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Summary of Whitemaine v. Aniskovich, 124 Nev. Advanced Opinion 29

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***Whitemaine v. Aniskovich*, 124 Nev. Advanced Opinion 29, (May 15, 2008)¹**

CONTRACTS – EMPLOYMENT CONTRACTS

Summary

Appellant Whitemaine had concurrent employment contracts with Bank of America Investment Services, Inc. (BAIS) and Bank of America, N.A. The BAIS contract contained a provision requiring appellant to arbitrate any dispute related to her employment. The Bank of America contract contained no arbitration clause, but contained an integration clause. The issue in this case was whether two employment contracts can constitute a single agreement when one of them contains an integration clause.

Disposition/Outcome

The two contracts formed a single agreement, one which included all the provisions of the two separate agreements.

Factual and Procedural History

Appellant Suzanne Whitemaine entered into an employment contract with Bank of America, N.A. in August 1997. The contract contained an integration provision which provided it was “the complete agreement between [Bank of America] and [Whitemaine], and takes the place of all prior oral and/or written agreements ... [and] [a]ny future changes to th[e] Employment Agreement must be in writing, signed by an authorized Bank representative.”²

Three days later Whitemaine entered into an employment contract with BAIS to work as a registered representative dealing in securities. The contract contained an arbitration clause

¹ By Meredith Holmes

² *Whitemaine v. Aniskovich*, 124 Nev. Advanced Opinion 29 at 3 (May 15, 2008).

which would continue notwithstanding termination of her employment with BAIS. During her employment with BAIS, she was supervised by Aniskovich, a BAIS manager. The BAIS contract referenced the Bank of America contract, stated that Whitemaine was employed by both BAIS and Bank of America, provided that BAIS retained exclusive control of Whitemaine's employment, and allowed either BAIS or Bank of America to terminate the BAIS agreement. Whitemaine agreed that she only represented BAIS, not Bank of America.

In January 1999, BAIS disciplined Whitemaine for violating a provision of her employment contract and demoted her to a preferred banker position with Bank of America, where she remained for approximately six months before voluntarily terminating her employment. Whitemaine brought about this action in September 2001 against Aniskovich and BAIS. Aniskovich and BAIS moved to dismiss the claims, which the district court granted with respect to several of the claims, then set the case for trial. Aniskovich and BAIS then moved to compel arbitration before the National Association of Securities Dealers (NASD), due to the arbitration clause in the employment contract, which the court granted. Whitemaine then amended her complaint to add Bank of America as a defendant.

At arbitration, the NASD panel found in favor of respondents, who subsequently moved the district court to confirm the arbitration award, which it did over Whitemaine's objections. Whitemaine then timely filed an appeal to the Nevada Supreme Court.

Discussion

The Court held that the district court did not err when it found that that the arbitration clause in the BAIS contract applied to claims arising from her employment with Bank of America.

The Court went on to discuss that the two employment contracts constituted a single agreement. In *Collins v. Union Federal Savings & Loan*,³ the Court held that two agreements are “presumed to be a single contract if (1) they are contemporaneously executed, (2) they concern the same subject matter, and (3) one of the instruments refers to the other.” The court held that all three requirements were met in this case.

The first requirement, contemporaneous execution, could be satisfied by a wide range of time spans, and the Court held that substantial evidence supported the district court’s finding that a three day time span between the signing of the two agreements constituted contemporaneous execution.

The second requirement, same subject matter, is met if they “both contain terms regarding the employment.” The court cited to the California case, *Brookwood v. Bank of America*,⁴ which addressed very similar facts and issues as the present case, and held that “a security dealer’s dual employment contracts with related entities involved the same subject matter because they both contained provisions regarding the terms of the employee’s employment.”⁵ The Court adopted the California Court of Appeal’s reasoning, and held that substantial evidence supported the district court’s finding that the two employment agreements involved the same subject matter. There was evidence in the record that the two agreements were connected with each other, that Whitemaine was required to be employed with BAIS in order to be an employee of Bank of America, and that the BAIS agreement referenced her employment with Bank of America numerous times.

The final requirement, that one agreement references the other, was met because the “BAIS agreement referenced the Bank of America agreement a total of 20 times and on every

³ 99 Nev. 284, 662 P.2d 610 (1983).

⁴ 53 Cal. Rptr.2d 515, 521 (Cal. Ct. App. 1996).

⁵ *Whitemaine v. Aniskovich*, 124 Nev. Advanced Opinion 29 at 9 (May 15, 2008); *Brookwood*, 53 Cal Rptr. at 518.

page.”⁶ Although the Bank of America agreement did not reference the BAIS agreement, both instruments are not required to reference each other under *Collins v. Union Federal Savings & Loan*.

The Court went on to discuss the California case *Brookwood v. Bank of America* in regards to whether an integration clause in one employment agreement would prevent the application of provisions contained in another agreement, specifically an arbitration clause in this case. The court held that, based on the record, the two agreements “were part of substantially one transaction and should be taken as one.”⁷ The Court extended the ruling in *Collins* to adopt the reasoning of *Brookwood*.

Conclusion

The Court held that substantial evidence supported the district court’s finding that the Bank of America and BAIS agreements constituted one agreement, regardless of the fact that the Bank of America agreement contained an integration clause. Therefore, the district court was correct in ordering Whitemaine to arbitrate her claims against Bank of America, and the order confirming the arbitration award was affirmed.

⁶ *Id.* at 11.

⁷ *Id.* at 13 (quoting *Brookwood*, 53 Cal. Rptr. at 520-21).