



CONNECTICUT SUPERIOR COURT RENDERS FAVORABLE OPINION FOR EMPLOYERS WHO WITHDRAW OFFER OF EMPLOYMENT PRIOR TO COMMENCEMENT OF EMPLOYMENT

Petitte v. DSL.net, Inc., CV 04-0489777S LEXIS 915 (Conn. Super. Mar. 28, 2006)

A Connecticut Superior Court recently held that an employer was not liable for withdrawing a written offer for at-will employment prior to the commencement of employment, notwithstanding the fact that the prospective employee relied on the offer and resigned from an existing position.

In Connecticut, an employer and employee have an at-will employment relationship in absence of a contract to the contrary. In most cases, an at-will employment relationship allows the employer and the employee the right to terminate the relationship for any reason, or no reason, at any time.

In this case, the plaintiff, Kevin Petitte, was offered a sales position by DSL.net, Inc. ("DSL") on December 8, 2003. Mr. Petitte was advised that his start date with DSL would be December 15, 2003. Mr. Petitte, in relying on the job offer, resigned from the position he held with another company. On December 10, 2003, Mr. Petitte received an offer letter from DSL which explicitly read:

This offer is contingent upon... (3) your understanding that this letter is not a guarantee of employment for any specified length of time by either party. While it is our hope that you will have a long and fruitful career with DSL.net, your employment will be at-will, which means that either you or the company can terminate your employment at any time for any reason, with or without cause.

Mr. Petitte signed the offer letter, and on December 15, 2003 when he reported to work at DSL, he was informed that some of DSL's employees expressed concerns about hiring him. Subsequently, he was sent home pending further investigation. That evening, Mr. Petitte was informed that DSL rescinded its employment offer.

One month later, Mr. Petitte brought a lawsuit against DSL for breach of employment contract, for negligently misrepresenting that he could work if he appeared on the start date and for infliction of emotional distress. Mr. Petitte contended that although his offer was for at-will employment, DSL's right to terminate his employment did not materialize until after he commenced his responsibilities for the company. Essentially, Mr. Petitte claimed that DSL prematurely exercised its right to terminate his employment.

In rejecting Mr. Petitte's claims, the court analyzed the nature of at-will employment offers. First, with respect to the breach of contract claim, the court noted that an employer has the right to terminate its relationship with at-will employees at any time with or without reason. The court further noted that DSL's rights are not conditioned on the employment relationship reaching any

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specific point. Specifically, the court reasoned that, as a practical matter, should an employer change its mind about hiring a prospective at-will employee, the employer should not be required to have the employee actually commence duties before terminating the employment relationship. Consequently, the court held that “due to the at will nature of this employment relationship, DSL did not breach any contractual obligations to Mr. Petite.” With respect to the claim of negligent misrepresentation, the court examined the offer letter provided to Mr. Petite. Specifically, the court found that DSL, through its offer letter, reserved “unfettered discretion to end the employment relationship at any time.” The court found that the letter did not guarantee employment and stated that the employment relationship was at-will. The court, therefore, held that Mr. Petite’s reliance on the offer letter as a guarantee of employment was not justified. Finally, the court found that DSL’s exercise of its legal right to end its relationship with Mr. Petite did not amount to the type of extreme and outrageous conduct necessary to establish an infliction of emotional distress claim.

Notwithstanding this favorable judgment for employers, employers should be aware of an earlier decision, by another Connecticut Superior Court, reaching the opposite conclusion on a similar issue. Goldstein v. Unilever, 397881 LEXIS 1126 (Conn. Super. May 3, 2004). The Goldstein court acknowledged the majority of jurisdictions hold that an employee does not have a cause of action, where an employer rescinds an at-will offer to an employee before the employee actually commences work. However, in Goldstein the court followed the reasoning of the Eighth Circuit in Bower v. AT&T, Technologies, Inc., 852 F.2d 361, 363-64 (8th Cir. 1998), and permitted the plaintiff’s complaint to proceed on a promissory estoppel theory. In Bower, the court reasoned that when an employer terminates an employee before commencing work, the promise has not been kept by the employer, and thus, the burdened employee has a cause of action for promissory estoppel as the employee relied to his or her detriment on the unkept promise of the employer. Although the Supreme Court of Connecticut has not ruled on this issue, the Goldstein court anticipated that the Supreme Court would apply the doctrine of promissory estoppel to the anticipatory breach of contract for employment at-will. The Goldstein court also permitted the employee-plaintiff’s complaint to proceed on theories of negligent and intentional misrepresentation, holding that whether the employee’s reliance on the defendant’s offer of employment was unreasonable is a question of fact for the judge or jury.

As the law in Connecticut, regarding the potential liability of employers who withdraw an offer of employment prior to an employee’s commencement of employment, is unsettled, the effect of the Petite decision will depend on how the courts decide other cases with similar facts. Should the Supreme Court of Connecticut weigh in on this issue, the employer’s rights in terminating one’s employment before he or she commences the job responsibilities may be limited. Regardless of the Court’s approach, it is evident from the Petite decision that the practical lesson for employers is to clearly and expressly identify an at-will relationship in an offer letter.

For further information on this case or any other employment related question, please contact either of the individuals listed below.

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