

EMPLOYMENT LAW UPDATE

Jennifer A. Becker
Shoshana Y. Chazan
Edward F. Donohue, III
Kathleen M. Ewins
Mehrdad Farivar
Bruce N. Furukawa
Howard M. Garfield
Jason A. Geller
Michael J. Higginbotham
John B. Hook
Farand C. Kan
Anna Kapetanakos
Joseph P. McMonigle
Douglas J. Melton
Peter B. Molgaard
Marsha L. Morrow
Robin M. Pearson
Jessica B. Rudin
Richard J. Sciaroni
Steven Sharafian
Jennifer W. Suzuki
Jeanette Traverso
Karen L. Uno
Seth E. Watkins
Gerald G. Weisbach
Irene K. Yesowitch

July 23, 2001

Issue No. 42

California Law

Lenk v. Total-Western, Inc. (5th App. Dist. June 4, 2001) 01 C.D.O.S. 4702

Plaintiff's undisclosed subjective belief of the terms of an employment contract does not jeopardize at-will status.

by Douglas J. Melton and Jason A. Geller

Following the holding of the recent California Supreme Court case **Guz v. Bechtel National, Inc. (2000)**, the California Court of Appeal held that a plaintiff needs to produce evidence that the parties in fact agreed that the employer's power to terminate would be limited in some way, either, for example, by a requirement that the termination be based only on "good cause" or that the employment relationship must last for a definite period of time. Otherwise, the employee will be deemed at-will.

In 1996, plaintiff Mike Lenk was working as a purchasing agent for ARB Inc. when he met a representative of defendant Total-Western, Inc. ("TWI"). The representative of TWI advised Lenk that the company was looking for a purchasing agent and suggested Lenk forward his resume for consideration. Shortly thereafter, Lenk interviewed for a position at TWI and received an offer of employment. The offer stated he would receive a performance review "to be completed after 12 months of employment." The offer did not state that Lenk's employment was for any

specific term or that "good cause" was required before he could be terminated.

Lenk accepted the offer and commenced employment. He signed a statement that provided: "I agree that my employment may be terminated by TWI at any time without liability for additional compensation... I understand and agree if I am employed, such employment is for no definite period of time..." TWI's personnel manual also included a statement providing that TWI is an "at-will employer." Lenk signed an acknowledgement of the at-will statement in the employee manual and a similar statement provided in the employment application as well.

After six months of employment, TWI advised Lenk that he was being terminated for "economic reasons" and gave no other explanation. Lenk filed suit against TWI alleging claims for fraud, false representations to induce relocation and breach of contract. A jury eventually awarded Lenk over \$200,000. TWI appealed.

In finding that there was insufficient evidence to support the jury's verdict on the breach of contract claim, the Court noted that there was no evidence to support Lenk's claim that he had an express or implied contract for a minimum of one year. Therefore, Lenk could not overcome the presumption under Labor Code Section 2922 that employment of an indefinite duration is intended to be at-will. The Court noted that there was no evidence that TWI agreed to a one-year term or that Lenk could be terminated only for "good cause." The Court referenced the at-will language in the employment application, employee manual and the absence of any reference to a one-year term in the offer letter.

have the appropriate at-will language in company documents, employment applications and offer letters to undermine potential implied contract claims.

Importantly, the Court rejected Lenk's argument that the statement in the offer letter providing for a performance review to be completed in one year is evidence that the parties agreed to a one-year term, noting that Lenk's "understanding" of the meaning of the performance review provision is not sufficient evidence to support his claim. Evidence of Lenk's undisclosed subjective intent is irrelevant in determining the meaning of contractual language.

In the spirit of *Guz v. Bechtel*, this case demonstrates that a plaintiff must provide objective, extrinsic evidence of the parties' agreement to a specified term of employment, and other limitations on the employer's right to terminate, to overcome the at-will presumption. A plaintiff's private understanding of the terms of employment will be insufficient. This case further shows that it is critical to

This publication is intended for general information purposes only and does not constitute nor is it intended to constitute legal advice. The reader must consult with legal counsel to determine how laws or decisions discussed here apply to the reader's specific circumstances including whether the case may have been depublished after the date of this publication.