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FRAUDULENT INDUCEMENT AND EMPLOYER LIABILITY: "A CHINK IN THE AT-WILL EMPLOYMENT DOCTRINE ARMOR?"

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ABSTRACT

Today, more courts around the country are allowing at-will employees to sue their employers under the theory of fraudulent inducement. Under this theory, some courts have held employers liable for promising their employees continued future employment. Additionally, employers can be held liable for intentionally lying to a prospective employee about a material aspect of the job, if the prospective employee detrimentally relies on the promise. Employees who detrimentally rely on employers' misrepresentations can potentially recover punitive damages, in addition to any damages directly related to the fraud claim. This article examines how the fraudulent inducement theory affects the at-will doctrine.

Generally, an employee hired for a general or indefinite term is considered an at-will employee, and the employment relationship can be terminated by either party, at any time, for any or no reason [1]. Thus, employees hired without a contract specifying the term of their employment have been left without recourse when an employer's statements concerning the duration of employment or the prospect of future employment have gone unfulfilled [2]. However, in some cases courts have applied general fraud principles where an employer's statements about the continuance of present employment or the prospect of future employment have been found to be misrepresentations of present fact [2].

Today, more courts are allowing at-will employees to sue their employers, or prospective employers, for broken promises under the theory of fraudulent inducement. Courts in California, Pennsylvania, New York, and several

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other states have recognized that an at-will employee can recover from current or prospective employers if the employer lies about an important aspect of the job and the employee detrimentally relies on that promise [3]. Additionally, some courts have ruled that employers owe prospective employees a duty to disclose information about the company's financial health if the prospective employee is under a false impression about the employer's financial viability [4].

FRAUDULENT INDUCEMENT

Under a fraudulent inducement claim, courts apply tort law principles to the employment relationship [2]. When employers make promises they intend not to perform, their unfulfilled statements might constitute actionable fraud if the employee or prospective employee relied on the promise to their detriment [2]. Fraud claims, unlike contractual claims of promissory estoppel, breach of an implied contract, and breach of good faith and fair dealing, are tort-based. Employers who are found liable for fraudulent inducement might be liable for punitive damages, as well as compensatory damages. Therefore, the measure of damages employers face in fraudulent inducement claims are potentially much greater than in a purely contractual setting.

Most jurisdictions have allowed fraudulent inducement claims in the at-will employment context when an employer's promises are predicated on fraud [5]. Often courts will cite public policy reasons for allowing such claims to pierce the at-will doctrine, such as a willingness to punish employers who engage in deceitful conduct [6].

However, fraudulent inducement does have its limitations. Courts are still reluctant to allow such claims when they are merely a guise for characterizing a contract claim as a tort [3]. Generally, the linchpin to successful fraudulent inducement claims is the nature of the damage suffered by the employee [3]. If the injury suffered relates directly to the discharge or termination, then most courts hold that the at-will doctrine bars a fraudulent inducement claim [3]. However, if the nature of the injury suffered is not related to the discharge, but arises from an independent wrong, namely the employer's false statements, then courts will allow a fraud claim [3].

In any event, more employees are likely to bring fraudulent inducement claims against their employers or former employers because it offers employees a way to pierce the at-will employment doctrine. Also, more fraudulent inducement claims will likely be asserted because of the potential recovery of punitive damages. The next section will examine some recent cases from various jurisdictions where courts have recognized fraudulent inducement claims in the employment context.

COMMON LAW DEVELOPMENTS IN VARIOUS JURISDICTIONS

Pennsylvania

Pennsylvania courts have recognized a fraudulent inducement action in the employment context where an employer deceived a prospective employee by misrepresenting its financial records [7]. In *Lokay v. Lehigh Valley Co-op Farmers, Inc.*, the plaintiff, Ray A. Lokay, worked as a division manager for Topco Associates, Inc., a wholesale distributor of milk products [7, at 407]. The defendant, Lehigh Valley Co-op, processed raw milk for sale to retail stores [7, at 407]. Lehigh Valley began negotiations with Topco to sell its milk products to retail food chains [7, at 407]. As part of his duties as division manager, the plaintiff was responsible for reviewing Lehigh's financial statements [7, at 407]. During the negotiations, Lehigh's chief operating officer, Richard Allison, suggested that the plaintiff might consider employment with Lehigh [7, at 408]. Lokay and Allison met on several occasions to discuss employment opportunities and Lehigh's financial status [7, at 408]. In 1972, Lokay joined Lehigh as vice president and two years later he was discharged as part of a reduction of management staff because Lehigh was in financial trouble [7, at 408]. Additionally, Lehigh fired Allison because he deliberately misrepresented Lehigh's financial status by misstating its economic condition in its annual reports [7, at 408].

The plaintiff, Lokay, sued defendant Lehigh for breach of contract and fraudulent inducement, contending that the defendant lured him into leaving Topco to join Lehigh [7, at 408]. The plaintiff alleged the basis of the fraud was the defendant's deliberate misstatement of its financial health. At the conclusion of the trial, the jury returned a verdict for the plaintiff and awarded him $28,490.48 in compensatory damages on the breach of contract claim and $162,000 on the fraud claim [7, at 408]. The defendant appealed the fraud award, claiming the evidence was insufficient to support the jury's verdict, and in the alternative, the evidence was insufficient to justify the amount of the award on the fraud claim [7, at 408].

The *Lokay* court said that in a fraudulent inducement action, the plaintiff must establish the following elements:

1. a misrepresentation;
2. a fraudulent utterance of it;
3. the maker's intent that the recipient be induced thereby to act;
4. the recipient's justifiable reliance on the misrepresentation; and
5. damage to the recipient proximately caused [7, at 408].

The defendant, Lehigh, argued the plaintiff did not meet the third and fourth elements because the plaintiff did not prove intent. Specifically, the defendant argued it could not intend that the plaintiff rely on the erroneous annual reports

because they were published only for shareholders and creditors, not prospective employees. Therefore, the defendant contended that the plaintiff was not a "foreseeable reader" of the reports [7, at 408]. Next, the defendant argued it had no knowledge that the reports were false when the plaintiff read them; therefore, it could not intend that the plaintiff would rely on the misrepresentations. To support its claims, the defendant pointed to the fact that it was a victim of the same fraud committed upon the plaintiff [7, at 408].

The court dismissed the defendant's arguments as meritless because the defendant's responsibility to plaintiff was founded upon corporate liability [7, at 409]. The court held the defendant liable for the acts of its agent, Richard Allison. Specifically, the court held that the defendant failed to prove Allison acted outside the scope of his expressed, implied, or apparent authority when he revealed the defendant's false annual reports to the plaintiff [7, at 409]. Therefore, the defendant was liable to the plaintiff for fraud because it knew the plaintiff read, and subsequently acted upon, the erroneous reports [7, at 409].

Additionally, the *Lokay* court said that in Pennsylvania a corporation is estopped from raising the defense that one of its agents acted outside the scope of his/her apparent authority where the corporation has received and enjoyed the benefits of its contract [7, at 409]. Here, the court found the defendant received and enjoyed the benefits of its employment contract with the plaintiff because it employed him for two years and then fired him for reasons unrelated to his performance [7, at 409]. The discharge occurred because of the defendant's own financial difficulties, not because the plaintiff failed to perform his duties.

The next issue the *Lokay* court addressed was whether the evidence supported the jury's award on the fraud claim. The defendant contended the plaintiff's breach of contract and tort claims arose out of the same wrong; therefore, the plaintiff was adequately compensated by the breach of contract award [7, at 410]. The court disposed of this argument by focusing on the nature of the plaintiff's injuries. The court said the plaintiff was entitled to compensation for the defendant's breach of its employment contract. Additionally, the plaintiff was "entitled to all pecuniary losses" associated with the fraud, that were "immediately and proximately caused by the fraud" [8]. Relying on the trial court's opinion denying the defendant's motions for judgment n.o.v.[1] or new trial, the *Lokay* court held the plaintiff's losses included his salary and projected salary increases and the value of the fringe benefits he gave up when he left Topco [8]. Also, the plaintiff properly included as damages the cost he incurred in relocating his family to a new state [8]. Following the rule in Pennsylvania that an appellate court will not find a verdict excessive unless it shocks the court's sense of justice, the court affirmed the jury verdict on the fraud claim [8, at 411].

[1] Judgment notwithstanding verdict.

Although *Lokay* did not specifically deal with punitive damages, the jury award on the fraud claim far exceeded Lokay's recovery on the contract claim. As one can readily see, employers face potentially much higher stakes in a fraudulent inducement action than in a contract action.

New York

More recently in New York, one court reached a similar result in a fraudulent inducement action. In *Stewart v. Jackson and Nash*, the plaintiff, Victoria A. Stewart, was an environmental attorney working for a firm in New York [9]. In 1988, a partner with the defendant's California firm contacted Stewart in an effort to lure her away from her New York firm to handle environmental work for Jackson and Nash [9]. In her complaint, the plaintiff alleged the defendant told her it had recently landed a large environmental law client and wanted Stewart to service the new client [9]. Additionally, Stewart was told she would head up the defendant's environmental law department that it was in the process of establishing [9]. Stewart left her New York firm and moved to California [9]. However, when she arrived at the new firm she learned there was no environmental work [9]. Instead, Jackson and Nash put her to work on general litigation matters. The plaintiff repeatedly inquired about environmental work. The defendant repeatedly assured her it would be forthcoming and it would promote her to head up the environmental law department [9]. After two years, one of the defendant's partners allegedly told the plaintiff the firm "never 'really' had this 'type' of work," and it never had an environmental law client [9]. On December 31, 1990, Jackson and Nash dismissed Stewart [9].

The plaintiff sued Jackson and Nash, claiming fraudulent inducement and negligent misrepresentation; she also requested compensatory and punitive damages [9]. The district court dismissed her claims and granted the defendant's Fed.R.Civ.P. 12(b)(6) motion for failure to state a claim upon which relief can be granted [9]. The court of appeals agreed with the district court on the negligent misrepresentation claim because, under New York state law, a plaintiff could only recover where the defendant owes a fiduciary duty [9]. Since Stewart alleged no facts to establish that Jackson and Nash owed her such a duty, either before or after she became their employee, dismissal of the negligent misrepresentation claim was proper [9]. However, the court allowed the plaintiff's fraudulent inducement claim to the extent that the defendant's statements were misrepresentations of present fact [9].

The district court found the plaintiff's fraud claim arose out of her termination [9]. Because Stewart was an at-will employee, the district court dismissed her claims "because at-will employees 'may be freely terminated . . . at any time for any reason or even for no reason,' [and] they can neither challenge their termination in a contract action nor 'bootstrap' themselves around this bar by alleging that the firing was in some way tortious" [9, at 88].

However, the court of appeals distinguished the at-will rule by focusing on the nature of the damages because they arose before her discharge and were unrelated to her termination [9]. Thus, the *Stewart* court found that plaintiff's claim was not "a transparent attempt to restate the forbidden contractual challenge in the guise of a tort" [9, at 88]. Rather, the court found the plaintiff's damages resulted from her leaving her specialty for two years as an environmental lawyer in New York [9, at 88]. Therefore, the injury to the plaintiff's career development as a budding environmental lawyer began while she was still employed with Jackson and Nash and arose independent of her discharge [9, at 88].

Having determined that the nature of her injuries made her fraud claim viable, the court next scrutinized the defendant's statements to determine the extent to which they were actionable as misrepresentation of present fact [9, at 89]. The *Stewart* court focused on the existence of present facts and the defendant's intention not to perform the promises made to the plaintiff. The plaintiff alleged the defendant made four misrepresentations that constituted actionable fraud: 1) that it recently secured a large environmental law client; 2) it was in the process of establishing an environmental law department; 3) that Stewart would head up the department; and 4) she would be expected to service the firm's substantial existing environmental law client [9, at 89].

The defendant argued the fraud charge related to a breach of contract; therefore, plaintiff's fraud claim was invalid [9, at 88]. However, the court agreed with the plaintiff in that, under New York law, where a contract is induced by fraud, the representations and the contract are distinct and separable [9, at 88]. The distinction that makes them separable is the difference between promissory statements regarding future events, which are not actionable, and representations of present fact, which are actionable [9, at 89]. The court held the defendant's statements that it had recently secured a large environmental law client, that it was in the process of setting up an environmental law department, and that it wanted the plaintiff to head up that department were representations of present fact [9, at 89]. Although the defendant's promise that the plaintiff would be promoted to head up the environmental law department seemed, at first blush, like a promise of a future event, the court noted that promissory statements as to the future are actionable if coupled with a present and undisclosed intention not to perform [9, at 89]. The court concluded that representation three was an allegation of present fact since the defendant knew it did not intend on fulfilling its promise at the time it made the statement [9, at 89]. Therefore, these statements were actionable because they constituted representations predicated on fraud. Accordingly, the *Stewart* court reversed and remanded the fraudulent inducement claim [9, at 90].

In another New York case, the court allowed a fraudulent inducement claim where the plaintiff was promised a "great future" with the company if she declined an offer of employment with a competitor [10]. In *Cole v. Kobs and Draft Advertising, Inc.*, the plaintiff, Patricia Cole, worked for the defendant as an

account supervisor in charge of direct marketing for one of Kobs' major clients [10]. When Kobs hired the plaintiff, she signed a standard employment agreement that stated her employment relationship with Kobs was at all times terminable at will [10]. The agreement also contained a covenant not to solicit from or compete with the defendant for one year after leaving its employ [10]. Additionally, the plaintiff received an employment handbook containing a definition of the at-will employment relationship that applied to all Kobs employees [10].

While still employed at Kobs, the plaintiff interviewed with a competitor and was offered a higher salary and an executive position as vice president and management supervisor [10]. The plaintiff informed her supervisor at Kobs of the offer and of her intention to accept it [10]. In response, the defendant offered the plaintiff an even higher salary, as well as additional assurances of promotion if the plaintiff rejected the offer and remained at Kobs [10]. Cole's supervisor told her she had a "great future" with the company if she stayed [10]. The plaintiff accepted the defendant's counteroffer and rejected the competitor's offer in reliance on these assurances [10]. About three months later, the defendant terminated Cole [10].

Cole brought suit, alleging the defendant fraudulently induced her to stay when it promised her a promotion and a "great future," yet it never intended to keep its promises [10]. Instead, the plaintiff alleged the promises "were part of a plan to transfer [her major account] to a new employee . . . to prevent the loss of . . . business" [10]. The plaintiff claimed the defendant damaged her relationship with the large client and prevented her from luring that client to a new employer [10]. Additionally, the plaintiff contended she suffered a tarnished reputation in the advertising industry, generally [10].

The defendant moved for summary judgment on the grounds that the plaintiff failed to prove justifiable reliance because she was an at-will employee [10]. Also, the defendant claimed the fraud claim was merely a contract claim in disguise and that the plaintiff's damages were too speculative to support a fraud claim [10].

As to the first issue, the defendant relied on *Garwood v. Sheen and Shine, Inc.*, where the court held that fraud related to breach of an employment contract is not actionable if the employer retains the right to terminate the employee under the employment-at-will doctrine [11]. The *Cole* court distinguished *Garwood* because the plaintiff's alleged damages arose out of the defendant's scheme to replace her, and not out of her discharge [11]. Again, the court focused on the nature of the damages and cited *Stewart* for the proposition that "the distinction is crucial in assessing whether a plaintiff has an actionable claim or is barred by the employment-at-will doctrine" [10, at 225, citing 9].

Finally, the court held that summary judgment was improper because substantial fact issues remained concerning the plaintiff's measure of damages [10]. Again relying on *Stewart*, the court held that the plaintiff's claims were not too speculative because the plaintiff suffered damage to her career path [10, at 225,

citing 9]. Even though determining the damage to her career might be difficult, that did not bar the plaintiff's ability to recover on her claim [10]. Thus, the court dismissed the defendant's motion for summary judgment and allowed the plaintiff to proceed with her fraudulent inducement claim [10].

California

Earlier this year, California recognized fraudulent inducement as a cause of action in *Lazar v. Superior Court (Rykoff-Sexton, Inc.)*, where the plaintiff, Andrew Lazar, also worked in New York and was lured to California by the defendant's fraudulent promises [12]. In response to the plaintiff's concerns about leaving a secure job in New York and moving his family across the country, the defendant, Rykoff, promised Lazar he would have a long and secure future with the company [12]. Specifically, the defendant told the plaintiff he would become part of the Rykoff "family," that the head of the department in which the plaintiff would be working was planning on retiring, and that Lazar would be groomed for that position [12]. Additionally, the defendant represented to the plaintiff that the company was financially sound and profitable and the department in which the plaintiff would be working was a growing division within the company [12]. Finally, the defendant told the plaintiff it would pay him $130,000 salary and that with regular raises based on good performance, he could quickly increase his salary to $150,000 [12]. The plaintiff requested a written contract, but was told it was unnecessary because "our word is our bond" [12]. The plaintiff accepted the defendant's offer on these terms and began working for Rykoff in February 1990 [12].

The defendant's statements were false. In fact, the company's financial position was bad, coming off its worst performance period in recent history [12]. Moreover, the defendant planned a merger that would eliminate the plaintiff's position altogether [12]. Additionally, the defendant knew the plaintiff's position would not be secure and he would not receive the promised salary increases because company policy limited annual increases to 2 or 3 percent [12].

Lazar worked for two years in the defendant's West Coast sales region and performed in "exemplary" fashion [12]. However, in April 1992, defendant Rykoff failed to pay the plaintiff a bonus for which he qualified. Later that year, the plaintiff's position was eliminated [12]. The plaintiff sued on several grounds, including fraudulent inducement, negligent misrepresentation, negligent infliction of emotional distress, and intentional infliction of emotional distress [12].

The sole issue considered by the California Supreme Court was whether, or under what circumstances, a plaintiff may state a cause of action for fraudulent inducement of an employment contract [12]. The elements the court set forth were essentially the same as those in *Lokay* [12, at 984]. After determining that the plaintiff sufficiently pled a cause of action for fraudulent inducement, the

court struggled with two previous California Supreme Court decisions that limited an at-will employee's right to sue an employer in tort [12].

First, in *Hunter v. Up-Right, Inc.*, the California Supreme Court held that an at-will employee in a wrongful discharge case could not sue his employer in fraud because he could not prove detrimental reliance, a necessary element of a fraudulent inducement claim [13]. The plaintiff, Hunter, alleged he quit his job in reliance of the employer's misrepresentation that it was eliminating his position [12]. In that case, even though the employer used a falsehood to discharge the employee, the *Lazar* court noted that the employer already had the power to discharge the plaintiff forthrightly [12]. Since the employer could terminate the plaintiff employee at any time for any or no reason, the employee could not detrimentally rely on the employer's representation [12]. Therefore, the plaintiff could not sufficiently plead a fraudulent cause of action [12].

The *Lazar* court distinguished *Hunter* because here, the plaintiff was not an employee when the misrepresentations were made [12]. The court noted that defendant Rykoff did not have the power to compel the plaintiff to leave his job in New York [12]. Therefore, plaintiff Lazar could, and in fact did, detrimentally rely on the defendant's false statements [12]. Also, the court distinguished *Hunter* because there the employee was in no worse position after quitting since he would have been fired anyway. Here, the plaintiff was in a worse position because he left a secure job in New York to work for a financially troubled company in California [12].

Next, the *Lazar* court distinguished its prior decision in *Foley v. Interactive Data Corp.*, where they held that the employment relationship is fundamentally contractual [14]. In *Foley*, the plaintiff sued under a breach of implied covenant of good faith and fair dealing [14]. The issue facing the *Foley* court was whether to acknowledge a *previously unrecognized* cause of action [14]. The California Supreme Court refused to extend tort remedies to the employment context for several reasons [12]. First, the *Foley* court cited concerns about economic policy and stability, recognizing that "the extension of . . . tort remedies" had "the potential to alter profoundly the nature of employment, the cost of products and services, and the availability of jobs" [12]. Also, the court noted the traditional distinction between tort and contract law, and the availability of numerous other protections afforded employees against improper terminations [12]. Finally, the *Foley* court said courts should exercise restraint when asked to recognize new causes of action and to fashion new remedies because extension of the law into new areas was "better suited for legislative decision-making" [12].

In contrast, the *Lazar* court noted the California legislature already recognized the common law cause of action of promissory fraud in a contract [12]. Thus, the need for judicial restraint was absent in the present case [12]. Specifically, the court noted that fraudulent inducement of a contract is not a situation requiring the traditional separation of tort and contract law [12]. Moreover, the *Lazar* court

said that the "existing protections" noted in the *Foley* opinion included "promissory fraud actions like this one" [12].

In support of its holding, the *Lazar* court relied on an equally compelling countervailing public policy in favor of punishing and deterring intentional misrepresentations [12]. Further, the concern for predictability of costs in contract cases was outweighed by the increased blameworthiness in fraud cases [12]. Accordingly, plaintiffs in fraud cases may recover compensatory damages for "out-of-pocket" expenses, such as the cost of moving, disruption of family, and the loss of income and security from the former job because these damages arise independently of the termination [12]. Also, these damages are recoverable in addition to any contractual damages that might apply [12].

Like the courts in *Lokay* and *Stewart*, the *Lazar* court focused on the nature of the damages and when they occurred. Here, Lazar's damages occurred before, during, and after he was employed with Rykoff, and they allegedly resulted from the defendant's intentional misrepresentations. Thus, the California Supreme Court allowed the plaintiff to proceed with his fraudulent inducement claim for any damages proximately caused by his detrimental reliance on the defendant's false statements.

CONCLUSION

Historically, most courts have held inviable the at-will employment doctrine. Employees hired without the benefit of a contract or some form of union protection or other collective bargaining agreement were generally considered at-will employees. As such, the employment relationship could be terminated by either party at any time for any or no reason. In other words, the employer could fire an at-will employee without having to show cause. Employers could make as many empty promises as they wanted without ever intending on keeping them, and employees had no recourse because at-will employees can have no expectations about the employment relationship.

However, as one can readily see from the above discussion, more courts are recognizing tort claims in the employment setting. With a claim of fraudulent inducement, more employees might have an avenue to redress their injuries when employers leave promises unfulfilled. Courts have held that employers can be liable for punitive damages, making fraudulent inducement claims potentially much costlier for employers than breach of contract claims. Also, courts have recognized fraudulent inducement claims for both current and prospective employees. When courts apply tort principles to the employment relationship, the at-will employment doctrine becomes eroded. Generally, courts point to public policy for support because they see the need to punish deceptive employer practices as outweighing concerns about eroding the employment at-will doctrine. Thus, it seems likely that more employees will bring fraudulent inducement claims against employers.

The tort of fraudulent inducement does have its limitations. The rule of law that seems to flow from these cases is that employees, or prospective employees, can sue for fraudulent inducement for unfulfilled promises the employer makes before the employment relationship is established. However, some jurisdictions have allowed current employees to recover for an employer's false statements made during the employment relationship, as long as the employee can show detrimental reliance.

Often, whether a court recognizes a fraudulent inducement claim comes down to how a plaintiff pleads his/her damages. The common theme among the decisions above is the nature of the plaintiff's damages. Generally, the courts require the damages to rest on the plaintiff's detrimental reliance on the employer's misrepresentations and arise independently from the termination. Any damages related directly to the termination will be barred by the at-will doctrine. But, if the plaintiff can allege some damage separate and independent from the termination, then the case will likely survive summary judgment on the fraudulent inducement claim.

Finally, most courts' willingness to recognize fraudulent inducement as an attack on the at-will employment doctrine should send a message to employers not to make promises they do not intend to keep. This does not mean that all at-will employees can sue their employers for unfulfilled promises. Nor does it signal the end of the at-will doctrine. Both employers and employees can still enter into employment relationships where either party can end it for any or no reason, at any time. Additionally, employers and employees can continue to contractually arrange their relationships. Fraudulent inducement is not a panacea for employee grievances where the employee does not get what they expected, or does not get promoted or kept on as long as the employer initially promised. However, employers should be aware that courts are recognizing such claims as a way of piercing the at-will doctrine with which many employers have clothed themselves to protect their deceptive practices.

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ENDNOTES

1. *Clarke v. Atlantic Stevedoring Co.*, 163 F. 423 (E.D.N.Y. 1908).
2. *See generally*, 37 Am Jur 2d, Fraud and Deceit sections 45-72.
3. *See e.g., Lokay v. Lehigh Valley Co-op Farmers, Inc.*, 492 A.2d 405 (Pa.Super. 1985); *Lazar v. Superior Court (Rykoff-Sexton, Inc.)*, 909 P.2d 981 (Calif. 1996); *Stewart*

v. Jackson & Nash, 976 F.2d 86 (2nd. Cir. 1992); *but see, Shelby v. Zayre Corp.*, 474 So.2d 1069 (Ala. 1985).

4. *Lokay v. Lehigh Valley Co-op Farmers, Inc.*, 492 A.2d 405 (Pa.Super. 1985); *See also, Berger v. Security Pacific Information Systems, Inc.*, 795 P.2d 1380 (Colo.App. 1990).
5. *Franz v. Iolab, Inc.*, 801 F.Supp. 1537, 1542 (E.D.La. 1992) (citing *Bernouidy v. Dura-Bond Concrete Restoration, Inc.*, 828 F.2d 1316 (8th Cir. 1987); *Berger v. Security Pacific Information Systems, Inc.*, 795 P.2d 1380 (Colo.App. 1990); *Walton v. Carolina Tel. & Telegraph Co.*, 378 S.E.2d 4276 (1989); and *Albrant v. Sterling Furniture Co.*, 736 P.2d 201(1987)).
6. *Lazar v. Superior Court (Rykoff-Sexton, Inc.)*, 909 P.2d 981 (Calif. 1986); and *Franz v. Iolab, Inc.*, 801 F.Supp. 1537 (E.D.La. 1992).
7. *Lokay v. Lehigh Valley Co-op Farmers, Inc.*, 492 A.2d 405 (Pa.Super 1985).
8. [7] at 410 (citing *Crawford v. Pituch*, 84 A.2d 204 (Pa. 1951) and quoting *Delahanty v. First Pennsylvania Bank, N.A.*, 464 A.2d 1243 (Pa.Super 1983)).
9. *Stewart v. Jackson and Nash*, 976 F.2d 86 (2d.Cir. 1992).
10. *Cole v. Kobs and Draft Advertising, Inc.*, 921 F.Supp. 220 (S.D.N.Y. 1996).
11. [10] at 224 (citing *Garwood v. Sheen and Shine, Inc.*, 175 A.D.2d 569, 572 N.Y.S.2d 237 (4th Dep't. 1991).
12. *Lazar v. Superior Court (Rydoff-Sexton, Inc.)*, 909 P.2d 981 (Calif.1996).
13. *Hunter v. Up-Right, Inc.*, 984 P.2d 88 (Calif. 1993).
14. *Foley v. Interactive Data Corp.*, 76 P.2d 373 (Calif. 1988).

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