New England IN-HOUSE

Eight-year employment suit hinges on issue of detriment

By: Dan McDonald June 18, 2012

The fallout from the firing of Henry C. Suominen Jr. has stretched across eight years, producing a lawsuit, a jury trial, an appeal and a second jury trial.

Running through the spine of the proceedings was a promissory estoppel claim, and, central to that, the issue of detriment. Specifically, for Suominen, the key question became: Was staying with his employer because he believed he was verbally promised certain things detrimental to him?

Last month, a jury answered "no" to that question, finding in favor of defendants Goodman Industrial Equities Management Group, a Boston real estate development firm, and Steven E. Goodman, the principal of the company.

Suominen had worked for Goodman Industrial as a construction manager, at one point making $225,000 a year, an increase from his 1999 starting salary of $100,000.

Following his 2004 firing, Suominen sued the company alleging that Steven Goodman had broken an agreement to pay him certain compensation in addition to his salary.

Juries weigh in

The case initially culminated in a seven-day trial in Boston's Suffolk Superior Court in 2008, with the jury finding in favor of the plaintiff on some of his claims, including one based on promissory estoppel. He was awarded $1.7 million, in large part on that claim.

The defendants appealed, arguing that the trial judge, Ralph D. Gants, who now sits on the Massachusetts Supreme Judicial Court, gave the wrong jury instructions.

Specifically, defense attorney Tyler E. Chapman of Boston's Todd & Weld said Gants did not instruct the jury on the requirement to prove detriment in addition to proving that the plaintiff continued his employment in reliance on a promise.

Chapman took the case to the state Appeals Court, which found in 2011 that a retrial was necessary, but only for the limited issue of whether the plaintiff continuing his employment in reliance on his employer's promise of future compensation was to the plaintiff's detriment.

Back in Superior Court, a jury sided with the defendants. Chapman obtained the verdict in early March.

Chapman said the plaintiff was highly compensated and received "a significant benefit as he was leaving the company in the form of a large deal," which the jury found was not detrimental.

It is not clear if the plaintiff will appeal. Suominen's attorney, Ronald M. Jacobs of Boston's Conn, Kavanaugh, Rosenthal, Peisch & Ford declined to comment.

Agreement and disagreement

The seeds of the suit were sown when Goodman and Suominen tried to work out a deal in which Suominen would

receive a percentage of the "promote" — a type of profit — of certain projects.

Suominen believed they had reached full agreement, but Goodman never signed an equity sharing contract. Goodman had decided the arrangement was too constraining, but never informed Suominen of his change in plan, according to the Appeals Court decision.

In March 2004, the two met to discuss Suominen's compensation. Goodman said the meeting primarily focused on concerns about Suominen's performance. Suominen, meanwhile, claimed the focus was on compensation he believed Goodman owed him.

In July, Goodman again met with Suominen and fired him, but also discussed a "transition period," according to the Appeals Court ruling, during which Suominen would be allowed to continue to work on some existing projects, but not as an employee. Suominen did so, believing he would be compensated for that work as a consultant at the same rate of his most recent annual salary.

Less than a month after Suominen's firing, however, Goodman sent him an email instructing him to refrain from doing any additional work. Goodman further refused to pay Suominen for the work he had done during the period Suominen assumed he was working as a "consultant."

"The plaintiff took the position [that his] continuing employment was enough," Chapman said. "If there had been a contract, I agree that continuing employment might be enough, but where there's no contract, the whole point of promissory estoppel is you've got to show some detriment arising beyond that."

'What was the detriment?'

Rebecca G. Pontikes, a Boston employment attorney who was not involved in the case, said the Appeals Court raised a good point in questioning detriment when an employee receives a 125 percent raise.

Pontikes said the court was justified in sending the case back to the trial court if there was not much evidence of other higher-paying positions the plaintiff could have taken.

She added that the case is an exercise in the cliché "Get it in writing."

"I realize you don't want to be push and anger the employer, but if there's nothing … in writing, you're taking a lot of things on faith and hoping things work out," she said.

Christopher J. Perry, an attorney at Morse, Barnes-Brown & Pendleton in Waltham, Mass., said the plaintiff would have to prove some harm was done to him as a result of his reliance on the verbal agreement, such as forgoing career opportunities to remain with the employer.

"The raise and making a lot of money is really irrelevant," Perry said.

Boston lawyer Katherine J. Michon agreed, noting that events such as moving a residence or turning down jobs offers can be instrumental when proving detriment.

"It's always good to think about what do you need to show," said Michon, who practices at Shilepsky, Hartley, Robb, Casey, Michon. "Continued employment is not enough. What else do you have to have for the jury to find detriment? You have to be wary of that."

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