



Commercial Law Reporter

A Publication Devoted to Commercial Law and Intellectual Property Issues • www.garanlucow.com

EDITORS: ROBERT D. GOLDSTEIN 8332 Office Park Drive Grand Blanc, MI 48439 800-875-3700
 KAREN LIBERTINY LUDDEN, 1111 W. Long Lake Rd., Ste. 300, Troy, MI 48098 800-875-7600
 MARK SHREVE, 1111 W. Long Lake Rd., Ste. 300, Troy, MI 48098 800-875-7600

From the Editors

by Karen Libertiny Ludden

This edition of Commercial Law Reporter addresses:

- **Small businesses:** should you withhold employee payroll taxes, when they are only due quarterly?
- Our new **practical advice column:** "What you need to know..." addressing what to do to **avoid lawsuits for "false imprisonment" when calling the police** about a customer's suspicious behavior.
- Commercial law update: **purchase agreements, non-compete clauses**, and **business contracts**.
- **Breaking news :arbitration** agreement upheld.
- Our **upcoming seminar:** "Law and Order – **Protecting your Business and Yourself.**"

Should small businesses withhold payroll taxes that are only due quarterly?

by: Thomas Christy

As any business with payroll employees knows, you are required to withhold taxes from their paychecks. Depending on how many employees you have, you must forward the withholdings to the government anywhere

from biweekly to quarterly. If you are a small business that pays quarterly, the withheld money can be a large sum in proportion to your size. If cash is short, you may be tempted to use the withheld taxes to pay other bills in the short term and hope to earn it back before the tax payment comes due. Don't do it. Set aside those tax withholdings – in a separate account, if necessary – and don't touch them.

If your business fails to pay payroll taxes, the government enjoys special privileges. Even if your business is properly incorporated, it can pursue individuals. If your business "willfully fails" to forward withheld taxes, the federal government can collect the taxes from the "responsible person," personally. 26 USC 6672. It is even worse for Michigan payroll taxes; the state can collect the payroll taxes from whoever is in "control, supervision of, or charged with the responsibility for" the payroll taxes, even if the failure to pay wasn't willful. MCL 206.351(5).

Your other creditors may be knocking at the door, but if your business is properly incorporated and you haven't given a personal guarantee, your other creditors probably won't be able to collect from you personally. Pay Uncle Sam first.

Mr. Christy is an attorney in the Troy office who handles business transactions including payroll taxes. You can contact him at (248) 641-7600 / (800) 875-7600, or tchristy@garanlucow.com.



What you need to know... about suspicious behavior on your premises.

by: Karen Libertiny Ludden

What do you do when you notice suspicious behavior by customers? Whether it be returning a few too many times in the same day, looking around for cameras, or actually stuffing items in garments, companies want to act quickly to avoid a crime, protect their customers and avoid liability. But what if placing that call to the police creates liability of a different kind... say, when the customer files a lawsuit for "unlawful imprisonment?"



Take comfort, under Michigan law, the mere reporting to police of a concern about unlawful behavior is not a proper basis for bringing a lawsuit. In *Lewis v Farmer Jack*, the Michigan Supreme Court ruled that, when the store merely reported its suspicions to police, it could not give rise to a lawsuit against the store, so long as the police decided whether to arrest the customers. *Lewis v Farmer Jack*, 4165 Mich 212, 217 (1982). This is true even when it turns out to be a case of mistaken identity.

Allowing the police to determine if an arrest is warranted is key. In *Hall v Pizza Hut*, the Michigan Court of Appeals confirmed that simply accusing the plaintiff of having committed a crime was insufficient to sustain a cause of action against the restaurant. *Hall v Pizza Hut of America, Inc.*, 153 Mich 609 (1986).

Ms. Ludden is an attorney in the Troy office who handles litigation involving contracts and premises liability. You can contact her at (248) 641-7600 / (800) 875-7600, or kludden@garanlucow.com.



Commercial Law Update

by Rachel A. Bissett

UNAMBIGUOUS PURCHASE AGREEMENT PROVIDING RETENTION OF DEPOSIT ON DEFAULT ENFORCED; NO SPECIFIC PERFORMANCE PERMITTED

Where a seller of commercial real estate requested

specific performance of a purchase agreement for real property for \$850,000, the Court denied the request, finding that it must enforce the clear and unambiguous terms of the purchase agreement, which provided that the seller's sole and exclusive remedy for the buyer's default was termination of the agreement and retention of the buyer's \$10,000 deposit. *Main Street Dining v Citizens First Savings Bank*, 2009 WL 349758 (Feb. 12, 2009)



SUBSTANTIAL COMPLIANCE WITH NON-COMPETE AGREEMENT NOT ENOUGH

Where a hair salon requested a preliminary injunction against a former hair stylist to enforce a non-competition agreement prohibiting work in a 5 mile radius, it was insufficient that the stylist substantially complied with the agreement by working .84 miles away. The Court of Appeals reversed the lower court, which had found that the stylist had moved "far enough" away. The Court of Appeals found that the test for evaluating non-compete agreements is not substantial compliance, but rather whether the agreement is reasonable. The Court of Appeals found that a 5 mile radius was reasonable. *Lockworks, Ltd v Keegan*, 2009 WL 187419 (Jan. 27, 2009)

NON-PARTIES TO A CONTRACT CANNOT BE SUED FOR ITS ENFORCEMENT

Where Plaintiff steam provider sued a hotel management company for amounts owed on a contract to heat the hotel with steam, the Court of Appeals found that the management company was not a party to that contract and therefore not liable, even though the general manager who signed the contract was first thought to be employed by the management company. *Detroit Thermal, LLC v Highgate Hotels, Inc.*, 2009 WL 804408 (Jan. 13, 2009).

Ms. Bissett is an attorney in the Troy office who handles litigation involving purchase agreements and commercial litigation. You can contact her at (248) 641-7600 / (800) 875-7600, or rbissett@garanlucow.com.



Breaking News

ARBITRATION AGREEMENT UPHELD

Last month, GLM's own Robert Goldstein successfully persuaded the Genesee Circuit Court to enforce the terms of an arbitration agreement, which resulted in a \$400,000 savings for his client.



Mr. Goldstein is an attorney in the Grand Blanc office who handles business transactions including drafting and litigating arbitration clauses. You can contact him at (810) 695-3700/ (800) 875-3700, or rgoldstein@garanlucow.com.



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SAVE THE DATE

Thursday, April 23, 2009

LAW AND ORDER – PROTECTING YOUR BUSINESS AND YOURSELF

**Baker College of Flint
Technology Center, Room S-130
8:00 a.m. to 12:00 p.m.**

This seminar is an introduction to business law issues. Topics include:

- So you want to sue? Have you been sued? What you need to know.**
- Protecting creative business property (Trademarks, logos, designs, artists' works).**
- Workplace injuries and worker's compensation; defending your organization.**
- The ins and outs of business succession planning.**