

Diamond McCarthy Wins Ninth Circuit Victory for Client Heller Ehrman LLP

Diamond McCarthy LLP partner, Chris Sullivan, recently won a Ninth Circuit victory for client Heller Ehrman LLP. The appellate court reversed a California bankruptcy court's \$1.2M award to an ex-Heller attorney. After a bench trial, the bankruptcy court had ruled that an employment agreement revised in 2007, giving K. William Neuman a fixed income, made him an employee of the firm as opposed to a shareholder.

In a 2-1 split decision filed on April 10, 2017, the Ninth Circuit concluded that Neuman was a shareholder at the time the firm dissolved. The Court found that Neuman's 2007 agreement, when reviewed against his prior employment arrangement with Heller CA PC, makes clear that the 2007 agreement only changed how Neuman was to be paid and did not change his status as a shareholder.

Other issues identified in the appellate judges' majority opinion include (1) Neuman maintained his right to vote on firm matters based upon his calculated Attributed Percentage that equated to his fixed income divided by the LLCs net profits; (2) voting was a privilege reserved only to shareholders; (3) Neuman was paid by the Heller CA PC, which is the means by which Heller shareholders were compensated; (4) that Neuman's preferred shares were not repurchased by the LLP and, (5) his capital contribution was not repaid, the latter two issues serving as contractual requirements when a shareholder and the LLP terminate a shareholder relationship.

For more information, please contact Chris Sullivan in our San Francisco office at 415.692.5200 or at csullivan@diamondmccarthy.com.