

1996

Meredith Gibson v. US West Communications, Inc. : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MEREDITH GIBSON,

PLAINTIFF and APPELLANT,

vs.

US WEST COMMUNICATIONS,
INC.,

DEFENDANT and APPELLEE.

96-0251-CA

COURT OF APPEALS
CASE NO. 950546-

THIRD DISTRICT COURT
CASE NO. 930905599CV

PRIORITY NO. 15 (RULE 29)

UTAH COURT OF APPEALS
BRIEF,

UTAH
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BRIEF OF THE APPELLANT⁵⁰

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DOCKET NO. 96-0251-CA

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY, THE HONORABLE J. DENNIS FREDERICK

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FILE

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COURT OF APPEALS

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*** * * * ***

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)	COURT OF APPEALS
PLAINTIFF and APPELLANT,)	CASE NO. 950546
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vs.)	THIRD DISTRICT COURT
)	CASE NO. 930905599CV
US WEST COMMUNICATIONS,)	
INC.,)	PRIORITY NO. 15 (RULE 29)
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*** * * * ***

BRIEF OF THE APPELLANT

*** * * * ***

**APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT OF
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Addendum

1. ORDER GRANTING MOTION FOR SUMMARY JUDGMENT AND DISMISSING COMPLAINT, dated November 9, 1995.
2. ORDER DENYING PLAINTIFF’S RULE 59 MOTION AND OBJECTION, dated November 28, 1995.
3. NOTICE OF APPEAL, dated December 6, 1995.

JURISDICTION OF THE COURT OF APPEALS

Appellant, Meredith Gibson, appeals the Judgment and Order of the Third District Court in a wrongful discharge case. She filed this appeal with the Supreme Court pursuant to U.C. §78-2-2(3)(j) (1995). Pursuant to its authority in U.C. §78-2-2(4) (1995), the Supreme Court assigned this case to the Court of Appeals for its review and disposition.

ISSUES PRESENTED FOR REVIEW AND STANDARD OF REVIEW

In reviewing the trial court's Summary Judgment, the Court of Appeals, after resolving all disputed facts and reasonable inferences in appellant's favor, affirms only if the appellee is nonetheless entitled to judgment as a matter of law. *Hunt v. ESI Engineering*, 808 P.2d 1137 (Utah App. 1991); *cert. denied*, 826 P.2d 651 (Utah 1991). In this case, the specific issues are:

1. When appellee ("US West") gives the appellant, Meredith Gibson ("Ms. Gibson"), a US West union employee of 18 years, an opportunity to change her position to a non-union position, does the promise of US West's Employment Office that her new employment would be governed by the union contract create an implied-in-fact contract, or can US West ignore its representation and fire her as an "at will" employee?
2. At the hearing on its motion for summary judgment, may US West attack, for the *first* time, the foundation of Ms. Gibson's testimony (concerning the representations of US West's Employment Office); additionally, may US West attack the credibility of Ms. Gibson's testimony in a motion for summary judgment?
3. Assuming that US West's promise to Ms. Gibson is honored, did US West have just cause (as required by the union contract) to fire Ms. Gibson where Ms. Gibson's supervisor, a US West manager, believed that a verbal reprimand was appropriate under the circumstances?

4. Assuming that US West's promise to Ms. Gibson is honored, did US West breach its covenant of good faith and fair dealing when it summarily fired Ms. Gibson?

5. Assuming that US West's promise to Ms. Gibson is honored, is Ms. Gibson entitled to damages based on her rights to severance pay?

DETERMINATIVE LAW

Rule 32(c)(3)(B) of the Utah Rules of Civil Procedure is determinative of part of the issues raised on this appeal. That Rule provides:

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented are waived unless seasonable objection thereto is made at the taking of the deposition.

U.R.C.P. Rule 32(c)(3)(B) (1995). There are no other constitutional provisions, statutes, ordinances or rules that are determinative of this appeal.

STATEMENT OF THE CASE

Upon being terminated by US West after nearly 20 years of exemplary service, Meredith Gibson sued US West, *inter alia*, for wrongful discharge, breach her employment contract's implied covenant of good faith and severance pay. US West moved for summary judgment, and the Salt Lake County Third District Court granted its motion. During its argument, US West had, for the first time, challenged the foundation of Ms. Gibson's deposition testimony concerning a promise made to her to treat her as an employee under US West's collective bargaining agreement with the Communications Workers of America. Accordingly, Ms. Gibson moved the Court to reverse its judgment on the basis that US West had violated provisions of the Utah Rules of Civil Procedure designed to protect parties from surprise. The Court denied Ms.

Gibson's motion. Ms. Gibson then filed this appeal. Her appeal is limited to her claims of wrongful termination, breach of the implied covenant of good faith and for severance pay.

FACTS

Meredith Gibson joined Mountain Bell, US West's predecessor, in 1971. R.124. Until 1989, Ms. Gibson worked as a union employee subject to the contract between US West and the Communications Workers of America. R.124. Ms. Gibson's work record was excellent. R.665.

In 1989, US West offered Ms. Gibson the opportunity to work in US West's Salt Lake City Security Office. R.664. She also learned that the Security Office was a non bargained for unit (meaning that employment in that office was not covered by the union contract). R.664. Before accepting the position, Ms. Gibson went to US West's Employment Office and asked how she would be treated if she accepted the position in the Security Office. R.664. The US West Employment Office advised Ms. Gibson that her employment would be *governed* by the union contract. R.664-65. Based on that representation, Ms. Gibson accepted the Security Office position. R.665.

In the Security Office, Ms. Gibson's immediate supervisor was Daniel Gomez, a US West Manager. R. 663, 665. US West repeatedly advised Mr. Gomez that he was to treat US West's union employees and its non union employees the same. R.665. Mr. Gomez acted accordingly. R.665. Other US West managers advised Ms. Gibson prior to her employment in the Security Office that US West would treat its union and non-union employees the same. R.285-87. Thus, Ms. Gibson saw that US West's promise coincided with how in fact she was treated. R.667.

The union contract provided that employees could only be fired for "just cause." R.668-

69. It further grants tenured employees like Ms. Gibson the right to challenge any US West action and require the dispute be resolved by mediation, binding arbitration, or mediation followed by binding arbitration. R.669.

As part of Ms. Gibson's duties, she handled teleabuse (customer complaints concerning annoying, abusive or threatening telephone calls). R.125. Ms. Gibson worked with Mary Tolman. R.125. Ms. Tolman handled all court ordered wire taps. R.125. When Ms. Gibson was on vacation, Ms. Tolman handled Ms. Gibson's duties. R.125.

On about December 20, 1990, Ms. Tolman received a letter from Brenda Mehl authorizing US West to establish a trap and trace on her telephone line. R.128. Ms. Gibson was on vacation. R. 129. Thus, Ms. Tolman called Ms. Mehl and confirmed the number of lines upon which a trap and trace should be placed. R.129. Thereafter, Ms. Tolman called Ms. Gibson at her home. R.666. Ms. Gibson was not available to take the call. R.129. Ms. Tolman advised Mr. Gibson that she had received a trap and trace request from a "Brenda" in Kaysville. R.666. She further stated that she knew that Ms. Gibson's sister was named Brenda and lived in the Kaysville area, but that she couldn't remember Ms. Gibson's sister's last name. R.666. Mr. Gibson advised Ms. Tolman that Ms. Gibson's sister's name was Carlson-Butcher, and Ms. Tolman concluded the call. R.187. Mr. Gibson later told his wife of Ms. Tolman's call. R.129.

Later that same day, Ms. Gibson and her husband went to her sister Brenda's home to borrow a carpet cleaner. R.187. Upon arriving at the home, Brenda told the Gibsons she had just concluded an unpleasant telephone conversation with her ex-husband and that she hung up on him. R.187. Brenda then complained about her ex-husband's calls. R.250. Ms. Gibson noted a Brenda in Kaysville had sought a trap and trace that day, that Ms. Tolman had wondered if it was

Brenda, and that maybe Brenda should consider getting a trap and trace on her ex-husband.

R.250. Brenda said it wasn't her, but that she would think about the trap and trace. R.250-51.

During this conversation, Brenda's boyfriend Derek was sitting in the kitchen area.

R.253. He did not participate in the conversation. R.254. Derek's ex-wife was Brenda Mehl, the Brenda who had called Mary Tolman that day. R.127.

The next day, Derek apparently¹ called Brenda Mehl. told her he knew she had placed a trap and trace on her line, and told her it would not work. R.255. Brenda Mehl then called Mr. Gomez (Ms. Gibson's supervisor) to complain that her request for a trap and trace had been compromised. R.130. Mr. Gomez then called Ms. Gibson twice. R.130. During the second call, Ms. Gibson realized that Derek was Ms. Mehl's ex-husband, and that he must have guessed that it was his ex-wife that called for call tracing. R.256.

After Mr. Gomez had apologized to Ms. Mehl, he called Ms. Gibson again and reprimanded her for the disclosure. R.256. Because he believed that Ms. Mehl was satisfied with his explanation of what had happened and the actions he took (reassigning her case, extending her trap and trace, and reprimanding both Ms. Tolman and Ms. Gibson), Mr. Gomez took no further action. R.130, 666.

In February of 1991, Ms. Mehl contacted Tim Shryne of US West's Denver office to complain about the events of December 1990. R.131. Mr. Shryne then initiated an investigation. R.131. US West immediately suspended Ms. Gibson, Ms. Tolman and Mr. Gomez. R. 132. On March 1, 1991, US West terminated all three. R.133.

¹ Mr. Mehl denied hearing the comment and making the call to his ex-wife. R.666.

In terminating Ms. Gibson, US West stated it was doing so for cause. In particular, it stated that she had violated US West's Code of Conduct, other US West policies and state law by revealing the contents of a court ordered wire tap. R.133. In fact, there never was a court ordered wire tap, nor did Ms. Gibson violate any state laws. R.132-33.

Upon learning of her suspension, Ms. Gibson sought help from the Communication Workers of America. R.133. The union sought to redress Ms. Gibson's injuries. R.667. When US West refused to honor its promise to Ms. Gibson, the union advised Ms. Gibson that it could not help her. R.667.

The Summary Judgment Proceeding

Ms. Gibson filed her lawsuit and in May of 1995, US West moved for summary judgment. R.119. It argued that Ms. Gibson failed to identify any "specific promises the company made to terminate her only for cause." R.139. Ms. Gibson responded that she had identified the US West's Employment Office's promise to her that her employment would be governed by the union contract. R.664. She further cited the terms of the union contract that only permitted termination for "just cause." R.667.

In its Reply Memorandum, US West argued that Ms. Gibson must provide proof that US West and Ms. Gibson "intended a specific term or agreed to terminate the relationship for cause alone." R.693. It then argued that this proof is adequate "only if it meets traditional rules of contract formation." R.693-694. US West further argued that Gibson's testimony that "someone" in its Employment Office advised her that her employment would be governed by the union contract was insufficient under the *Johnson* test (employee's understanding insufficient to change employment from at will to contract). *Johnson v. Morton Thiokol*, 812 P.2d 997, 1002

(Utah 1991). US West made no challenge to the foundation of Ms. Gibson's testimony.

At the hearing, US West challenged both the credibility of Ms. Gibson's testimony, and for the first time, attacked its foundation. R.900-901. Ms. Gibson's counsel was surprised by US West's action and failed to advise the Court of Rule 32(c)(3)(B) and the fact that US West had not made any foundational objection at the time of Ms. Gibson's deposition. R. 904-12. The Court granted US West's motion for the "reasons set forth in [US West's] supporting memoranda." R.786.

Thereafter, Ms. Gibson filed her Motion for relief from the Court's ruling under Rule 59. R.826. She argued that US West had improperly attacked the credibility and foundation of her deposition testimony and that giving proper weight to her testimony, the Court should have denied the Motion for Summary Judgment. R.844-48. The Court denied her motion. R.930. Ms. Gibson then filed this appeal. R.932.

SUMMARY OF ARGUMENT

Ms. Gibson's testimony that a US West Employment Office representative advised her that her position as a Security Assistant would be governed by the union contract is unrebutted. Under the doctrine of apparent authority, Ms. Gibson was entitled to rely upon that representation. Under the test articulated in *Johnson v. Morton Thiokol*, Ms. Gibson established a specific promise upon which she relied that established the terms of her contract. Thus, she was not an "at will" employee.

Her testimony was given in answer to a question propounded by US West. There was no objection to the form of the question or the answer. By not asserting its foundational objection, US West waive this objection. Further, US West improperly attacked the credibility of Ms.

Gibson's testimony, thus seeking to have the trial court resolve doubts in *its* favor.

Assuming that US West's commitment is honored and the union contract governs Ms. Gibson's employment, there are material facts in dispute as to whether US West had just cause to fire Ms. Gibson. US West's manager in charge of Ms. Gibson did not fire Ms. Gibson. Instead, he gave her a verbal reprimand. Again, resolving inferences in Ms. Gibson's favor, the trial court should have concluded that there was a material issue of fact as to whether Ms. Gibson's firing was for just cause. In any event, the union contract grants Ms. Gibson the right to seek mediation, binding arbitration or both. Ms. Gibson would be entitled to invoke those remedies if she prevails in her claim that she had an implied-in-fact contract with US West.

If Ms. Gibson establishes her entitlement under an implied-in-fact contract, she can sue for breach of the implied covenant of good faith and for severance pay damages.

Thus, had the trial court properly reviewed the record evidence and properly applied Utah law, it would have denied the motion for summary judgment as to these three issues.

ARGUMENT

1. MS. GIBSON'S EMPLOYMENT WITH US WEST WAS GOVERNED BY THE TERMS OF THE COLLECTIVE BARGAINING AGREEMENT WITH THE COMMUNICATIONS WORKERS OF AMERICA; SHE WAS NOT AN "AT WILL" EMPLOYEE

This case has several key facts that sets it apart from other "at will" wrongful discharge cases:

1. For 18 years, Ms. Gibson was a union employee whose employment was governed by the collective bargaining agreement between US West and its union. R.124. For 20 years, she had observed that US West treated its union and non-union employees the same. R.285-87. She had been told by supervisors that she would be treated fairly and not terminated except for cause.

R.286-287. When she went to US West's Employment Office to discuss the proposed transfer to a non-bargained for unit, she wanted the assurance that her employment would be governed by the union contract. R.918-19.

2. Ms. Gibson testified that the US West Employment Office transfer counselor advised her that her new position would be governed by the union contract. R.919.

3. US West did not add its disclaimer language to its Code of Business Conduct advising employees that all employees were "at will" until its August 1989 edition, after Ms. Gibson began work in her new position in April 1989 (R.919). Compare R.158 *et seq.* and R.165 *et seq.*

4. US West falsely claimed in its memorandum to the Court that Ms. Gibson read the 1989 Code of Business Conduct. R.135. Ms. Gibson testified she never saw the 1989 version until after her termination. R.717.

Thus, where other employees signed documents at the inception of their employment acknowledging "at will" status (*Kriberg v. West One Bank*, 872 P.2d 39 (Utah App. 1994)) or received handbooks at the outset of the employment asserting employment was "at will" (*Hamilton v. Parkdale Care Center*, 904 P.2d 1110 (Utah App. 1995)), Ms. Gibson had worked for 18 years under the union contract, observed that US West treated union and non-union employees alike, wanted to make sure her new employment would be governed by the union contract, and received a specific promise that her employment would be governed by the union contract. Furthermore, she never saw US West's self serving changes in its Code of Business Conduct.

As both parties agreed below, the Utah Supreme Court has established the methodology for analyzing this case in *Johnson v. Morton Thiokol*, 812 P.2d 997, 1002 (Utah 1991). The Court stated that the key is whether a unilateral contract has been formed. It explained:

Under a unilateral contract analysis, an employer's promise of employment under certain terms and for an indefinite period constitutes both the terms of the

employment contract and the employer's consideration for the employment contract. The employee's performance of service pursuant to the employer's offer constitutes both the employee's acceptance of the offer and the employee's consideration for the contract. Therefore, for an implied-in-face contract term to exist, it must meet the requirements for an offer of a unilateral contract. There must be a manifestation of the employer's intent that is communicated to the employee and sufficiently definite to operate as a contract provision. Furthermore, the manifestation of the employer's intent must be of such a nature that the employee can reasonably believe that the employer is making an offer of employment other than employment at will. The unilateral nature of such an employment contract is important because it affects the flexibility of the employment relationship.

In this case, when the transfer counselor advised Ms. Gibson that the union contract would govern her employment, that met the requirement of “a manifestation of the employer's intent that is communicated to the employee . . . sufficiently definite to operate as a contract provision.”² Moreover, Ms. Gibson’s reliance on this promise was entirely reasonable. Not only had she observed that union and non-union employees were treated alike (R.285-287, 918), but she had been told by US West managers that they would treat union and non-union employees alike (R.285-287). Furthermore, her immediate supervisor, Mr. Gomez (a US West manager), testified that he had been repeatedly instructed that US West managers were to treat union and non-union employees alike, and he followed that practice. R.665. Finally, when US West fired Ms. Gibson, it did *not* advise her that it was exercising its unilateral right to fire an “at-will”

² Apparently, US West is arguing that its transfer counselor could not orally change the “at-will” status expressly provided for in its to-be-published 1989 edition of its Code of Business Conduct. In addition to putting the cart before the horse, the Utah Supreme Court has expressly held: “At-will employment is a bundle of different privileges, any or all of which an employer can surrender through an oral agreement.” *Sanderson v. First Security Leasing Company*, 844 P.2d 303 (Utah 1992).

employee. Instead, it wrongly accused Ms. Gibson of disclosing a “court ordered” wire tap and committing a crime. R.132-33.

Since whether an implied-in-fact employment relationship exists is a question of fact, US West must show that no reasonable jury could find that an implied-in-fact contract existed. *Kriberg v. West One Bank*, 872 P.2d 39 (Utah App. 1994). Resolving disputed facts in Ms. Gibson’s favor and taking all reasonable inferences from those facts, Ms. Gibson has shown a reasonable jury could find that she had an implied-in-fact contract with US West.

2. ABSENT A TIMELY OBJECTION, US WEST MAY NOT ATTACK MS. GIBSON’S DEPOSITION TESTIMONY FOR LACK OF FOUNDATION; FURTHER, US WEST MAY NOT ATTACK THE CREDIBILITY OF HER TESTIMONY FOR PURPOSES OF A MOTION FOR SUMMARY JUDGMENT.

U.R.C.P. Rule 32(c)(3)(B) is designed to prevent the kind of surprise that US West used against Ms. Gibson in this case. Although it had never before attacked Ms. Gibson’s testimony concerning her conversation with the US West Employment Office transfer counselor, during the oral argument, it argued:

Importantly, the plaintiff relies on the statement that supposedly was made by someone in the Employment Office at the time she was moving to her job in the Security Office, to the effect that her employment would be upon the same terms and conditions as bargained for employees were entitled to under the collective bargaining agreement.

There are two principal reasons why this statement cannot create an issue of fact and is insufficient to create an issue of fact. First of all, there is no foundation as to who made the statement. She simply says it was someone in the employment office of US West who made the statement. She didn’t say who it was, whether it was a management employee, a secretary, or anyone else so there is no foundation, and if that kind of evidence were presented at the trial, it would not be admitted because it has insufficient foundation.

More importantly, the person who made the statement, there is no evidence in the record that that person had any authority to make the statement,

and by making the statement alter the express intent of US West that employment was at will .

R.900-01.

Rule 32(c)(3)(B) prevents this type of surprise attack.

Errors and irregularities occurring at the oral examination in the . . . the form of the questions or answers, . . . which might be obviated, removed, or cured if promptly presented are waived unless seasonable objection thereto is made at the taking of the deposition.

U.R.C.P. Rule 32(c)(3)(B) (1995). If US West wanted to attack the foundational basis of Ms. Gibson's testimony, it needed to object at the deposition so that Ms. Gibson could have adduced additional testimony at the deposition or prepared a supporting affidavit with the additional information in preparation for the hearing. Recognizing the unfairness of these kinds of attacks, this Court has ruled that *all* objections to the sufficiency of evidence raised for the first time at a hearing are waived. *D&L Supply v. Saurini*, 775 P.2d 410 (Utah 1989).

In addition, US West further attack the credibility of Ms. Gibson's testimony. In its brief, US West referred to the US West transfer counselor by placing the word "someone" in quotation marks. In continued its attack on the credibility of Ms. Gibson's testimony at the hearing. In referring to Ms. Gibson's reliance on the statement, US West referred to the statement as one "supposedly made."

Ms. Gibson provided sufficient testimony to identify the US West office responsible for the statement made to her. Where she went to the US West Employment Office to seek advice concerning the possible transfer to the Security Office, Ms. Gibson was entitled to rely upon the apparent authority of US West's transfer counselor. As this Court has said:

Basic agency law dictates that a principal is bound by the acts of an agent

clothed with apparent authority. [Citations omitted]. In *Harrison v. Auto Securities Co.*, 70 Utah 11, 257 P. 677 (1927), the Utah Supreme Court stated:

It is a general principle of the law of agency, running through all contracts made by agents with third parties, that the principals are bound by the acts of their agents which fall within the apparent scope of the authority of the agents, and that the principals will not be permitted to deny the authority of their agents against innocent third parties, who have dealt with those agents in good faith.

Horrocks v. Westfalia Systemat, 802 P.2d 14 (Utah App. 1995).

Thus, US West unfairly attacks the foundation and credibility of Ms. Gibson's testimony. Moreover, rather than draw inferences in Ms. Gibson's favor, US West would have the court ignore its agent's apparent authority and infer that it was a secretary, with no authority, who advised Ms. Gibson she would be governed by the union contract. Utah law does not support US West's efforts to undermine Ms. Gibson's testimony.

3. US WEST DID NOT HAVE JUST CAUSE TO FIRE MS. GIBSON

For purposes of its Motion for Summary Judgment, US West assumed that Ms. Gibson's testimony was accurate. R.124. Based on her testimony, Ms. Gibson inadvertently disclosed to her sister Brenda that a person with her first name had requested a "trap and trace" at the Security Office. Her sister's boyfriend apparently ³ overheard the comment, guessed who the other Brenda was, and the "trap and trace" was compromised.

The US West manager who was in the best position to determine whether Ms. Gibson's inadvertent disclosure warranted firing was Ms. Gibson's immediate supervisor, Daniel Gomez. In light of her excellent record, the inadvertent nature of the disclosure, and the limited amount

³ The boyfriend denied hearing the remark or using the information. R.666.

of information disclosed, Mr. Gomez gave Ms. Gibson a verbal reprimand. R.146-48. He testified that he understood that it was “his judgment call.” R.162. When question about his actions, he testified that he had handled it properly. R.228.⁴

Thus, Ms. Gibson has established that there are materials issues of disputed fact as to whether US West had just cause for terminating her.

4. US WEST VIOLATED THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING THAT IS PART OF ITS CONTRACT WITH MS. GIBSON

The Utah Supreme Court has forcefully stated that the implied covenant of good faith and fair dealing *cannot* create contractual duties that did not already exist. *Sanderson v. First Security Leasing Company*, 844 P.2d 303 (Utah 1992). Thus, Ms. Gibson has no claim for any breach under this claim until the Court holds that she has a justiciable claim under her implied-in-fact contract.

The union contract only permits firing for cause. R.667-68. In addition, the union contract authorizes an aggrieved employee to require US West to mediate, arbitrate or mediate and arbitrate any dispute that arises in the course of the employee’s employment. When US West summarily fired Ms. Gibson, it denied her these rights under her contract. By so doing, US West violated its duty of good faith and fair dealing.

Thus, if the Court reverses Ms. Gibson’s claim for wrongful discharge, it should also reverse the trial court’s dismissal of her claim for breach of the implied covenant of good faith and fair dealing.

⁴ US West also attacked Mr. Gomez’s testimony noting that he was fired for the same instance. While this may be probative at trial, it is irrelevant in a motion for summary judgment.

5. MS. GIBSON IS ENTITLED TO SEVERANCE PAY DAMAGES.

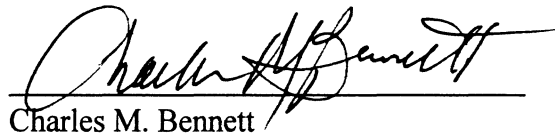
The trial court held that Ms. Gibson was not entitled to severance pay because her discharge was not wrongful. R. 927; Addendum 1 p.3. If the Court of Appeals reverses the trial court's decision on the foregoing issues, the Court should reinstate this claim.

CONCLUSION

The trial court erred in granting US West's Motion for Summary Judgment. The disputed evidence and inferences drawn in Ms. Gibson's favor establish that Ms. Gibson had an implied-in-fact contract with US West, that US West breached that contract, and that it fired her without just cause. Thus, Ms. Gibson asks that the Court of Appeals reverse the dismissal of her first three causes of action (wrongful discharge, breach of the implied covenant of good faith and fair dealing and severance pay) and direct those issues to proceed to trial.

Dated July 1, 1996.

BLACKBURN & STOLL

A handwritten signature in cursive script, appearing to read "Charles M. Bennett", written over a horizontal line.

Charles M. Bennett
Attorneys for Meredith Gibson

CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of Ms. Gibson's **APPELLANT'S BRIEF** was mailed on this 4 day of July, 1996, to the following:

Floyd Jensen
Ray, Quinney & Nebeker
79 South Main St.
Suite 400
Salt Lake City, UT 84111

A handwritten signature in black ink, appearing to read "Charles H. Bennett", written over a horizontal line.

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ADDENDUM

1. ORDER GRANTING MOTION FOR SUMMARY JUDGMENT AND DISMISSING COMPLAINT, dated November 9, 1995.
2. ORDER DENYING PLAINTIFF'S RULE 59 MOTION AND OBJECTION, dated November 28, 1995.
3. NOTICE OF APPEAL, dated December 6, 1995.

Tab 1

Floyd Andrew Jensen (Bar No. 1672)
Janet Hugie Smith (Bar No. 3001)
Lisa A. Yerkovich (Bar No. 5165)
RAY, QUINNEY & NEBEKER
79 S. Main, Suite 700
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
Attorneys for Defendant
U S WEST Communications, Inc.

FILED DISTRICT COURT
Third Judicial District

NOV 9 1995

By C. Bennett
SALT LAKE COUNTY
Dep. Clerk

**IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

MEREDITH A. GIBSON,
Plaintiff,

vs.

U S WEST COMMUNICATIONS, INC.,
a Colorado corporation,
Defendant.

**ORDER GRANTING MOTION
FOR SUMMARY JUDGMENT
AND DISMISSING COMPLAINT**

Civil No. 930905599CV

Judge J. Dennis Frederick

BY THE COURT:

Defendant's Motion for Summary Judgment came on for hearing before the Court, the Honorable J. Dennis Frederick, District Judge, presiding, on October 2, 1995, at 9:00 a.m. Defendant was represented by Floyd A. Jensen, and Plaintiff was represented by Charles Bennett. The motion was argued to the Court, and the Court took the matter under advisement. Having reviewed the arguments of counsel and the memoranda and other materials on file supporting and opposing the motion, including depositions and affidavits, relying on the reasons set forth in Defendant's supporting memoranda, and being thus fully advised in the premises, the Court rules that there are no genuine issues of material fact pertaining to Defendant's motion, and that Defendant is entitled to judgment as a matter of law

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dismissing Plaintiff's complaint, and each cause of action therein, for the following reasons:

1. Because Plaintiff failed to come forward with evidence that she was employed for a definite term, the law presumes that Plaintiff was an employee at will, whose employment could be terminated by Defendant at any time, for any reason or for no reason, with or without notice.
2. The presumption of at-will employment is reinforced by statements in Defendant's publications, all of which were issued prior to Plaintiff's termination, to the effect that employment with Defendant is at will. Such statements establish Defendant's intention to create or maintain an at-will employment relationship with its employees, including Plaintiff.
3. To avoid summary judgment, Plaintiff had the burden to present admissible evidence showing that notwithstanding its published statements that employment with Defendant is at will, Defendant manifested a contrary intent and communicated that intent to Plaintiff in a manner sufficiently definite to operate as a contract provision, and that the communication was of such a nature that Plaintiff could reasonably believe that Defendant was making an offer of employment other than employment at will.
4. Plaintiff failed to present admissible evidence sufficient to satisfy her burden, as described above. Plaintiff's deposition testimony that an unidentified person in Defendant's employment office told Plaintiff that her employment in Defendant's Security Department would be governed by the terms and conditions of a collective bargaining agreement is insufficient to raise an issue of material fact. It is undisputed that Plaintiff was not a member of the union during her

tenure in the Security Department. Furthermore, the statement cannot be imputed to Defendant in the absence of foundational evidence as to the identity or authority of the person making the statement. Such evidence was wholly lacking. Finally, neither Plaintiff's understanding of her employment relationship, nor Defendant's general assurances regarding an ongoing employment relationship, are sufficient to demonstrate Defendant's intent to alter Plaintiff's presumed at-will status.

5. Even if an implied covenant not to discharge except for just cause existed, Plaintiff was terminated for just cause as a matter of law because she violated Defendant's policy against the disclosure of confidential information to persons not employed by Defendant, as set forth in Defendant's Code of Business Ethics and Conduct. Defendant's Code of Business Ethics and Conduct allowed Defendant to determine the measure of discipline for breach of its provisions. Plaintiff offered no evidence to establish that the Code of Conduct did not apply to her, or that Defendant had agreed to different terms with respect to her employment.

6. As a matter of law, an implied covenant of good faith and fair dealing does not create a for-cause standard of dismissal under Utah law; therefore, Plaintiff's claim for breach of such a covenant is not cognizable in this case.

7. Plaintiff's claim for failure to pay severance pay fails as a matter of law because Plaintiff's discharge was not wrongful, and Plaintiff has presented no evidence to establish that Defendant had an obligation to pay severance pay to discharged employees.

8. Plaintiff's defamation claim is barred by the one year statute of limitations

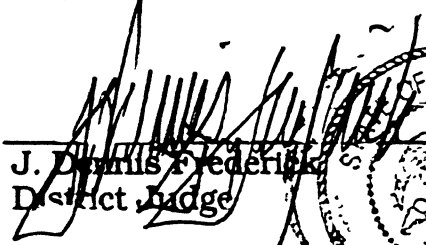
in Utah Code Ann. § 78-12-29(4). Even if a discovery rule applied, Plaintiff knew of the defamatory statements more than one year prior to filing her complaint. Alternatively, even if the statute of limitations were not a bar, the alleged defamatory statements were qualifiedly privileged, because they were made by and to persons who had a legitimate interest in Plaintiff's discharge from employment, and Plaintiff presented no evidence of excessive publication or actual malice on the part of Defendant.

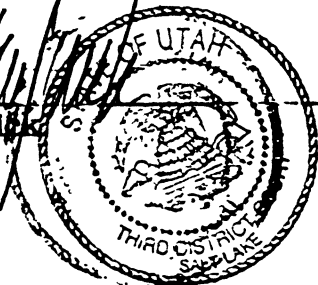
9. Plaintiff stipulated in open court and in her opposing memorandum that her negligence claim may be dismissed. Accordingly, the Court does not address the merits of that claim.

Based on the foregoing, the Court ORDERS that (1) Defendant's motion for summary judgment is granted; and (2) Plaintiff's complaint is dismissed in its entirety, with prejudice, Plaintiff to bear the costs in the sum of \$_____.

Dated this 9th day of Nov, 1995.

BY THE COURT:


J. Dennis Frederick
District Judge



APPROVAL AS TO FORM:

Attorney for Plaintiff

Tab 2

Floyd Andrew Jensen (Bar No. 1672)
Janet Hugle Smith (Bar No. 3001)
Lisa A. Yerkovich (Bar No. 5165)
RAY, QUINNEY & NEBEKER
79 S. Main, Suite 700
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Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
Attorneys for Defendant
U S WEST Communications, Inc.

FILED DISTRICT COURT
Third Judicial District

NOV 28 1995

By C. B. [Signature]
SALT LAKE COUNTY
Deputy Clerk

**IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

MEREDITH A. GIBSON,

Plaintiff,

vs.

U S WEST COMMUNICATIONS, INC.,
a Colorado corporation,

Defendant.

**ORDER DENYING PLAINTIFF'S
RULE 59 MOTION AND
OBJECTION**

Civil No. 930905599CV

Judge J. Dennis Frederick

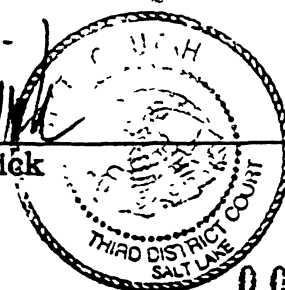
BY THE COURT:

Plaintiff's Rule 59 Motion for Denial of U S WEST's Motion for Summary Judgment and her Objection to Defendant's Proposed Order, together with supporting and opposing memoranda, were duly presented to and considered by the Court pursuant to a Notice to Submit for Decision. Having reviewed the memoranda and other materials on file supporting and opposing the motion, and being thus fully advised in the premises, the Court hereby ORDERS that Plaintiff's Motion and Objection are denied.

Dated this 28th day of Nov., 1995.

BY THE COURT:

[Signature]
J. Dennis Frederick
District Judge



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APPROVAL AS TO FORM:


Attorney for Plaintiff

Certificate of Service

I hereby certify that on this 16th day of November, 1995, I caused a copy of the foregoing ORDER DENYING PLAINTIFF'S RULE 59 MOTION AND OBJECTION to be mailed by United States mail, postage prepaid, to the following:

Charles M. Bennett
Blackburn & Stoll
77 W. 200 South
Salt Lake City, Utah 84101



Tab 3

FILED
DISTRICT COURT
95 DEC -8 AM 9:55
JUDICIAL DISTRICT
SALT LAKE COUNTY
BY S. Owen
DEPUTY CLERK

BLACKBURN & STOLL, LC
CHARLES M. BENNETT (A0283)
77 West 200 South St., Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 521-7900

Attorneys for Plaintiff Meredith A. Gibson

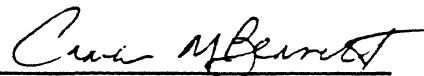
IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

MEREDITH A. GIBSON,)	NOTICE OF APPEAL
)	
Plaintiff,)	
vs.)	
)	Civil No. 930905599 CV
US WEST)	
COMMUNICATIONS, INC., a)	Judge J. Dennis Frederick
Colorado Corporation,)	
)	
Defendant.)	

Plaintiff Meredith Gibson ("Ms. Gibson"), through counsel, gives notice that she is appealing to the Utah Supreme Court the District Court's Summary Judgment entered on November 9, 1995 and the District Court's Denial of Ms. Gibson's Rule 59 Motion entered on November 28, 1995. Ms. Gibson's appeals that part of the Summary Judgment that dismissed her first, second and third causes of action and all of the Court's denial of her Rule 59 Motion.

Dated this 6 day of December, 1995.

BLACKBURN & STOLL, LC


Charles M. Bennett
Attorneys for Meredith Gibson

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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing **NOTICE OF APPEAL** was mailed, postage prepaid, on this 6 day of December, 1995, to the following:

Floyd A. Jensen, Esq.
Ray, Quinney & Nebeker
79 South Main Street, #500
Salt Lake City, Utah 84111

A handwritten signature in cursive script, appearing to read "Chuck R. Bennett", is written over a horizontal line.

H:\CMB\PLDX\GIBSON-M\NOT