



News & Types: Commercial, Competition & Trade Update

Unsigned Contract Still a Written Contract

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Can an unsigned contract still be a contract? The answer is yes, for statute of limitations purposes, says the 7th Circuit Court of Appeals. On this basis, it permitted a Chicago law firm to pursue a claim of unpaid fees against a foreign company and its U.S. subsidiary. (*Blanchard & Associates v. Lupin Pharmaceuticals, Inc. and Lupin, Ltd.*, 7th Circuit Court of Appeals, No. 17-1903, August 20, 2018)

Lupin, Ltd. (“Lupin India”) is an Indian pharmaceutical company with a U.S. subsidiary, Lupin Pharmaceuticals, Inc. (“Lupin USA”). In 2009, Lupin India planned to launch in the U.S. through Lupin USA a generic birth-control drug. For this purpose, the Lupin companies worked with a Chicago law firm, Blanchard & Associates (“Blanchard”). Blanchard communicated with the Lupin companies through Sofia Mumtaz, who said she was authorized to act for both of the Lupin companies. Blanchard sent its engagement letter to both Lupin companies through Mumtaz, but neither of the Lupin companies signed the letter.

Nevertheless, Blanchard performed legal services for both Lupin companies in the form of patent review and related services. The first set of services was performed, invoiced and paid for. But the second set of services was a different story. On October 31, 2009, Blanchard sent two final invoices for \$120,835, but they were never paid.

Almost seven years later, in August 2016, Blanchard sued Lupin USA in Illinois state court for breach of contract and unjust enrichment. After removing the case to federal court, Lupin USA moved to dismiss arguing a) Blanchard failed to allege a valid contract; b) the claims were too late; and c) Blanchard sued the wrong party, as Lupin India was responsible for payment.

Blanchard amended the complaint to add Lupin India and then claimed that Lupin USA and Lupin India acted as a “joint enterprise.” Blanchard claimed that Mumtaz held herself out as a dual agent for both of the Lupin companies. Lupin USA again moved to dismiss for the same reasons. Lupin India failed to respond and Blanchard sought a default judgment against Lupin India.

The district judge dismissed suit against both of the Lupin companies. The judge agreed that the companies operated as a “joint venture” and engaged Blanchard jointly. The judge also found that the contract was enforceable as an *unwritten* contract because the engagement letter was never signed. Limitations period for unwritten contracts is five years in Illinois, well beyond the time Blanchard made the claim. Similarly, the limitations period for unjust enrichment is also five years. So the judge dismissed both breach of contract and unjust enrichment claims against both the Lupin companies.

On appeal, Judge Sykes, the author of the 7th Circuit opinion, had a different view. The first issue was to decide which company was the proper defendant. Said Judge Sykes, "Read in context . . . the letter's reference to "Lupin" signifies the joint enterprise between both companies. The amended complaint alleges that the two companies formed a joint venture to launch their generic drug in the United States and that Mumtaz held herself out as an agent for both companies . . ." For purposes of a motion to dismiss, this was sufficient to keep the suit against both Lupin companies alive.

But was the suit in time to overcome the statute of limitations? To answer this question, the starting point is to determine when the claim accrued and, therefore, when to start the countdown on the statute of limitations. Lupin USA argued the claim accrued when payment became due on the invoices (around November 2009). Blanchard argued the claim accrued when the Lupin companies retained the benefit of Blanchard's legal work without paying for it – a hard date to pin down with any certainty. Blanchard even argued that the claim did not accrue until 2011, when the Lupin drug received FDA approval and launched in the U.S. Judge Sykes rejected this date as the accrual date, noting, "Legal advice immediately benefits the client."

For purposes of the unjust enrichment claim, by any plausible accrual date, the statute of limitations period had long expired. So Judge Sykes affirmed dismissal of that claim.

On the breach of contract claim, Judge Sykes parted with the district judge. For unwritten contracts, the limitations period is five years. For written contracts, the limitations period is ten years. This case involved a written contract, although unsigned, in the form of the engagement letter. So for purposes of the applicable statute of limitations period, is an unsigned contract a written or an unwritten contract?

Quoting prior cases, Judge Sykes noted, "A contract is deemed written for these purposes 'if parties are identified and all the essential terms are in writing and ascertainable from the instrument itself.' . . . The essential terms include 'the nature of the transaction, the amount in question and, at least by reasonable implication, an intention to repay the debt.'"

Lupin USA claimed the engagement letter failed as a written contract because it was unsigned and did not identify the parties or the amount involved.

Judge Sykes disagreed. The unsigned engagement letter referred to Lupin and Blanchard & Associates as parties. "Lupin" referred to both Lupin India and Lupin USA. The letter also listed hourly rates. Most importantly, Judge Sykes cited the Illinois Supreme Court which held that a contract counts as "written" even if it is unsigned. So the ten-year statute of limitations applied to the engagement letter, even though it was unsigned. Blanchard's unjust enrichment claim failed but its claim for breach of contract survived Lupin USA's motion to dismiss. So the unsigned engagement letter proved valuable to Blanchard after all.