

Federal Court Denies Summary Judgment On Breach Of Fiduciary Duty Claim Against Former Employee

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In *Eho360 LLC v. Opalich*, an employer sued its former employee for breaching fiduciary duties and other related claims regarding the former employee setting up a competing business. No. 3:21-CV-0724-B, 2023 U.S. Dist. LEXIS 45076 (N.D. Tex. March 17, 2023). The employee filed a motion for summary judgment, which the district court denied. The court stated the law in Texas as follows:

Under Texas law, “[t]he elements of a breach of fiduciary duty claim are: (1) a fiduciary relationship between the plaintiff and defendant; (2) the defendant must have breached his fiduciary duty to the plaintiff; and (3) the defendant’s breach must result in injury to the plaintiff or benefit to the defendant.” A fiduciary duty generally entails “fair dealing and good faith” and “integrity and fidelity.” When a fiduciary relationship exists between an employer and an employee, an employee “has a duty to act primarily for the benefit of the employer in matters connected with his [employment].” But, “an employer’s right to demand and receive loyalty must be tempered by society’s legitimate interest in encouraging competition.” Under Texas law, “[a]n at-will employee may properly plan to go into competition with his employer and may take active steps to do so while still employed.” And a fiduciary relationship “does not preclude the fiduciary from making preparations for a future competing business venture; nor do such preparations necessarily constitute a breach of fiduciary duties.” However, the Texas Supreme Court has imposed limitations on an employee’s right to prepare to compete with his employer. “[An employee] may not appropriate his employer’s trade secrets He may not solicit his employer’s customers while still working for his employer . . . , and he may not carry away certain information, such as lists of customers. . . . Of course, such a person may not act for his future interests at the expense of his employer by using the employer’s funds or employees for personal gain or by a course of conduct designed to hurt the employer.” And while “[f]iduciary duties generally terminate at the end of an employment relationship,” some duties survive the termination of employment. One such duty “forbids an employee from using confidential or proprietary information acquired during the relationship in a manner adverse to his employer.” “Although this duty does not bar use of general knowledge, skill, and experience, it prevents the former employee’s use of confidential information or trade secrets acquired during the course of employment.”

Id. (internal citations omitted).

The court held that the evidence created a fact issue as to whether the defendants, who were executives, used confidential information from their former employer to set up their new competing business. This was true even though the defendants had no restrictions on competition. Further, regarding damages, the court held that even though the plaintiff did not lose any business, the evidence showed that the defendants benefited from their fiduciary breaches, which is sufficient to sustain a breach of fiduciary duty. Based on this evidence the court denied the summary judgment motion as to both defendants.

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