Joint Venture Win: Internal Communications Are Not Considered "Published"

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Participating in a joint venture is one way a business can capitalize on new opportunities which may otherwise be out of reach. Moreover, unlike other forms of inter-enterprise organization, joint ventures tend to protect the participants from damaging, opportunistic behavior. With the right focus and alignment of interests, a joint venture can lead to collaborative solutions and better bottom lines. But like all business endeavors, joint ventures entail certain risks. For example, where competing businesses participate in a joint venture, federal antitrust issues can emerge. Moreover, in some cases, a business can find itself liable for the missteps of a fellow joint venture participant—often with respect to the treatment of current or former employees. Fortunately, an Oklahoma appeals court recently decided that liability for "blacklisting" does not extend to joint venture participants who may merely exchange information amongst themselves.

In *Asher v. Parsons Electric*, two electric companies decided to form a joint venture in order to submit a bid for electrical work on a large construction project. Under their agreement, one company would provide manpower and the other would provide foreman and equipment. The agreement was a classic example of how businesses can leverage the flexibility of joint ventures to upsize on-demand in order to tackle a large project. After the two companies formed a joint venture and while the construction project was ongoing, one emailed the other a list of electrical workers who had previously been terminated for cause. Some of those workers found out and filed suit.

The workers' argument, in short, was that the electric companies conspired against them in violation of Oklahoma's blacklisting statute. That statute, 40 O.S. § 172, prohibits businesses from sharing, or more precisely, "publishing" a list of discharged employees with the intent that such employees not be hired elsewhere. At first glance, it seems the workers had a colorable argument. Indeed, one company shared a list of discharged employees with the other. Luckily for the electric companies, they were participants to a joint venture. That meant, according to the court, that there was no "publication" of the list. Rather, the list was simply an internal communication within the joint venture. As such, it did not amount to blacklisting, and the electric companies prevailed. The Court held that the blacklisting statute "requires a communication to be addressed to a person or entity other than an agent, partner, or joint venturer in order to constitute an actionable offense."

The case was a win for joint ventures, and it should encourage those considering such an arrangement. At GableGotwals, our Commercial Law and Employment & Labor teams are committed to helping employers during the formation of inter-enterprise organizations and thereafter to avoid claims and mitigate risk. To that end, please feel free to contact any member of the team for assistance.

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