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Featured Article

$30,211,716 VERDICT FOR PLAINTIFF AND $236,000 VERDICT ON COUNTERCLAIM FOR DEFENDANT - CONTRACT - TERMINATION OF EMPLOYMENT - FAILURE TO COMPLY WITH COMPENSATION AND SEVERANCE CONTRACTS - BREACH OF CONTRACTUAL AGREEMENTS - DEFAMATION - COUNTERCLAIM FOR OUTSTANDING LOAN.

County
Hennepin County, Minnesota

In this contract matter, the plaintiff contended that the defendant breached the change in control severance agreement by characterizing the plaintiff's termination as "for cause" which severely altered his compensation package. The defendant alleged that the plaintiff was terminated for cause and the defendant counterclaimed for repayment of a loan allegedly outstanding.

The plaintiff was the Chief Executive Officer of Metris Companies, a credit card issuer. He was terminated from this position in December 2002. The directors of the company had a "forensic audit" conducted and claimed that they were recharacterizing the plaintiff's termination as "for cause," which significantly altered his compensation package. This would cause the plaintiff to forfeit all benefits under a Change in Control Severance Agreement and other executive compensation agreements.

The plaintiff brought suit against the defendant Metris and its principals alleging breach of contract, defamation, wrongful interference with contract and related torts. The plaintiff claimed that the defendants did not have "cause" for termination as defined by the contracts at issue and that plaintiff was terminated in connection with or in anticipation of a sale of the company, thus triggering his severance agreement. The plaintiff also claimed that the publication of the "for cause" termination, under the circumstances, defamed him and effectively

» CONTACT US

45 Springfield Ave.
Second Floor
Springfield, NJ 07081-1316
info@jvra.com

Fax: (973) 376-1775

foreclosed future employment in the financial services industry.

The defendant claimed that plaintiff had been terminated "for cause," that he had breached his fiduciary duties to the company, and that the plaintiff's termination was not connected to any sale or attempt to sell the company. The defendant counterclaimed for an alleged unpaid $5,000,000.00 loan and for recovery of alleged improper expense account charges.

At the conclusion of the three and one-half week trial, the jury deliberated for one and one-half days before returning its verdict. The jury found in favor of the plaintiff on his complaint and awarded damages in the amount of $30,211,716.00. The jury also determined that the defendant's counterclaim had viability and entered a verdict in favor of the defendant on the counterclaim in the amount of $236,000.

Reference

Plaintiff's executive compensation and damages expert: Mark Lipis from Los Angeles, CA. Plaintiff's corporate finance and investment banking expert: Daniel Larson from Minneapolis, MN. Defendant's executive compensation and damages expert: E. Webb Bassick, IV from Bannockburn, IL.

Ronald N. Zebeck vs. Thomas H. Lee, et al. Case no. EM04-722; Judge Kevin Burke, 9-14-06.

Attorneys for plaintiff: Lewis A. Remele, Jr., Boyd H. Ratchye and Frederick E. Finch of Bassford Remele, P.A. in Minneapolis, MN. Attorneys for defendant: R. Scott Davies and Greg Stenmoe of Briggs & Morgan, P.A. in Minneapolis, MN.

Commentary
This case created somewhat of a media flurry since the plaintiff was, according to reports, the second largest paid executive in the area. His termination and allegations of breach of contract, fraud and defamation made the headlines. The plaintiff accused the defendant of terminating him because he was going to report alleged improper actions by the company to the federal regulatory authorities. The jury, which heard both sides of the story and all of the evidence, put the matter to rest by returning its verdict in a King Solomon-type fashion, finding for both the plaintiff and the defendant on their respective claims. The plaintiff claimed a vindication and the defendant vowed to appeal the verdict through post-trial motions and an appeal if necessary.

The defendant Metris was one of the larger credit card issuers, having spun off from the Fingerhut Corporation. It was recently purchased by HSBC Finance.