NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. NC-06-1255-KuBS
SAN JOSE MEDICAL MANAGEMENT, INC., a California Corporation and Affiliated Chapter 11 Cases,	Bk. No. 02-55527
Debtors.	
UECKER & ASSOCIATES, INC., as Trustee of the San Jose Medical Group Trust for the Benefit of Creditors,	
Appellant,	
v.	**M E M O R A N D U M**[1]
THOMAS LEI,	
Appellee.	

Argued and Submitted on February 23, 2007
at San Francisco, California

Filed - May 10, 2007

Appeal from the United States Bankruptcy Court
for the Northern District of California

Honorable James R. Grube, Bankruptcy Judge, Presiding

Before: KURTZ,[2] BRANDT and SMITH, Bankruptcy Judges

[1] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

[2] Hon. Frank L. Kurtz, Chief Bankruptcy Judge for the Eastern District of Washington, sitting by designation.

One day after San Jose Medical Group ("Medical Group") filed its petition for chapter 11 relief, Dr. Thomas D. Lei notified Medical Group that he was exercising his right under their employment contract to terminate his employment, upon 90 days' notice, without cause. One month later, Medical Group notified Dr. Lei that it was exercising its right under their employment contract to terminate his employment, without notice, for cause. Dr. Lei filed a proof of claim asserting that Medical Group had wrongfully terminated him and owed him two months' wages. The trustee for the San Jose Medical Group Trust for the Benefit of Creditors ("Trustee"), established by the confirmed plan, filed an objection to Dr. Lei's proof of claim. After a trial, the bankruptcy court ruled that Dr. Lei was wrongfully terminated, allowed his proof of claim, and overruled the Trustee's objection.

On appeal, the Trustee contends the bankruptcy court applied the wrong legal standard when it ruled that Medical Group wrongfully terminated Dr. Lei. The legal standard applied by the court required the Trustee to prove actual misconduct justifying termination. Instead, the Trustee argues, the court should have applied a legal standard that required the Trustee to prove only that Medical Group acted in good faith, upon an honest belief that misconduct had occurred, and after a reasonable investigation. We conclude the bankruptcy court followed binding precedent and applied the correct legal standard. For that reason, we affirm the judgment of the bankruptcy court.

I. FACTS

Dr. Lei is an internist, a pulmonologist, and a critical care physician. Before coming to the United States, he trained in China. After coming to the United States, he taught as a visiting professor at Tulane University. Thereafter, he did a three-year internal medicine residency at a New Orleans charity hospital and a three-year fellowship in a combined pulmonary and critical care program at Columbia and Cornell Universities.

While working at Columbia University Hospital, Dr. Lei answered a Medical Group advertisement seeking to employ a physician. Before he was hired, Dr. Lei was interviewed by representatives of Medical Group, including Dr. Dean Michael Didvech and Dr. Robert Bruce Filuk. Dr. Didvech is the president of Medical Group and its chief medical officer. Dr. Filuk is an employed physician at Medical Group and its medical director. As Chief of Pulmonary Care and Critical Care Medicine, he was Dr. Lei's immediate supervisor.

Dr. Lei was hired by Medical Group and signed a written employment contract. The contract provides for an effective date of July 1, 2002, and states in section 4.1 that "[t]he term of this contract shall be December 31, 2003 and it shall be renewed at expiration only by written agreement..." (Trial Exhibit 1, 016, May 16, 2006). Subsection 4.3.5 of the contract governs dismissal of the physician for cause. The "for cause" dismissal section of the employment contract states it is nonexclusive, but specifies a number of causes for dismissal, including violation of the terms of the contract. By contrast, subsection 4.3.9 provides that either Medical Group or Dr. Lei could terminate the agreement, without cause, upon 90 days' notice.

Soon after starting his work with Medical Group, Dr. Lei learned that it was experiencing financial difficulties. This was a decade-long problem for Medical Group. At some point, Medical Group's financial condition became so serious that it became obvious to its employees that Medical Group was contemplating reorganization in bankruptcy. Before filing, Medical Group's management met with its employees and, separately, with its physicians. At the physicians-only meeting, Dr. Lei expressed reservations about the propriety of Medical Group filing for bankruptcy. After the meeting, he was stopped by Dr. Didvech, who informed him that he needed to be more positive about Medical Group's prospects for reorganization in bankruptcy. Dr. Didvech expressed concern that negative comments could impact Medical Group's ability to retain its employed physicians.

On September 30, 2002, Medical Group filed a petition for chapter 11 relief. The following day, Dr. Lei submitted his letter of resignation, effective December 31, 2002, exercising his rights under the employment contract to terminate the contract, without cause. Later, at trial, Dr. Lei testified that he was motivated to resign by his family's reaction to learning about his employer's bankruptcy in the local newspaper and by his concern about Medical Group's inability to obtain the services of consulting specialists for his patients. Apparently, outside physicians were reluctant to consult with Medical Group's physicians, due to Medical Group's reputation for slow payment of outside consultant's bills.

On October 28, 2002, less than one month after Dr. Lei notified Medical Group of his resignation, it terminated Dr. Lei, effective October 31, 2002. Medical Group was purportedly exercising its

right under the contract to terminate Dr. Lei's employment for cause. The two-sentence termination letter neither provided an explanation nor stated any cause for the termination. Later, Dr. Didvech testified that he did not include the reasons for terminating Dr. Lei in the October 28 letter in order to prevent public dissemination of that information.

Dr. Lei submitted two claims in Medical Group's bankruptcy case. The first claim asserted fraud in the inducement of a contract and damages in an unliquidated amount. The second claim, at issue here, asserted breach of his employment contract and damages of $36,416.68—the wages he would have earned had his employment not been terminated. The Trustee objected to Dr. Lei's claim for unpaid wages, alleging that the claim was not supported by the debtors' books and records.

At trial, Dr. Filuk and Dr. Didvech stated Medical Group's reasons for firing Dr. Lei. Dr. Didvech testified that the immediate cause for Dr. Lei's termination was his conduct after Medical Group filed for chapter 11. Dr. Didvech stated that he received reports that Dr. Lei was speaking negatively about Medical Group and casting doubts about its future. On October 8, Dr. Didvech met with Dr. Lei and advised him to stop this behavior. When the behavior did not cease, according to Dr. Didvech, Medical Group made the decision to terminate Dr. Lei. "[H]e was somebody that we didn't want to keep around for another day at that point." (Hr'g Tr. 34, May 16, 2006).

In support of his firing of Dr. Lei, Dr. Didvech offered other bases for the dismissal. Dr. Didvech testified that he received negative reports regarding Dr. Lei's performance from the very

beginning of Dr. Lei's employment. Most of the initial reports concerned Dr. Lei's refusal to see internal medicine patients. According to Dr. Didvech, Dr. Lei was obligated to see primary care patients until his caseload was filled with patients within his specialty. Dr. Lei refused to be a primary care doctor. Dr. Didvech discussed this issue with Dr. Lei, but according to Dr. Didvech, Dr. Lei was "pretty adamant" that he was not interested in seeing these patients. Id. at 30

Dr. Didvech testified that there were a number of other complaints regarding Dr. Lei's performance as a hired physician. He received reports that Dr. Lei was refusing to work as a hospitalist— a physician who saw patients in the hospital. Also, there were complaints that Dr. Lei was not cooperative with other physicians who wanted to transfer their patients to the Intensive Care Unit and to his immediate responsibility. Additionally, Dr. Didvech heard that Dr. Lei did not respond in a timely manner to nurses' pages.

On cross-examination, Dr. Didvech admitted that he did not investigate the pre-bankruptcy complaints regarding Dr. Lei's job performance. Essentially, he was reporting complaints that he received from other people, including Dr. Filuk. On one occasion, he spoke with Dr. Lei regarding Dr. Lei's reluctance to accept internal medicine patient referrals and, on another occasion, he spoke "in passing" to Dr. Lei regarding Dr. Lei's refusal to perform the duties of a hospitalist. But Dr. Didvech conceded that he did not prepare a memo or issue a warning to Dr. Lei regarding these complaints. In fact, there is nothing in writing regarding these complaints and they do not appear in Dr. Didvech's letter of

termination to Dr. Lei.

Dr. Filuk testified that, as Dr. Lei's immediate supervisor, he received a number of complaints regarding Dr. Lei's work. Dr. Lei's duties included the obligation to consult with other physicians and to accept referrals from these physicians. Dr. Filuk reported that he received complaints from other physicians that Dr. Lei was reluctant to accept these referrals and that he was not attentive to the referred patients. Similarly, nurses complained, according to Dr. Filuk, about Dr. Lei's bedside manner. In general, Dr. Filuk testified that the complaints were about Dr. Lei's attitude, attendance, and performance.

On cross-examination, Dr. Filuk conceded that he did not independently investigate the complaints about Dr. Lei. The complaints are undocumented by him or anybody else. Moreover, he never discussed the complaints with Dr. Lei. Dr. Filuk limited his role to communicating the complaints about Dr. Lei to Dr. Didvech.

In response to the testimonies of his medical colleagues, Dr. Lei testified regarding his termination by Medical Group. At the time of dismissal, he was not told he was being terminated for cause. According to Dr. Lei, Dr. Didvech simply referenced Medical Group's financial problems and the bankruptcy as the reasons for his dismissal.

Dr. Lei also testified about his understanding of his position at Medical Group. His understanding was based primarily upon what he was told at his interview. He would be a specialist—a chest doctor—but he was also obligated to see or treat some internal medicine patients. At the hospital, while he was making rounds or on call, he would see or treat some internal medical patients.

Furthermore, he was a critical care specialist and, in that capacity, he would consult and, if needed, treat Medical Group's critical care patients. At the clinic, his practice would be limited to pulmonary cases. When physicians referred internal medicine cases to Dr. Lei at the clinic, he complained to Dr. Didvech. Dr. Lei argued that it would be more cost effective to refer such patients to a general internist. However, Dr. Lei denied that he ever refused to take a call regarding an internal medicine patient, or that he ever refused to accept a referral for such a patient. In summary, Dr. Lei disputed the testimonies of Dr. Didvech and Dr. Filuk regarding his treatment of the internal medicine patients who were referred to him.

After hearing and considering the evidence, the court issued an oral ruling. The court ruled the contract between Medical Group and Dr. Lei was a "term contract," subject to the provisions of California Labor Code § 2924, which provides:

> An employment for a specified term may be terminated at any time by the employer in case of any willful breach of duty by the employee in the course of his employment, or in case of his habitual neglect of his duty or continued incapacity to perform it.

Cal. Lab. Code § 2924. Emphasizing the statute's requirement for a willful breach, the court decided that the Trustee failed to establish by a preponderance of the evidence that Dr. Lei's conduct satisfied the provisions of section 2924 and authorized his termination.

The court then addressed the Trustee's contention that the employment contract's failure to define "for cause" in subsection 4.3.5 means that the parties to the contract are bound by the definition of "good cause" stated in Cotran v. Rollins Hudig Hall

International, Inc., 948 P.2d 412 (Cal. 1998). Cotran's definition of good cause incorporates a good faith standard for judging an employer's termination decision: a reasoned conclusion, supported by substantial evidence, gathered through an adequate investigation that includes notice of the claimed misconduct and a chance for the employee to respond. Id. at 422. Under the Cotran good faith standard, both actual misconduct committed by the employee and an honest but mistaken belief by the employer that misconduct has occurred are sufficient for termination. Id. at 421.

In rejecting the Trustee's contention, the court identified Khajavi v. Feather River Anesthesia Medical Group, 100 Cal. Rptr. 2d 627 (Ct. App. 2000), and not Cotran as controlling precedent. Khajavi holds that the Cotran good faith standard is limited to implied employment contracts and does not extend to contracts for a specified term, like Dr. Lei's contract. Khajavi, 100 Cal. Rptr. 2d at 644. Khajavi further holds that an employee who has a contract for a specified term may not be terminated prior to the term's expiration based on an honest but mistaken belief that the employee breached the contract. Id. at 644-645. Finally, the court ruled that the Trustee failed to establish by a preponderance of the evidence that Dr. Lei's conduct violated the contract's "for cause" provisions.

The Trustee timely appealed.

II. JURISDICTION

Bankruptcy courts are authorized to "hear and determine" "cases under title 11" and "core proceedings" arising under title 11. 28 U.S.C. § 157(b)(1). An objection to claim is a core proceeding that

a bankruptcy judge has power to hear and determine. Id. § 157(b)(2)(B). The Bankruptcy Appellate Panel has appellate jurisdiction over the final order determining an objection to claim. 28 U.S.C. § 158(b).

III. ISSUE

Whether the court applied the correct standard for good cause when it determined that Medical Group did not have good cause to terminate Dr. Lei.[3]

IV. STANDARD OF REVIEW

The Bankruptcy Appellate Panel reviews conclusions of law and questions of statutory interpretation de novo, and findings of fact for clear error. Rule 8013; In re Mednet, 251 B.R. 103, 106 (9th Cir. BAP 2000). A factual finding is clearly erroneous if the appellate court, after reviewing the record, has a firm and definite conviction that a mistake has been committed. Anderson v. City of Bessemer City, 470 U.S. 564, 573, 105 S. Ct. 1504, 84 L. Ed. 2d 518 (1985). "The 'basic federal rule' in bankruptcy is that state law governs the substance of claims[.]" Raleigh v. Illinois Dep't of Rev., 530 U.S. 15, 20, 120 S. Ct. 1951, 147 L. Ed. 2d 13 (2000). Determination of contract rights by the bankruptcy court ordinarily

[3] The employment agreement uses the term "for cause." The issue on appeal is whether the court applied the correct standard for "good cause." "For cause" means for a legal reason or ground. Black's Law Dictionary 673 (8th ed. 2004). For example, Dr. Lei was terminated for cause, as opposed to "by mutual agreement" or because the term of his contract expired. "Good cause" means a legally sufficient reason. Id. at 235. In the claims litigation, the Trustee asked the court to rule that Medical Group terminated Dr. Lei for good cause.

is controlled by state law. Butner v. United States, 44 U.S. 48, 54, 99 S. Ct. 914, 59 L. Ed. 2d 136 (1979). Under California law, the interpretation of a contract is a question of law, subject to de novo review. In re Bennett, 298 F.3d 1059, 1064 (9th Cir. 2002); In re Bartleson, 253 B.R. 75, 79 (9th Cir. BAP 2000).

V. ANALYSIS

In this appeal, the Trustee is challenging the legal standard applied by the trial court to determine whether Medical Group wrongfully terminated Dr. Lei. Essentially, the question is: what must an employer prove in order to establish good cause to fire an employee? More specifically, must the employer establish that the employee actually committed the misconduct—the standard adopted by the trial court—or may the employer merely establish that the employer acted in good faith, after an appropriate investigation, upon reasonable grounds for termination?

Courts that have considered the issue have disagreed. Some courts have adopted the actual misconduct standard, reasoning that the employee bargained for the right to be dismissed only for good cause and that this right would be undermined by a standard that relieved the employer of the burden of proving misconduct. Toussaint v. Blue Cross & Blue Shield of Mich., 408 Mich. 579, 651, 292 N.W.2d 880 (1980). Other courts have adopted the good faith standard, reasoning that the actual misconduct standard is too onerous and inappropriately allows the court to second guess an employer's business decision. Baldwin v. Sisters of Providence in Wash., Inc., 112 Wn.2d 127, 134, 769 P.2d 298 (1989); Simpson v. Western Graphics Corp., 293 Or. 96, 100, 643 P.2d 1276 (1982); Life

Care Centers v. Dexter, 65 P.3d 385, 392-93 (Wyo. 2003); Almada v. Allstate Ins. Co., 153 F. Supp. 2d. 1108, 1114 (D. Ariz. 2000). The good faith standard appears to be the majority rule. Towson Univ. v. Conte, 384 Md. 68, 86, 862 A.2d 941 (2004).

In California, the issue is made more complicated by labor laws regulating termination of employees. For example, Cal. Lab. Code § 2922 creates a presumption that an employment relationship is at will and, consequently, provides that the relationship may be terminated without cause upon notice by either party. The reach of section 2922 has been sharply limited, however, by the case law development of the doctrine of the "for cause" implied contract. In these cases, the employee argues that there was an understanding that he or she would not be fired without "good cause." Based upon a number of factors, like the employee's length of service, oral assurances of continued employment, and personnel policies protecting job security, courts have found an implied in fact contract not to terminate the employee without cause. Foley v. Interactive Data Corp., 765 P.2d 373, 383-389 (1988); Pugh v. See's Candies, Inc., 171 Cal. Rptr. 917 (1981).

By contrast, there is a different statute and a different set of rules for the termination of employees under a specified term contract (greater than one month). Cal. Lab. Code § 2924. Section 2924 provides that if the employment is for a specified term, termination is allowed, provided there has been a "willful breach of duty by the employee," "habitual neglect of his duty," or "continued incapacity to perform." Id. § 2924. The statute requires proof of the conduct that authorizes termination. An employer's honest but mistaken belief that the misconduct has

occurred is insufficient. Khajavi, 100 Cal. Rptr. 2d at 645.

For implied employment contracts, the California Supreme Court has rejected the actual misconduct standard in favor of the good faith standard. Cotran, 948 P.2d at 422. In Cotran, after an investigation, the employer fired the employee based upon accusations that the employee had sexually harassed two fellow employees. Id. at 415. The employee denied that he committed the sexual harassment and brought suit against his employer for wrongful termination. Although the parties had not executed an express employment contract, the court interpreted a letter exchanged between the parties as an implied employment agreement providing that Mr. Cotran could not be terminated unless good cause existed. Id. at 414. After a trial, a jury determined that Mr. Cotran had not engaged in any conduct that would have justified the termination and awarded Mr. Cotran a large judgment for lost compensation. Id. at 416.

On appeal, the employer argued that the employer should be relieved of the burden of proving that actual misconduct occurred. Rather, the employer should be required to prove only that the employer acted in good faith, upon an honest belief that the sexual harassment had occurred, and after conducting a reasonable investigation. Id. at 413-414. The California Supreme Court agreed and adopted an objective good faith standard for implied contract employment cases. The court ordered a new trial and stated "the question critical to the defendants' liability is not whether plaintiff in fact sexually harassed other employees, but whether at the time the decision to terminate his employment was made, defendants, acting in good faith and following an investigation that

was appropriate under the circumstances, had reasonable grounds for believing plaintiff had done so." Id. at 422.

In addition to adopting a good faith standard for implied contract cases, the court created a definition of "good cause" to apply in litigation involving breach of an implied employment contract. The Cotran court stated, "good cause" can be defined as:

> [F]air and honest reasons, regulated by good faith on the part of the employer, that are not trivial, arbitrary or capricious, unrelated to business needs or goals, or pretextual. A reasoned conclusion, in short, supported by substantial evidence gathered through an adequate investigation that includes notice of the claimed misconduct and a chance for the employee to respond.

Id. Here, the Trustee argues the Cotran definition of "good cause" is the default definition for "good cause" or "for cause" if those terms are undefined in an employment contract. Because Dr. Lei's employment contract uses the term "for cause," but fails to define the term, the term is defined by Cotran.

In a footnote to its decision, the Cotran court suggested that its holding might not apply to other kinds of contracts.[4] Thereafter, the California Court of Appeals accepted Cotran's invitation to follow a different path and applied the actual misconduct standard to an express oral contract for a specified term. Khajavi, 100 Cal. Rptr. 2d at 644-645. In Khajavi, an anesthesiologist was hired by a medical group as a temporary doctor pursuant to a written contract. Id. at 632. After that contract expired, the medical group orally offered the doctor a two-year position and promised him that a written contract would be

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[4] "Wrongful termination claims founded on an explicit promise that termination will not occur except for just or good cause may call for a different standard, depending on the precise terms of the contract provision." Cotran, 948 P.2d at 414.

forthcoming. Id. at 632-633. Before the contract was prepared, Dr. Khajavi got into an argument about the treatment of a patient with a surgeon who was related to one of the shareholders of the medical group. Not long thereafter, Dr. Khajavi's employment was terminated and he sued the medical group. Id. at 634.

As already noted, the Khajavi court recognized that the Cotran holding could be limited to implied employment contracts. The court reasoned good cause in the context of wrongful termination based upon breach of a specified term contract was different from the applicable standard in determining the propriety of a termination under an implied contract. Id. at 644. In part, the court based the distinction upon section 2924:

> The plain language of this statute—that an employment contract for a specified term may be terminated for a "willful breach of duty," a "habitual neglect of duty," or a "continued incapacity to perform"—would not appear to allow termination for an honest but mistaken belief that discharge was required.

Id. at 645. The court further reasoned that applying the Cotran good faith standard would "run counter to the concept of employment for a specified term." Id. "What would be the benefit," the court asked, "of a specified term if the employee could be discharged prior to the end of that term, notwithstanding the employee's compliance with the contract's provisions?" Id. The court held that employment for a specified term may not be terminated prior to the term's expiration, based upon an employer's honest but mistaken belief of misconduct.[5] Id. at 646-647.

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[5] At least one court has criticized the Khajavi court's rationale for treating contracts differently based upon whether they are express or implied. The court quoted the comment to the

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Like Cotran, Khajavi contains a footnote that has special relevance to the case before the court. In that footnote, the court notes that its decision does not address the issue whether the express terms of the contract could provide for another basis for termination, or conversely, modify one of the statutory grounds. Id. at 645. Of course, that is precisely what the Trustee is arguing here: that section 2924 is trumped by the parties' fundamental right to negotiate their own contract, including a provision stating the parties' duties and rights in the event of termination. The Trustee contends the parties negotiated a for cause provision that specifies examples of "for cause," but does not define the term. In such a case, according to the Trustee, courts look to Cotran's default definition of good cause.

There is some support for the Trustee's argument in the case law interpreting section 2922 and establishing the doctrine of the "for cause" implied contract. In that context, the issue arose as to whether the court's rationale for implied good cause employment contracts undermined the statutory presumption of at-will employment contained in section 2922. In Guz v. Bechtel National, Inc., 8 P.3d 1089 (Cal. 2000), the court addressed the issue by reasoning that section 2922 does not deprive parties of their fundamental right to contract and to depart from at-will employment. Guz, 8 P.3d at 1100-1101. In Guz, the court states, "[t]he statute does not

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[5](...continued)
Restatement of Contracts, "'[c]ontracts are often spoken of as express or implied. The distinction involves, however, no difference in legal effect, but lies merely in the mode of manifesting assent.'" Towson Univ., 384 Md. at 91 (Restatement (Second) of Contracts § 4 cmt. a (1981)) (emphasis in original).

prevent the parties from agreeing to any limitation, otherwise lawful, on the employer's termination rights. Id. at 1100.

Also, there is additional support for the Trustee's argument in Justice Mosk's concurrence in Cotran. The Justice was concerned that the adoption of a good faith standard in implied contract cases might be viewed as a limitation on the parties' freedom to contract. Explaining the majority's holding, Justice Mosk stated:

> [T]here is nothing, of course, in the majority's standard that precludes an employer and an employee from negotiating or impliedly forming a contract with a "good cause" clause that defines that term more explicitly, in which case the jury's good cause determination would be shaped by this contractual definition.

Cotran, 948 P.2d at 423 (Mosk, J., concurring). The concurring opinion goes on to state, "[i]n short, the majority's definition of 'good cause' is a 'default' definition that applies only in the absence of more specific provisions." Id. at 423 (Mosk, J., concurring).

Here, the Trustee argues section 2924 does not prevent the parties from agreeing to a termination provision that varies from the statute and embodies the parties' freely-negotiated terms. The case that best demonstrates the Trustee's position is Thompson v. Associated Potato Growers, Inc., 610 N.W.2d 53 (N.D. 2000). In Thompson, a case with an express employment agreement, the North Dakota Supreme Court adopted the Cotran standard. Thompson, 610 N.W.2d at 57, 59. The employment contract authorized the employer to terminate an employee for any material breach of the employment policies or provisions. The employee was fired after the employer conducted an investigation and concluded that the employee had been dishonest. The employee brought a wrongful termination action,

arguing that he had not been dishonest and he had not violated the policies or provisions of the employment agreement. Id. at 55-56. After a trial, the court found in favor of the employee and ruled that the employee had been wrongfully discharged. Id. at 56.

On appeal, the court concluded that the employee's job could not be terminated except for cause based on the employment agreement. The court, however, reached its conclusion by drawing an inference from the employment agreement, not by applying any express contract terms. The court interpreted a provision that authorized the employer to terminate an employee for, among other reasons, a material violation of the employer's policies. It construed this provision to mean that an employee could not be terminated except for cause. Because the inferred for cause term was not further defined by the contract, the court adopted the good faith standard articulated in Cotran. Id. at 59-60. Here, the Trustee argues for a similar approach to Dr. Lei's employment contract.

Obviously, Thompson is distinguishable by the existence in California of section 2924 and case law interpreting it as precluding the application of the Cotran good faith standard to express contracts for a specified term. The stated rationale behind the Khajavi holding is that Cotran's good faith standard runs counter to the concept of employment for a specified term and violates an employee's statutory section 2924 protection. In effect, the Trustee is attempting to circumvent Khajavi by asking this court to adopt Cotran's definition for good cause, which incorporates the Cotran good faith standard. But the Trustee does not cite any California appellate case applying the Cotran good

faith standard to an express contract for a specified term.

Moreover, we question whether application of the Cotran's good faith standard to the facts of this case would help the Trustee. Among its elements, Cotran requires an investigation, notice, and an opportunity for response. Essentially, the employer is relieved of the difficult task of proving misconduct in exchange for proving an honest and complete investigation. The record before us does not establish that Medical Group's decision to terminate Dr. Lei was "supported by substantial evidence gathered through an adequate investigation that includes notice of the claimed misconduct and a chance for the employee to respond." Cotran, 948 P.2d at 422. In other words, even if the bankruptcy court applied the wrong legal standard, the error would be harmless.

VI. CONCLUSION

While Khajavi remains good law, trial courts cannot apply the Cotran good faith standard to express contracts for a specified term.[6] In this case, the bankruptcy court, like California trial courts, was bound by Khajavi and applied the correct standard for good cause when it determined that Medical Group did not have good cause to terminate Dr. Lei. We affirm the order of the bankruptcy court.

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[6] "Decisions of every division of the District Courts of Appeal are binding upon all the justice and municipal courts and upon all the superior courts of this state, and this is so whether or not the superior court is acting as a trial or appellate court. Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court." People v. Hunter, 34 Cal. Rptr. 3d 818, 826 (App. Ct. 2005) (quoting Auto Equity Sales, Inc. v. Superior Court, 369 P.2d 937, 944 (Cal. 1962)) (citations omitted).