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BLOGS

Contracts

Court Holds Sales Agreement With Indefinite Duration Is Not Terminable at Will if Its Terms Provide Otherwise

The United States Court of Appeals for the Seventh Circuit recently reversed a lower court's judgment that a sales agreement was of indefinite duration and therefore terminable at will. *Burford v. Accounting Practice Sales, Inc.*, 2015 U.S. App. LEXIS 7894 (7th Cir. May 13, 2015). The parties had entered into an agreement whereby Burford facilitated the purchase and sale of accounting practices in a designated territory on behalf of Accounting Practice Sales ("APS"). The agreement had an initial term of twelve months and provided that it would renew automatically for another twelve-month period each year thereafter. It stated that "APS cannot terminate [the agreement unless it is violated by Burford]." When APS terminated the parties' relationship, Burford brought suit for breach of contract. The district court granted summary judgment to APS on the theory that the sales agreement was perpetual, and as with any contract of indefinite duration, it could be terminated at will by either party. Burford appealed the grant of summary judgment and argued that APS could only terminate the contract for cause.

The Seventh Circuit held that the lower court erred in granting summary judgment for APS because the plain language of the sales agreement and the context in which it was signed showed that APS could not terminate the contract at will. Applying Illinois law, the court recognized that the sales agreement was of indefinite duration and that, as a general rule, such contracts are presumed to be terminable at will by either party. However, the court reasoned that parties can avoid this presumption if they agree to place limits on when termination may take place. The sales agreement included an express provision that it could be terminated by APS only if Burford violated its terms. The court inferred that this provision was intended to protect Burford from the risk that APS would wait until he had built up his territory and then reassign it to someone else. Absent APS's ability to terminate the agreement at will, the contract claim survived summary judgment.

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