

Will Disproportionate Forfeiture Lead to More Trials?



By Arthur G. Boylan of Anthony Ostlund

For seemingly run-of-the-mill breach of contract cases where someone refuses to pay based on a technicality, things may have just gotten more complicated. After all, the question of whether a particular provision was material and the question of whether the forfeiture is proportionate are likely fact questions reserved for the jury. The doctrine of disproportionate forfeiture is alive and well—and, based on a recent ruling from the Minnesota Supreme Court—it just may preclude summary judgment. The Minnesota Supreme Court's holding in *Capistrant v. Lifetouch Nat'l School Studios, Inc.*, — N.W.2d —, 2018 WL 3558943 (July 25, 2018).

The basic facts of the *Capistrant v. Lifetouch* case are straightforward. When Capistrant retired from Lifetouch, he and his employer had some on-going disagreements. As a result, Capistrant sought a declaratory judgment to confirm his entitlement to around \$2.6 million in

residual commissions. But, during the discovery, Capistrant revealed that he still had a variety of confidential Lifetouch information. Upon demand, Capistrant returned the information, and further discovery confirmed that Capistrant had not shared the information with any third parties or that Capistrant never intended to use the information to compete. Nevertheless, Lifetouch—relying on an obligation to “immediately” return the information in a decades old agreement—claimed that Capistrant was in breach for failing to “immediately” return the information when his employment ended and, as a result, was not entitled to the \$2.6 million.

The district court agreed with Lifetouch and granted summary judgment. The Court of Appeals reversed, concluding, as a matter of law, that the “immediate” time frame for the return of property was not a material part of the agreed exchange. As a result, the strict enforcement of the contract would result in a disproportionate forfeiture as a matter of law, that Capistrant should be excused from the breach, and that Capistrant should be paid the \$2.6 million.

On further appeal, the Minnesota Supreme Court confirmed the validity of the disproportionate forfeiture doctrine in Minnesota, but pulled back from concluding that the facts presented a disproportionate forfeiture as a matter of law. Specifically, the Minnesota Supreme Court confirmed that a two pronged test must be applied for disproportionate forfeiture. First, the district court must determine whether the occurrence of the condition was a **material** part of the agreed exchange (i.e., contract). Second, assuming that the district court determines that a condition was not material, a proportionality analysis is appropriate to try to balance the risk to be protected with the amount to be forfeited. In other words, according to the Supreme Court, if the occurrence of the condition is a material part of the agreement, then the proportionality analysis is not applied and the forfeiture cannot be prevented. But if the condition is not material, then the court

is to engage in the proportionality analysis. The Court indicated it was necessary for the district court to determine whether the contractual term to be excused was material to the parties' exchange and, assuming the provision was not material, whether the forfeiture of \$2.6 million based was disproportionate.

In cases involving disproportionate forfeiture, summary judgment is likely to be elusive. After all, whether the breach of a contract is material is generally an issue of fact. As a result, parties will need to fight out whether the allegedly breached provision was material or not. Since this is typically a fact question, the district courts may be able to punt the entire issue to the jury. On the other hand, some cases confirm that if there is only one reasonable answer (because the evidence on the point is either undisputed or lopsided), then the court may intervene and address what is ordinarily a factual question as a question of law. In short, district courts are going to grapple with whether they can decide if a provision was “material” because the question itself may be a fact question for the jury to decide or it may be decided as a matter of law. Then, assuming the district court or jury decides the provision is not material, the fact finder will need to determine whether the potential forfeiture is disproportionate, which is very likely another fact question. Resolving these issues are sure to make obtaining summary judgment more difficult.

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