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By: Kelly Caplan in News Stories March 30, 2020

An Ottawa County jury found that a defendant manufacturer did not breach either express or implied contracts or the Michigan Sales Representative Commission Act even though it engaged in business activities with the plaintiff salesman without a signed sales representative agreement.



Dornbos

After a seven-day trial, the jury returned a no-cause verdict in this employment matter, *Fluxis Marketing, LLC v. Volta Power Systems, LLC*, Ottawa County Circuit Court, Case Number: 17-5199-CB, heard in Judge Jon Van Allsburg's courtroom.

Jeffrey S. Dornbos, a senior attorney with Clark Hill PLC in Grand Rapids, represented the defendant. He said this case was unusual in several respects.

Fluxis, he noted, is a single-member LLC that was seeking both cash and an equity interest in Volta. However, his client's position was that not only did the parties never finalize a sales representative agreement, the plaintiff never finalized any sales for Volta.

"In a nutshell, Volta was trying to negotiate a sales representative agreement with Fluxis in good faith," he said. "During this time, Fluxis was learning about the business, and going on sales calls to learn about the business, but was not

bringing in customers for Volta. Volta never agreed to give any equity to Fluxis."

He added that the plaintiff claimed there was an oral agreement for equity in Volta, and the plaintiff was looking for an award that would have given it an equity ownership in Volta.

"That claim for equity was dismissed after several attempts shortly before trial," he said.

He noted that while the plaintiff also alleged unjust enrichment, he was able to overcome that claim as well.

"The jury found that Volta did receive a benefit from Fluxis, but that no inequity resulted to Fluxis because of the retention of that benefit by Volta, which makes it unique," he said.

A final distinction Dornbos pointed out involved pretrial stipulations, or rather the lack thereof.

"It was a hard fought battle with respect to admitting exhibits," he stated. "There were dozens of exhibits on each side and very few pretrial stipulations."

He said the basis of the story he presented to the jury was clearly showing the multiple versions of the SRA that were sent back and forth, but never signed. This is what, in the end, helped him succeed.

"Have a good plan for how to persuasively present documents to a jury, and how to use those documents to impeach the [opposing side's] testimony," he said.

Plaintiff's counsel Stephen J. Hulst did not respond to requests for comment before deadline.

Background



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Plaintiff Fluxis Marketing assists companies with business development, program management, marketing, and new product development. In early 2015, it approached defendant Volta Power Systems, a manufacturer of Lithium ion energy systems for mobile applications, about becoming a sales representative for the company.

According to court documents, the plaintiff proposed a “full-service” approach, where it would be the first line of contact for sales and marketing of the defendant’s products, and would be “fully immersed” in the business.

The parties held meetings and discussions about a sales representative agreement, and continued to exchange drafts and emails regarding the terms of the SRA throughout 2016 and into 2017.

“They sent numerous drafts of a sales representative agreement back and forth during a lengthy time period, and never came to any final agreement,” Dornbos said. “Nothing was ever signed.”

The plaintiff filed suit in late 2017 in Ottawa County Circuit Court on the specialized business docket.

Dornbos said the plaintiff alleged that the parties entered into an enforceable verbal agreement, and filed suit for breach of contract, breach of contract implied in fact, breach of contract implied in law, promissory estoppel, and violation of Michigan’s Sales Representative Commission Act.

Document-heavy discovery

Dornbos said his first hurdle to overcome in this case was discovery. The plaintiff, as a single-member LLC, had contracts with several other companies to act as their sales representative.

“He had his own computer and cell phone, and it was used for all of the work he did with Volta, and all of the other companies he was contracted to,” he said. “Fluxis had email addresses for many different companies that it was working as a sales rep for, not just Volta.”

That’s when he obtained a court order to allow D4 to help with e-discovery and forensics, including examining the plaintiff’s computers directly and downloading emails and metadata.

Fluxis had claimed it was working for Volta all the time, Dornbos noted, so it wasn’t just thousands of emails between Fluxis and the Volta principals, it was all of plaintiff’s emails.

“We tried to establish what the plaintiff was doing with his time,” he added. “We reviewed thousands of emails to see if we could say it wasn’t accurate that he was spending all of his time working on things related to Volta because he was doing work for other companies, too.”

Engaging the jury

Dornbos said he took a thoughtful and straightforward approach to the case.

“There were so many versions of the unsigned SRA going back and forth,” he said. “We used a lot of visual aids in trying to highlight the different agreements to keep the jury engaged.”

To do this effectively, he said they hired Collin Ritsema from Fortz Legal in Grand Rapids to assist with the trial technology during the questioning.

“We put up different provisions from the agreements side by side from earlier to later versions and highlighted the differences,” Dornbos noted.

As engaging as the technical aspects of the trial were, Dornbos credits the human element as crucial to winning.

He called the four principals of Volta, another sales representative the company works with, and some of the customers that salesman worked with.

“The key for us was juxtaposing the different versions of the SRAs with compelling testimony from our witnesses,” he said. “We wanted to allow our witnesses to bring the story to life, and then weave the documents in and around that story.”

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