




Thomas Devine v. Roche Biomedical Laboratories, et al.

Tran, Hai

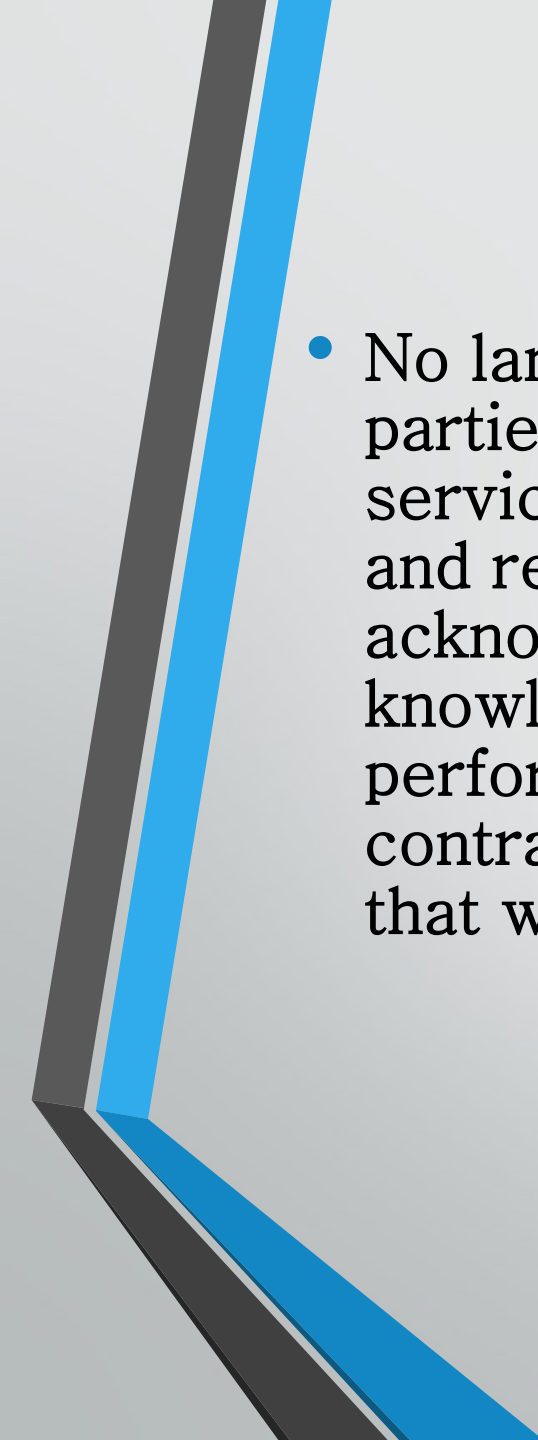
Nuntivacharind, Money

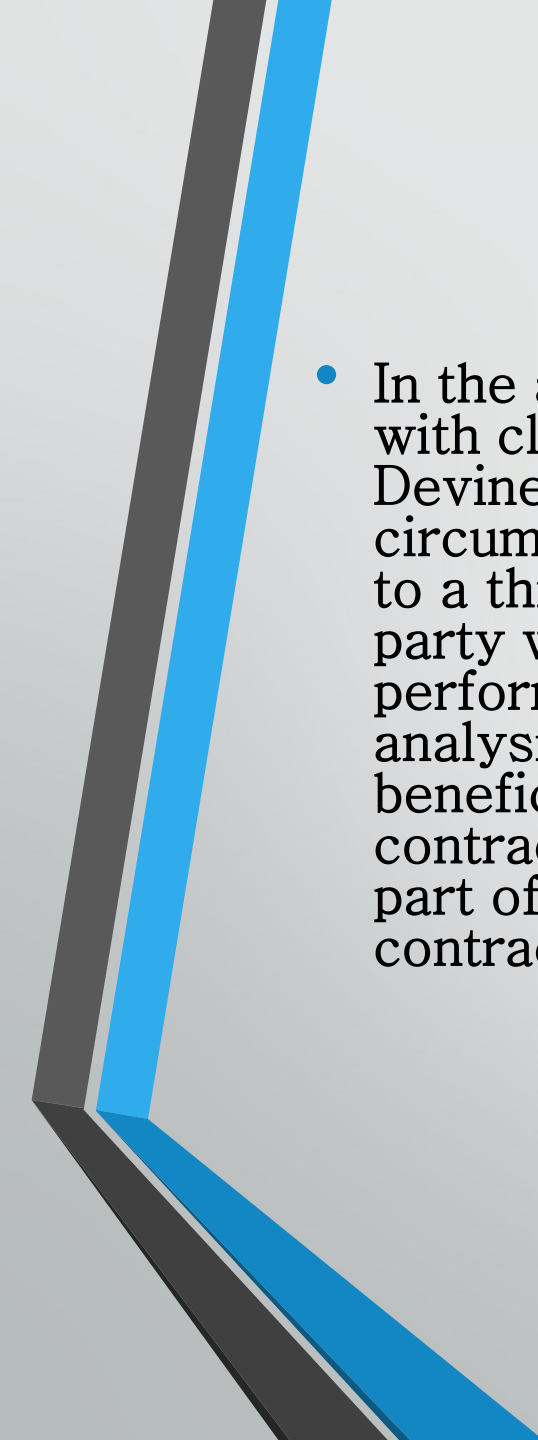
Law 01

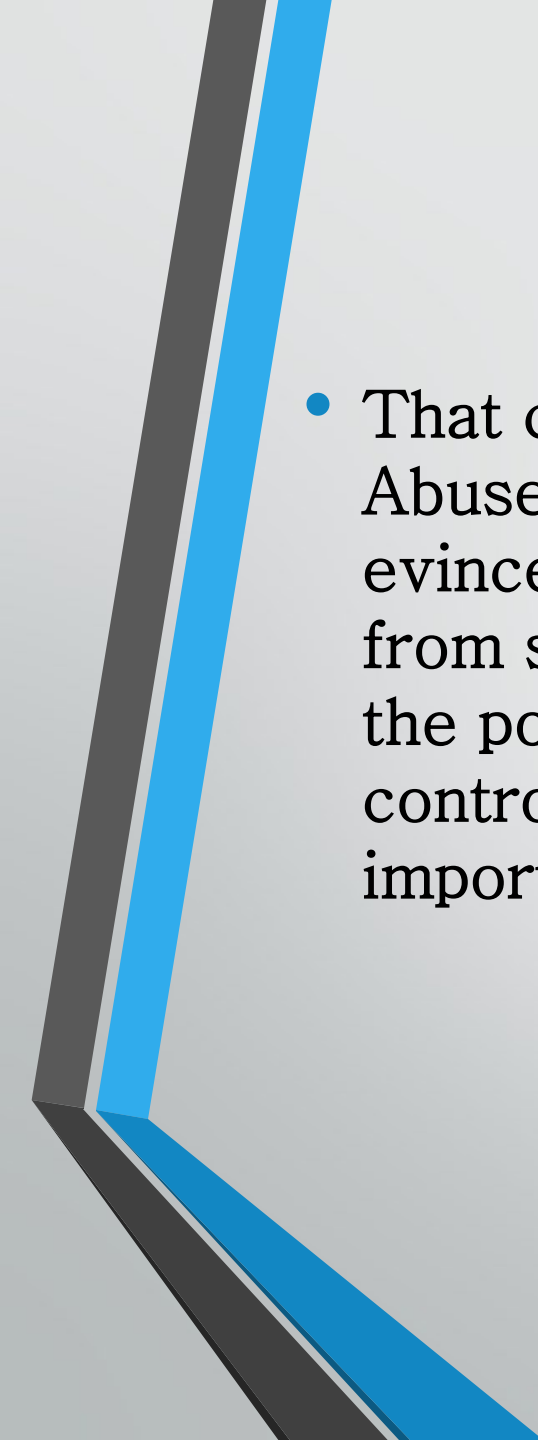
Professor Jordan

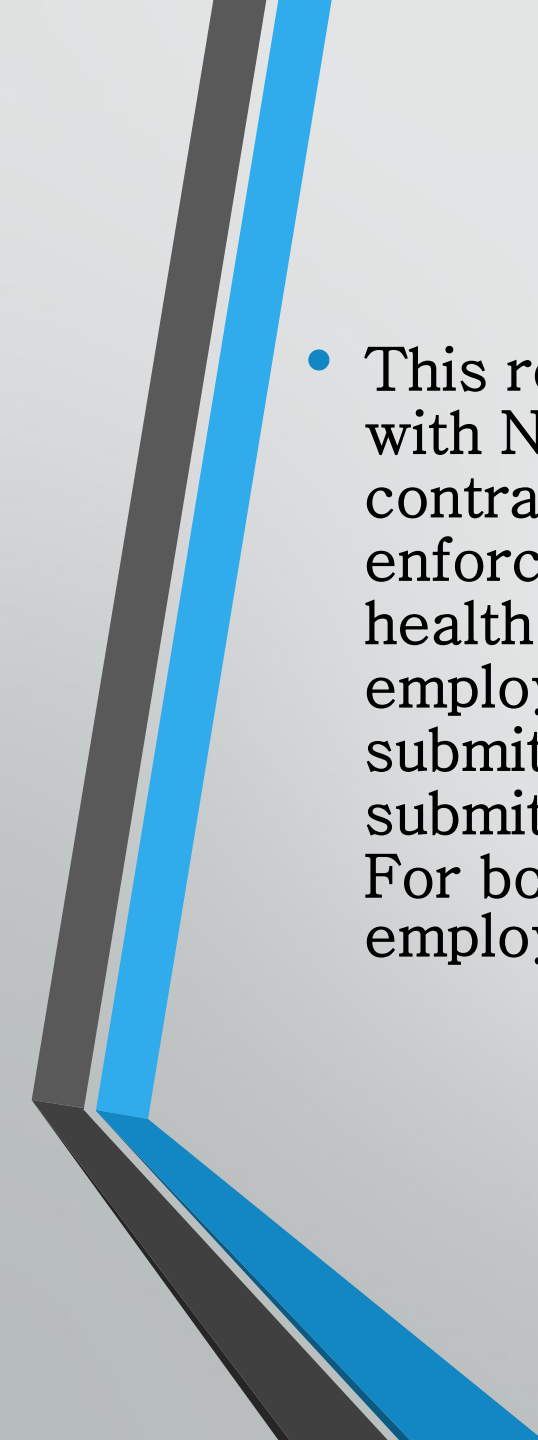
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- We review the entry of the summary judgments entered in favor of NorDx and Roche by examining the evidence in the light most favorable to Devine to determine 870*870 whether the Superior Court committed an error of law.

- This he fails to do. It is not enough that he benefitted or could have benefitted from the performance of the contract. The intent must be clear and definite, whether it is expressed in the contract itself or in the circumstances surrounding its execution. *Id.* If BIW did not intend to confer upon Devine an enforceable right, any benefit enjoyed by him as a result of the performance of the contract renders him a mere incidental beneficiary. "An incidental beneficiary cannot sue to enforce third party beneficiary rights."

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- No language in the contract indicates BIW's intent to benefit third parties. The contract provides that NorDx will provide courier service and that Roche will provide clinical laboratory services and report the results orally and in writing. While the contract acknowledges that BIW is relying on NorDx's special skills, knowledge and ability regarding the type of work to be performed, we read this language neither to expand the work contracted for nor to indicate an intent that the performance of that work benefit BIW employees.

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- In the absence of contract language, there must be circumstances that indicate with clarity and definiteness that BIW intended to give an employee such as Devine an enforceable benefit under the contract. In assessing the relevant circumstances, courts must be careful to distinguish between the consequences to a third party of a contract breach and the intent of a promisee to give a third party who might be affected by that contract breach the right to enforce performance under the contract. If consequences become the focus of the analysis, the distinction between an incidental beneficiary and an intended beneficiary becomes obscured. Instead, the focus must be on the nature of the contract itself to determine if the contract necessarily implies an intent on the part of the promisee to give an enforceable benefit to a third party. The contract between BIW and NorDx does not meet that standard.

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- That contract was intended to help BIW implement its Substance Abuse Policy and Procedures. Although that policy appropriately evinces a concern for the well-being of employees who suffer from substance abuse, BIW implemented that policy because, as the policy notes, substance abuse affects "security, safety, quality control, productivity and employee health," all of which are important to the economic well-being of the company.

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- This recognition of the reasons for the policy and the related contract with NorDx is important because it underscores why the nature of the contract itself does not imply an intent on the part of BIW to confer an enforceable benefit on an employee like Devine. BIW is not in the health care business. It engaged in drug testing of Devine and other employees to advance its economic objectives. Similarly, Devine did not submit to the drug testing at BIW to address his health concerns. He submitted only because the drug testing was a condition of employment. For both BIW and Devine, the drug testing was incidental to their employment relationship.

- By contrast, if Devine went to a physician who took a urine sample from him as part of a physical examination and submitted the sample to an independent laboratory for analysis and interpretation, Devine would clearly be an intended beneficiary of the 871*871 contractual relationship between the doctor and the laboratory. The patient-doctor relationship is all about the health of the patient. Had Devine gone to a doctor to address his health concerns, a doctor would submit a specimen for testing primarily for the benefit of his patient. The laboratory would perform its work primarily for the benefit of the patient. Given these facts, the contract between the doctor and the laboratory would necessarily imply an intent on the part of the doctor to confer an enforceable benefit on the patient with respect to the contractual performance of the laboratory.

- Explain who won the case and provide a conclusion.

Supreme Judicial Court of Maine affirms ruling of lower court. Thomas Devine loses due to lack of proving that there was an intent for him to benefit from BIW-NorDx-Roche agreement. He has no third party rights here and even any incidental benefits he experienced would still not give him any grounds to sue as by rule, incidental beneficiaries cannot sue under third party contracts. The court found nothing to indicate the laboratory had any duty to Devine.