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EMPLOYER LAW BLOG

When Discretion is not Discretion

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Gilbert, John Image not found or type unknown On March 17, 2015, the Illinois Appellate Court (First District, Second Division) issued an Opinion which was interesting because it gave life to the often-cited covenant of good faith and fair dealing in a contract. While this so-called covenant is often mentioned and discussed, few cases actually operationalize the concept, and rarely does a case base a cause of action on the covenant.

In *McCleary v. Wells Fargo Securitie*s, the court reviewed a case which had been dismissed by the circuit court in which the plaintiff worked for Wells Fargo Securities. As part of his employment, plaintiff alleged that he was entitled to a bonus which he earned during the period of his employment prior to the elimination of his position (unrelated to performance). The parties agreed plaintiff was eligible for the plan; however, Wells Fargo was successful in dismissing the complaint in circuit court on the grounds it had full discretion to determine whether to pay the bonus.

The appellate court disagreed. The court reasoned that Wells Fargo had breached its contract with plaintiff. The court reached that conclusion by citing the implied covenant of good faith and fair dealing with which every contract in Illinois is impressed. The court stated that disputes involving the exercise of good faith and fair dealing arise when one party is given broad discretion in performing obligations under a contract. If contractual discretion is involved, the covenant requires the discretion be exercised reasonably and with proper motive, not arbitrarily, capriciously, or in a manner inconsistent with the reasonable expectation of the parties. The court determined even though Wells Fargo had full contractual discretion to deny or award a bonus, it really did not. If discretion is abused, then a plaintiff may recover. As the court stated, "A plaintiff sustains a cause of action for breach of contract for abuse of discretion based on a violation of the implied covenant of good faith and fair dealing by alleging defendant 'exercised its discretion in a manner contrary to the reasonable expectations of the parties.'" The court ruled that if the plaintiff could prove an abuse of discretion with respect to Wells Fargo's decision not to pay him a bonus for which he apparently qualified, then plaintiff could prevail. There was some evidence Wells Fargo changed the qualifications for the bonus retroactively with regard to plaintiff.

The court concluded plaintiff sufficiently pled a claim for violation of the Wage Payment and Collection Act and the equitable doctrine of unjust enrichment.

The lesson from this case is that complete discretion may not actually be complete discretion under the law and under this court's concept and application of the covenant of good faith and fair dealing.