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LEGAL AFFAIRS

Embezzlement case turns on technicality

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Columnist

Talk about chutzpah.

Last year, Laura R. Kreisler pleaded guilty in **Johnson County District Court** to embezzling more than \$857,000 from **Creative Consumer Concepts** — known as C3 — over a 3½-year period.

The embezzlement was discovered after Kreisler, the company's chief financial officer, was fired for insubordination. But before the embezzlement was discovered, the company offered her six months' severance pay in return for signing a release of any claims she had against the marketing company.

Kreisler took the release home, scanned it into her computer, and altered it to include a provision releasing any claims C3 had against her. She then met with C3's human resources manager, who, ignorant of the alterations, duly signed it.

After it got wind of the embezzlement, C3 sued Kreisler in federal court to recoup its severance money. Kreisler, amazingly, contended that because C3 had signed the altered release, it forfeited its right to recover.

Under Kansas law, signatories to an agreement are generally bound by it, whether they read it or not, unless a signatory was fraudulently induced not to read the agreement.

Kreisler said that she never told C3 that she didn't change the document. Ergo, she argued, she was entitled to her severance pay.

Last week, U.S. District Carlos Murguia disagreed — sort of.

Murguia agreed with Kreisler's contention that C3 had failed to prove "fraud by silence." Under that doctrine, the **Kansas Supreme Court** ruled in 1986 that there "must be a concealment of facts which the party is under a legal or equitable duty to communicate and in respect of which he could not be innocently silent."

Case closed, right? Not so fast, said Murguia.

Under Kansas law, Kreisler would have had a duty to disclose her alterations if she had a fiduciary relationship with C3 or if there was a disparity of bargaining power between her and C3.

Murguia said there was no fiduciary relationship because Kreisler no longer was an employee when she executed the document. He also found that any disparity in bargaining power favored C3, not Kreisler.

What saved the day for C3 was a technicality. It turned out that C3's HR manager lacked the authority to execute the release. Under company policy, only Bob Cutler, C3's founder and chief executive, had that authority.

On that ground, Murguia concluded, the severance agreement was invalid.

"His refusal to validate an agreement that Kreisler surreptitiously changed is the right result. How that will impact the question of whether you can unilaterally change agreements and then benefit from that — that isn't clear to us at this point," said C3's attorney, Rachel Baker of Seigfreid Bingham Levy Selzer & Gee.

Kreisler's attorney, Richard Dvorak of **Tomes & Dvorak**, said he would consult with his client about an appeal.

Kreisler is serving a seven-year sentence in the **Women's Detention Center** in Topeka.