

HOW TO AVOID A \$2.5 MILLION LAWSUIT WITH VALID ENTIRE AGREEMENT CLAUSE

A recent case demonstrates that a properly drafted employment contract can act as an effective shield against employee complaints and costly lawsuits.

In *McNeely v. Herbal Magic*, the plaintiff, Thomas McNeely, commenced a lawsuit claiming damages based on negligent misrepresentation arising from the termination of his employment and removal from the board of directors.

McNeely alleged that a number of representations were made to him during the months leading up an acquisition in which he was heavily involved. At the time, McNeely was a senior executive at Herbal Magic and was actively involved in negotiations surrounding an acquisition by the defendants, including Brent Belzberg.

McNeely alleged that during the negotiation process Belzberg promised him that he would become the CEO and president of a newly created company following the acquisition. Belzberg also allegedly promised McNeely that he would function as a "long-term senior employee of the new company with a say in the ongoing operation and direction of the company as a member of its board of directors." Relying on these representations McNeely invested \$2.5 million in

capital stock.

For 7 months McNeely held the position of CEO and president, then, his employment was abruptly terminated and he was removed from the board of directors.

McNeely argued that the representations made to him during the negotiation process were untrue. He sued claiming \$2.5 million invested based on the "faith and strength" of Belzberg's representations of long tenure and a position as a director of the company.

Interestingly, the defendants didn't deny that Belzberg had made the statements, but instead pointed to an entire agreement clause contained in McNeely's employment agreement. The clause stated as follows:

This Agreement constitutes the entire agreement among the Parties hereto with regard to the subject matter hereof and supersedes all prior agreements, understandings, representations or warranties, negotiations or discussions, whether oral or written, among the Parties hereto with respect thereto, including without limitation, any agreements among the shareholders of the Corporation entered into prior to the date hereof, which are hereby terminated.

Whitten & Lublin is a team of legal experts who provide practical advice and advocacy for workplace issues.

OUR TEAM

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The question for the court was whether McNeely was precluded from bringing his claim in light of the entire agreement clause. The court determined he was.

Here's why:

The defendant argued that McNeely was prevented from bringing his action because his employment agreement contained an entire agreement provision.

The judge considered a number of cases where contracts containing entire agreement clauses precluding reliance on "representations" were enforceable and upheld. He then examined the facts and the clause in question, and concluded that McNeely's entire agreement clause was "fatal" to his claim for damages.

He dismissed McNeely's action on a summary judgment motion on the basis that his action disclosed no genuine issue requiring a trial.

This case demonstrates once again that where the language of an employment contract is clear and where the parties are sophisticated, the courts will hold the parties to the deal they signed, even when it's detrimental to the employee.

The take-away is clear - prudent employers and human resources professionals will have their employment contracts drafted by a lawyer, and will have old employment contracts reviewed before the parties sign. Doing so just might save you \$2.5 million.

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