"I Quit," "No, You're Fired!" New York Supreme Court Tells Employer to Think Twice Before Terminating Employees Without Setting Forth a Reason

Justice Melvin L. Schweitzer of the New York Commercial Division recently issued a decision in Greater Talent Network, Inc. v. Alec Melman, et. al., Index No. 650522/2010 (Sup. Ct., NY County, Dec. 22, 2010) that can have important ramifications for New York employers.

Background

The plaintiff, Greater Talent Network ("GTN"), acts as an agent for celebrity speakers in connection with their dealings with event organizers and sponsors. Defendants Alec Melman and Daniel Ymar were employed by GTN as account associates, responsible for developing leads on events for GTN's clients, obtaining speaking engagements for GTN's clients, and assisting event organizers and sponsors in preparing for speaking engagements. GTN provided Melman and Ymar with access to GTN's deal structures and confidential information so that Defendants could effectively carry out their job responsibilities.

Both Melman and Ymar had employment contracts with GTN pursuant to which they were to receive commissions in the amount of 35% of the net proceeds that resulted from their efforts. Their employment contracts further provided that if their employment was terminated for reasons other than "for cause" (as such term is defined in their contracts), then they were to receive a percentage of the amount that had already accrued to them for services performed and not paid out during their employment with GTN. Both of their contracts contained non-compete, non-solicit and confidentiality clauses that extended for a period of one year following the termination of their employment.

In April 2009, Melman and Ymar informed GTN of their intent to resign from their employment. In response, GTN immediately terminated Melman and Ymar without stating a reason and sent them a letter detailing their post-employment obligations, including the obligations set forth in their restrictive covenants. Melman and Ymar assured GTN that they would not contact any former customers or use any confidential information during the period set forth in their restrictive covenants. Melman and Ymar then incorporated Gotham Artists LLC ("Gotham") to perform services that compete with GTN (Melman, Ymar and Gotham are referred to herein collectively as "Defendants").

Procedural History

GTN commenced an action against Defendants for breach of contract, breach of duty of loyalty, unfair competition, and misappropriation. GTN alleged that Defendants had misappropriated GTN's confidential information and that Melman and Ymar violated their non-compete and non-solicit obligations to GTN. Melman and Ymar filed a counterclaim against GTN for breach of contract alleging that GTN failed to pay them certain commissions. GTN filed a motion to dismiss Melman's and Ymar's counterclaim. Defendants then filed a motion for partial summary arguing that the restrictive covenants set forth in their employment contracts with GTN are too broad in scope and, thus, invalid as a matter of law.

GTN's Motion to Dismiss Melman's and Ymar's Counterclaim for Unpaid Commissions

In denying GTN's motion to dismiss Melman's and Ymar's counterclaim for unpaid commissions, Justice

Schweitzer explained that the relevant issue was whether Melman and Ymar were terminated "for cause" as such term is defined in their employment contracts. If Melman and Ymar were terminated "for cause" then GTN was under no obligation to pay Defendants any commissions following their termination. Justice Schweitzer held that neither Melman nor Ymar were terminated "for cause" because, after Melman and Ymar gave notice of their intent to resign from GTN, GTN immediately terminated their employment without setting forth a reason.

Defendants' Motion for Partial Summary Judgment

Defendants first argued that the restrictions imposed on Melman and Ymar are broader than is required to protect GTN's legitimate interests and are, thus, unenforceable as overbroad. GTN countered such argument by noting that New York courts have protected trade secrets and confidential information where the services performed by the employee are unique or special. GTN also argued that Melman and Ymar were in a unique position at GTN because of the access GTN gave them to GTN's confidential information. Justice Schweitzer held that the "uniqueness" of Melman's and Ymar's job duties and the access that they had to confidential information are questions of fact that could not be resolved on summary judgment.

Defendants further argued that the restrictive covenants impose an undue hardship on Melman and Ymar because such covenants restrict them from working with persons and entities that GTN does not and has never represented. GTN argued that the reasonableness of the restrictions at issue should be examined in the context of its duration and geographical scope. Justice Schweitzer again agreed with GTN and held that such issues were questions of fact inappropriate for summary judgment.

Finally, Defendants argued that Melman's and Ymar's employment contracts were unenforceable because Melman and Ymar did not have equal bargaining power with GTN when negotiating their employment contracts. Once again, Justice Schweitzer held that issues regarding whether Melman and Ymar were sophisticated employees who had the opportunity to negotiate their employment contracts with GTN at arm's length was an issue of fact and could not be decided on summary judgment.

Conclusion

New York employers can learn at least two valuable lessons from this decision. First, where, as here, the basis for an employee's termination directly impacts whether the employee is entitled to certain post-termination payments, the employer must clearly set forth the basis of the employee's termination in writing at the time of such termination. If an employer fails to provide the employee with a basis for his/her termination the employer may be held liable for failing to remit certain post-employment payments to the employee.

Second, Justice Schweitzer's decision reiterates the fact that when determining whether a post-employment restrictive covenant is enforceable because the employee provided unique services, one must review all aspects of the former employee's employment. More specifically, a fact-finder must not only look at the employee's job duties and skills, but must also look at the types of information the employer provided to the employee so that the employee could perform his/her job duties.

Article also written by Jonathan Sokolowski, a law clerk at Sheppard, Mullin, Richter & Hampton LLP currently admitted to the New Jersey Bar and awaiting admission to the Bar of the State of New York.

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