



BLOGS
Contracts

Seventh Circuit Affirms Dismissal of Inventor’s Claim that Distributor Failed to Use Commercially Reasonable Efforts to Sell Its Products

The Seventh Circuit Court of Appeals affirmed an Indiana court’s order dismissing a claim by inventor Thomas Russell that his exclusive distributor, Zimmer, Inc., failed to use commercially reasonable efforts to sell Russell’s products. *Russell v. Zimmer, Inc.*, 82 F.4th 564 (7th Cir. 2023).

The Seventh Circuit Court of Appeals affirmed an Indiana court’s order dismissing a claim by inventor Thomas Russell that his exclusive distributor, Zimmer, Inc., failed to use commercially reasonable efforts to sell Russell’s products. *Russell v. Zimmer, Inc.*, 82 F.4th 564 (7th Cir. 2023). The district court found that, given the terms of the agreement between the parties, Russell failed to state a viable claim for relief and denied Russell’s request to amend the complaint a second time. In affirming the district court’s decision, the Seventh Circuit agreed that the plain language of the agreement made clear that the allegations did not support a breach of contract claim, and that the district court did not abuse its discretion in denying the motion to amend the complaint.

Russell, an orthopedic trauma surgeon who invented numerous products such as bone substitutes and surgical devices, argued that the complaint’s detailed list of 21 actions that Zimmer took or failed to take sufficiently set forth a claim that Zimmer breached the agreement by failing to use commercially reasonable efforts. The court of appeals affirmed the district court’s decision to evaluate whether Zimmer used “commercially reasonable efforts” by looking to Zimmer’s own business practices instead of looking at an objective industry standard, reasoning that the plain language of the agreement emphasized that Zimmer’s ordinary commercial practices should be applied, including a statement that: “decisions and actions with respect to particular Earnout Products are to be evaluated in the context of the business, operations and product portfolio of Buyer [Zimmer] and its Affiliates.” The court of appeals also explained that the agreement did not create a fiduciary duty between the parties; rather it disclaimed any representation as to future performance.

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