

EMPLOYMENT LAW UPDATE

Juan C. Aranceda

Jennifer A. Becker

David P. Borovsky

Robert J. Buccieri

Chip Cox

Kim Dincel

Edward F. Donohue, III

Kathleen M. Ewins

Howard M. Garfield

Jason A. Geller

J. Michael Higginbotham

John B. Hook

William L. Jacobson

Anna Kapetanakos

Joseph P. McMonigle

Douglas J. Melton

Jessica B. Rudin

Steven Sharaftian

Jennifer W. Suzuki

Jeanette Traverso

Karen L. Uno

Seth E. Watkins

Gerald G. Weisbach

Kevin D. Whittaker

Irene K. Yesowitch

March 3, 2004

Issue No. 101

California Law

Blitz v. Fluor Enterprises
(January 26, 2004) 115 Cal.App.4th 185

A Verbal Agreement To Provide “Long-term Employment” May Defeat “At-will” Language In An Employment Contract.

By Jason A. Geller and Jessica B. Rudin

Fluor Enterprises recruited Robert Blitz. At the time he was recruited, Blitz was employed by Raytheon in New Jersey. Blitz told Fluor he had no interest in leaving his secure position unless the position Fluor offered was long-term and not project specific. Fluor orally told Blitz that his position was “long-term.” Blitz orally accepted Fluor’s employment offer and he then resigned from Raytheon.

Thereafter, Fluor presented him with an employment contract which specified that Blitz’s employment was “at-will”. Blitz reminded Fluor of its agreement to provide him with “long-term” employment. Fluor assured Blitz it would not enforce the at-will provision. Based on this representation, as well as the feeling he had no other viable choices, Blitz signed the employment contract.

When the project Blitz worked on concluded, Fluor terminated his employment. Blitz sued Fluor for fraud, negligent misrepresentation and

violation of California Labor Code Section 970.

Fluor attempted to rely on the at-will provision of its employment contract with Blitz to defeat his claims at summary judgment. The trial court dismissed the suit on the grounds that the written contract overcame any oral statements of “long-term” employment. The Court of Appeal disagreed and reversed the decision of the trial court. Blitz successfully argued on appeal that Fluor could not rely on the at-will provision of the contract to obtain summary judgment because Fluor had made an oral promise of “long-term” employment.

Employers should be extremely careful when making employment offers. An oral agreement to provide “long-term” employment may weaken significantly the strength of an otherwise enforceable at-will provision in an employment agreement.

DOCS\Z9901-500\474905.V1