New Jersey Law Journal

VOL. CXCIII - NO.13 - INDEX 991 SEPTEMBER 29, 2008 ESTABLISHED 1878

IN PRACTICE

EMPLOYMENT LAW

Statute of Limitations Be Damned: Employee's Acquiescence Bars Claim for Breach of Contract

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One morning a partner storms into an associate's office in a tizzy, looking for advice on an employment law matter. He tells the associate that he just received a phone call from the President of Mammoth Company; a multinational corporation the law firm has been courting without success for months to handle its legal work. The associate learns that Mammoth recently had downsized and laid off a portion of its sales force. One of those employees is claiming that, shortly after he was hired five years ago, Mammoth reduced his commission formula in breach of his written employment agreement and that he is owed $2 million, plus interest and attorneys' fees.

The partner is an emotional wreck. The partner explains that the law firm finally has its foot in the door at Mammoth but he has reviewed the employment agreement and he believes the employee is right. Mammoth breached the agreement and the former employee has another year before the statute of limitations runs. The associate tries to calm the partner down, telling him not to worry because the associate has "just the defense" for Mammoth. In fact, he explains that, if the stars and moon align correctly, the law firm might even get the claim dismissed on summary judgment. This is something the partner has to hear, and he sits down to listen to the associate's explanation concerning acquiescence.

If an employee believes that a change in working conditions breaches his employment contract, under New Jersey law he must object within a reasonable time or he will be found to have acquiesced. As far back as 1940, the New Jersey Supreme Court has held that employees waive their right to claim a higher salary if they voluntarily accept lesser pay without making a timely objection. In *Van Houghten v. City of Englewood*, 124 N.J.L. 425 (1940), police officers were found to have acquiesced when they accepted reduced salary and pay increments for a number of years. Twelve years after *Van Houghten,* the Supreme Court in *Long et al. v. Board of Chosen Freeholders of Hudson County*, 10 N.J. 380 (1952), held that jail guards, who accepted their pay checks and signed a receipt as payment in full for services rendered, abandoned and relinquished their legal right to receive a higher salary.

More recent case law also confirms that an employee cannot acquiesce to new employment terms and then successfully sue for breach of contract. In *Craffey v. Bergen County Utilities Authority*, 315 N.J. Super. 345 (App. Div. 1998), the Bergen County Utilities Authority (the "Authority") hired plaintiff pursuant to a written contract with a five-year term ending December 31, 1987. The contract provided for a set salary that would be adjusted each year based upon the annual increase the Authority paid to its blue-collar workers. After the expiration of the contract, plaintiff continued to work for the Authority performing the same job duties, but no new contract was executed. In 1988, plaintiff received the same salary he earned in the final year of his contract. In 1989, he received no increase. Thereafter, he received various raises not pegged to the blue-collar employees' wages, and in 1993 his salary was reduced. Plaintiff never objected concerning his compensation until 1993, when he retired.

Craffey sued for the difference between what he had been paid and the higher salary and benefits that he allegedly was due under the employment contract, arguing that the contract renewed on a year-to-year basis upon the expiration of the five-year term. The Supreme Court disagreed, holding that when the

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Authority did not increase plaintiff's salary in accordance with the contract, it in essence notified plaintiff that the original contract terms were no longer in effect. Rather than object to the situation when plaintiff's expectations were first disappointed, he "lulled the [Authority] into inactivity by his silence" and then, when he was about to retire, decided to sue it for over $100,000. The court held that plaintiff had acquiesced. He implicitly agreed to the new employment terms and waived his breach of contract claim.

Other New Jersey cases, especially in the employment law area, hold similarly. *See Garden State Bldgs. v. First Fidelity*, 305 N.J. Super. 510, 524 (App. Div. 1997). *Ballantyne House Assocs. v. City of Newark*, 269 N.J. Super. 322, 334 (App. Div. 1993).

How Long Is Too Long?

It is well settled that a court can find acquiescence well short of the statute of limitations, but how long can one wait before objecting and not be found to have acquiesced? Shorter than one might think. In *Ross Systems v. Linden Dari-Delite, Inc.,* 62 N.J. Super. 439, 449 (App. Div. 1960), the Appellate Division found that a party waiting more than one year acquiesced even though the party initially complained about the breach. In *Van Dusen Aircraft Supplies, Inc. v. Terminal Const. Corp.*, 3 N.J. 321 (1949), our Supreme Court held that as little as four months could be too long. *Van Dusen* involved a dispute concerning the type of material to be used for the foundation of a building. There, the court held as follows:

> The law is generally that if the benefit of a provision in a contract is waived compliance therewith is excused and the party waiving it cannot thereafter insist on its performance.

Out-of-state cases are in accord. *Facelli v. Southeast Marketing Co.,* 284 S.C. 449, 327 S.E. 2d 338 (Sup. Ct. 1985) (employee who remained with defendant for six months after commission rate changed was estopped); *Weiss v. Duro Chrome Corp.*, 207 F. 2d 298 (8th Cir. 1953) (one year).

Acquiescence As a Matter of Law

Courts have even gone so far as finding acquiescence or a waiver as a matter of law. *New Jersey Dept. of Environ. Protection v. Gloucester Environmental Mgmt. Services, Inc.,* 264 F. Supp. 2d 165, 177 (D.N.J. 2003) ("Where a party fails to declare a breach of contract, and continues to perform under the contract after learning of the breach, it may be deemed to have acquiesced in an alteration of the terms of the contract, thereby barring its enforcement"); *Bullock v. Automobile Club of Michigan*, 432 Mich. 472, 444 N.W. 2d 114 (Sup. Ct. 1989) ("Surely, where an employee continues to work under a revised compensation system for nearly four years, . . . acceptance by the employee should be implied as a matter of law.") (emphasis added).

Conclusion

So you see, said the associate, while most contracts have a six-year statute of limitations, the limitations period can be substantially shortened. This occurs most often in the employment context and especially when the employee's conduct is unfair to the employer. An employee cannot continue to perform without objection to material changes in the terms of his employment and then spring a claim upon the employer years later. Under such circumstances, courts will not simply look at the contract, but will analyze the individual facts and circumstances to ensure an equitable result. The partner thanked the associate profusely and ran to call Mammoth's President. What was the end result? Mammoth Corporation became a loyal client of the law firm, the associate became a partner and everyone lived happily ever after. ■