



Weekly Wright Report (9/25/17)

CONTRACT LAW

Contractual Statutes of Limitations: Are They Enforceable?

Can a party contractually shorten the statute of limitations in Maryland? The Court of Appeals recently answered that question as any lawyer might: it depends. In *Ceccone v. Carroll Home Servs., LLC*, (decided July 28, 2017), the Cecones heated their home with an oil-fueled furnace. They contracted with Carroll Home Services, LLC (“CHS”) to supply that oil, as well as to maintain and repair the furnace. The contract contained various exculpatory clauses and contained a one year period of limitations for any lawsuit against CHS, rather than the statutory three year limitations period. However, it contained no such limitation on CHS’s ability to sue a customer.

During the period of time that they were under contract with CHS, the Cecones encountered a problem with their furnace, which ultimately caused damage to their home. Their insurance company, as well as third party experts, identified defective work by CHS as the culprit. The Cecones, therefore, sought to have CHS pay for the repairs, but the parties were unable to agree, and the Cecones filed suit against CHS in Maryland District Court. The court dismissed their claims, on the basis that they were filed outside the contractual one year limitations period, and the Circuit Court, on appeal, affirmed.

The Court of Appeals reversed and remanded. In doing so, it noted that, in Maryland, contractually shorter limitations periods are enforceable if (a) there is no statute prohibiting a shorter limitations period, (b) the provision is not subject to a defense of fraud or duress, and (c) the provision is reasonable. Although the shortened limitations period in the CHS contract was not prohibited by statute, the Court held that the lower courts failed to consider whether the provision was procured by fraud or duress and failed to consider whether it was reasonable under the circumstances. Accordingly, it reversed the dismissal of the case and remanded it to the Circuit Court to consider any defenses related to fraud, duress or unreasonableness.

This case reinforces the importance not only of reading your contracts, but also understanding that not all contract terms are enforceable in every circumstance. Ask Jason jpotter@wcslaw.com



GOVERNMENT CONTRACTS

Termination Costs Assessed Against Government in “Termination for Convenience” Case

The Armed Services Board of Contract Appeals (ASBCA) tackled a contractor’s claim for pre-construction costs following termination for convenience by the U.S. Army Corps of Engineers. In *Pro-Built Construction Firm* (June 2017), the ASBCA disagreed with the Corps of Engineers and awarded Pro-Built \$338,708.47 in termination costs. The Board noted that the termination of the contract had the general effect of converting the contract into a cost-plus reimbursement agreement and entitled Pro-Built to reimbursement for all reasonable costs incurred. The determination of what costs were reasonable and thus reimbursable was a fact-intensive inquiry. Ask Don dwalsh@wcslaw.com

LABOR LAW

No Recording Policies

The Second Circuit recently affirmed the National Labor Relations Board’s (NLRB’s) decision that no-recording policies violate Section 8(a)(1) of the National Labor Relations Act (NLRA). The court found that Whole Foods’ policy, which generally prohibited all recording (audio, video and image) in the workplace absent prior approval, inhibited employees’ Section 7 rights (Section 7) to self-organize and engage in concerted activities. Ask Laura lrubenstein@wcslaw.com or Paul pevelius@wcslaw.com.

EMPLOYMENT LAW

Pending Fair Labor Standards Act Legislation

A new bill has been introduced into the Senate which would make violations of the Fair Labor Standards Act (FLSA) costlier for employers, establishing a \$2,000 civil penalty for non-willful violations, increasing the penalty for willful or repeat violations to \$10,000 and extending the limitations period to four and five years, respectively. “Wage theft is a real problem,” said Sen. Al Franken. “Our bill will combat this crooked practice by giving each worker the tools to make sure that employers aren’t shortchanging workers’ hours or overtime pay.” Employers would also be required to provide regular pay stubs to each employee and disclose the terms of employment when the relationship begins. Ask Laura lrubenstein@wcslaw.com