

Adverse Inference Based on Destruction of Computer Evidence

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Monday, March 11, 2013

In a case of first impression, the U.S. Court of Appeals for the Eighth Circuit affirmed the district court's adverse inference instruction to the jury regarding the destruction of evidence in a case involving trade secret misappropriation, unjust enrichment and breach of contract. ***Hallmark Cards, Inc. v. Murley***, Case No. 11-2855 (8th Cir., Jan. 15, 2013) (Bye, J.) (Shepherd, J., concurring).

Janet Murley, a former Hallmark Cards employee, allegedly breached her separation agreement with Hallmark when she disclosed confidential information to one of Hallmark's competitors during a consulting project. At trial, Hallmark's computer expert introduced evidence that certain files had been deleted from Murley's computer hard drive, including documents related to Hallmark's business, just a few hours before it was scheduled for inspection. The district court judge instructed the jury that it "may, but [is] not required to, assume that the contents of the files destroyed would have been adverse, or detrimental to the Defendant." The jury decided in favor of Hallmark and awarded \$860,000 in damages.

Murley sought judgment as a matter of law (JMOL) or, in the alternative, a new trial on the grounds that the adverse inference instruction was improperly given because the district court did not issue "explicit findings of bad faith and prejudice" prior to delivering the instruction. Murley also argued that the \$860,000 in damages, which

consisted of her \$735,000 severance payment plus the \$125,000 she received for the consulting project, was excessive.

In its decision, the 8th Circuit explained that “a district court must issue explicit findings of bad faith and prejudice prior to delivering an adverse inference instruction.” This will ensure that such instructions “are imposed only after thoughtful consideration and an appropriate weighing of the evidence.” Although there were no explicit findings issued by the district court in this case, the court held that the adverse inference instruction was appropriate “in light of the overwhelming evidence of bad faith and prejudice.” The instruction by the district court was “supported by evidence that Murley deleted a number of Hallmark-related documents from her private computer just hours before it was scheduled for inspection . . . [and] Hallmark would undoubtedly have benefitted from producing actual documents.” According to the court, the district court’s failure to issue explicit findings before giving the adverse inference instruction did not prejudice Murley and constituted a “harmless error.”

Murley’s arguments regarding the adverse inference instruction may have failed, but she did succeed in reducing the total damages awarded to Hallmark by \$125,000. The Court held that Hallmark was entitled to \$735,000, the total amount it paid to Murley under the separation agreement, because the primary purpose of the separation agreement was to preserve confidentiality. However, an 8th Circuit found the award of the remaining \$125,000 awarded by the lower court to be improper, because this would have “placed Hallmark in a better position that it would find itself had Murley not breached the agreement.”

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