of state and purportedly on behalf of Dropbox, returned Mr. Corts' call. The Plaintiff states in the Complaint that the phone call which took place involved a discussion of the confidential nature of its Expo submission to Dropbox, the possibility of a purchase, and, ultimately, Dropbox's declining to work with Mr. Corts, EnhanceWorks, and Expo.

The Complaint further alleges that Mr. Mylod stated he had an opportunity to discuss Expo with Dropbox's CEO Drew Houston and COO Dennis Woodside. Mr. Mylod relayed statements from them such as Expo was a "cool UI [user interface]" but that it was "not

¹ Attached to the Complaint as Exhibit A

actionable.” In other words, Dropbox was not interested in pursuing the application or a business relationship with Corts or EnhanceWorks.

Mr. Mylod went on to state that Corts was wasting his time in developing such an application and discouraged him from continued development of that or other applications. Dropbox was unequivocally declining to purchase or pursue further exploration regarding Expo.

Mr. Corts’ final contact with Mr. Mylod and/or Dropbox was an email he sent on March 30, 2015² to Mr. Mylod in which he thanked Mr. Mylod for his time and valuable feedback.

It is Plaintiff’s allegation that Mr. Mylod’s statements during their March 20, 2015 phone call were an intentional misrepresentation and fraud as Dropbox actually took EnhanceWorks’ idea and application and used that information for its own purposes to develop a Dropbox application called Showcase.

In late 2017, Mr. Corts became aware of Showcase. He believes Showcase and Expo to be nearly identical in function and design. Not only that, but Showcase’s marketing materials contain substantial similarities to Expo’s initial marketing efforts.

The Plaintiff alleges that despite telling Mr. Corts that Expo has no practical value for Dropbox, Dropbox has been marketing Showcase aggressively since its release—which the Plaintiff believes is a clear indication that Dropbox intended to take Expo, discourage its creator from advancing the application, develop its own application based on Expo, and profit from it without compensation to Corts or EnhanceWorks.

LEGAL STANDARD

The Defendant has raised a Tenn. R. C. P. 12.02(2) Motion to Dismiss for Lack of Personal Jurisdiction. Such a motion challenges a “trial court’s ability to proceed with the claim or claims against a defendant.” *Gordon v Greenview Hosp., Inc.*, 300 S.W.3d 635, 644 (Tenn.

² Attached to the Complaint as Exhibit B.

2009). A motion to dismiss is decided on the factual allegations contained in the complaint. In its discretion, a defendant may support a motion to dismiss for lack of personal jurisdiction with affidavits or other evidentiary materials, which the plaintiff may rebut with its own evidence. A court must take all facts and allegations in the plaintiff's complaint as true and must also resolve all factual disputes in the plaintiff's favor. *State v. NV Sumatra Tobacco Trading Co*, 403 S.W.3d 726, 739 (Tenn. 2013). It is the court's responsibility to determine whether sufficient allegations exist for the exercise of personal jurisdiction over the defendant. A decision regarding jurisdiction involves a question of law. *Gordon*, at 645.

The proper question for the Court to ask, therefore, is whether "taking the [Plaintiff's] factual allegations as true and resolving all reasonably disputed facts in the [Plaintiff's] favor, the [Plaintiff] has shown, by a preponderance of the evidence, that Tennessee courts may properly exercise jurisdiction over" Dropbox. *Sumatra*, at 739.

There are two types of personal jurisdiction: general and specific jurisdiction. General jurisdiction must be based on "substantial forum-related activity on the part of the defendant. The nonresident defendant's contacts with the forum state must be sufficiently continuous and systematic" to justify jurisdiction for activities not occurring in the forum state. *Gordon*, at 648. The Plaintiff concedes that there is no basis for a finding of general personal jurisdiction on Dropbox.

Specific jurisdiction may be found when a cause of action "arises from or is related to the nonresident defendant's activities in or contacts with the forum state." *Id.* at 647. A finding of specific jurisdiction is "appropriate only when the plaintiff's cause of action arises from or is related to the defendant's contacts with the forum state." *Id.* at 648.

Having established the type of jurisdiction that must be present, the Court now moves on to the two-part test solidified by the *Sumatra* opinion:

The first step is the fact-gathering exercise of identifying the relevant contacts. The plaintiff is **required to establish that minimum contacts exist by a preponderance of the evidence**. The court should consider the quantity of the contacts, their **nature and quality**, and the **source and connection** of the cause of action with those contacts. A defendant's contacts are sufficiently meaningful when they demonstrate that the defendant **has purposefully targeted Tennessee** to the extent that the defendant should reasonably anticipate being haled into court here.

If the court finds sufficient minimum contacts, then the inquiry should proceed to the second step. At step two, the **defendant bears the burden of showing** that, despite the existence of minimum contacts, **exercising jurisdiction would be unreasonable or unfair**. The court, at this stage, should consider such factors as the burden on the defendant, the interests of the forum state, the plaintiff's interest in obtaining relief, the judicial system's interest in obtaining the most efficient resolution of controversies, and the state's interest in furthering substantive social policies.

403 S.W.3d at 759-60 (emphasis added).

Having determined the proper legal test, the Court will now apply the minimum contacts test to the facts of this case.

ANALYSIS

The Court's first task is to identify Dropbox's contacts with Tennessee. The Court should weigh the quality, nature, and quantity of contacts, and, most importantly, their connection to the cause of action. Ultimately, the Court must decide whether, through its contacts, Dropbox purposefully availed itself of Tennessee's laws such that it should "reasonably anticipate being haled into court" in Tennessee and whether exercising jurisdiction would "offend traditional notions of fair play and substantial justice." *Id.*

As stated above, in resolving a TRCP 12.02(2) motion, the Court must look at the Plaintiff's complaint and the Defendant's supporting affidavits, if any, to its challenge of jurisdiction. Since no affidavits were submitted in this case, the Court must rely solely on the allegations contained within the Complaint, taking all allegations as true.

The Complaint lists the following contacts between the Plaintiff and Dropbox:

1. Email chain beginning March 18, 2015 initiated by non-party Paul Francis between Bob Mylod and Charlie Corts requesting "advice or insights" on Expo and setting up a phone call.
2. Phone call initiated by Charlie Corts, which Bob Mylod returned, on March 20, 2015 during which Mylod informed Corts that Dropbox was not interested in Expo or working with EnhanceWorks.
3. Email from Charlie Corts to Bob Mylod expressing gratitude for his time and feedback, despite Dropbox's declining to pursue Expo.
4. Dropbox visits the Expo website for language to use for marketing Showcase.

Even though the quantity of contacts is few in this case, that alone is not dispositive in a determination under the *Sumatra* test. The Court must also consider the nature and **quality** of the

contacts, especially with regard to the connection to the cause of action. The Complaint sets out allegations of fraud and misrepresentation in connection with these contacts. Specifically, the Plaintiff believes that the phone call was predicated on fraud as Mr. Mylod intended to convince Mr. Corts to discontinue his pursuit of the development of Expo in an effort to give Dropbox an edge in the marketplace with Showcase.

The Plaintiff is only required to demonstrate that jurisdiction is appropriate by a preponderance of the evidence and a Court must resolve all factual disputes in favor of the Plaintiff. In this case, there are no facts alleged in the Complaint that the Defendant's contacts with Tennessee are sufficiently meaningful such that Dropbox purposefully targeted Tennessee "to the extent that [it] should reasonably anticipate being haled into court here." *Sumatra*, at 760. It should be noted that it is the Plaintiff and not the Defendant in this case that initiated contact. As stated in Paragraph 16 of the Complaint, Mr. Corts, on behalf of his company EnhanceWorks, contacted a third party acquaintance, Paul Francis, to communicate with someone Mr. Francis knew, Mr. Mylod, a finance executive and a member of Dropbox's Board of Directors and ultimately Mr. Francis furnished Expo materials and documentation to Mr. Mylod and Dropbox. Dropbox did not "*itself* deliberately engage in significant activities within the State or create continuing obligations with Tennessee residents." *Id.* at 764 (emphasis original); See *Walden v. Fiore*, 134 S.Ct. 1115, 1122 (2014). Instead, a non-party placed the Plaintiff's CEO and a member of the Defendant's Board of Directors in contact. Contact of that kind is "precisely the sort of unilateral activity...that cannot satisfy the requirement of contact with the forum State." *Walden*, at 1125.

Citing *Burger King Corp. v. Rudzewicz*, 471 S.Ct. 2174, 2183-4 (1985), *Sumatra* states that purposeful avilment requires that the minimum contacts are not a result of "random,

fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person,” but instead are the proximate result of “actions by the defendant himself that create a substantial connection with the forum state.” *Sumatra*, at 745.

Regarding Plaintiff’s allegations of Dropbox’s use of Expo’s marketing language from Expo’s website and marketing material as contained in Paragraph 33 of the Complaint, while the Court is required to take all allegations as true, when it compares the marketing language of the two products, the Court is left analyzing language so seemingly generic to describe a product, that the Court finds Dropbox’s contact by visiting Expo’s website was so inconsequential that it does not rise to the required level of contact to support a finding of personal jurisdiction.

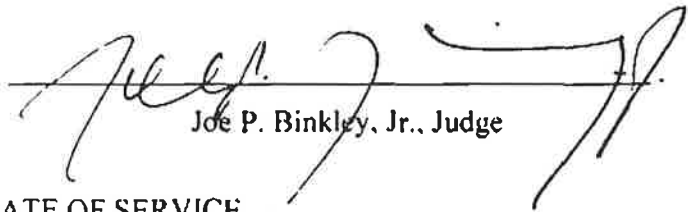
This Court does not find that Dropbox’s contacts with the state of Tennessee could be considered “purposeful conduct and connection with the forum state... such that the defendant avail[ed] itself of the benefits and protections of the state’s laws.” *Sumatra* at 759. Nor are the contacts sufficiently meaningful to demonstrate that Dropbox has targeted the state of Tennessee or its citizens. *Id.* at 760. Rather, the Court considers the contacts of Dropbox with the forum state to be the type that are attenuated, not of sufficient quality or quantity, and inconsequential.

Pursuant to the two-step test stated in *Sumatra*, the Court is to proceed to step two only after finding sufficient minimum contacts. Having found that there are not sufficient minimum contacts in this case as well as because the parties did not brief or present argument regarding step two, the Court finds it is unnecessary to analyze step two of the *Sumatra* test for establishing specific personal jurisdiction.

Accordingly, for the reasons previously stated, this Court finds that it cannot assert specific personal jurisdiction over Dropbox, Inc. This case is, therefore, dismissed and costs are assessed to the Plaintiff.

It is so **ORDERED**.

Entered this _____ day of June, 2018.



Joe P. Binkley, Jr., Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order has been mailed and emailed to:

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Attorneys for the Defendant

This 26th day of June, 2018.



Deputy clerk

RULE 58 CERTIFICATION

A Copy of this order has been served by U. S. Mail upon all parties or their counsel named above.

 6/26/18
Deputy Clerk and Master Date
Chancery Court

FILED

2018 JUN 28 PM 3:39
Charlie Corts <ccorts@gmail.com>



Introduction

5 messages

Paul Francis <paulfrancis2@gmail.com>
To: Bob Mylod <rmylod@gmail.com>, Charlie Corts <ccorts@gmail.com>

Wed, Mar 18, 2015 at 10 01 PM

Charlie: I am contacting you by e-mail with Bob Mylod. Bob had a chance to look at your demo and speak to one or two people at Dropbox about the idea. He would be happy to talk to you to give you some feedback

I assume the two of you will take it from here

All the best, Paul

This email was written with voice recognition software.

Charlie Corts <ccorts@gmail.com>
To: Paul Francis <paulfrancis2@gmail.com>
Cc: Bob Mylod <rmylod@gmail.com>

Thu, Mar 19, 2015 at 9:37 AM

Paul, thanks so much for the introduction, and thank you again for your continued feedback and support.

Bob, it's great to e-meet you. I've heard a lot about you from Paul, as well as from my brother David and his wife Heather. The consensus is you would be an excellent person for me to speak with about the product I am building. Any advice or insights you may have would be enormously helpful.

Do you have time for a quick phone call in the next week or two? I know you are extremely busy, so feel free to pick any date/time that works well for you. Please let me now if I can provide any additional information in the meantime.

I sincerely appreciate your time, and hope to connect with you soon.

Cheers,

Charlie

615-975-9027
charlie@get-expo.com
www.get-expo.com
(Quoted text hidden)

FILED
2015 MAR -7 AM 11:01
MAR 19 2015

Bob Mylod <rmylod@annoxcapital.com>
To: Charlie Corts <ccorts@gmail.com>

Thu, Mar 19, 2015 at 2 28 PM

Hi Charlie,

Nice to meet you. I'm available in the late morning tomorrow for a call if you are. How about 11:30am?

Robert J. Mylod, Jr.

Annex Capital Management

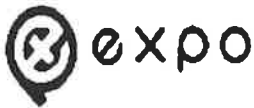


2/14/2018

Great Introduction

2/19/2018

Expo Mail: Thank you



2018 JUN 26 Fri 3:59

Charlie Corts <charlie@get-expo.com>

Thank you

1 message

Charlie Corts <charlie@get-expo.com>
To: rmylod@annoxcapital.com
Cc: rmylod@gmail.com

Mon, Mar 30, 2015 at 3:15 PM

Hi Bob,

I hope your week is off to a good start. Please accept my apologies for not following up with you sooner. I thought I had emailed you right after our phone call, but I discovered the message still in my drafts folder this morning

I wanted to let you know how much I appreciated your taking the time to speak with me about Expo. Thank you especially for sharing it with Drew and Dennis to get their thoughts. I am thrilled you all took the time to evaluate the product. Your collective feedback is incredibly important to me.

Despite the enormous challenges lie ahead for Expo – most notably, conveying the value proposition to new users at scale – I continue to be encouraged by the feedback from my early adopters. I have seen many use cases in which Expo has fundamentally simplified the way people manage their files in the cloud. At the very least, I have seen enough to believe I am on to something.

Please feel free to reach out to me anytime if you have any other thoughts or questions for me. Otherwise, I would love to keep you posted on my progress.

Thank you again for taking the time to speak with me and offer your feedback. I can't tell you how much I appreciate it. Have a great week.

Cheers,

Charlie

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7:11 ED

