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### **At-Will Provisions Do Not Protect Employers From Fraud Claims**

An employer who makes false promises when hiring an employee may be liable for fraud regardless of the employee's at-will employment status. In *Agosta v. Astor*, the California Court of Appeal recently held that an employer who induces an employee to enter into an employment contract by intentionally promising compensation terms the employer never intended to honor may not avoid tort liability for fraudulent inducement of contract just because the contract contains an "at-will" provision.

After agreeing to the terms of a compensation plan, Agosta resigned from his account executive job with Clear Channel Communications, and accepted a position as the General Sales Manager for Astor's San Diego and Orange County based radio stations. Agosta agreed to take the job only after Astor agreed to provide him with the exact compensation he requested. Shortly after beginning his employment, Astor informed Agosta that he was "withdrawing" the previous compensation agreement. Three weeks into his employment, Astor terminated Agosta's employment.

The Court first distinguished a fraud claim from a wrongful termination claim, explaining that the employer's fraudulent inducement caused damages **unrelated** to the employee's discharge, and is therefore actionable regardless of the employee's at-will status. Thus, as an at-will employee, Agosta could not obtain damages arising from the termination of his employment based on breach of contract, but could obtain damages for the loss of security and income associated with his former employment due to fraud. The Court warned "an at-will employer does not have carte blanche to lie to an employee about any matter whatsoever to trick him or her into accepting employment."

From a practical standpoint, this case does not diminish the importance of well-written, integrated at-will employment policies. However, it does emphasize that employers must nonetheless be very cautious when engaging in negotiations to solicit prospective employees, and should always truthfully memorialize the terms and conditions of a prospective employee's employment in a detailed offer letter in order to avoid claims that additional promises were made to the employee.

For more information on this issue, please contact a member of the Labor and Employment Practice Group in one of our offices.

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