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Confidentiality provisions should be read closely

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The Third District Court of Appeal issued an opinion in *Gulliver Schools et al. v. Snay* on Feb. 26, which highlights the critical importance of carefully negotiating confidentiality provisions in settlement agreements, and making certain those provisions are understood by the parties.


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The court's ruling is fact-specific, and its reasoning is relatively straightforward. However, the opinion underscores the fact that not understanding or complying with a confidentiality clause may have drastic ramifications.

In *Snay*, Patrick Snay filed suit against Gulliver Schools Inc. after Gulliver did not renew Snay's contract as the school's headmaster. The parties later executed a general release and settlement agreement containing a confidentiality provision.

Four days after executing the agreement, Gulliver notified Snay that the confidentiality provision was breached because his daughter had posted the following on Facebook: "Mama and Papa Snay won the case against Gulliver. Gulliver is now officially paying for my vacation to Europe this summer. SUCK IT."

As a result, Gulliver did not tender Snay's $80,000 portion of the settlement proceeds. The trial court found no breach had occurred and ordered Gulliver to comply with its payment obligation under the settlement agreement.

Noting that settlement agreements are to be interpreted as any other contract, the Third District found the plain, unambiguous meaning of the confidentiality provision must be enforced.

The Third District's analysis highlighted two aspects of the confidentiality provision: First, the confidentiality provision prohibited direct and indirect disclosure of not only the terms but also the existence of the settlement agreement; and second, Snay's entitlement to his portion of the settlement proceeds was expressly conditioned upon his compliance with the confidentiality clause.

The Third District found the Facebook post to be an indirect disclosure of the settlement agreement in violation of the confidentiality provision. Snay's position was exacerbated by the fact that the court likely considered the disclosure by Snay's daughter to be particularly egregious in terms of its phraseology and the fact it was broadcast online to approximately 1,200 of Snay's daughter's friends, many of whom had gone to Gulliver.

UNANSWERED QUESTIONS

Notably, though, the Facebook post was not the only violation found by the court. Snay's daughter learned of the settlement because Snay had told her the case settled and he was happy with the result.

Interestingly—and likely because disclosure of the mere existence of the settlement was prohibited—the court found the clear and unambiguous language in the confidentiality provision rendered Snay's simple conversation with his daughter to be a separate, initial breach of the agreement.

Snay testified he had to provide his daughter with some explanation of whether and how the case concluded. Notwithstanding, the court found the clear terms of the confidentiality provision prohibited Snay's disclosure to his daughter, even though the communication evidently lacked detail as to the terms or amount of the settlement.

By its terms, the confidentiality provision barred Snay from receiving his portion of the settlement proceeds if confidentiality was breached, and therefore, the Third District reversed.

Given the fact-specific reasoning, the opinion leaves unanswered whether even slightly different circumstances would have led to a different result. Had the confidentiality provision prohibited disclosure of the terms of the agreement but not its mere existence, would the Third District have found a breach? Had the confidentiality provision not expressly made payment of the settlement proceeds contingent on its compliance, would the court have afforded Gulliver the remedy of not having to comply with its payment obligation? Had Snay's daughter not disclosed the existence of the settlement in such a blatant manner using inflammatory language, would the ruling, or remedy, have been different?

Nonetheless, *Snay* is a clear indication that parties will be held to the plain language to which they agree, even when one is obligated to something potentially impracticable, such as a prohibition on disclosing even the mere existence of a settlement agreement from anybody, including even family members who know a case is pending.

It is possible that Snay did not comprehend that his settlement agreement prohibited even a seemingly innocuous conversation with his daughter in which he revealed little more than that the case had settled. *Snay* compels all parties in litigation, and their counsel, to very clearly consider and grasp the terms of the settlement agreements and confidentiality provisions to which they agree. Otherwise, they may face potentially unanticipated, and drastic, consequences.

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