



## **Claim for Violation of Non-Disparagement Clause Based on CEO Interview Survives Dismissal**

In *Liotta v. Agrify*, Judge Kazanjian, sitting in the Business Litigation Session of the Massachusetts Superior Court, recently denied a motion to dismiss a claim alleging violation of a non-disparagement clause. Plaintiff Matthew Liotta ("Liotta") founded a company called PodPonics, which later became Defendant Agrify Corporation ("Agrify"). Liotta subsequently entered into a Share Purchase Agreement with Agrify in which he sold all his shares in that company. The Share Purchase Agreement contained a Mutual Non-Disparagement clause that prohibited either party from making "any negative or disparaging statements or communications about the other."

Several months later, Agrify's CEO gave an interview that was published on a blog called BudsFeed.com, as well as on Agrify's website and various social media platforms. Agrify's CEO stated that a "mistake" that Agrify made in the past was "allowing one person to make a critical decision without looking at the problem in its totality." The CEO referenced that person as being one of its prior founders but did not specifically name Liotta. He also stated that he believed the prior founder was acting with a good intention. Liotta claimed that the CEO's comments violated the Mutual Non-Disparagement Clause and had caused him reputational harm.

The court declined to apply the law of defamation to the case, since Liotta had alleged breach of contract, and found that the CEO's statements could be viewed as negative or disparaging under the Non-Disparagement clause.

The court also explained that, although reputational damages alone are not recoverable on a claim for breach of contract, the loss of specific business opportunities may be recovered, so long as such damages were foreseeable by the parties at the time of contracting. The court further stated that, by agreeing to a non-disparagement clause, it was arguable that the parties contemplated recovery of those type of damages. The court found that Liotta's allegation that he had suffered reputational harm "that impedes his livelihood as an entrepreneur" was sufficient to suggest the existence of specific losses of professional opportunities at the motion to dismiss stage.

This case shows that non-disparagement clauses do have teeth, and parties subject to them should be mindful of what they say.

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