

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

AT&T SERVICES, INC.,

Plaintiff,

-against-

BROADCOM INC., as successor-in-interest to
VMware, Inc., and VMWARE, INC.

Defendants.

Index No.: 654490/2024

IAS Part 54

Motion Seq. No. 1

Hon. Jennifer G. Schechter, J.S.C.

I, **SUSAN JOHNSON**, affirm as follows:

1. I am the Executive Vice President and General Manager of Wireline Transformation and Global Supply Chain at AT&T Services, Inc. (“AT&T”). I have been employed at AT&T for over 25 years. In my current role I oversee AT&T’s procurement and supply chain. I have been actively involved in the discussions with Defendants regarding AT&T’s renewal of the Support Services at issue in this action.
2. I submit this affirmation (“Affirmation”), pursuant to CPLR Section 2106, in further support of AT&T’s Order to Show Cause for a Preliminary Injunction. The statements in this Affirmation are based on my own personal knowledge, experience, and information available to me through my role with AT&T.
3. I understand that Defendants have claimed that “as recently as August 19, 2024, Susan Johnson of AT&T sent Broadcom’s CEO, Hock Tan, an email explaining that AT&T would not be entering into a new subscription deal with VMware because it could just ‘migrate away.’” (Defendants’ Memorandum of Law in Opposition to Plaintiff’s Order to Show Cause for Preliminary Injunction (the “Opposition”), NYSCEF Doc. No. 57) at 7 (citing Affirmation of Randall Gressett ¶ 56 (“Gressett Affirmation”), NYSCEF Doc. No. 61).)

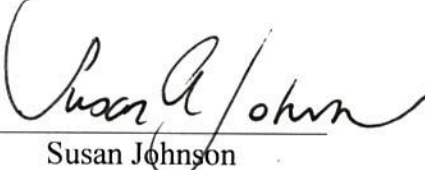
4. The above claim mischaracterizes the email I sent to Mr. Tan on August 19, 2024 (the “August 19 Email”) and our ongoing negotiations over the last several months. For the Court’s convenience, attached as **Exhibit A** is a true, correct, and complete copy of the August 19 Email, referenced in the Opposition and paragraph 56 of the Gressett Affirmation.

5. Nothing in my August 19 Email to Mr. Tan suggested that migrating away from the VMware software would be easy, quick, or inexpensive. And at no point have I ever made that statement to Mr. Tan. In fact, none of those would be accurate statements. My understanding is that migrating away from the VMware software would be a time-consuming process—taking years—and would involve significant efforts by AT&T at great expense. My email to Mr. Tan recognized that because Defendants were asking for exorbitant licensing rates for VMware, there is a quick payback or return on our investment to migrate off all VMware licenses. My point was that although it is not easy, cheap, or quick to migrate off VMware, Defendants’ high fees will incentivize us to migrate to another solution.

6. The Gressett Affirmation cherry picks a portion of a sentence in my August 19 email that discussed the cost of AT&T’s migration away from VMware. The email also does not say that AT&T waited until August 2024 to explore the option to migrate away from VMware. To the contrary, AT&T began to explore the option to migrate away from the VMware software since at least the time Defendants announced in December 2023 that they would be moving customers to more costly subscription-based licensing deals in the future. But while exploring that option, which I understood could take years, we understood we had time to migrate if we needed to because Defendants were contractually committed to honor AT&T’s renewal rights for Support Services until at least September 2026, at AT&T’s sole option.

7. Although AT&T has been exploring the option to move away from Defendants' software diligently, at the same time, I continued to negotiate with Defendants through Mr. Tan in efforts to reach a resolution without resorting to litigation. AT&T would have preferred to avoid litigation if it could have and we worked hard for many months in an effort to do so. However, around August 19, 2024, it became clear to me that Defendants would not budge from their position which refused to recognize AT&T's renewal rights under its contract with Defendants and that AT&T would be forced to file a lawsuit against Defendants in order to enforce its contractual rights. AT&T filed suit 10 days after my August 19 email to Mr. Tan.

I affirm this 26th day of September, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true to the best of my knowledge, information, and belief, and I understand that this document may be filed in an action or proceeding in a court of law.



Susan Johnson

RULE 17 CERTIFICATE OF COMPLIANCE WITH WORD COUNT LIMIT

I hereby certify that the foregoing document complies with the word count limit set forth in Rule 17 of the Rules of Practice for the Commercial Division of the Supreme Court. I relied on the word count of the word-processing system used to prepare the document. The total number of words in this document, exclusive of the caption and signature block, is 707 words.

By: /s/ Jonathan D. Pressment
Jonathan D. Pressment