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According to the plaintiff, this statement was sufficient to create an oral contract to not demote her. The Court of Appeals disagreed. The court stated that such “words of encouragement” could not possibly constitute an enforceable promise that plaintiff would never be subject to a change of job assignment or that she would never be demoted from a job that had never been promised to her to begin with. Longevity, raises and promotions are their own rewards for the employee’s continued valued service, but they do not in and of themselves constitute a contractual guarantee of future employment security.

The Court of Appeals reversed the lower court’s judgment and remanded the case with directions to enter a judgment in favor of the defense. In doing so, the Court of Appeals noted that although plaintiff may have been disappointed with the way she was treated by the company, she failed to prove discrimination.

New at Wesierski & Zurek

J. Christian Conrad: Christian Conrad attended the University of California at Los Angeles, where he graduated with a Bachelor of Arts degree in Collective Behavior in 1992. Mr. Conrad studied law at the University of San Diego, receiving his Juris Doctor degree in 1995. He was admitted to the California State Bar that same year. He is a member of the Orange County Bar Association.

Prior to joining Wesierski & Zurek LLP, Mr. Conrad was a partner in a private electronics distribution company, where his duties included contract negotiations, vendor relations, and other operational issues.

Edye Hill: Edye Hill attended Allegheny College in Meadville, Pennsylvania earning her Bachelor of Arts in 1999 with a major in History and a minor in Rhetoric. Ms. Hill received her Juris Doctor degree in 2002 from American University Washington College of Law in Washington, D.C. where she graduated *cum laude*. She was admitted to the California State Bar and the California Central District of the U.S. District Court in 2002.

Prior to joining Wesierski & Zurek, Ms. Hill worked in the areas of insurance defense, insurance coverage, construction defect, business litigation, and premises liability.

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The appellate court in *Prouty v. Gores Technology Group et al.* reversed and reasoned that the amendment clause, conferring upon employees approximately the same severance benefits as those which they had with Hewlett Packard, was intended for the benefit of plaintiffs who were Verifone employees prior to its purchase by GTG. This clause in the amendment superceded the original agreement which provided that there were no third party beneficiaries.

Further, under the rules of contract construction, where there are inconsistent general and specific provisions, the specific provision supercedes the general one. Since the original agreement spoke only generally that there were no rights or remedies to third persons under the contract, the more specific amendment provision giving approximately the same benefits to the employees as those they had prior to the purchase of the company, controlled.

The court went on to say that in choosing among the reasonable meanings of the terms of the agreement, a meaning that serves the public interest is generally preferred. Further, the court cited by *Civil Code* section 1559 which states that “[a] contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.” In light of the foregoing, the court had no doubt that the requirement not to terminate plaintiffs and to pay them the Hewlett-Packard severance was not to benefit Hewlett-Packard or GTG but rather to benefit plaintiffs. Had the companies not wanted to benefit plaintiffs-employees, they would not have amended the original agreement.

Therefore, California Court of Appeals concluded that, as a matter of law, the plaintiffs-employees were intended beneficiaries of the rights extended to them in the amendment to the original stock purchase agreement.

- Olga V. Tillman

Editor

Paul J. Lipman