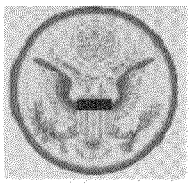
Blackmon v. Iverson



United States District Court, Eastern District of Pennsylvania, 2003. 324 F.Supp.2d 602.

BACKGROUND AND FACTS *Jamil Blackmon became friends with Allen Iverson in 1987 when Iverson was a high school student who showed tremendous promise as an athlete. Blackmon began to provide financial and other support to Iverson and his family. One evening in 1994, Blackmon suggested that Iverson use "The Answer" as a nickname in the summer league basketball tournaments. Blackmon said that Iverson would be "The Answer" to all of the National Basketball Association's woes. Later that night, Iverson said that he would give Blackmon 25 percent of any proceeds from the merchandising of products that used "The Answer" as a logo or a slogan. Blackmon invested time, money, and effort in refining the concept of "The Answer." In 1996, just before Iverson was drafted by the Philadelphia 76ers, Iverson told Blackmon that Iverson intended to use "The Answer" under a contract with Reebok. In 1997, Reebok began to sell, and continues to sell, products bearing "The Answer" slogan. None of the products uses any of Blackmon's designs, however, and Iverson does not share any of his profits with Blackmon. In 1998, Iverson persuaded Blackmon to move to Philadelphia. Blackmon subsequently filed a suit in a federal district court against Iverson, alleging breach of contract, among other things. Iverson filed a motion for summary judgment.*

IN THE LANGUAGE OF THE COURT

MCLAUGHLIN, District Judge.

* * * *

The plaintiff claims that he entered into an express contract with the defendant pursuant to which he was to receive twenty-five percent of the proceeds that the defendant received from marketing products with "The Answer" on them. The defendant argues that there was not a valid contract because * * * there was no consideration alleged.

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Under [the] law, a plaintiff must present clear and precise evidence of an agreement in which both parties manifested an intent to be bound, for which both parties gave consideration, and which contains sufficiently definite terms.

Consideration confers a benefit upon the promisor or causes a detriment to the promisee and must be an act, forbearance, or return promise bargained for and given in exchange for the original promise. Under [the] law, past consideration is insufficient to support a subsequent promise. [Emphasis added.]

* * * *

The plaintiff has argued that, in exchange for the defendant's promise to pay the twenty-five percent, the plaintiff gave three things as consideration: (1) the plaintiff's idea to use "The Answer" as a nickname to sell athletic apparel; (2) the plaintiff's assistance to and relationship with the defendant and his family; and (3) the plaintiff's move to Philadelphia.

According to the facts alleged by the plaintiff, he made the suggestion that the defendant use "The Answer" as a nickname and for product merchandising one evening in 1994. This was before the defendant first promised to pay; according to the plaintiff, the promise to pay was made later that evening. The disclosure of the idea also occurred before the defendant told the plaintiff that he was going to use the idea in connection with the Reebok contract in 1996, and before the sales of goods bearing "The Answer" actually began in 1997.

Regardless of whether the contract was formed in 1994, 1996, or 1997, the disclosure of "The Answer" idea had already occurred and was, therefore, past consideration insufficient to create a binding contract.

* * * *

According to the complaint, the plaintiff's relationship and support for the defendant, * * * began in 1987, seven years before the first alleged promise to pay was made. There is no allegation that the plaintiff began engaging in this conduct because of any promise by the defendant, or that the plaintiff continued his gratuitous conduct in 1994, 1996, or 1997 in exchange for the promise to pay. These actions are not valid consideration.

The plaintiff also alleged at oral argument that his move to Philadelphia during the 1997–1998 season was consideration for the promise to pay. If the parties reached a mutual agreement in 1994, the plaintiff has not properly alleged that the move was consideration because there is no allegation that the parties anticipated that the plaintiff would move to Philadelphia three or four years later, or that the plaintiff promised to do so in exchange for the defendant's promise to pay.

Nor is there any allegation that the move was part of the terms of any contract created in 1996 or 1997. The complaint states only that the defendant "persuaded" him to move to Philadelphia to "begin seeking the profits from his ideas." Even when the complaint is construed broadly, there is no allegation that the move was required in exchange for any promise by the defendant to pay. In the absence of valid consideration, the plaintiff has no claim for breach of an express contract.

DECISION AND REMEDY *The court granted Iverson's motion to dismiss Blackmon's complaint. The alleged contract between the parties was not supported by sufficient consideration. The disclosure of the idea for the use of "The Answer" as a marketing tool occurred before the formation of a promise to pay for the use of the idea.*

WHAT IF THE FACTS WERE DIFFERENT? *Suppose that only five minutes had elapsed between Blackmon's suggesting that Iverson use "The Answer" as a marketing slogan and Iverson's promising to give Blackmon a percentage of the proceeds. Would the court's ruling in this case have been any different? Why or why not?*