AFFIRMED and Opinion Filed December 27, 2024

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-00130-CV

FRANCIS PALARDY, Appellant V.

AT&T SERVICES INC. AND INTERNATIONAL BUSINESS MACHINES CORPORATION, Appellees

On Appeal from the
401st Judicial District
Court Collin County,
Texas
Trial Court Cause No. 401-06348-2022

MEMORANDUM OPINION

Before Justices Partida-Kipness, Carlyle, and Garcia Opinion by Justice Carlyle

Appellant Francis Palardy sued appellees AT&T Services Inc. and International Business Machines Corporation for defamation. Via a staffing firm, Experis, Palardy worked as an IBM contractor on an AT&T project. The project required him to perform technical work on a computer, but when AT&T became aware Palardy appeared to lack even

basic computer skills, such as logging on to a laptop, it informed IBM and Experis that Palardy was to be terminated. We affirm in this memorandum opinion. *See* TEX. R. APP. P. 47.4.

The trial court properly denied summary judgment

The trial court granted appellees' no evidence and traditional motions for summary judgment and denied Palardy's motion for summary judgment, which appears to be a traditional motion. When both sides move for summary judgment and the trial court grants one and denies the other, we review both sides' summary judgment evidence and determine all questions presented, rendering the judgment the trial court should have rendered. *FM Properties Operating Co. v. City of Austin*, 22 S.W.3d 868, 972 (Tex. 2000).

"The common law provides a qualified privilege against defamation liability when 'communication is made in good faith and the author, the recipient or a third person, or one of their family members, has an interest that is sufficiently affected by the communication.'" *Burbage v. Burbage*, 447 S.W.3d 249, 254 (Tex. 2014) (quoting *Cain v. Hearst Corp.*, 878 S.W.2d 577, 582 (Tex. 1994)). This can be "between people having a common business interest in employment-related matters or in reference to matters that the speaker has a duty to communicate to the other." *See Durant v. Anderson*, No. 02-14-00283-CV, 2020 WL 1295058, at *25 (Tex. App.—Fort Worth Mar. 19, 2020, pet. denied) (mem. op.). To prevail on summary judgment, the defendant must conclusively establish a lack of actual malice in making the allegedly defamatory statement. *Randall's Food Markets, Inc. v. Johnson*, 891 S.W.2d

640, 646 (Tex. 1995) (citing *Jackson v. Cheatwood*, 445S.W.2d 513 (Tex. 1969)).[11] Actual malice means a statement was made with knowledge of its falsity or with reckless disregard for its truth. *In re Lipsky*, 460 S.W.3d 579, 593 (Tex. 2015) (orig. proceeding). Whether the privilege applies is a question of law. *Holloway v. Texas Medical Ass'n,* 757 S.W.2d 810, 813 (Tex. App.—Houston [1st Dist.] 1988, writ denied).

First, some background: Palardy relocated to North Texas to start this job on November 26, 2018, having previously coordinated with IBM to have a laptop sent to his prior residence on the West Coast. Without informing Experis, IBM, or AT&T, Palardy left for Texas without having received the laptop. Palardy did not show up for work on the 26th, and appeared the next day but without the laptop. He waited until midday this first day to inform IBM that he did not have a computer, and was seen looking at his phone and reading books on his tablet in a corner the rest of the day.

The next day, AT&T provided a temporary laptop for Palardy, and he admitted receiving the password for it but that it took him over an hour to log in with that password. Others tried to help and referred Palardy to an 800 number to help, but Palardy claimed he didn't like calling 800 numbers and that if he did, "it would just be confusing."

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[11]

Were the matter to proceed to trial, if the defamation defendant proves qualified privilege, the plaintiff must prove the statement was made with malice in order to prevail. *See Randall's Food Markets, Inc.*, 891 S.W.2d at 646.

Someone else eventually logged on for Palardy, but he did no substantive work that second day. The third day, McEnroe, whose computer Palardy was using, instructed Palardy to change the password but Palardy struggled to do so. Palardy admitted he missed a morning meeting trying to perform this basic function. Palardy did no substantive work this third and final day, despite having all he needed to do so.

First, Palardy alleges AT&T project manager Martin McEnroe "sent emails to IBM management" seeking Palardy's dismissal and stating "I don't think he has any idea of whether a computer is working or not. He seems not to understand the most basic things about computers." McEnroe also said: "He has two computers. They are both working" and "I don't need people who will sit in a corner and not do anything." McEnroe's statement concerned an employee's performance and he made it to someone who had an interest therein. Therefore, it is subject to a qualified privilege. *See Burbage*, 447 S.W.3d at 254.

Appellants establish lack of malice by conclusively proving that McEnroe and those who reported their interactions with and observations of Palardy had reasonable grounds to believe that their statements were true. *See Randall's Food Markets, Inc.*, 891 S.W.2d at 647; *Huckabee v. Time Warner Entm't Co.*, 19 S.W.3d 413, 420 (Tex. 2000). They have shown more than some self-serving protestation of sincerity. *See Bentley v. Bunton*, 94 S.W.3d 561, 597 (Tex. 2002). Even assuming the statements were false, appellants have proved McEnroe exhibited no actual malice by way of reckless disregard—either by having "entertained serious doubts as to the truth" of

the statement or by having had a "high degree of awareness of [the statement's] probable falsity." *See Bentley*, 94 S.W.3d at 591. Thus, the trial court did not err when it granted appellees' motion for summary judgment concerning McEnroe's email to IBM management seeking Palardy's dismissal.

Second, Palardy alleged McEnroe's statements to police were defamatory. McEnroe filed a police report in response to both an email Palardy sent him approximately a week after being fired and a text Palardy sent to another employee. Palardy's email covered a range of topics, from alleging a conspiracy against him during the three days he worked on this job to discussions of other large companies and references to other discrimination and retaliation complaints he had filed in the past. In a move that understandably troubled McEnroe, Palardy ended his email by saying "I also predicted MGM would be hit by a massive terrorist attack, which the FBI didn't like. Last year someone shot five hundred people at an MGM concert. I even predicted it would be at a concert. Maybe that was coincidence. I added that so you can't ignore this email. All of this info has already been given to Experis." Palardy's text to the other employee said, "Tell Marty I'm gunning for his job. If he's called away to hr you'll know why. I could be back soon."

Palardy alleges defamation when "McEnroe claimed he felt threatened" and told police he "did not know how to log onto the Windows computer, [sic] when he was hired as a computer programmer." Appellants have conclusively shown McEnroe's report that he felt threatened was his opinion. No

reasonable reader would be misled to think this statement concerned anything but McEnroe's genuine reaction to Palardy's email. *See Lilith Fund for Reproductive Equity v. Dickson*, 662 S.W.3d 355, 369 & n.76 (Tex. 2023) (discussing opinion statements).

Also, a person has a qualified privilege to make statements to authorities in good faith and without malice. *See Vista Chevrolet, Inc. v. Barron*, 698 S.W.2d 435, 437–40 (Tex. App.—Corpus Christi 1985, no writ). McEnroe's statement about Palardy's inability to log on to the computer sought to contextualize his relationship to Palardy and was an expression of his belief based on observation and consultation with others. Palardy admitted to having trouble with passwords and that resetting a password was harder for him than for someone else. McEnroe's statement, arguably attributable only to AT&T, is also subject to the qualified privilege because it was made to an entity with a duty to investigate. *See id.*; *Randall's Food Markets, Inc.*, 891 S.W.2d at 647. For the same reasons we expressed in regard to the first statement, appellants have proved McEnroe made it without malice. *See Bentley*, 94 S.W.3d at 591. Finally, Palardy seems overly focused on the fact that police declined to initiate criminal proceedings against him based on the report. The law enforcement conclusion not to refer the matter for criminal prosecution bears no relevance to this defamation claim and in no way vitiates the qualified privilege. The trial court did not err when it granted summary judgment concerning McEnroe's police statements.

Third, Palardy alleges appellees are liable for McEnroe's email to a manager at Luxoft stating, "I

believe this individual is mentally ill." Luxsoft is another company involved in the project. McEnroe made the statement in response to a situation where an employee at Luxsoft—who had some contact with Palardy during his short stint—saw Palardy at her hotel two weeks after he had been terminated. She said seeing him at her hotel made her feel uneasy. Here too, McEnroe reported his opinion on the situation to another entity staffing the project having an interest or duty in the matter to which the communication relates and has established a lack of malice in his sincere belief in the truth. *See Randall's Food Markets, Inc.*, 891 S.W.2d at 647; *Burbage*, 447 S.W.3d at 254. By the same token, appellants have conclusively proven McEnroe did not recklessly disregard the truth in making the statement. *See Bentley*, 94 S.W.3d at 591. The qualified privilege applies and the trial court did not err in granting summary judgment.

Fourth, Palardy alleged McEnroe

> wrote a longer two-page email about his decision to dismiss plaintiff. This email contradicts McEnroe's earlier claims that Plaintiff could not tell if a computer was working and he could not log in. In his email McEnroe makes several false statements related to computer security that intend to make Plaintiff look incompetent. In this email McEnroe also references Plaintiff as a "deaf mute".

McEnroe sent this email to an IBM employee. In it, he exhaustively detailed Palardy's contacts with McEnroe and the team, including Palardy's many

failures at basic tasks and missteps indicating, at least to McEnroe, his lack of fitness for the job. Again, McEnroe was sending his comments to another entity staffing the project having an interest or duty in the matter to which the communication relates and thus his statements are subject to the qualified privilege. *See Burbage*, 447 S.W.3d at 254. And it is clear McEnroe believed in the truth of what he relayed to his team member in discussing Palardy's employee performance, conclusively demonstrating a lack of malice. *See Randall's Food Markets, Inc.*, 891 S.W.2d at 647.

Palardy makes much of McEnroe's use of the phrase "deaf-mute" in the email. McEnroe described instructing Palardy to "go to the stand-up and pick up tasks. That's how you'll get work. In the meantime, read the web pages for our project." The next day, having observed Palardy at the "stand-up," McEnroe checked an internal system where employees were instructed to list tasks they had picked up but found Palardy had none.[2] McEnroe confronted Palardy, as he explained in the email:

"Were you at the stand-up?"

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[2]2 McEnroe explains later in the email: "I suspected that Frank had no experience with Agile development, that he had shown no recognition of the words Sprint and Scrum and Stand-up and he had no idea we were following a specific ceremony of the Agile method at the stand-up."

"Agile" appears to be a software development methodology, "the ability to create and respond to change [in] an uncertain and turbulent environment." *See* "Agile Essentials: Agile 101 What is Agile?,"

www.agilealliance.org/agile101/ (last visited December 17, 2024).

"What? No"

"The sprint, did you go to the sprint? (I know it's really a scrum but it's to talk about the sprint)

"No"

"Frank," I said, point at the meeting room three feet away," I looked in the window during the sprint and saw you sitting there looking at the monitor and you had your laptop. Why are you telling me you weren't there?"

He looked confused and then said "Oh, the meeting?"

"Yes, Frank, the meeting. Could you hear what was going on during the meeting?"

"Yes, I can hear. People went over what they are working on"

Now, I asked this because of course he has a cochlear implant. I know what it is, I know what it looks like, I know what it does. Nothing had to be explained to me. If he had said that he trouble hearing then I was ready to explain what he could do in order to participate. From my perspective a deaf-mute (can we still say that?) could fully participate in a sprint (yeah, scrum) since the principle of Agile is to use the JIRA to document what you are

> doing. I have often thought if we all pretended we couldn't talk then our stand-ups would be better. I was fully prepared to work with the rest of the team privately if Frank had said he had an issue hearing. He did not. I did however, always make sure that he could see my lips when we were talking just in case he was being a little shy about problems, given that it is the first few days. [sic passim]

The most credible interpretation of McEnroe's use of "deaf-mute" is that he suggests a generic person who could neither hear nor speak "could fully participate in a sprint." *See Lilith Fund*, 662 S.W.3d at 363 (review alleged defamatory statements from reasonable person's perspective, given the entirety of the communication). This much is clear because, in the very next sentence he says, "I have often thought if we all pretended we couldn't talk then our stand-ups would be better." McEnroe spends the next two sentences addressing Palardy's hearing and accommodating it. Thus, while using an outdated, offensive term, McEnroe was not applying it to Palardy and the summary judgment record conclusively demonstrates lack of malice in this generic statement. *See Randall's Food Markets, Inc.*, 891 S.W.2d at 647. This portion of the email also falls under the qualified privilege. *See Burbage*, 447 S.W.3d at 254.

A defendant is entitled to summary judgment on an affirmative defense if the defendant conclusively proves all elements of the affirmative defense, as appellants have done here. *See Cathey v.*

Booth, 900 S.W.2d 339, 341 (Tex. 1995). Palardy has failed to produce evidence raising a genuine issue of material fact on the affirmative defense of qualified privilege. *See Nichols v. Smith*, 507 S.W.2d 518, 520–21 (Tex. 1974). The trial court did not err when it granted appellees' motion for summary judgment.[3]

Other issues

In his first issue, Palardy claims appellees mischaracterize the facts and otherwise demonstrates his misunderstanding of the legal basis for a no-evidence motion for summary judgment by suggesting he did provide evidence. Neither is germane to the issues before the court, nor do they raise an appealable issue. Palardy next supposes that the trial court might have "found some small issue" in his evidence presentation, leading the court to "dismiss it all." He builds on this unfounded assumption in the next sentence, stating as fact that the court dismissed all of his evidence without appellees requesting it. He concludes that this "is improperly denying evidence" when the court "needed to favor the non-movant."

Palardy makes no further claims, other than to insist the court must indulge every reasonable inference in the non-movant's favor, citing *City of Keller v. Wilson*, 168 S.W.3d 802, 824 (Tex. 2005),

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[3]3 Palardy's live petition does not make any allegations against IBM, and we affirm the summary judgment grant in its favor in all respects. In any event, to the extent Palardy successfully makes a defamation claim against IBM, it fails for the same reasons we have outlined as to his allegations against AT&T.

among others. We generally agree with that basic point of summary judgment law, and would apply it if called upon to resolve factual doubts or inferences. Palardy, however, gains little benefit from this principle in this case because legal principles—not the absence of fact issues—support summary judgment. In any event, Palardy's first issue presents nothing for our review. *See* TEX. R. APP. P. 38.1(i).

In his fifth issue, Palardy argues the trial court wrongly granted appellees' request to prohibit punitive damages on the basis that he did not request an apology within 90 days. *See* TEX. CIV. PRAC. & REM. CODE § 73.055(c) ("If not later than the 90th day after receiving knowledge of the publication, the person does not request a correction, clarification, or retraction, the person may not recover exemplary damages."). The court did so in its order granting special exceptions to his second amended petition, and in reviewing this order, we take all allegations, facts, and inferences in the pleadings as true, viewing them in the lights most favorable to the plaintiff. *See Boales v. Brighton Builders, Inc.*, 29 S.W.3d 159, 163 (Tex. App.— Houston [14th Dist.] 2000, pet. denied). Palardy never contends he made the statutorily required request for "correction, clarification, or retraction" within 90 days. We overrule this issue.

In his sixth and seventh issues, Palardy argues that the forced retirement of the trial court judge improperly affected the outcome of his case and that the trial court was improperly motivated by Palardy's federal lawsuits under the Americans with Disabilities Act. Palardy fails to cite any relevant

authority that supports either contention, instead spending his time complaining about the aged, immigrants, and gay people and his perception that they fare better than those in the Deaf community. Issues six and seven present nothing for our review. *See* TEX. R. APP. P. 38.1(i).

We affirm the trial court's judgment.

/Cory L. Carlyle/

CORY L. CARLYLE JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

FRANCIS PALARDY, Appellant No. 05-24-00130-CV V. AT&T SERVICES INC. AND INTERNATIONAL BUSINESS MACHINES CORPORATION,	On Appeal from the 401st Judicial District Court, Collin County, Texas Trial Court Cause No. 401-06348- 2022. Opinion delivered by Justice Carlyle. Justices Partida-Kipness and Garcia participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellees AT&T SERVICES INC. and INTERNATIONAL BUSINESS MACHINES CORPORATION recover their costs of this appeal from appellant FRANCIS PALARDY. Judgment entered this 27th day of December 2024.

Filed: 1/9/2024 5:04 PM Michael Gould District Clerk Collin County, Texas By Lane St. Clair Deputy

CAUSE NO. 401-06348-2022

FRANCIS PALARDY, Plaintiff, v. AT&T SERVICES, INC., INTERNATIONAL BUSINESS MACHINES CORPORATION Defendants.	IN THE JUDICIAL DISTRICT __401__ DISTRICT COURT COLLIN COUNTY, TEXAS

FINAL JUDGMENT IN THE DISTRICT COURT 401ST JUDICIAL DISTRICT COLLIN COUNTY, TEXAS

Pursuant to the Order on Cross-Motions for Summary Judgment signed of even date herewith,

IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiff Francis Palardy take nothing against Defendants A&T Services, Inc. and International Business Machines Corporation.

Costs are taxed against the party incurring same, for which let execution issue. Any relief not herein granted is denied.

This judgment resolves all claims in this case involving all parties, is final, and is appealable.

Signed on January 9, 2024.

/Judge Presiding/

From: Claudia Jenks, Chief Deputy Clerk,
Supreme Court of Texas

RE: Case No. 25-0119
DATE: 3/28/2025
COA #: 05-24-00130-CV
TC#: 401-06348-2022

STYLE: PALARDY v. AT&T SERVS. INC.

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

MR. FRANCIS PALARDY
* DELIVERED VIA E-MAIL *
CR 271,272 11 /30/18, 12:28 AM •

SMS w /Raymond Lagman, IBM:

Frank, u did not coordinate with Dinesh. The IBM laptop is very important as that is the gateway how you will be paid. You have to get that at all cost.

If u can authorize a friend of yours to get that, u have to. A lot of effort has been done to ship that laptop to you and i will not ship that again.
d trainings are thru IBM email system.

Without it, you will get escalated for non-completion.

You will not get paid until you enter your hours into the ILC system. That is only available thru IBM vpn using an IBM laptop. Also, all the audit relate e So do everything to get that laptop!

Att gave me a laptop. So why do I need another one? I told them I would be leaving and not to send it unless it would arrive before Thanksgiving. I don't control it since I can't pick it up and I didn't authorize the shipping. Maybe you can reroute it, or it gets sent back.

Ok then. Try to figure out how you can post your hours.

Also, I've told them several times that

I have a hearing loss so they should email me.

CR 293

FROM: Frank Palardy < 57007code@gmail.com>
SENT: Friday, November 30, 2018 1 :31 PM
TO: Dellavecchia, Dawn
Dellavecchia@manpowergroup.com>
CC: Farooq, Mohammed
mohammedf.khan@experis.com>
SUBJECT: Laptop

IBM sent the laptop to Portland Oregon. So it's been there all week and I can't get it. Att did give me one but it doesn't have full access. I guess the IBM laptop has programs for them I'm supposed to work on. Plus the time card app.

Frank

Dawn Dellavecchia 973-332-2649

ASK ME ABOUT OUR JAVA TALENT
COMMUNITY'
CR 196

CR 196
From: "MCENROE, MARTIN P"
To: "SHARMA, JYOTSNA" jsharma@us.ibm.com
Cc: Brian Marquard , Renu Sharma2 ,
"FIGUEROLA, MARK"
Date: 11/30/2018 02:36 PM
Subject: Dismiss Frank Palardy. Restart the resourcing process to backfill.

I don't understand what Frank is doing. I see him just sitting there looking at websites on his phone. I ask him about what tasks he's picked up and he says his computer is not working. However in working with him I don't think he has any idea of whether a computer is working or not. He seems not to understand the most basic things about computers.

He has two computers. They are both working.

There are 20 people here to get help from. I don't need people who will sit in a corner and not do anything.

You can trade him out. He doesn't need to show up on Monday. He should just leave all of the computer equipment on the desk.

Martin McEnroe
Director Data Insights
AT&T Chief Data Office
AT&T Services, Inc
Redacted 2900 W Plano Parkway, Plano, TX, 75075

CR 195
From: "MCENROE, MARTIN P"
Date: Friday, November 30, 2018 at 5:07 PM
To: "SHARMA, JYOTSNA"
Cc: Brian Marquard , "FIGUEROLA, MARK" ,
Dinesh Kumar C V

Subject: Re: Dismiss Frank Palardy. Restart the resourcing process to backfill.

Thank you. I have retrieved his computer under the pretext of fixing it this weekend.

I will do the hot button system access termination now (as soon as I can find the link). I told him it is 5 oclock but he is still here. It may be better to just wait a few minutes so that you deliver the news to him after he has left the office.

Martin McEnroe
Director Data Insights
AT&T Chief Data Office
AT&T Services, Inc
Redacted 2900 W Plano Parkway, Plano, TX, 75075

CR 213
From: "MCENROE, MARTIN P"
Date: Thursday, December 20, 2018 at 4:37 PM
To: "SHARMA, JYOTSNA"
Subject: Frank Palardy official report information.

Jyotsna,

Thank you for your shared concern on the very brief interaction with Frank Palardy. I was able to immediately detect that he did not have the technical skills to perform a technical job, let alone a development job at the level we required.

The Plano police Incident# 18-222949. Officer B. Bawera #17058 filed Thursday December 6th. I filed that one.
The Richardson Police Report 201800 128548 Agent N. Perez #1378 filed Wednesday December 19th by Katy Hodges.

The AT&T Asset Management (Personnel Security) report number is: 2018-12-06-024103

I am including his email to me and a screenshot of a text he sent an employee here. I found these two Links, I guess I'm old but it never occurred to me to Google him (or really anybody else).

Https://www.pacermonitor.com/public/case/24473809
/Palardy v Cognizant Technology Solutions Corp
https://www.pacermonitor.com/public/case/248158z8/

Palardy v Hitachi Consulting Corporation

I have attached the communications I sent to Brian Marquard. We also spoke on the phone about the matter.

Thank you for taking steps to contain this situation.
Marty

Join our POC (Proof of Culture)
Link.att.com/WeCanStack

CR 210 - 211

From: "MCENROE, MARTIN P"<mm6769@att.com>
To: "SHARMA, JYOTSNA" <jsharma@us.ibm.com>,
Brian Marquard <Brian.Marquard@ibm.com>
Date: 01/19/2019 10:50 PM
Subject: Notes on my short time with Frank Palardy.

Jyotsna, Here is a summary of the events and conversations that took place between roughly 9 am 11/29/2018 and 5 pm 11/30/2018. All times CT. I have added information about my evaluation and thinking during the events and have summarized how I was able to reach a fully justified business decision in less than two days. I note that subsequent events have added new information that would absolutely have caused an immediate dismissal for any NPW.

As you know, Frank Palardy was selected by IBM in 2018 to work on the T&M contract for the PST/OMC chatbots. His scheduled start date was 11/26/2018 but he did not show up, as I informed you at 12:15 pm that day. Since I had vacation planned for 11/27 and 11/28 I made arrangement for an employee to provide him with a Windows computer that was already set-up and another person to bring him a new MAC computer that would require set-up. Other IBM resources assisted him in those two days.

When I met him Wednesday morning I asked him if his computer set-up was working and he said it was not, that his password did not work. I explained that there are two passwords, told him which applications and services handled which and handed

him printed out instructions on who to contact since apparently his ITServices password was the password that was not working. After a little while, perhaps an hour or two, I met with him again to see if his password was working. He seemed to be having problems getting email and I explained that he needed a license for Office 365 which should be assigned soon, but in the meantime he could access his email via Outlook Web Access. I had him log in, thus demonstrating to me that the ITServices password worked. I now knew it worked, however I had logged into his Windows computer with my password.

I then read his email and saw that he had subscribed to a large number of tSpace communities and was being deluged with email from these communities, thus obscuring emails I had sent to him and emails he needed in order to do his job. I asked him about several of these communities: "What is this?" "What do they do?" "Did you work at AT&T before and this si some prior engagement?"

He answered that he did not know what these communities were, that he didn't have any work to do and so he was just reading AT&T's intranet to find something interesting. Aghast, I then went into his account and quickly removed him from all communities and then went into his preferences and turned off auto-notifications in case he repeated this worthless use of AT&T's time. I did this with a suspicion that he could not follow what I had just done and would not be able to turn notifications back on, even though anyone else on my team can read faster

than I and would have known what I was doing and be able to undo it in five seconds.
I told him to "go to the stand-up and pick up tasks. That's how you'll get work. In the meantime, read the web pages for our project."

Then soon after lunch I asked him if he had logged into the Windows computer and everything was working, including email. He said, "Yes, I logged in everything is working". Starting to doubt that he really knew anything I just clicked on his Windows start button and asked, "If you logged in, why does the computer show I'm logged in?" I was stunned that someone who claimed to be in a technology job would not know how to log into a Windows computer and would not know that I could catch him in a false representation of the situation in one second with one click.
Next day Frank had two computers working, both his Mac, and his Windows machine. Our stand-up for his project was at 10:30. I inspected the room through the window and saw that he was in attendance, clearly able to see the large 4K monitors. Later, I looked into the JIRA tool see if he had picked up any tasks, and I saw he had not.

So I asked him, "Were you at the stand-up?" "What? No" "The sprint, did you go to the sprint? (I know it's really a scrum but it's to talk about the sprint) "No" "Frank," I said, point at the meeting room three feet away," I looked in the window during the sprint and saw you sitting there looking at the monitor and you had your laptop. Why are you telling me you weren't there?" He looked confused and then

said "Oh, the meeting?" "Yes, Frank, the meeting. Could you hear what was going on during the meeting?" "Yes, I can hear. People went over what they are working on"

Now, I asked this because of course he has a cochlear implant. I know what it is, I know what it looks like, I know what it does. Nothing had to be explained to me. If he had said that he trouble hearing then I was ready to explain what he could do in order to participate. From my perspective a deaf-mute (can we still say that?) could fully participate in a sprint (yeah, scrum) since the principle of Agile is to use the JIRA to document what you are doing. I have often thought if we all pretended we couldn't talk then our stand-ups would be better. I was fully prepared to work with the rest of the team privately if Frank had said he had an issue hearing. He did not. I did however, always make sure that he could see my lips when we were talking just in case he was being a little shy about problems, given that it is the first few days.

So we covered his attendance and ability to hear and I knew he had a direct line of sight to the monitor, but I suspected that Frank had no experience with Agile development, that he had shown no recognition of the words Sprint and Scrum and Stand-up and he had no idea we were following a specific ceremony of the Agile method at the stand-up. After lunch and some meetings I came back to our work area and saw that Frank was on his phone. Over his shoulder I could see that he was reading Yelp restaurant reviews on his phone. I asked him if his computer set-up was working and he said no, he had

a problem with admin rights and Q Messenger on the MAC. (Of course he has the Windows machine right there too and Q messenger was working on that). I told him he didn't need Q to learn about what we were doing, just read the web pages.

As I turned around and saw how hard everyone else was working I realized that this was never going to work. I then went and privately spoke to a couple of people on my team and asked them if they had seen or heard anything to suggest Frank was going to be able to perform. All expressed that he seemed to have a hard time doing anything. I concluded that Frank did not have the basic technology talent to work in a computer environment. How was he ever going to program something? Had he completely lied about being a developer? How can you be a developer in 2018 and not at least have heard the words scrum, stand-up and sprint?

So at 4:36 pm I wrote to you and Brian and said "Dismiss Frank". At 5, as he was preparing to leave I said, let me just have the computer, I'll get it all fixed. Oh, and the charger too. I watched him leave the building, I did the immediate perimeter lockout on the corporate security page and walked down and informed security. The rest you know all about.

I made my business decision with none of the information that later was revealed: the subtly threatening SMS texts; the strange email with references to the mob, the NRA, the FBI and his unique ability to predict mass shootings; his presence weeks afterwards at the hotel of one of the few people in my group. I knew none of this. All I knew is that

this person could not function in a technology job. He couldn't use the most basic of computer environment controls. I had a strong and immediate intuition that all we would do is try to help him for weeks until everyone became disgusted with how much he was dragging the team down. I've been a manager for two decades. I've had a couple hundred people work directly for me over time. This NPW set a new standard for inability to function.

Marty

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS SHERMAN DIVISION

FRANCIS PALARDY,

Plaintiff,

CASE NO. 4:21-cv-00626-SDJ-CAN

v.

AT&T SERVICES, INC., INTERNATIONAL BUSINESS MACHINES CORPORATION, EXPERIS US, INC.

Defendants.

NOTICE REGARDING PRODUCTION OF PLAINTIFF'S EMAILS

Pursuant to the Court's directive during the August 5, 2022 Status Conference, Defendant AT&T Services, Inc. hereby advises the Court and Plaintiff Francis Palardy that it is not able to produce Mr. Palardy's emails from his four-day assignment in November 2018 because his email account would have been deleted approximately 60 days following the end of his assignment. Defendant International Business Machines Corporation did not issue Mr. Palardy an email

account in connection with his assignment. Accordingly, it has no emails to produce.

DATED: August 11, 2022

Respectfully submitted,

/s/ Talley R. Parker

Talley R. Parker
State Bar No. 24065872
Ethan J. Davis
State Bar No. 24107748
JACKSON LEWIS P.C.
500 Akard, Suite 2500
Dallas, Texas 75201
(214) 520-2400 – Telephone
(214) 520-2008 - Facsimile
talley.parker@jacksonlewis.com – Email
ethan.davis@jacksonlewis.com – Email

ATTORNEYS FOR DEFENDANTS AT&T SERVICES, INC. AND INTERNATIONAL BUSINESS MACHINES CORPORATION

Texas GC Sec. 57.002. APPOINTMENT OF INTERPRETER OR CART PROVIDER; CART PROVIDER LIST; PAYMENT OF INTERPRETER COSTS. (a) A court shall appoint a certified court interpreter or a certified CART provider for an individual who has a hearing impairment or a licensed court interpreter for an individual who can hear but does not comprehend or communicate in English if a motion for the appointment of an interpreter or provider is filed by a party or requested by a witness in a civil or criminal proceeding in the court.

(b) A court may, on its own motion, appoint a certified court interpreter or a certified CART provider for an individual who has a hearing impairment or a licensed court interpreter for an individual who can hear but does not comprehend or communicate in English.

(b-1) A licensed court interpreter appointed by a court under Subsection (a) or (b) must hold a license that includes the appropriate designation under Section 157.101(d) that indicates the interpreter is permitted to interpret in that court.

(c) Subject to Subsection (e), in a county with a population of less than 50,000, a court may appoint a spoken language interpreter who is not a licensed court interpreter.

(d) Subject to Subsection (e), in a county with a population of 50,000 or more, a court may appoint a spoken language interpreter who is not a certified or licensed court interpreter if:

(1) the language necessary in the proceeding is a

language other than Spanish; and

(2) the court makes a finding that there is no licensed court interpreter within 75 miles who can interpret in the language that is necessary in a proceeding.

(d-1) Subject to Subsection (e), a court in a county to which Section 21.021, Civil Practice and Remedies Code, applies may appoint a spoken language interpreter who is not a licensed court interpreter.

(e) A person appointed under Subsection (c) or (d):

(1) must be qualified by the court as an expert under the Texas Rules of Evidence;

(2) must be at least 18 years of age; and

(3) may not be a party to the proceeding.

(f) The department shall maintain a list of certified CART providers and, on request, may send the list to a person or court.

(g) A party to a proceeding in a court who files a statement of inability to afford payment of court costs under Rule 145, Texas Rules of Civil Procedure, is not required to provide an interpreter at the party's expense or pay the costs associated with the services of an interpreter appointed under this section that are incurred during the course of the action, unless the statement has been contested and the court has ordered the party to pay costs pursuant to Rule 145. Nothing in this subsection is intended to apply to interpreter services or other auxiliary aids for individuals who are deaf, hard of hearing, or have communication disabilities, which shall be provided to those individuals free of charge

pursuant to federal and state laws.

(h) Each county auditor, or other individual designated by the commissioners court of a county, in consultation with the district and county clerks shall submit to the Office of Court Administration of the Texas Judicial System, in the manner prescribed by the office, information on the money the county spent during the preceding fiscal year to provide court-ordered interpretation services in civil and criminal proceedings. The information must include:

(1) the number of interpreters appointed;

(2) the number of interpreters appointed for parties or witnesses who are indigent;

(3) the amount of money the county spent to provide court-ordered interpretation services; and

(4) for civil proceedings, whether a party to the proceeding filed a statement of inability to afford payment of court costs under Rule 145, Texas Rules of Civil Procedure, applicable to the appointment of an interpreter.

(i) Not later than December 1 of each year, the Office of Court Administration of the Texas Judicial System shall:

(1) submit to the legislature a report that aggregates by county the information submitted under Subsection (h) for the preceding fiscal year; and

(2) publish the report on the office's Internet website.