Case In Point

Appellate Court Finds Settlement for Payment of Bonus Enforceable Despite Breach of Non-Compete Clause

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The Court of Appeal recently upheld a motion judge's finding that an employer was required to pay a bonus despite the fact that the dismissed employee was in breach of a non-compete clause.

In Wilson v. Northwest Value Partners Inc., the parties entered into a settlement at mediation regarding Wilson's claim for benefits (inclusive of a bonus) following the termination of his employment with Northwest. In the days following the mediation, Northwest learned that Wilson was working with a competitor contrary to the terms of a non-compete clause in his employment contract. Counsel for Northwest then confirmed in a letter that Northwest was no longer prepared to accept the terms of the proposed settlement and wished to proceed with the action. In response, Wilson brought a motion to enforce the settlement. By way of cross-motion, Northwest asked the court to declare that the parties had not reached a settlement or alternatively provide an order that the enforceability of the settlement agreement be determined at trial.

The central issues before the motion judge were: (1) whether the parties had indeed reached a settlement; and (2) whether any settlement reached should be enforced.

In deciding whether the parties had reached a settlement, the motion judge reviewed the facts and concluded that the parties had intended to create a legally binding settlement and had reached an agreement on all of the essential terms of the settlement, largely evidenced through the settlement documentation exchanged.

In concluding that the settlement should be enforced the motion judge was mindful of certain key legal principles including finality, the fact that a settlement agreement should not be enforced if it would create a real risk of injustice and "second thoughts" do not constitute a valid reason for non-enforcement. Ultimately, the motion judge concluded that Northwest failed to demonstrate any real risk by the enforcement of the settlement. Specifically, he found that there was nothing in the settlement agreement which purported to release Wilson from the terms of his employment contract; rather the settlement only required Wilson to relieve Northwest from the action. As a result, Northwest remained free to pursue its allegation that Wilson was in breach of the non-compete (which it was doing through a separate action), a fact the motion judge found had no bearing on the settlement reached.

On appeal, the Court of Appeal found that there was no ground upon which it could interfere with the motion judge's finding. Specifically, the Court noted that there was clear evidence to support the judge's finding that the parties had settled Wilson's claim for payments owing to him, there was nothing wrong with enforcing the settlement despite Wilson's breach of the non-compete and the conclusion that the settlement did not include any claim by Northwest for the alleged breach of the non-compete was entirely reasonable. In this regard, the Court was mindful of the fact that the breach of the non-compete was not on the table at mediation and there was a significant amount of time remaining in the duration of the non-compete (11 months).

This case is a good reminder to employers that if post-employment activities are a concern when settlement discussions are occurring, these concerns should be clearly raised and documented. A word of caution, however, that courts remain reluctant to deny employees bonus payments or other benefits which are arguably earned and owing prior to termination and unrelated to post-employment conduct.