

Puerto Rico Supreme Court: Former Exec Cannot Sue Individual Board Members for Breach of Employment Contract

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A former employee cannot sue individual members of a corporation's board of directors for breach of an employment contract and negligence in execution of fiduciary duties, where: 1) the individual board members are not parties to the employment contract; and 2) the employee and his relatives are not shareholders with standing to sue board members for alleged breach of fiduciary duty, the Puerto Rico Supreme Court has held. *Randolfo Rivera San Feliz et al v. Junta de Directores de Firstbank Corporate et al.*, 2015 TSPR 61, 196 DPR ____ (2015).

Plaintiff Randolph Rivera was a former executive of a banking entity in Puerto Rico. The terms of his employment were established in a contract with the bank. The contract provided that any decision regarding the contract, including termination of employment, had to be approved by at least two-thirds of all the members of the bank's board of directors. The contract also contained a clause requiring arbitration of any controversy regarding the interpretation of the employment contract.

The bank terminated Rivera's contract in June of 2010. He filed a lawsuit against the bank in Puerto Rico Superior Court, alleging unjust dismissal and breach of contract under the law of Puerto Rico. While this litigation was pending, Rivera filed a separate lawsuit against each member of the board of directors, requesting damages for breach of contract and alleged negligence in the execution of their fiduciary duties. He asserted the board members wrongfully allowed his termination in violation of his employment contract. Rivera's partner, children, and siblings were included as co-plaintiffs in the second lawsuit, each alleging emotional and economic damages arising out of the employment termination.

The initial lawsuit between Rivera and the bank was dismissed by the court for lack of jurisdiction in light of the employment contract's arbitration provision.

The second lawsuit, against the board of directors, also was dismissed at the pleadings stage. The court held Rivera and his family may not sue individual members of the board of directors for violation of their fiduciary duty, because such a claim was available only to shareholders of a corporation through a derivative action and neither Rivera nor his relatives were shareholders. Rivera and his relatives appealed the dismissal of this lawsuit and the case eventually came before the Puerto Rico Supreme Court.

Puerto Rico's highest court upheld dismissal of the action because a non-shareholder does not have standing to sue individual directors of a corporation for an alleged violation of their fiduciary duty. The Supreme Court reiterated that a breach of

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violation of their fiduciary duty. The Supreme Court reiterated that a breach of fiduciary duty claim requires an existing relationship between plaintiffs and defendants, such as the one that exists between shareholders and a corporation's board of directors. The Court also held that the board of directors could not be liable for breach of contract because it was the corporation, and not the individual members of the board, that was a party to the contract.

Associate Justice Annabelle Rodriguez-Rodriguez dissented. She noted that the employment contract at issue had a clause that was undisputed which provided for arbitration of all controversies related to interpretation of the contract. Since the second lawsuit was based on alleged breach of fiduciary duty arising out of the termination of the contract, she would have dismissed for lack of jurisdiction in light of the arbitration clause and abstained from analyzing the nature of the claims for purposes of a standing issue.

In light of Puerto Rico law governing employee terminations, employers should tread carefully when drafting employment contracts that contain specific reasons for termination, as well as notification requirements.

Please contact your Jackson Lewis attorney if you have any questions.

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