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Beware of unsigned employment contracts

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Introduction

It is a common occurrence for an employment relationship to be initiated before the employment contract is signed by both parties. As far as legal claims by employees are concerned, this is not so much of a problem, since those are, to a large extent, set forth in mandatory statute. If, on the other hand, an employer wants to enforce contractual claims, they are well advised to have a contract that is signed by both parties.

The Supreme Court[(1)] recently demonstrated the consequences of employer negligence in this regard.

Facts

The employer sued a former employee for payment of a contractual penalty for breach of a post-contractual non-competition clause. The defendant employee was a technician in the field and worked for a competing company after the employment relationship was terminated.

The employer claimed that the contract was set in motion based on a draft contract that was sent to the employee shortly before the beginning and then again during the employment relationship. The contract contained a post-contractual non-competition clause. The employee did not react to these mailings, nor did he sign the contracts.

From the employer's perspective, it followed from this that the restrictive covenant formed a part of the contract. Under the circumstances, the employee's silence was to be interpreted as tacit approval to the non-compete provision.

Decision

The Supreme Court confirmed the judgments of the lower courts and stated that much caution is required when assuming implied consent, or else conduct or actions are falsely deemed legally relevant, when in fact the contracting party remaining silent had no intention to make a legal statement. It was found that the conclusion of the contracting party interpreting silence as more than just that is not convincing.

Silence has no explanatory value in itself, and is therefore not to be regarded as consent, as a matter of principle. Only special circumstances can warrant a different interpretation, such as when silence leaves no other conclusion than to attribute it an affirmative meaning.

This also applies if the contractual relationship was initiated based on a written contractual document which was not signed by both contracting parties, because generally, a written agreement only becomes legally effective when it has been signed by both parties.

The plaintiff employer could also not prove that it is customary in the industry that field technicians are bound to post-termination restrictive covenants, regardless of a written contract.

Comment

If an employment contract is not signed by both parties, an employer faces the risk that the employee will receive all the benefits from it, but will not have to comply with more detrimental provisions. Diligent contract management can come to employer's rescue and help prevent hazardous legal circumstances.

For further information on this topic please contact Jakob Widner at GRAF ISOLA by telephone (+43 1 401 170) or email (j.widner@grafisola.at). The GRAF ISOLA website can be accessed at www.grafisola.at.

Endnotes

(1) OGH 24 October 2022, 8 ObA 75/22w.