TRAUB LIEBERMAN

NEWS & EVENTS

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# Traub Lieberman Partner Jessica Kull Obtains Dismissal of a Four-Count Complaint on Behalf of Professional Liability Client

Related Attorneys: Jessica N. Kull

Traub Lieberman Partner Jessica Kull obtained dismissal of a four-count complaint for a professional liability client in a quasi-commercial litigation case in the Northern District of Illinois. The firm's client and others were sued in their personal capacities for alleged breaches of an employment contract, aiding and abetting fraud, and two alleged violations of the Illinois Wage Payment Collection, which carries heavy punitive penalties if violated. Plaintiff also claimed he was fraudulently induced by co-defendants into entering into an employment contract for Company X, which was alleged to be an assetless company formed for the purpose of avoiding debts owed by Company Y. Plaintiff blamed the client and others for aiding and abetting the alleged fraud that was intended to induce him into working for Company X instead of Company Y, despite the fact that he signed a written employment contract for Company X and continued to work for Company X for approximately 9 months before being terminated. Plaintiff also attempted to hold the client personally liable for the acts of the company in alleged violations of payment and termination.

Attorney Kull and counsel for co-defendants argued that Plaintiff waived his fraudulent inducement claim because he ratified the employment agreement by continuing his employment for 9 months after allegedly learning of the alleged 'fraud'—that he was working for Company X rather than Company Y. The court agreed with defendants that under Illinois law an unreasonable delay in taking the steps necessary to set aside a fraudulent contract has the effect of affirming it. The court also agreed that because the fraud claim should be dismissed, the derivative aiding and abetting claim must also be dismissed because it was not an independent tort. After the filing of the motion, Plaintiff agreed to dismiss the claim for breach of contract as it pertained to the client, realizing that the allegations were insufficient to breach the corporate veil and hold him personally liable for acts of the Company.

Finally, with respect to the alleged violations of the Illinois Wage Payment Collection Act ("IWPCA"), the Court agreed that the allegations against the client were insufficient. The IWPCA, 820 ILCS 115/1 et seq., requires, among other things, that "[e]very employer shall pay the final compensation of separated employees in full, at the time of separation, if possible, but in no case later than the next regularly scheduled payday for such employee." Section 2 "confirms that an employer is liable both for its own violations of the Wage Act and for any Wage Act violations committed by its agents," and Section 13 "imposes personal liability on any officers or agents who knowingly permitted the Wage Act violation." Finally, Section 14(c) of the IWPCA provides private plaintiffs with the right to bring a claim for retaliatory discharge. Plaintiff alleged that he had not received his final compensation and the client and other co-defendants were liable as "employers" under the IWPCA. Plaintiff also argued that he was discharged for complaining about the company's alleged failure to timely pay his final compensation.

Attorney Kull argued that the allegations against the client were insufficient to give rise to a knowing violation of the Act by the firm's client because the allegations were more akin to rubber stamping the decisions of others rather than permitting a knowing violation. The Court agreed, and for these same reasons, also dismissed the retaliation claim under the IWPCA against the client. Because all claims against the client were dismissed, the Court also dismissed the claim for punitive damages against the client.

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