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EMPLOYEE'S SIGNATURE CAN BIND COMPANY TO COLLECTIVE BARGAINING AGREEMENT WHEN COMPANY PRESIDENT REFUSES TO SIGN

On February 4, 2014, the Eleventh Circuit affirmed the decision of the District Court for the Middle District of Florida in *Gay v. Brencorp, Inc.*, No. 13-13075 (11th Cir. 2014), holding that an employee could bind his employer to the terms of two separate collective bargaining agreements even though the company's president refused to sign the agreements.

Brencorp, Inc. is an industrial contracting company located in Jacksonville, Florida. In August of 2007, the company requested the Jacksonville Plumbers and Pipefitters Local 234 ("Union") to provide labor to fulfill a contract the company had with the Anheuser-Busch plant in Jacksonville. Brencorp's president, Ted Brennan, wanted a collective bargaining agreement ("CBA") that would last only the duration of the project, but the Union demanded a standard three-year agreement. Mr. Brennan would not consent to a three-year CBA. However, the company's project supervisor, Kenneth Welchel, explained to Mr. Brennan that he would not start the project without Union labor. During a discussion with Mr. Welchel about the agreement, Mr. Brennan threw the proposed CBA across the room and, using an expletive, told Mr. Welchel he could sign the CBA if he wanted to. Mr. Welchel signed the agreement, and the project began shortly thereafter. Mr. Welchel testified that he told Mr. Brennan he had signed the CBA. After this first agreement expired, Mr. Welchel signed a second agreement, believing he was authorized to do so based on the circumstances surrounding the signing of the first CBA. Mr. Brennan denied knowledge of the two signings.

Throughout the duration of the first CBA, the company honored its obligations, including making contributions to the fringe benefit funds. The company did not, however, contribute funds during the period of the second CBA, resulting in the funds' trustees bringing an ERISA action against the company. The company took the position that it was not bound to make the contributions because Mr. Welchel did not have authority to enter into contracts on the company's behalf. Finding that Mr. Brennan had given Mr. Welchel actual authority to sign the contracts on behalf of the company and that the company's use of the Union labor on the project served to ratify Mr. Welchel's signing of the CBAs, the district court held that the company was obligated to make the contributions. The court also noted that even if Mr. Brennan did not actually know the CBAs had been signed, his conduct amounted to "willful blindness [that] was tantamount to knowledge." The Eleventh Circuit upheld the court's findings of fact and conclusions of law.

~ J. Evan Gibbs, III, Constangy, Brooks & Smith LLP

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