

News & Types: Commercial, Competition & Trade Update

Update: Bad Faith Negotiation or Hard Bargaining? Turns Out to Be Hard Bargaining

9/16/2015

Practices: Commercial, Competition & Trade, Litigation

In an August 3, 2011 Business Update, we reported on a 7th Circuit decision which a thwarted purchaser of a business sued to recover a \$200,000 break-up fee, in which the purchaser alleged it was owed because the seller had decided not to sell, but continued to engage in "sham" negotiations to avoid formally terminating negotiations, which would have triggered the break-up fee. (*Trovare Capital Group, LLC v. Simkins Industries, Incorporated*, et al., No. 10-2778, July 20, 2011 discussed in "Bad Faith Negotiating or Hard Bargaining?") In that case, the 7th Circuit reversed a summary judgment in favor of the seller and sent the case back to the trial court. The 7th Circuit noted that the case would go back to the same trial judge who decided the summary judgment motion in favor of the seller, so a different result was not likely.

The court was correct and, after a bench trial, the trial judge found for the sellers that the negotiations were not "sham" and not a pretext to avoid the break-up fee. Again the persistent buyer appealed to the 7th Circuit. This time the 7th Circuit did not give the buyer another opportunity but affirmed the trial judge's decision. (*Trovare Capital Group, LLC v. Simkins Industries, Inc. et al*, 7th Circuit Court of Appeals, No. 13-2005, July 23, 2015) A more detailed account of the facts and background is in the Business Update cited above.