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Wyoming high court finds no ambiguity in employment agreement

Executives violated agreement by engaging in own franchise venture

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The language contained in the employment agreement of two franchise executives was not ambiguous and did not require the consideration of parol evidence, held the Supreme Court of Wyoming after the executives challenged their termination for engaging in a competing business. The ruling affirmed the grant of summary judgment at the trial level to the executives' former employer, Taco John's International. *James v. Taco John's Int'l, Inc.,* 2018 WY 96 (08/22/2018).

Dan B. James and Shawn L. Eby were both franchise executives with Taco John's. In mid-2016, the wife of Taco John's CEO Jeff Linville expressed interest in opening a Beef Jerky Outlet franchise. Linville, James and Eby all agreed to act as investors in the franchise. In the run up to this investment, the three executives participated in conference calls and viewed webinars related to the Beef Jerky Outlet franchise from the Taco John's corporate offices. They also registered an LLC and drafted a business plan naming them as the LLC's sole partners. The plan outlined the three individual's roles in the venture, which mirrored their respective responsibilities with Taco John's. The plan also detailed their ambitions to open 15 Beef Jerky Outlets by 2021. The team then sought financing by sending their proposal to investors using their Taco John's email accounts. During a Taco John's related business trip to Tennessee, the three visited the Beef Jerky Outlet headquarters to discuss their venture with its executives.

When Taco John's general counsel learned of these outside business activities, he reported the matter to the company's board, which terminated James and Eby for cause under their employment agreements. The agreements, which both individuals signed when they were hired, required that they "devote all of their time, attention, knowledge and skills solely to the business and interest of the employer."

James and Eby filed suit for breach of the employment agreement, seeking more than $1 million each in damages. The trial court granted the employer's motion for summary judgment, finding that the agreements unambiguously precluded them from engaging in outside business while still employed as executives, and that their involvement in forming the new company provided sufficient basis to terminate under the agreement.

The executives argued at the trial level, as they did on appeal, that the employment agreements were ambiguous and that resolution of the matter required the examination of parol evidence at trial. Specifically, they took issue with the use of the word "all" in the contract provision, arguing that it was so broad as to prohibit them from shoveling sidewalks, mowing the lawn, or attending church.

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The high court was not moved by these arguments. It held that in context the term "all" referred to the executives' business-related activities, and that interpreting it to encompass personal activities was simply unreasonable. A plain reading of the provision, the court held, did not reveal any ambiguities that would require the examination of extrinsic evidence. The agreement did not provide any exceptions permitting them to engage in business ventures outside those of Taco John's.

Parol evidence not admissable

In *James v. Taco John's*, the court looked to *Ultra Resources, Inc. v. Hartman*, 2010 WY 36 (03/23/2010) in making its decision that the employment agreements signed by the executives unambiguously prohibited them from exploring, forming, or participating in other business ventures not related to Taco John's International and prohibited consideration of parol evidence.

In *Ultra Resources*, the court stated that "[E]vidence of circumstances surrounding the execution of a contract may always be shown and is always relevant in determining the contracting parties' intent. The term 'surrounding circumstances' refers to the commercial or other setting in which the contract was negotiated and other objectively determinable factors that give a context to the transaction between the parties. Parol evidence, on the other hand, is not admissible to establish contracting parties' intent unless the contract itself is ambiguous."

The court also held that the CEO's participation in the venture did not create apparent authority on behalf of the company to allow the two individuals to join the outside business. The court noted that the employment agreements explicitly provided that any changes to the agreement had to be in writing and executed by both parties. These disclaimers precluded the executives from reasonably relying on any direct or implicit approval by the CEO for their conduct.