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EMPLOYMENT LAW

Additional Consideration and Presumption of At-Will Employment

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Special to the Legal

Pennsylvania is, of course, a state with a strong presumption that employment is “at-will.” At-will employees can be terminated for any reason or no reason at all. One of the few exceptions to at-will employment is where an employee can demonstrate “additional consideration” beyond the services for which he or she was hired. In *Wakeley v. M.J. Brunner*, 2016 Pa. Super. LEXIS 227 (Pa. Super. Ct. 2016), the Pennsylvania Superior Court affirmed the lower court’s judgment for the defendant on the plaintiff’s breach of contract claims, although the employee’s relocation and house purchase were sufficient additional consideration to overcome the at-will employment presumption.

In 2012, Katie Wakeley, a project manager for an advertising agency in Dallas, was courted by



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a recruiter to join M.J. Brunner Inc. as a digital account director in Pittsburgh. Wakeley indicated that she was not interested unless the position offered a higher salary than she was currently earning and offered the opportunity for advancement. After Wakeley interviewed for the position, Brunner offered her \$90,000 annually, plus benefits and a \$4,000 relocation allowance, according to the opinion. At the time, Wakeley

earned \$80,000 annually. In April 2012, notwithstanding the fact that Wakeley and her family were settled in Dallas with no intentions of leaving, Wakeley accepted Brunner’s offer of employment and gave her employer notice of her resignation. Less than a week later, Brunner rescinded its offer of employment due to an unexpected change in its business, the opinion said. Wakeley was able to keep her job in Dallas.

FOOL ME ONCE, SHAME ON YOU; FOOL ME TWICE, SHAME ON ME

One month later, in April 2012, Wakeley was approached by the same recruiter about another position at Brunner. This new position, account director, offered the same salary and benefits as the previous position. Brunner explained that Wakeley would fill in for an employee who was on maternity leave and would later receive extensive training and be assigned

a permanent position, the opinion said. In addition, Wakeley's relocation allowance was increased to \$9,000. Given Brunner's representations, Wakeley resigned from her employment in Dallas. Wakeley executed a confirmation of employment, which specified that her employment with

Wakeley argued she was entitled to employment for a 'reasonable period' of time because she provided the company with 'additional consideration.'

Brunner was at-will, there was no contractual agreement, and that no Brunner representative had authority to make any contrary agreement.

Thereafter, Wakeley relocated to Pittsburgh and began her employment with Brunner. Wakeley received minimal training and guidance. After two "mishaps" involving client communications, Brunner grew critical of Wakeley's performance and her employment was terminated four days before the employee returned from maternity leave. Wakeley brought suit alleging breach of implied and express contract and fraudulent inducement. Judgment on the pleadings was

granted in favor of Brunner by the trial court. Wakeley appealed.

SUFFICIENT ADDITIONAL CONSIDERATION

On appeal, Wakeley argued that her employment relationship with Brunner was not at-will and she was entitled to employment for a "reasonable period" of time because she provided the company with "additional consideration" in the form of her resignation from a secure job, her decision to relocate her family to another state and her assumption of a 30-year home mortgage. Additionally, Wakeley argued that Brunner breached its agreement to provide her with training, an experienced supervisor and a new permanent position, the opinion said.

THE DOCUMENTS SPEAK FOR THEMSELVES

In its defense, Brunner pointed to the express language of the confirmation of employment signed by Wakeley, which specifically provided that her employment was at-will and that no representative of Brunner had the authority to make a contrary agreement. Brunner also pointed to Wakeley's initial employment application, which was executed on April 2, 2012, and also noted that her employment was at-will.

INITIAL EMPLOYMENT APPLICATION IRRELEVANT

Wakeley argued that the language in her application for employment

could not support Brunner's motion for judgment on the pleadings because that application related to a different position. The Superior Court agreed and noted that trial court's consideration of the application was in error because it related to a different job opportunity and by its express terms the application remained valid for only 30 days and thus was not valid at the time that Wakeley was approached about the second position.

The Superior Court found that by pleading she had left a stable job, uprooted her family and purchased a new home, Wakeley had successfully pleaded "additional consideration" sufficient to overcome the at-will presumption. Nevertheless, judgment for Brunner was affirmed based upon Wakeley having executed a confirmation of employment that specifically noted her employment's at-will status.

Wakeley serves as a helpful guidepost on the types of actions that can be deemed additional consideration sufficient to overcome the burden of presumption of an at-will employment relationship. •