



Employer's Internally Inconsistent Documents Precluded It From Retaining Disputed Charges Under Tips Act

The Massachusetts Supreme Judicial Court ("SJC") recently issued a decision that emphasizes the importance of clear contractual language in the context of liability under the Tips Act, G.L. c. 149, § 152A. *Hovagimian v. Concert Blue Hill, LLC* involved Plaintiffs who worked as service employees for defendant Concert Blue Hill, LLC, doing business as Blue Hill Country Club ("Blue Hill"). Blue Hill operates an establishment that hosts events requiring food and beverage service. Patrons who use Blue Hill's facilities sign an initial contract that states that the patron will be charged a ten percent gratuity for wait staff and an additional ten percent "administrative" or "overhead" charge that is retained by Blue Hill. The final invoice issued by Blue Hill does not identify any administrative or overhead charge but instead labels that fee as a "service" charge. Plaintiffs brought suit alleging that Blue Hill violated the Tips Act by retaining those service charges instead of remitting them to Plaintiffs. The Superior Court allowed Blue Hill's motion for judgment on the pleadings and dismissed the complaint. The Appeals Court affirmed.

The SJC, however, vacated the dismissal, holding that the plain meaning of the Tips Act required Blue Hill to remit the disputed charge to the Plaintiffs because Blue Hill had labeled it as a "service" charge in its final invoice. The SJC explained that Blue Hill had drafted inconsistent contractual documents and "appropriately should bear the responsibility of its choice of labels in its contracts." The SJC also rejected Blue Hill's argument that the Tips Act could be interpreted to permit retention of the service charge, stating that such an interpretation would "transform[] a law that clearly is meant to help employees secure their tips into one that would aid employers in frustrating this purpose."

This case serves as a reminder of the importance of consistent and careful drafting of contractual language. As the SJC explained, the Tips Act "requires employers to proceed with due care in drafting bills, invoices, and charges to patrons. Even if an employer's carelessness in drafting were to result in its employees unintentionally acquiring proceeds that the employer planned to retain, that result is mandated by a plain reading of the statute, consistent with the Legislature's intent."

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