What the Apple v. Samsung Verdict Teaches Us About Jury Misconduct

Overturning a jury verdict is exceedingly difficult. However, the Apple v. Samsung case is one of those rare examples where it makes sense to pursue every possible legal argument to overturn a verdict. Samsung's strategy of using the jury foreman's alleged misconduct to overturn a billion dollar verdict is a tactic that has little chance of succeeding but is necessary given the stakes involved.

On August 24, 2012, the jury in the Apple v. Samsung case awarded $1.05 billion in damages to Apple in the Northern District of California. In its motion for judgment as a matter of law, new trial and remitter, which was originally filed in late September, Samsung asks for a new trial based on jury foreman Velvin Hogan's alleged misconduct. Samsung claims Hogan lied during voir dire by failing to disclose that he was sued by a company called Seagate in 1993. In addition, Samsung raises questions regarding Hogan's impartiality by revealing that the attorney who sued Hogan on Seagate's behalf was the husband of one of Samsung's attorneys and that Samsung is presently the single largest direct shareholder of Seagate.

To obtain a new trial on the ground that the juror withheld relevant key information "a party must demonstrate that a juror failed to answer honestly a material question on voir dire, and then further show that a correct response would have provided a valid basis for a challenge for cause." McDonough Power Equipment, Inc. v. Greenwood, 464 U.S. 548, 556 (1984).

Hogan has stated in interviews to Reuters and Bloomberg that he thought that he was not asked about all cases during voir dire and that the question regarding involvement in litigation only referred to litigation that occurred in the last ten years. Samsung may be successful in demonstrating that Hogan answered the question dishonestly because the court transcripts show that the question whether "you or a family member or someone very close to you [has] ever been involved in a lawsuit, either as a plaintiff, a defendant, or as a witness?" was not limited to the past ten years.

However, Samsung is not likely to be able to demonstrate that Hogan's failure to answer a voir dire question would have resulted his dismissal. Challenges for cause fall under "narrowly specified, provable and legally cognizable bases of partiality." United States v. Torres, 128 F.3d 38, 43 (2nd Cir. 1997). "Traditionally, challenges for cause have been divided into two categories: (1) those based on actual bias, and (2) those grounded in implied bias." Id. Demonstrating that Hogan's involvement in a 1993 lawsuit would form the basis for a for cause challenge will be difficult. Hogan was never directly involved in litigation with Samsung. In addition, the fact that the attorney who sued Hogan in the 1993 lawsuit is the husband of one of Samsung's current attorneys is too attenuated a connection to demonstrate that Hogan had any implied or actual bias to be excused as a juror. Furthermore, Apple may argue that Samsung must show that Hogan actually knew that the attorney in the 1993 Seagate

litigation is married to a current Samsung attorney and acted to be empaneled as a juror based on that fact. Combined, all these factors suggests that the verdict will be upheld.

What can we learn from Samsung v. Apple? I think the main lesson to take away is that winning a large verdict is not the end of the fight. From Samsung's perspective paying additional legal fees to try and overturn a verdict makes sense because the prospect of paying out a billion dollar verdict is so daunting. Blaming the jury is also a good business strategy because it delays the time in which the judgment must be paid and also sets up the groundwork for an appeal.

Evaluating Whether to Sue for Breach of Contract

I was recently approached about representing an electronics manufacturer in a breach of contract action. The company had delivered more than $100,000 of goods to a Los Angeles-based customer, which later refused to pay. On one level this seemed like a very straightforward case. The documentation presented by the company, mostly in the form of email communication, seemed to reflect that a contract to deliver the goods had clearly been established. At most, it seemed like the purchaser had communicated some vague displeasure about the suitability of the goods that were delivered before refusing to accept them. But overall the manufacturer seemed to have a strong case that they had entered into a valid contract, that they manufactured the goods as required, and that the purchaser had violated or breached that contract by failing to accept delivery of the goods.

Seems like this is an appropriate opportunity to file a breach of contract lawsuit against the purchaser, right?

Perhaps.

Too many companies (and lawyers) who pursue business lawsuits fail to consider at least two important considerations. First, it is not enough to prove that someone broke their promise to pay. In this case, it would also be critical to prove that the manufacturer was financially damaged by the purchaser's refusal to pay. That, in turn, depended in part on whether the goods were unique and could be sold to another purchaser. If they could, the manufacturer might only be allowed to recover the difference between the contract price and the amount paid by another purchaser.

Second, and perhaps, more importantly, it was critical to know whether the manufacturer wanted to maintain any kind of business relationship with the purchaser. In other words, even when a company has a strong argument that it can recover money by suing for breach of contract, it might be contrary to its business goals to pursue an actual lawsuit.

A breach of contract lawsuit should, as with any business litigation, be informed by the

business goals of the respective parties. There are, of course, situations where an aggressive litigation strategy is perfectly appropriate. But a good business litigator will discuss the business context of any potential dispute before deciding to file a lawsuit.

If you have any questions or comments, I would be delighted to hear from you.

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