Contract Power

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Disclaimer

What is a contract:

A promise or a set of promises for the breach of which the law gives a remedy.

Contract Terms

Court interpretation

Standards of preference

Terms needing interpretation

Court interpretation

Typically, courts will consider the terms of the agreement, as well as the intent of the parties regarding those terms.

Also, as a general rule, the purpose of the parties is given significant weight, and their words and conduct are interpreted in light of the circumstances.

Standards of preference

First, courts will prefer to give reasonable, lawful, and effective meaning to all of the terms.

Second, courts will give greater weight to specific or exact terms than to general language.

Third, courts will give greater weight to negotiated or added terms than to non-negotiated or standard terms

Finally, courts will interpret the contract against the drafter when choosing among reasonable meanings

Terms needing interpretation

Indefinite

Ambiguous

Omitted terms.

Indefinite terms

The terms of a contract may be indefinite in that they are left open or uncertain. If so, then courts may void the contract for indefiniteness, depending on the importance of the terms.

Essential = No contract

Nonessential= court may infer

Example: if the time for payment is left open or uncertain, then the court will set the time for performance at a reasonable time

Abrams v. Illinois College of Podiatric Medicine

Jonathan Abrams (plaintiff) was a student at the Illinois College of Podiatric Medicine (College) (defendant) for one year. During his first semester at the College, Abrams failed Physiology 101. The College allowed him to retake the exam, but Abrams failed again. The College then removed Physiology 203 from Abrams's second-semester schedule, telling Abrams that, if he passed all the classes in his reduced workload, Abrams could retake Physiology 101 in the summer. Throughout the year, Abrams talked with College representatives about his struggle to keep up with the customary workload. The College reassured Abrams that the College would make an effort to help Abrams through. The student handbook said that it was "desirable" for professors to keep their students up-to-date about their progress. The handbook also said that students "should be" told how they were doing shortly after mid-terms and given recommendations to help them improve. Abrams's professors, however, did not update him about his progress or standing throughout the school year. Ultimately, Abrams failed two of his second-semester courses and the College expelled him. Abrams then sued the College for breach of contract, arguing that the handbook's language and the College representatives' statements to him created a binding contract. The trial court ruled in favor of the College. Claiming no actual contract existed.

Ambiguous terms

The terms of a contract may also be ambiguous in that they have multiple meanings or involve a misunderstanding between the parties. If so, then courts may void the contract for a lack of mutual assent, depending on what the parties understood.

If the parties had the same meaning for the term, then the court will interpret the contract based on that meaning

If one party knew of the misunderstanding, then the court will interpret the contract based on the other party's meaning.

Omitted terms

Courts will usually fill in the gaps of the contract by supplying a reasonable term under the circumstances.

Courts will also impose a duty of good faith in the performance and enforcement of the contract.

Under the duty of good faith, both parties must act with decency, fairness, reasonableness, and honesty in their conduct and in their transaction

Parol Evidence

Under the parol evidence rule, extrinsic evidence may not be used to modify or supplement a written contract.

No evidence will be admitted in terms of oral or written statements prior to the written contract or oral statements contemporaneous to the contract.

only applies to written contracts that are integrated agreements.

Conditions

A condition is an uncertain event that must occur before a party can be required to perform.

Conditions can be either express or constructive.

An express condition is one to which the parties explicitly agree.

A constructive condition is a condition implied by law to avoid injustice.

Can be excused if bad faith – not credentialing

Can be waived

Breach

full performance of a duty under a contract discharges the duty. When performance of a duty under a contract is due, any non-performance is a breach

Anticipatory Repudiation

A party may also sue for a remedy even when a breach has not yet occurred, based on anticipatory repudiation by the other party.

Anticipatory repudiation may take one of two forms.

1. The repudiating party may give a statement clearly indicating the intention to breach. Must be a firm statement

2. Second, the repudiating party may take an action that renders him unable to perform.

Damages

Expectation

Reliance

Let’s talk negotiations

All about POWER

Are you an at will Employee?

If you are employed at will, your employer does not need good cause to fire you

Employers are free to adopt at-will employment policies

Unless your employer gives some clear indication that it will only fire employees for good cause, the law presumes that you are employed at will.

Can be fired for any reason except illegal reasons (discrimination etc)

Check your contract, written policies, applications, handbooks, job evaluations, or other employment-related documents, for at will language

Restrictive Covenants

An agreement that requires one of the parties to refrain from taking a particular action.

Non compete vs Non solicitation

a non-compete or a restrictive covenant clause prohibits an individual, usually from working for a competitor.

A non-solicitation clause prevents an individual from soliciting a company's employees, clients, vendors, or other important business contacts.

Non compete

It really tries to limit where an employee can work. It is estimated right now that one in five labor force participants are bound by a non-compete. It's meant to protect the employer's interest in its employees

For skilled workers:

When we're looking at reasonableness, the courts are also going to be looking at the time, geography and scope. And those restraints must be reasonable and must be industry based. So reasonable obviously depends on the specifics of the industry. In certain industries, prohibiting employments within 50 miles might be unreasonable, in others, a global restriction might be reasonable.

Decisions

A restrictive covenant in a contract will only be subject to specific enforcement to the extent that it is reasonable in time and area, necessary to protect the employer's legitimate interests in preventing unfair competition, not harmful to the general public and not unreasonably burdensome to the employee.

Didn’t the FTC ban restrictive covenants?

They tried:

The Federal Trade Commission (FTC) voted to ban most non-compete clauses in employer-employee contracts on April 23, 2024:

The rule would prohibit almost all non-competes, including for independent contractors, volunteers, interns, and externs

The rule would require employers to notify current and former employees that their non-compete is no longer enforceable

The rule would allow existing non-compete provisions for senior executives to remain in place

However, a federal court set aside the rule on August 20, 2024, preventing the FTC from enforcing it. This means that state-specific restrictions will continue to shape non-compete covenants.

Regardless, Loper overturned the chevron doctrine that gave agencies their power to “create” laws which would have likely killed this ban anyway.

Even if the Federal Trade Commission’s (FTC’s) rule banning non-competes survives legal challenges and becomes effective, the FTC does not have authority over not-for-profit entities — like many hospital systems.

There is no federal law regarding restrictive covenants. Each state really treats them pretty differently. A few states actually prohibit them all together.

Pennsylvania Governor Josh Shapiro has signed the “Fair Contracting for Health Care Practitioners Act” (House Bill 1633), which restricts the ability of employers and healthcare practitioners to enter into non-compete agreements.

The Act went into effect on Jan. 1, 2025.

The Act represents a significant shift in the employment landscape for healthcare practitioners in Pennsylvania and is part of a growing trend of greater scrutiny of restrictive covenants, especially in the healthcare industry.

Key points

Aiming to retain and attract healthcare talent, improve patient access and care, and foster a more competitive healthcare market, the Act makes void and unenforceable any non-competition covenant that “has the effect of impeding” certain healthcare practitioners’ ability to treat or accept new patients. Practitioners covered by the Act include physicians, osteopaths, certified registered nurse anesthetists, certified registered nurse practitioners, and physician assistants.

However, non-compete covenants that do not exceed one year in length remain enforceable when the healthcare practitioner voluntarily terminates employment. But such non-competes are unenforceable if an employer involuntarily dismisses a practitioner for any reason. There is no apparent exception for terminations for cause.

Employers can enforce contract provisions to recover reasonable expenses related to relocation, training, and establishing a patient base that are “directly attributable” to a practitioner if the employer accrued these expenses within three years prior to separation, and the practitioner voluntarily departed.

Non-compete covenants tied to the sale or transfer of a business entity remain enforceable if the healthcare practitioner is a party to the transaction.

Not really CRNA applicable portion

To ensure continuity of care between patients and providers, the Act requires employers to notify patients of a departing healthcare practitioner within 90 days if the practitioner has had an ongoing outpatient relationship with the patient for at least two years. The notice must state that (1) the practitioner has departed, (2) explain how the patient may transfer the patient's health records if the patient chooses to receive care from another provider, and (3) explain that the patient may be assigned to a new practitioner within the existing employer if the patient chooses to continue receiving care from the employer.

However, the bill expressly covers CRNAs.

Background

House Bill 1633, introduced by Rep. Dan Frankel (D-Pittsburgh), initially sought a complete ban on non-compete agreements for healthcare workers. The stated aim was improving patient care and addressing rural healthcare challenges. Legislative negotiations resulted in a partial but still significant bar on the use of non-compete agreements.

Any non-compete entered into before the Act's effective date would not be subject to its provisions. Accordingly, employers and healthcare practitioners should be cognizant of existing obligations that are unaffected by the Act.

Unclear how this applies to independent contractors.

Let’s look at cases

STARK AMBULATORY SURGERY CENTER, LLC, Plaintiff-Appellant,

v.

CS ANESTHESIA, LLC, Defendant-Appellee.

Case No. 2021CA00127.

Court of Appeals of Ohio, Fifth District, Stark County.

September 20, 2022.

Facts

CS and SASC entered into a contract whereby CS provided SASC medical personnel qualified to administer anesthesia. They operated under the terms of the contract for several years when CS terminated the agreement. After searching for replacements, SASC decided to hire two of the Certified Registered Nurse Anesthetists (CRNA) that had been provided by CS. CS was aware of SASC's plan to hire one of the CRNA's it had provided pursuant to the contract and did not object to the hiring. CS did demand payment for breach of the non-solicitation clause that triggered an obligation of SASC to pay $60,000.00 in liquidated damages. SASC refused to pay and instead filed a complaint seeking invalidation of the liquidated-damages clause leading to litigation and the appeal currently before this court.

Brian Cross contacted SASC and, after explaining the services that would be provided, the parties entered into an agreement on December 19, 2015 with an effective date of April 3, 2016. The time gap was agreed upon to allow the CRNA's assigned by CS to provide services at SASC to become certified by the medical insurers that provided coverage for procedures performed at SASC.

Relevant Contract clause

Non-Solicitation. The Corporation agrees that it will not, at any time between the Effective Date and the first calendar year anniversary of the termination of this Agreement, either directly or indirectly solicit (or attempt to solicit), induce (or attempt to induce), cause or facilitate: (i) any independent contractor, agent, consultant, employee, representative or associate of Contractor to terminate, his, her or its relationship with Contractor, or (ii) the employment or engagement as an employee, independent contractor, or otherwise of those Anesthesia Providers that render services at the Surgery Center during the term hereof. Should the Corporation breach or otherwise violate subsection (ii) above, it will pay Contractor the sum of Thirty Thousand Dollars ($30,000) for each of the Anesthesia Providers that Corporation hires or otherwise engages, as an award of liquidated damages. The Corporation acknowledges that the actual damages which may be sustained by the Contractor in such an event are not easily quantifiable at this time, and such a liquidated damages award under such circumstances is reasonable and does not constitute a penalty or forfeiture as concerns the Corporation.

On July 1, 2019 CS delivered a termination notice to SASC that offered to renegotiate the terms of the agreement by July 10, 2019. SASC did not renegotiate the contract, so the agreement expired on September 29, 2019.

Prior to the termination, CS had been regularly providing SASC with the same two CRNAs, Pam Mitchell and Staci Martin. Martin tendered her resignation to CS shortly before CS delivered the termination notice to SASC. Mitchell remained an employee of CS, but after considering her options chose to become an employee of SASC. CS explained that she had this option, was aware of her choice, but did not object. The proprietor of SASC, Nabil Fahmy, M.D., confirmed with Mitchell that CS did not object to her employment with SASC and she explained that CS was aware of her plan.

In August 2019, SASC approached Martin and offered her a part time position to begin at the conclusion of the agreement with CS. She agreed, but did not first consult with CS or disclose her plans to anyone at CS.

Shortly after the termination of the agreement between CS and SASC, CS sought to enforce the non-solicitation portion of the agreement by asking Dr. Fahmy when payment could be expected. Dr. Fahmy claims that he believed that Cross had approved the hiring of the two CRNAs and would not be seeking to enforce that clause in the agreement. He postponed surgeries and attempted to reach an agreement with CS, but did not succeed. After searching for an alternative to hiring CS employees, and facing the need to postpone medical procedures, SASC employed Mitchell and Martin and resumed operations on October 7, 2019.

On October 17, 2019, SASC filed a declaratory judgment action and, relevant to this appeal, sought a finding that the liquidated-damages clause in paragraph 16 of the agreement was void because it was a penalty. SASC also sought judgment for attorney fees, interest and costs. CS answered and counterclaimed seeking to enforce the liquidated-damages clause, asking for judgment in the amount of $60,000.00, interest, costs and attorney fees.

Liquidated damages cannot be a penalty

The trial court found that the liquidated-damages clause was not a penalty and concluded that "Stark Ambulatory breached the contract in this case with the hiring of CRNA's Pamela Mitchell and Staci Martin, and that as a result of that breach CS Anesthesia is entitled to liquidated damages in the amount of $30,000 for each CRNA hired for a total of amount of $60,000."

Defendant appealed

Appellate Court standard of review

Liquidated damages are "damages that the parties to a contract agree upon, or stipulate to, as the actual damages that will result from a future breach of the contract."

While courts viewed liquidated damage clauses with a "gimlet eye" in the past, the modern rule is "to look with candor, if not with favor" upon liquidated damages provisions in contracts when those provisions were "deliberately entered into between parties who have equality of opportunity for understanding and insisting upon their rights."

Cont review of liquidated damages

Parties to contracts, attorneys and courts have recognized that liquidated damage clauses serve the valid purpose of including an amount for the actual damages resulting from a breach preventing controversy regarding the amount of damages. These provisions allow the contracting parties to:

"protect themselves against the difficulty, uncertainty, and expenses that necessarily follow judicial proceedings when trying to ascertain damages."

This benefit is particularly valuable when "actual damages are likely to be difficult to quantify in the event that the contract is breached." Liquidated damages provisions thereby "promote prompt performance of contracts" and "adjust[in advance, and amicably, matters the settlement of which through courts would often involve difficulty, uncertainty, delay and expense.

"The difficult problem, in each case, is to determine whether or not the stipulated sum is an unenforceable penalty or an enforceable provision for liquidated damages."

If the stipulated sum is deemed to be a penalty, it is not enforceable and the nondefaulting party is left to the recovery of such actual damages as he can prove.

Reasonable

Where the parties have agreed on the amount of damages, ascertained by estimation and adjustment, and have expressed this agreement in clear and unambiguous terms, the amount so fixed should be treated as liquidated damages and not as a penalty, if the damages would be (1) uncertain as to amount and difficult of proof, and if (2) the contract as a whole is not so manifestly unconscionable, unreasonable, and disproportionate in amount as to justify the conclusion that it does not express the true intention of the parties, and if (3) the contract is consistent with the conclusion that it was the intention of the parties that damages in the amount stated should follow the breach thereof.

That is the standard the court measures the case against.

Here is how it looks specifically at this case:

They considered that the surgicenter claimed to be able to actually calculate damages but didn’t show how. They even pointed out how the contract addresses the uncertainty of shifts but no actual compensation numbers for shifts that are cxd.

SASC does argue that the damages in this case would be easy to calculate, but it fails to provide an example of how the damages may have been ascertainable with any confidence at the outset of the contractual period. The parties agreed to the rate to be paid for the services provided by CS, but the contract expressly stated that the parties understood that the need for services was not predictable.

Compensation due CS for breach of the contract with regard to the services provided would not be possible without a clear obligation to pay for a minimum or maximum number of service hours and such a requirement does not exist in the contract.

The court further points out that it doesn’t even matter how the canceled shifts were compensated because this was a non solicitation issue.

More importantly, the liquidated-damages clause is not applicable to the obligation of SASC to pay for the services of CS. The clause at issue is triggered only by a breach of the non-solicitation clause of the contract which prohibits SASC hiring of any CS contractor. The hourly rate of the CRNAs provided by CS and the number of hours worked or anticipated are irrelevant in the calculation of the damages for the violation of this portion of the contract. SASC's argument that the damages for a breach were readily calculable due to a set rate for services and a predictable demand is therefore inapplicable to the breach described in the counterclaim.

Final holding:

Further, we find that the amount agreed upon by the parties, $30,000.00 was not an unreasonable amount in the context of the contract. The two CRNAs that were the subject of this dispute were earning a total $355,000.00 annually so, at a minimum, SASC was paying CS $355,000.00 for the services provided by CS. SASC was obligated to pay CS $1,100 per day when a contractor worked more than seven hours, creating a potential cash flow of $286,000.00 per CRNA. The CRNAs were clearly a valued asset for SASC and CS. If the contractor would leave CS and be hired by another party, CS would lose a valuable asset and all that it had invested in locating and certifying that person's qualification to provide services for CS.

How did they come up with 30k?

Brian Cross estimated the value of each CRNA to be equivalent to what a headhunter would charge for the search and acquisition of a similarly qualified person. Cross was familiar with the business of locating and retaining CRNA's and the amount charged by organizations that provided this service and his testimony regarding this amount was not rebutted. SASC objects only to the fact that it did not hire CS as a headhunter and while that is true, that argument does not meet the significance of the testimony. CS is not presenting this information as an argument that it served as a headhunter but only as a basis for arguing that the liquidated damages were reasonable at the time the parties executed the contract. And, while SASC did not retain CS as a headhunter, it did benefit from the relationship in the same manner as if it had retained a service to locate CRNAs to join its practice.

SASC gained a valuable asset in that the CRNAs provided by CS were certified to work for its facility, were familiar with its procedures and had the trust of the doctors at that facility. SASC had planned to hire the CRNAs previously under contract to CS, but once reminded of the provisions of the non-solicitation clause in the contract, SASC decided to not retain either CRNA but continued searching for CRNAs. The search was unsuccessful, and SASC decided to hire the CRNAs that had worked with CS despite being notified that CS planned to pursue enforcement of the non-solicitation clause and the $30,000.00 per contractor damage payment. We find that SASC found the potential charge for a violation of the contract to be a reasonable cost to avoid postponing surgical procedures while they continued to search for replacement CRNAs.

We follow the modern rule and "look with candor, if not with favor" upon liquidated-damages provisions in contracts when those provisions were "deliberately entered into between parties who have equality of opportunity for understanding and insisting upon their rights."

DAVID ALMASY et al., Plaintiffs and Appellants,

v.

RIDGECREST REGIONAL HOSPITAL et al., Defendants and Respondents.

No. F083295.

Court of Appeals of California, Fifth District.

Filed February 17, 2023.

Ridgecrest Regional Hospital (Ridgecrest), defendant and respondent, is a general acute care hospital that provides safety net services to residents of Kern County. James Suver, co-defendant and co-respondent, is its longtime CEO. Plaintiffs/appellants David Almasy, Ralph Luellen, and Randall Wilke are certified registered nurse anesthetists (plaintiff/appellant CRNAs), who were under contract to perform medical services at Ridgecrest during the 2018-2019 period.

In June 2018, Almasy and Wilke, and in January 2019, Luellen, signed three-year contracts (June 2018 contracts) with Ridgecrest to provide anesthetist nursing services to Ridgecrest's patients. Around April 2019, a number of resignations occurred in Ridgecrest's Anesthesia Department. Among others, plaintiff/appellant Almasy presented a letter of resignation on April 8, 2019; Almasy stepped in as lead CRNA later that month (upon the resignation of the prior lead CRNA). James Suver, Ridgecrest's CEO, repeatedly met with the Anesthesia Department during the ensuing weeks to address staffing, compensation, and scheduling issues. At the same time, that is in April 2019, plaintiff/appellant CRNAs entered into discussions with James Suver about the "need or desire" to execute a new three-year contract between themselves and Ridgecrest. Shortly thereafter, Plaintiff/appellant CRNAs and Ridgecrest executed new contracts effective May 13, 2019 (May 2019 contracts).

The May 2019 contracts provided, at the top, that the new contracts fully supplanted the June 2018 contracts: "This contract replaces in its entirety the contract dated June 26th, 2018." The May 2019 contracts (like the June 2018 contracts) also contained an express integration clause: "11.1 Entire Agreement. This Agreement contains the entire agreement between the Parties. Any and all verbal or written agreements made prior to the date of this Agreement are superseded by this Agreement and shall have no further effect." In addition, the May 2019 contracts (like the June 2018 contracts) specified: "11.2 Modification. No modification or change to the terms of this Agreement will be binding on a Party unless in writing and signed by an authorized representative of that Party." The May 2019 contracts (like the June 2018 contracts) also expressly permitted either party to terminate the contracts without cause upon giving 90 days' written notice: "Either party may terminate this Agreement at any time without cause and without penalty upon ninety (90) days' prior written notice to the other party."

The May 2019 contracts diverged significantly from the June 2018 contracts in one way that is highly relevant to the instant matter, namely the question of Ridgecrest's obligations, if any, when it sought to change the anesthesia provider(s) delivering anesthesia services to the hospital. The June 2018 contracts outlined specific steps that Ridgecrest had to follow if it were to request proposals from or negotiate with other anesthesia providers to deliver anesthesia services for the hospital. Specifically, the June 2018 contracts stated:

"3.3 Change of Anesthesia Provider. If Hospital decides to request proposals or enter into negotiations with another anesthesia provider who will assume overall responsibility for the Services provided by the CRNAs, Hospital will first notify the Chief CRNA and meet and confer with the CRNAs for a period of thirty (30) days from the date of the notice (as may be extended by mutual agreement). If no agreement is reached prior to the expiration of the meet and confer period, either party may terminate this Agreement upon two hundred and ten (210) days' prior written notice to the other party. This Section 3.3 shall not apply to the discussions with or retention of one or more CRNAs to provide Services under the same terms of this Agreement."

The May 2019 contracts omitted this provision entirely. Rather, the May 2019 contracts simply and expressly provided: "This Agreement is not exclusive, and Hospital may contract with other CRNAs to provide similar Services as described in this Agreement."

In August 2019, Ridgecrest tendered 90-day termination-without-cause notices to plaintiff/appellant CRNAs, with their last day set for November 12, 2019. Ridgecrest had contracted with another anesthesia provider (Regional Anesthesia Associates or RAA) to begin providing anesthesia services at Ridgecrest as of November 12, 2019. Plaintiff/appellant CRNAs had the option of working with Regional Anesthesia Associates to continue to provide anesthesia services at Ridgecrest under new contracts. Plaintiff/appellant CRNAs instead filed the lawsuit.

CRNAs claimed bad faith and breach of contract.

Claimed the hospital tricked them

They claimed: CRNAs were entitled to notification under the original June 2018 contracts of Ridgecrest's negotiations with any alternative anesthesia provider and to 210 days of notice before any resulting termination of plaintiff/appellant CRNAs' employment. Alleged that plaintiff/appellant CRNAs instead got only 90 days' notice of termination. Alleged that plaintiff/appellant CRNAs were therefore "damaged for the loss of employment of 120 days."

Court held:

suffered from a fatal defect in that it relied on a provision of the prior June 2018 contracts. However, the June 2018 contracts were entirely superseded by the May 2019 contracts, which stated: "This contract replaces in its entirety the contract dated June 26th 2018." The May 2019 contracts also contained an integration clause: "This Agreement contains the entire agreement between the Parties. Any and all verbal or written agreements made prior to the date of this Agreement are superseded by this Agreement and shall have no further effect." Critically, the May 2019 contracts did not contain the change-of-provider provision requiring 210 days of notice prior to termination that was part of the June 2018 contracts. Not only did the May 2019 contracts not contain any change-of-provider notification provision, but they expressly stated the contracts were "not exclusive," and, more importantly, provided for termination without cause on 90 days' notice.

BRANDON BOSCH
v.
NORTHSHORE UNIVERSITY HEALTH SYSTEM,

Alleged Facts

In 2010, Bosch enrolled in the School. He successfully completed all clinical and classroom instruction from September 2010 to July 2012. In July, he began his final course, Practicum III. Defendants Tracy Felt and Julia Feczko were the preceptors—the clinical instructors—for Practicum III. Bosch claims that due to a "personality conflict," Felt and Feczko "began manufacturing reasons to discipline Plaintiff and eventually have [him] dismissed from the program.

On July 26, Bosch was placed on probation for alleged problems in Practicum III. In accordance with the program's student handbook, Bosch received a notice detailing the reasons he was being placed on probation. The notice stated that Bosch (1) failed to prepare routine anesthesia equipment, (2) failed to correlate anesthetic requirements with monitored parameters and surgical events, (3) required frequent reminders to provide routine equipment, (4) failed to manage intra-operative problems, (5) failed to comply with the controlled substance policy, (6) was disorganized in setting up for cases, (7) failed to anticipate progress of cases, (8) was unable to multitask, and (9) was unable to think critically and solve problems during case management.

P claims:

One way in which Bosch seeks to hold defendants liable in contract is by claiming that the School had a contract with the body that provides it accreditation, the Council on Accreditation of Nurse Anesthesia Educational Programs (the Council). Bosch claims that he is a third-party beneficiary of that alleged contract. We agree with the trial court that these counts fail to state a claim.

The Council is a nongovernmental accrediting body that claims to have been recognized since 1975 by the DOE. Among other things, accreditation by a DOE-approved body makes a school eligible for certain federal funding, and its students eligible for federal student loan programs. (There appear to be other benefits as well, such as the ability of students to transfer credits between accredited schools.) The accrediting agency sets standards for accreditation—

An accrediting body, then, is much like a traditional administrative agency,

For that reason, courts have consistently refused to apply contract law to actions involving accreditation disputes.

And because there is no contract between a school and an accrediting body, there obviously can be no third-party beneficiary to a nonexistent contract.

P also claims

Bosch also alleges the breach of a direct contract with the School—an implied contract to provide him an education and a degree.

An implied contract arises where the intention of the parties is not expressed but an agreement in fact creating an obligation is implied or presumed from their acts—in other words, where circumstances under common understanding show a mutual intent to contract.“

Illinois law generally recognizes an implied contract between a student and a school (at least a private school, as here

Holding

we hold that Bosch stated a claim for breach of an **implied contract** with both NorthShore and DePaul. While the trial court was understandably reluctant to wade into matters of academic judgment for which courts have long considered themselves ill suited, this case, as pleaded, is. Bold and difficult to prove as they may be, these allegations, if true, would state a claim **not about the school's academic judgment. It's about fabricating charges against a student the instructors didn't like, to run him out of the school on the eve of his graduation**laim for breach of an implied contract.

Murphy v El Paso Health

Facts

Laura Murphy CRNA worked pd at El Paso

Worked per diem

No obligation to assign or to work

What happened?

While working an overnight shift, Murphy interacted with a nineteen-year-old patient who was a first-time expectant mother with gestational diabetes. This patient was under the care of Dr. Frederick Harlass, a high-risk-delivery specialist. When Murphy arrived that night, the patient's cervix had not sufficiently dilated to allow for a vaginal birth, and her progress appeared to be stalled. Harlass had advised the patient and nurses that he would deliver the baby by Cesarean section if the patient did not dilate further within a particular amount of time. The patient told Murphy that she was worried about having a C-section. Murphy told the patient that she had the right to "ask the doctor what he wants to do and why he wants to do it." She said, "You remember you have the right to do that. You have the right to say who does what to your body."

By 9 p.m., the patient had not further dilated, and Harlass ordered the C-section. The patient asked to speak with Harlass before she signed the consent form for the procedure. Harlass and another nurse, Olivia Juarez, went into the patient's room to talk to her. Murphy remained outside. Murphy estimated that Harlass was in the room with the patient for four or five minutes. When Harlass came back out, he approached Murphy. He was very angry and said, "I don't have to take this crap." He believed that Murphy had discouraged the patient from consenting to the C-section and, in doing so, had hampered a safe and successful delivery. Harlass explained to Murphy that he "just told [the patient] that if she wanted a brain-damaged or dead baby, it wouldn't be his fault." Murphy asked Nurse Juarez if Harlass really said this to the patient. Juarez confirmed that he had, but added that "he wasn't real nasty about it." Murphy conceded not really knowing what Juarez meant by this. After speaking with Harlass, the patient consented to the C-section. Harlass successfully delivered the baby without complications.

Around 8 a.m. the following morning, Murphy visited with Las Palmas's ethics coordinator. Murphy complained about Harlass's behavior around patients, his tendency to order premature inductions and C-sections, and her belief that he failed to obtain the nineteen-year-old patient's informed consent. She also expressed apprehension about making the complaint, stating that she feared doing so "may become the cause for [her] dismissal." Sometime that same morning, Harlass called West Texas OB and complained that Murphy had interfered with his treatment and management of the patient. Shortly before eleven that morning, a West Texas OB partner left a voice mail for Murphy, telling her that because of complaints by Harlass and another Las Palmas physician, she should not return to work at Las Palmas until further notice. The next day, Murphy sent letters to West Texas OB and to Las Palmas's ethics coordinator, memorializing her recollection of these events.

About a month later, Murphy had still not returned to work, and the chairman of Las Palmas's credentialing committee asked Murphy to attend a meeting. When Murphy inquired about the purpose of the meeting, the committee coordinator refused to say. Fearing the committee would revoke her credentials at Las Palmas, Murphy asked if her attorney could attend the meeting. When her request was denied, Murphy refused to attend the meeting and instead filed this suit against El Paso Healthcare a few days later.

At trial, the court submitted jury questions on Murphy's claims against El Paso Healthcare for statutory retaliation and tortious interference with "the continuation of the business relationship between" Murphy and West Texas OB. The jury found El Paso Healthcare liable on both causes of action and found that Murphy sustained damages of $31,000 in lost wages and $600,000 for past and future emotional pain, mental anguish, loss of enjoyment of life, and damage to her reputation. The trial court entered judgment on the jury's verdict, and the court of appeals affirmed

Appealed to the Texas Supreme Court

P Claimed

Tortious Interreference with her contract

Murphy claims that El Paso Healthcare interfered with her business relationship by requesting that Murphy not be scheduled at Las Palmas while it conducted its investigation into Murphy's and Harlass's complaints.

To prevail on a claim for tortious interference with an existing contract, Murphy had to present evidence that El Paso Healthcare induced West Texas OB to "breach the contract," and thus interfered with Murphy's "legal rights under the . . . contract,"

But as Murphy admits, an obligation to provide employment was not a term of Murphy's existing contract with West Texas OB. Although West Texas OB had agreed to pay Murphy at a particular rate on a monthly basis for the hours she worked, it had not agreed to schedule Murphy at Las Palmas, or indeed at any hospital. The evidence does not support a finding that El Paso Healthcare interfered with Murphy's legal rights under her existing agreement with West Texas OB, **so Murphy's tortious-interference claim must fail.**

Take home points

Careful when interfering with contracts – big $$ judgements (although reversed)

Careful on characterization of your position – do you have a contract

Could be a lower threshold to prove tortious interference than if a mere business relationship

Restricitve Covenant

“It limits the use of restrictive covenants between employers and certain health care workers, i.e. doctors, CRNAs, CRNPs and PAs. After 1/1/25 noncompete covenants are enforceable only if the noncompete covenant is no more than one year. But, even if it is one year or less, it is not enforceable against a practitioner who is dismissed by the employer. There are also exceptions for noncompetes with a practitioner with an interest in a business entity which is sold, merged etc.

The Act also includes notification of patient requirements, but that provision is insignificant for CRNAs. The reason I say insignificant is that the notification requirements are only applicable to health care practitioners with an ongoing outpatient relationship with the patient of two or more years. That would cover doctors, CRNPs and PAs, but hardly any CRNAs since they typically do not have ongoing outpatient relationships with patients.

I don't know if the Act applies to independent contractors or not. It does not use that designation anywhere. It refers to "employ," "employer" and "employees." None of those terms is defined so it is difficult to determine if the intent is to exclude independent contractors or not.

I also do not see how the legislative intent to protect health care practitioners' freedom of practice is satisfied by authorizing one year noncompete covenants.

Tortious Interference

What is it?

Hypothetical:

The group you have been working for is given a term of contract. A new group is coming in. You start emailing your coworkers regarding strategies to create obstacles for the incoming group in hopes that the old group stays. THIS IS TORTIOUS INTERFERENCE.

A cause of action against a person for wrongfully intruding upon a potential business relationship.

Tortious Interference

Nostrame v. Santiago

213 N.J. 109 (2013)

Answered the question:

For tortious interference with contract, must a plaintiff prove that the defendant acted intentionally or wrongfully in interfering with an existing or prospective contract?

facts

Natividad Santiago sustained a serious eye injury during a cataract surgery.

Santiago hired attorney Frank Nostrame to represent her in a medical-malpractice case. Santiago signed a contingent-fee agreement. A contingent-fee arrangement means the lawyer's compensation is a percentage of the plaintiff's ultimate award if the case is successful. Nostrame then began work on the case. Nostrame gathered documents, performed research, and consulted with experts. Nostrame filed the complaint in the case on May 23, 2007.

Approximately one week later, Santiago failed to come to a client meeting and notified Nostrame that she had retained a new attorney, Mazie Slater Katz & Freeman. Later, Mazie settled the malpractice case for $1,200,000, with approximately $360,000 of that going to Mazie for attorney's fees.

Nostrame was only paid an hourly rate based on the number of hours that he had worked on the case rather than receiving a portion of the larger contingent-fee amount. Nostrame sued Mazie, alleging tortious inference with contract and seeking a portion of the larger contingency-fee amount that he claimed would have been his if Mazie had not induced Santiago to fire Nostrame.

holding

For tortious interference with contract, a plaintiff must prove that the defendant acted intentionally or wrongfully in interfering with an existing or prospective contract.

A contract between an attorney and client may always be terminated by the client at will because a client is always entitled to be represented by counsel of his own choosing. Therefore, a claim of interference with a contract between an attorney and client must be a claim of interference with a prospective contractual relationship. Regardless, for cases involving attorney-client contracts, the key issue is often whether the defendant's interfering act was intentional or wrongful.

Nostrame admitted that he knew of no other facts to plead and was hoping to use the discovery process to uncover misdeeds. This is improper and could chill a client's exercise of choosing counsel. Accordingly, because Nostrame did not allege any alleged wrongful conduct by Mazie, he has not alleged a viable tortious-interference-with-contract claim here. The judgment of the court of appeals is affirmed.

Point is……

For tortious interference with contract, a plaintiff must prove that the defendant acted intentionally or wrongfully in interfering with an existing or prospective contract

Torts restatement

A provision specifying that giving truthful information or honest advice that causes a third person not to perform a contract or not to enter into a prospective contractual relation with another does not constitute tortious interference with contractual relations.

To support a claim of tortious interference with prospective economic advantage, the plaintiff must demonstrate (1) a valid business relationship or expected relationship, (2) the defendant's knowledge of the relationship, (3) the defendant's intentional interference that terminates the relationship or prevents the expected relationship from materializing, and (4) resultant damages. Under the first prong, the fact that a relationship is terminable at will does not prevent a finding of a relationship.