

## Massachusetts SJC Affirms Personal Jurisdiction over Non-Residents Served Within the Commonwealth

### Associates

Danilo A. Borgas

### Related Practices

Employment Law and Litigation

General Litigation

By Danilo A. Borgas on January 30, 2019

Planning a trip to Massachusetts for a Patriots or Sox game? If so, be aware that coming to Massachusetts for a game, or for other voluntary reasons, may give Massachusetts courts personal jurisdiction over you if you are served with process within the Commonwealth. Earlier this month, the Massachusetts Supreme Judicial Court (“SJC”) affirmed that the doctrine of common-law transient jurisdiction (“CLTJ”) is still good law and provides Massachusetts courts with personal jurisdiction over nonresident individuals who are served with process while intentionally, knowingly, and voluntarily in the Commonwealth. See *Caroline Roch v. David J. Mollica et al.*, Civ. A. No. SJC-12517 (Jan. 4, 2019).

While a court’s personal jurisdiction (a court’s jurisdiction over a person as opposed to a matter) over a party to a lawsuit ordinarily requires residency in the state or certain minimum contacts with the forum in which the court sits, neither is required for CLTJ. In fact, in *Roch* the defendants were *New Hampshire* residents sued by a plaintiff, who was a *New Jersey* resident, for alleged negligence and resulting injuries that occurred at a house in *Florida* rented by the defendants. In summary, defendants’ daughter coached a Massachusetts-based university softball team and took the team to the defendants’ rental home in Florida during a spring training trip. While at the home, the plaintiff, a freshman member of the team, suffered injuries when she was pushed into a swimming pool without warning as part of an initiation ritual by upperclassmen members of the team. Plaintiff subsequently filed a lawsuit in Massachusetts Superior Court.

After the plaintiff’s lawsuit was filed, the defendants were properly served with notice of the lawsuit while attending a softball game in Worcester, Massachusetts. In light of the apparent lack of connection between the plaintiff’s case and Massachusetts, the defendants promptly moved to dismiss the case for lack of personal jurisdiction. In response, the plaintiff argued that under the common-law rule of transient jurisdiction, a nonresident defendant’s mere presence in Massachusetts when served with process provides for personal jurisdiction over the defendant. The lower court agreed with the defendants when it held that personal service on the defendants did not confer jurisdiction on the court and dismissed plaintiff’s complaint. The defendants’ victory was short-lived. Upon review, the SJC reversed the dismissal holding that CLTJ has been recognized in Massachusetts “as early as the Nineteenth Century” and has never been abolished.

As detailed by the SJC, Massachusetts courts have personal jurisdiction over any resident of the Commonwealth and over nonresidents in certain circumstances. Those circumstances include “when the party is in the state, however transiently, and the summons is actually served upon him there.” *Roch* at \*6 (citing *Peabody v. Hamilton*, 106 Mass. 217, 220 (1870)). In addressing the fairness of CLTJ, the SJC noted that CLTJ is fair to defendants because it is “consistent with reasonable expectations.” That is, by visiting the state asserting personal jurisdiction, a transient defendant accepts significant benefits provided by the state, such as health and safety services provided by

police, fire, and emergency services. Further, a transient defendant travels freely on the state's roads, may benefit from the state's economy, and may even sue in the state's court if he or she is wronged. According to the SJC's analysis, it would be unfair not to exercise transient jurisdiction where a transient defendant accepts the benefits of the power of the state's court, but retains immunity from that power as a defendant. Having said that, the SJC clarified that basic due process must be followed for proper CLTJ, but quickly concluded that due process is met if the individual is served process while "intentionally, knowingly, and voluntarily" in Massachusetts. As the SJC acknowledged, this requirement will almost always be met.

As noted in *Roch*, judges still have discretion to protect transient defendants by dismissing matters under the doctrine of forum non conveniens and allowing the case to be tried in a forum better suited to hear the case. Further, the SJC's holding in *Roch* is expressly limited to individuals only. While the SJC did not outright address whether mere presence in the state when served would confer personal jurisdiction over corporations, it did cite to federal cases limiting personal jurisdiction over corporations, suggesting that CLTJ does not apply to corporations or entities. *Roch* at \*3 n.3.

So what is the takeaway? Unless specifically abolished by the Massachusetts legislature, CLTJ is here to stay. Accordingly, individually named defendants in any lawsuit should be aware that proper service of process on them while in Massachusetts "intentionally, knowingly, and voluntarily" will likely result in Massachusetts courts acquiring personal jurisdiction over them. What is more, the exceptionally broad scope of "intentionally, knowingly, and voluntarily" seemingly encompasses all travel to and presence in Massachusetts, regardless of whether that activity relates to the lawsuit. Lastly, while corporate defendants are seemingly safe from CLTJ for now, it is worth monitoring any future application and interpretation of CLTJ in this regard.