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O'Connor Carnathan & Mack



COURT DISMISSES LAWSUIT FOR FRAUD ON THE COURT

Bay Promo, LLC v. Alaniz was a federal court action in which a Florida distributor of personal protective equipment, Bay Promo, LLC (“Bay Promo”), sued a former employee to recover an allegedly unearned commission. In September of 2022, Bay Promo asked the court for an indefinite extension of the trial date, which was then set for October 11, 2022. In support of that request, Bay Promo submitted a letter purportedly written by its CFO’s treating physician. The letter claimed that the CFO’s doctors needed to immediately implant a cardiac device and it was a “matter of life and death” that prevented him from traveling to Boston. The court initially accepted the letter at face value and continued the trial until January. Defendant’s counsel was

skeptical of the letter's authenticity, however, and contacted the treating physician, who stated that he had never written the letter and that it was "fraudulent."

The court (Stearns, J.) held a hearing and subsequently concluded that the defendant had shown by clear and convincing evidence that Bay Promo had engaged in a "fraud on the court." The court explained that Fed. R. Civ. P. 11(c) permits the imposition of sanctions for the filing of a false "paper," which includes a letter supporting a party's position that is filed with the court. The court stated, "Plaintiff's representatives deliberately forged a physician's letter to obtain from the court the continuance of a trial that they knew the court was unlikely to grant." The court also noted that the Plaintiff's representatives "were unwilling to present themselves in court at the show cause hearing to testify, subject as they would have been to oath and cross-examination." The court concluded that this type of fraud deserved "the ultimate of civil sanctions, a dismissal of plaintiff's case with prejudice."

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