



JONES DAY
COMMENTARY

CALIFORNIA SUPREME COURT BUTTRESSES “AT WILL” DEFENSE TO EMPLOYMENT CLAIMS

In an important decision for employers, the California Supreme Court has clarified that language in an offer letter or employment contract that an employee may be terminated “at any time” creates an at-will employment relationship that defeats an employee’s claim that he could be terminated only for good cause. In *Dore v. Arnold Worldwide, Inc.*, Case No. S124494 (August 3, 2006), the Supreme Court held that summary judgment for the employer was appropriate on the plaintiff’s breach-of-contract and fraud claims, ruling that the plaintiff’s allegations that the employer had recruited him with verbal statements implying a long-term relationship were insufficient to overcome the express at-will language of the offer letter signed by the employee.

PLAINTIFF’S CLAIMS

The plaintiff, Brook Dore, alleged that during the recruiting process, executives at Arnold Worldwide, Inc. (“AWI”), formerly Arnold Communications, Inc., had told him they were looking for someone to manage a new

account “on a long-term basis”; that, if hired, he would play a “critical role in growing the agency”; and that AWI was looking for a “long-term fix.” According to Dore, AWI further assured him that the company treated its employees “like family.” Dore was offered the position in a telephone conversation, and he accepted.

AWI subsequently sent Dore a letter confirming the offer of employment. In addition to confirming the terms of his employment, the letter stated: “Brook, please know that as with all of our company employees, your employment with Arnold Communications, Inc. is at will. This simply means that Arnold Communications has the right to terminate your employment at any time. . . .” Dore read and signed the offer letter.

Dore’s employment was terminated two years later. Notwithstanding the at-will language in the offer letter, Dore claimed that the assurances of long-term employment by AWI gave rise to an implied contract that he would be terminated only for good cause.

SIGNIFICANCE OF THE SUPREME COURT'S DECISION

The California Supreme Court's decision resolves a conflict among the California courts of appeal, overruling the three appellate courts that had held that phrasing in an offer letter or employment contract that employment may be terminated "at any time" did not eliminate an employee's claim that he/she could be terminated only for good cause. In the *Dore* decision, the Supreme Court made clear that the phrase "at any time" includes the notion that employment may be terminated without good cause. As a result, the Court ruled that the employee's claims for breach of contract and breach of the covenant of good faith and fair dealing were properly dismissed on summary judgment. The Supreme Court further held that the employee's fraud claim was also properly dismissed on summary judgment. Since the employee read, understood, and signed the offer letter containing the statement that his employment could be terminated "at any time," as a matter of law, he could not establish justifiable reliance on the employer's alleged oral assurances of long-term employment.

The *Dore* decision confirms that employers who include at-will language in their offer letters will be able to defeat breach-of-contract and misrepresentation claims based on an employee's allegations of assurances of long-term employment. It is nevertheless important for employers to ensure that those involved in the recruiting process do not make representations to prospective employees that are contrary to, or undermine, the employer's at-will policy.

Many lower courts, and certainly juries, continue to resist the concept of at-will employment. Thus, if it appears that the employer has lured an employee with statements suggesting a long-term relationship and that the at-will language is "simply a formality" that the employee should not take seriously, a judge or jury may look for, and find, a way around that language. Significantly, in holding that the at-will language in the employer's offer letter was unambiguous in the *Dore* case, the California Supreme Court nevertheless endorsed the principle that evidence of oral representations may be introduced to expose ambiguity in contract language. Although the Supreme Court rejected the evidence of a long-term commitment that *Dore* sought to introduce, the Court left open the possibility that other evidence or circumstances might overcome at-will language in an offer letter. Moreover, ensuring from the outset that an employee understands the at-will status of his or her employment can avoid misunderstandings or claims later on.

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