1982

Jack Horgan v. Industrial Design et al : Brief of Defendants-Respondents

Utah Supreme Court

Henry S. Nygaard; Beaslin, Nygaard, Coke & Vincent; Attorney for Appellant;
William L. Crawford; Parsons, Behle & Latimer; Attorney for Respondents;

IN THE SUPREME COURT OF THE STATE OF UTAH

* * * * * * *

JACK HORGAN, Plaintiff-Appellant, vs. INDUSTRIAL DESIGN CORPORATION, a Utah corporation, ABE W. MATHEWS ENGINEERING CORPORATION, a Minnesota Corporation, Defendants-Respondents.	)	Case No. 18104

* * * * * * *

BRIEF OF DEFENDANTS-RESPONDENTS

* * * * * * *

Appeal from the Judgment of
The Third Judicial District Court of
Salt Lake County, State of Utah
The Honorable G. Hal Taylor, Judge

* * * * * * *

William L. Crawford
Kent O. Roche
of and for
PARSONS, BEHLE & LATIMER
79 South State Street
Post Office Box 11898
Salt Lake City, Utah 84147
Telephone: (801) 532-1234

Attorneys for Defendants-Respondents, Industrial Design and Abe W.Mathews Engineering Corporation

Henry S. Nygaard
BEASLIN, NYGAARD, COKE & VINCENT
1100 Boston Building
Salt Lake City, Utah 84111
Attorney for Plaintiff-Appellant, Jack Horgan

IN THE SUPREME COURT OF THE STATE OF UTAH

* * * * * * *

JACK HORGAN, Plaintiff-Appellant, vs. INDUSTRIAL DESIGN CORPORATION, a Utah corporation, ABE W. MATHEWS ENGINEERING CORPORATION, a Minnesota Corporation, Defendants-Respondents.	)	Case No. 18104

* * * * * * *

BRIEF OF DEFENDANTS-RESPONDENTS

* * * * * * *

Appeal from the Judgment of
The Third Judicial District Court of
Salt Lake County, State of Utah
The Honorable G. Hal Taylor, Judge

* * * * * * *

William L. Crawford
Kent O. Roche
of and for
PARSONS, BEHLE & LATIMER
79 South State Street
Post Office Box 11898
Salt Lake City, Utah 84147
Telephone: (801) 532-1234

Attorneys for Defendants-Respondents, Industrial Design and Abe W.Mathews Engineering Corporation

Henry S. Nygaard
BEASLIN, NYGAARD, COKE & VINCENT
1100 Boston Building
Salt Lake City, Utah 84111
Attorney for Plaintiff-Appellant, Jack Horgan

TABLE OF CONTENTS

AUTHORITIES CITED

IN THE SUPREME COURT OF THE STATE OF UTAH

* * * * * * *

JACK HORGAN, Plaintiff-Appellant, vs. INDUSTRIAL DESIGN CORPORATION, a Utah Corporation, ABE W. MATHEWS ENGINEERING CORPORATION, a Minnesota Corporation, Defendants-Respondents.	Case No. 18104

* * * * * * *

BRIEF OF DEFENDANTS-RESPONDENTS

* * * * * * *

NATURE OF THE CASE

This is an action by plaintiff to recover damages for an alleged breach of an employment contract and for wrongful termination of employment.

DISPOSITION IN THE LOWER COURT

The trial court granted defendants' motion for summary judgment against the plaintiff.

RELIEF SOUGHT ON APPEAL

Defendants seek to have the trial court's summary judgment affirmed.

QUESTION ON APPEAL

Did the trial court abuse its discretion in granting defendants' motion for summary judgment?

STATEMENT OF FACTS

The facts as set forth by plaintiff are so selective as to be misleading. Therefore, defendants offer the following statement of facts.

Plaintiff is an engineer and was employed by defendant Abe W. Mathews Engineering Corporation (hereinafter referred to as "Mathews") in October, 1957. Plaintiff was employed by Mathews until July 1, 1977, at which time he went on the payroll of Industrial Design Corporation (hereinafter referred to as "IDC"), a subsidiary of Mathews.

Plaintiff volunteered in October, 1976, to move from Hibbing, Minnesota, to Salt Lake City, Utah, to try to lend assistance to IDC in its business operation. (Horgan depo., p. 13). Plaintiff's offer to transfer to Salt Lake City was officially accepted at a directors' meeting on December 17, 1976 (Horgan depo., p. 14), and plaintiff began commuting to Salt Lake City in February, 1977. (Horgan depo., p. 10). Plaintiff ultimately sold his home in Hibbing, Minnesota, and bought a home in Salt Lake City. Plaintiff went on the payroll of IDC on July 1, 1977. At the time of plaintiff's move to Salt Lake City, he was compensated $3,000 to help make up the difference between the appraised value of his home in Hibbing and the

actual sales price and was also paid $3,836.10 for moving expenses. (Horgan depo., Ex. D-3).

Plaintiff claims that as part of his agreement to move to Salt Lake City, he was to have the opportunity for a stock option with IDC, bonuses, and the eventual presidency of IDC, (Horgan depo. p. 15). Plaintiff alleges that these representations amounted to an employment contract and that defendants breached the contract. However, plaintiff has made the following admissions, all of which indicate that he had no employment contract that precluded defendants from firing plaintiff for cause:

1. That he did not have a written employment contract or stock option contract with Mathews or IDC (Horgan depo., p. 17).

2. That the verbal discussions about stock options did not progress to the point of setting a price at which the stock would be purchased (Horgan depo., p. 22).

3. That any bonuses would be contingent upon the corporation operating at a profit (Horgan dep., p. 22).

4. That bonuses were at the discretion at the Board of Directors (Horgan depo., p. 22).

5. That Mr. James S. Robb had the right, pursuant to a written employment contract, to remain as president of IDC as long as he desired. (Horgan depo., p. 25).

6. That it would only be upon Mr. Robb's retirement and upon plaintiff's earning the presidency that he would become president. (Horgan depo., p. 25).

7. That prior to moving to Salt Lake City, plaintiff had a discussion with one of the members of the Board of Directors of Mathews and told that Director that he didn't feel that he needed a written employment contract. (Horgan dep., p. 18). In fact, Mathews' standard operating procedure was not to have employment contracts with its employees. (Mathews depo., p. 45).

Because of the conflicts that existed between Mr. Robb and plaintiff as to plaintiff's alleged disloyalty, refusal to follow company policies regarding review of bids and other matters, and inability to produce sales (Robb depo., p. 12-34), plaintiff either quit or was terminated from IDC effective June 30, 1978.

During the course of events leading up to his termination, plaintiff told Jack H. DeLuca ("DeLuca"), president of Mathews, that "either Jim Robb has to go or I have to go." When reminded that Mr. Robb had an employment contract for as long as he desired, plaintiff said, "Well, then I'd better get out of here." (DeLuca depo., p. 33). Plaintiff admits that "I might have said that." (Horgan depo., p. 44). At that time, plaintiff was offered a transfer back to Hibbing, Minnesota, to work for Mathews but refused the same (Horgan depo., p. 78,

DeLuca depo., p. 30, and Abe W. Mathews depo., p. 46). Plaintiff states that he felt the defendants were not sincere in this offer (Horgan depo., p. 78).

Upon termination, plaintiff received the following considerations:

1. For repurchase of his Mathews stock, the sum of $123,200 based on $1600 per share for 77 shares.

2. Lump sum distribution from Mathews profit sharing plan in the amount of $16,338.04.

3. Distribution from IDC profit sharing plan in the amount of $200.00.

4. A bonus from IDC in the amount of $170.00.

5. Three months' termination pay from Mathews in the sum of $10,200.00.

6. Vacation pay from IDC in the amount of $3,400.00.

7. IDC paid $720 for six months' premiums for group health insurance coverage for plaintiff's family.

8. Plaintiff also received the cash value of a life insurance policy.

All of the foregoing is evidenced by a letter dated June 27, 1978, from DeLuca to plaintiff (Horgan depo., Ex. D-4.) That letter made reference to plaintiff's "voluntary termination." By letter dated August 11, 1978, plaintiff requested that "voluntary termination" be changed to "involuntary termination". (Horgan depo., Ex. D-6). At plaintiff's

request, DeLuca wrote a letter dated August 28, 1978, stating that the termination was involuntary and also that his services would be retained as an independent consultant for a period of three months at $3,400.00 per month. (Horgan depo., Ex. D-8). This letter was written using the designation "involuntary termination" and set forth the arrangement for consulting fees as an accommodation to plaintiff to assist him in collecting unemployment insurance payments (Horgan depo., p. 73) and so that the payments would not be subject to income tax withholding and Social Security taxes (DeLuca depo., p. 39).

As to the termination pay, plaintiff claims that he had a right to this termination pay because it had been paid to other employees (Horgan depo., p. 68). However, DeLuca testified that there was no such company policy and that termination pay, up to that time, had only been paid on one previous occasion. (DeLuca depo., p. 39). With regard to health insurance, plaintiff claims that the premiums were paid for six months because defendants knew that plaintiff's family was uninsurable (Horgan depo., p. 68). The premiums amounted to $720.00 (Horgan depo., p. 70), but were in fact worth much more than that because plaintiff's family was uninsurable as a result of a handicapped child.

Plaintiff and Mathews entered into a Mutual Release on August 28, 1978, wherein plaintiff waived

> . . . any and all rights or claims of whatever nature, past, present or future, which have accrued or which would accrue by reason of the employment relationship and hereby releases Employer from any and all obligations and liabilities arising under, incident to, or by virtue of the employment relationship, and as a stockholder and director of Employer.

(Horgan depo., Ex. D-7).

Plaintiff admits that he read the Mutual Release, understood that it was a release of all claims, and "wanted to get it over with." (Horgan depo., p. 72). Plaintiff further admits that at about the time of signing the Mutual Release he considered consulting an attorney. In fact, plaintiff called William L. Crawford, attorney for defendant, and was referred to another attorney but plaintiff chose not to consult with the attorney because he "wanted to get it behind me as soon as possible." (Horgan depo., p. 77).

Horgan alleges that he signed the Mutual Release under emotional distress stemming from the fact that he had lost his job. (Horgan depo., p 72). He also alleges that he was under duress as a result of a letter he received from Mathews stating that his termination pay would be held up because he was contemplating legal action against Mathews. (Horgan depo., p. 87; Ex. P-1). However, this allegation is meritless since the letter clearly stated that the termination pay would not be paid until the manner in which the payment was to be made for the stock was decided. It did not state that the termination

pay would be withheld if plaintiff consulted an attorney or if he did not sign the release. DeLuca stated that the intent of the letter authored by him was to indicate that he wanted to know the terms of payment for the stock before the termination pay would be paid. (DeLuca depo., p. 49).

Defendants maintain that they were exceedingly fair to plaintiff upon the termination in paying him a premium of $4,543 for his Mathews stock ($1600 per share less $1541 per share book value--see Mathews depo. p. 40), $10,200 in termination pay, maintaining health insurance as aforesaid, etc. After the settlement was reached, plaintiff also felt that he had been treated justly, equitably and held no animosity. (Horgan deposition p. 75). In fact, plaintiff wrote DeLuca a letter dated September 7, 1978, wherein he stated that he appreciated the prompt handling of some of the details of his termination and further stated:

> I feel that you have been just and equitable in this final settlement. I hold no animosity towards AWMECO [Mathews] since I also helped make the company what it is today. Hence I will always remember the good people, fun and disappointments of building a business as a most rewarding experience.

(Horgan depo., Ex. D-9).

After January 31, 1979, when the final payments were made under the settlement agreement, there was no further contact by plaintiff with Mathews. Plaintiff made no demands for additional compensation until he filed suit on May 19, 1980. (Horgan depo. p. 76).

POINT I

THE TRIAL COURT PROPERLY AWARDED SUMMARY JUDGMENT TO DEFENDANTS SINCE NO GENUINE ISSUE OF FACT EXISTS WITH RESPECT TO PLAINTIFF'S VOLUNTARY TERMINATION OF EMPLOYMENT.

As stated above, based upon the depositions of DeLuca, plaintiff, and Mathews, plaintiff was given the opportunity at the time of his termination of employment with IDC to transfer back to Hibbing, Minnesota, and to work for Mathews. Plaintiff admits that the offer of transfer was made, but felt that the defendants were not sincere in their offer. However, Abe W. Mathews, Chairman of the Board of Directors and majority stock holder in Abe W. Mathews Engineering Company, testified that the offer was a sincere offer and that Mathews would have taken plaintiff back if plaintiff had wanted to transfer back to Hibbing, Minnesota. Thus, it appears from the record that plaintiff, rather than accepting a transfer, voluntarily terminated his employment in spite of the fact that some of the documents refer to an involuntary termination. The fact that an employee is not entitled to damages for wrongful termination for breach of contract if he in fact quits his employment is so apparent and clear cut that it requires no citation of legal authority to substantiate the same. Thus, the trial court could have properly found no cause of action on the basis of plaintiff's voluntary termination.

POINT II

THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT TO DEFENDANTS SINCE PLAINTIFF WAS AN EMPLOYEE AT WILL AND THUS, AS A MATTER OF LAW, HAS NO RIGHT TO COMPENSATION HE WOULD HAVE RECEIVED HAD HE NOT BEEN DISCHARGED.

As stated above, plaintiff did not have a written or oral employment contract with defendants, or either of them, whereby defendants were required to retain plaintiff for any particular time. At the time the plaintiff volunteered to come to Salt Lake City, he had an oral agreement that provided, in pertinent part, that he would receive the same compensation that he received in Hibbing, that if things worked out he might eventually receive bonuses, that he might also receive the right to purchase stock at a future date, and that at a future date he might have the opportunity to become president of IDC. However, plaintiff had no written or oral contract that he would be employed for any definite period of time. On the contrary, plaintiff knew when he transferred to Salt Lake City that his continued employment, bonuses, stock options, and eventual presidency of the company would depend upon his performance. Because of the nature of the oral agreement, it being indefinite as to its terms, defendants submit that they had an unconditional and unrestricted right to fire or discharge plaintiff because of the conflicts that arose between plaintiff and the president of the company. The case of Bihlmaier v. Carson, 603 P.2d 790 (Utah, 1979) is quite similar to

the case at hand. In that case the plaintiff quit one job and moved to Utah with the expectation that if things worked out he would become store manager. He was hired for a trial period and his assumption of managerial duties would depend upon his performance. Because of a dispute with defendant, plaintiff quit and sued for damages for an alleged breach of oral employment contract. The Trial Court granted summary judgment for defendant and this Court affirmed stating:

> [I]n the absence of some further express or implied stipulation as to the duration of the employment or of a good consideration in addition to the services contracted to be rendered, the contract is no more than an indefinite general hiring which is terminable at the will of either party. . .
>
> When an individual is hired for an indefinite time, he has no right of action against his employer for breach of employment contract upon being discharged.

(Id. 792).

Similary, in Bullock v. Deseret Dodge Truck Center, Inc., 11 Utah 2d 1, 354 P.2d 559 (1960), this Court affirmed the granting of a summary judgment for the employer on the ground that the employee did not have a contract for a definite period of time. The Court also held that the fact that plaintiff had the right to purchase stock within a specified period of time if he were still employed, that he quit a job and took a pay cut in order to work for defendant, that he moved to Utah at his expense, and that he lost other benefits, did not give rise to an implication that he was employed for some definite period of time. Id. at 6, 354 P.2d at 562.

POINT III

THE TRIAL COURT PROPERLY AWARDED SUMMARY JUDGMENT TO DEFENDANT SINCE NO GENUINE ISSUE OF FACT EXIST WITH RESPECT TO THE VALIDITY OF THE RELEASE EXECUTED BY PLAINTIFF.

Plaintiff and Mathews entered into a Mutual Release dated August 28, 1978. This Release purported to be a Mutual Release of all claims that plaintiff and Mathews had against each other. This Release was executed by plaintiff in consideration of the payments that had been received or were to be received from Mathews and IDC. Inasmuch as plaintiff negotiated for and received $3400 in vacation pay from IDC, $170 in bonuses from IDC, $200 in profit sharing contributions from IDC, and six months of premium payments on health insurance from IDC, and since IDC is a subsidiary of Mathews, the Mutual Release must be construed to be a release of not only Mathews but also of IDC.

It is significant that after the Mutual Release was signed in August, 1978, plaintiff wrote a letter to DeLuca, part of which is quoted above in the Statement of Facts, stating that he felt the settlement was just and equitable and that he held no animosity towards the Company. (Horgan depo., Ex. D-9.) Because of plaintiff's satisfaction with the settlement and because of the Mutual Release, plaintiff should not now be allowed to repudiate said agreement and make additional claims against defendants as he is attempting to do.

In an attempt to avoid the consequences of the Mutual Release, plaintiff alleges that it is invalid because he executed it under duress. This bald allegation does not preclude the granting of summary judgment for defendant since plaintiff admitted during his deposition that his emotional distress resulted from the fact that he had lost his job and that his child was about to undergo major surgery. This is clearly not the type of duress that should excuse plaintiff from the Release. With respect to the first basis, the duress experienced by plaintiff is no more than that experienced by every discharged employee. Recognition of plaintiff's argument would cast doubt on the validity of all Releases executed by discharged employees and would thereby hinder the voluntary settlement of such dispute. Since settlements are to be encouraged, plaintiff's first argument must be rejected as a matter of law. With respect to the plaintiff's second basis for claiming that the Release is invalid, it should suffice to say that, although the child's medical problem probably did cause plaintiff some emotional distress, the distress was in no way caused by defendants and therefore cannot provide a basis for evading the terms of the Release.

CONCLUSION

The Trial Court properly granted Defendant's Motion for Summary Judgment because

(1) Plaintiff quit his employment rather than accept a transfer for Hibbing, Minnesota,

(2) plaintiff did not have an employment agreement whereby defendants were obligated to employ him for a definite period of time and defendants were justified in discharging plaintiff at any time for any reason, and

(3) plaintiff has given defendants his Mutual Release.

Accordingly, this Court should affirm the summary judgment entered by the trial court.

DATED this 2nd day of March, 1982.

Respectfully submitted,

PARSONS, BEHLE & LATIMER

William L. Crawford

Kent O. Roche

of and for
PARSONS, BEHLE & LATIMER
Attorneys for Defendants-
Respondents, Industrial Design
and Abe W. Mathews Engineering
Corporation

MAILING CERTIFICATE

I hereby certify that I mailed two (2) copies of the foregoing Brief, to Henry S. Nygaard, of and for BEASLIN, NYGAARD, COKE & VINCENT, attorneys for plaintiff, 1100 Boston Building, Salt Lake City, UT 84111, this 2nd day of March, 1982.