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PERSPECTIVE

Court clarifies 7-year rule for employment contracts, *finally*

By Anthony J. Oncidi

Los Angeles County Superior Court Judge Marc D. Gross made history on June 5 by becoming the first state court judge to decide an issue that has been haunting California employers for years: Whether employees who have entered into successive-term employment agreements may seek to invalidate the last agreement in the series based upon the "seven-year rule" (Labor Code Section 2855).

Judge Gross rejected as a matter of law the notion advocated by Netflix in the ongoing employee-poaching litigation filed against it by Twentieth Century Fox Film Corp. that the total number of years from successive-term agreements can be aggregated, and if the sum exceeds seven years, then the final agreement is voidable at the option of the employee pursuant to the seven-year rule.

In short, Judge Gross rejected Netflix's invitation to convert the application of the seven-year rule into a simple math problem (i.e., does the total number of years of service under successive employment agreements exceed seven?): "Netflix is, in effect, asking this court to look solely to the length of each employee's tenure with Fox as determinative. However, Netflix, in making this argument, does not address the difference between the length of time someone has worked for a company and the term of any specific employment contract."

Fox filed its complaint against Netflix in 2016, alleging that Netflix tortiously interfered with and induced the breach of two separate term employment agreements that Fox had with two of its executives. Fox alleges that Netflix tortiously induced the employees to breach their agreements by soliciting, recruiting, hiring and agreeing to defend and indemnify them — while, by the way, also doubling their salaries.

Among other things, Fox alleges Netflix is engaged in a "brazen campaign to unlawfully target, recruit and poach valuable Fox executives by illegally inducing them to break their employment contracts with Fox to work at Netflix." Fox asserts this conduct violates the Unfair Competition Law (Bus. & Prof. Code Section 17200) and that Netflix has induced at least 15 other employees (beyond the two directly at issue in the case) who were employed by Fox pursuant to similar term employment agreements.

Netflix proffered a number of arguments in support of its motion to summarily adjudicate and dismiss Fox's UCL claim — and Judge Gross rejected each and all of them in an exceedingly well-reasoned and elegantly-crafted 16-page ruling.

Netflix principally argued that Fox is not entitled to injunctive relief because some of its employees "have been bound" to remain employed with Fox for more than seven years. Labor Code Section 2855, which has been on the books in one form or another for more than 80 years, says in pertinent part: "a contract to render personal service … may not be enforced against the employee beyond seven years from the commencement of service under it."

Importantly, Netflix did not argue that Fox routinely (or ever) enters into term employment agreements whose singular term exceeds seven years (the clear focus of Section 2855). Instead, Netflix argued that because Fox (like many other employers) enters into "consecutive and overlapping" fixed-term contracts with some of its employees, such employees are subject to "continuous obligations longer than seven years" and their contracts are, therefore, voidable under the seven-year rule.

The provenance of this profound misinterpretation of the seven-year rule is a 2011 federal district court opinion (*De La Hoya v. Top Rank, Inc.*, 2011 WL 34624886 (C.D. Cal. 2011)), which Judge Gross easily distinguished on the ground that it did not involve separate successive agreements, but, rather, the *same contract* that was amended and extended (and not superseded by a new contract) for more than seven years.

Judge Gross found another federal district court opinion to be "better reasoned": *Manchester v. Arista Records, Inc.*, 1981 U.S. Dist. Lexis 18642 (C.D. Cal. 1981), in which the court rejected the argument that successive term employment agreements are voidable under the seven-year rule just because they happen to overlap with one another. "This argument is unpersuasive. It would effectively prevent an employee from entering into a new contract with his or her current employer until after completion of all obligations between them. The better course is to consider the circumstances surrounding the formation of the new contract in each situation." *Id.* at *18.

In addition, Judge Gross seemed to find persuasive the common sense outcome dictated by *Manchester*: "Netflix's position ignores the benefits to the employee of having continuous employment if the employee so chooses. This may provide financial security and provide an employee assurance that he or she will be able to continue to meet their obligations (mortgage, car payment, school tuition, etc.) … Labor Code Section 2855 merely ensures a choice must be available to employees at least every seven years to ensure they have the freedom and opportunity to choose to enter into employment agreements."

If Netflix's interpretation of the seven-year rule were correct, then no employer could enter into successive term employment agreements after seven years without the fear that the contracts would become voidable at the whim of the employee. That would soon translate into a hard-and-fast rule that employees with tenure greater than seven years would be summarily converted into at-will employees, whether they liked it or not. This obviously would not serve the interests of employees or employers who are otherwise content to continue to negotiate and execute new contracts after the seven-year mark.

In addition to the failed attack based upon the seven-year rule, Netflix argued that Fox "is not entitled to a blanket injunction preventing Netflix from recruiting and hiring Fox's employees whom Fox legally could not enjoin directly." Netflix asserted that because Fox cannot enjoin the employees themselves since they were not providing specialized or unique services, Fox should not be able to enjoin Netflix either.

In rejecting this argument, Judge Gross noted Fox is not seeking to enjoin Netflix from recruiting and hiring Fox's fixed-term employees, but, rather, is seeking an injunction restraining Netflix from *intentionally interfering* with Fox's fixed-term employment agreements.

Netflix also argued unsuccessfully that because the Fox employment agreements contained a provision permitting Fox to seek injunctive relief against the employees to prevent their breach of the agreement (which Netflix argues is unenforceable as to these particular employees), the overall agreements violate the anti-non-compete statute (Bus. & Prof. Code Section 16600). The court disagreed, stating that "the injunctive relief provisions do not, in fact, restrain anyone. Fox … merely reserved the right to seek injunctive relief" and, in any event, those provisions could be severed.

Although Judge Gross' well-reasoned trial court opinion is of course not binding precedent for other parties in other cases, it is good news for the many California employers and employees who are content to continue negotiating and executing new employment agreements beyond an arbitrary seven-year end date. A contrary holding would have been both unnecessarily rigid and unworkable, while upending the tranquility of long-standing employment relationships throughout the state.

Anthony J. Oncidi *is a partner in and the chair of the West Coast Labor and Employment Department of Proskauer Rose LLP in Los Angeles.*


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