NORTH CAROLINA ASSOCIATION OF DEFENSE ATTORNEYS

The Resource

March 2018 Feature Article

U.S. Supreme Court Scolds the Sixth Circuit for Attempting to Side Step Precedent

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Three years ago, I co-authored a case summary (here) about a U.S. Supreme Court decision applying "ordinary principles of contract law." *See M&G Polymers USA, LLC v. Tackett*, 135 S.Ct. 926 (2015). I thought *Tackett* was worth a short article because it is unusual to see a U.S. Supreme Court case on contract law.

In *Tackett*, the Supreme Court vacated a Sixth Circuit decision because that court had failed to apply ordinary principles of contract law to a collective bargaining agreement. The issue in *Tackett* was whether the agreement, governed by The Employee Retirement Income Security Act of 1974 (ERISA), granted lifetime health benefits to employees even in the face of the agreement's three-year term. In a prior case, *International Union, et al v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), the Sixth Circuit had adopted its "*Yard-Man*" inference, pursuant to which courts in the Sixth Circuit could construe the grant of health care benefits in a collective bargaining agreement as vested and interminable despite express language setting an expiration date on the entire agreement itself.

It now appears that *Tackett* has exposed a minor rift between the Sixth Circuit and the Supreme Court, because the Sixth Circuit would not take "no" for an answer in *Tackett*. Those who are familiar with how judges speak (and write) when they take a lawyer to the woodshed will recognize that same tone and frustration in the Supreme Court's February 2018 opinion in *CNH Industrial Nv, et al v. Jack Reese, et al*. In a per curiam opinion, the Supreme Court recognizes that it had addressed the same issues in Tackett only "[t]hree terms ago," and then the Court summarizes the case and its holding as follows:

> *In this case, the Sixth Circuit held that the same Yard-Man inferences it once used to presume lifetime vesting can now be used to render a collective-bargaining agreement ambiguous as a matter of law, thus allowing courts to consult extrinsic evidence about lifetime vesting. 854 F. 3d 877, 882-883 (2017). This analysis cannot be squared with Tackett. A contract is not ambiguous unless it is subject to more than one reasonable interpretation, and the Yard-Man inferences cannot generate a reasonable interpretation because they are not "ordinary principles of contract law," Tackett, supra, at ___ (slip op., at 14). Because the Sixth Circuit's analysis is "Yard-Man re-born, re-built, and re-purposed for new adventures," 854 F. 3d, at 891 (Sutton, J., dissenting), we reverse.*

The Supreme Court makes a point of reminding the Sixth Circuit that no other circuit has made this same error: "[t]ellingly, no other Court of Appeals would find ambiguity in these circumstances . . . . The approach taken in these other decisions 'only underscores' how the decision below 'deviated from ordinary principles of contract law.'" Ouch.

In judge-speak for "this is not rocket science," the Supreme Court concludes its opinion by remarking that "[s]horn of *Yard-Man* inferences, this case is straightforward." The Court then shows the Sixth Circuit how it could have decided the case in about the length of a single paragraph. The Court's final jab notes that the Sixth Circuit continues to be unreasonable in its approach to collective bargaining agreements: "Thus, the only reasonable interpretation of the 1998 agreement is that the health care benefits expired when the collective-bargaining agreement expired in May 2004." (emphasis added)

The nugget of contract law, quoted from *Tackett*, is that "[w]hen the intent of the parties is unambiguously expressed in the contract, that expression controls, and the court's inquiry should proceed no further." Do not pass go. Do not collect $200!