

1990

## Heslop v. Bank of Utah : Unknown

Utah Supreme Court

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November 7, 1991

**FILED**

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CLERK SUPREME COURT  
UTAH

Geoffrey J. Butler  
Clerk  
Utah Supreme Court  
332 State Capitol Building  
Salt Lake City, UT 84114

Re: Heslop v. Bank of Utah  
Civil No. 900532  
U.R.A.P. 24(j) Response and Letter

Dear Mr. Butler:

This letter constitutes a response on behalf of the Bank of Utah to Mr. Heslop's October 31, 1991, Rule 24(j) letter. This letter also constitutes a Rule 24(j) letter on behalf of the Bank of Utah.

1. Response to Mr. Heslop's Letter:

Johnson v. Morton Thiokol, Inc., 168 Utah Adv. Rep. 13, \_\_\_\_\_ P.2d \_\_\_\_\_ (Utah 1991) (filed September 5, 1991) discusses the implied-in-fact exception to the employment-at-will presumption. The issue of implied-in-fact contracts terminable only for good cause is raised in Point I.C. of the bank's initial brief and in Point I.B.2. of the bank's reply brief.

Mr. Heslop's October 31, 1991, letter suggests that Johnson v. Morton Thiokol, Inc., supra, counters the bank's argument in its reply brief that an employer's course of conduct and pertinent oral representations are not relevant in determining the existence of an implied-in-fact contract where the language of an employee manual is not ambiguous, based on Brehany v. Nordstrom, Inc., 812 P.2d 49 (Utah 1991).

The majority opinion in Johnson did not overrule Brehany. Johnson specifically involved interpretation of terms of an employee manual. At footnote 15, the majority opinion states, in

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part:

While the existence of an agreement which forms the basis of an implied-in-fact contract provision is a question of fact, not all issues relating to implied employment contract provisions are factual questions. Indeed, we have held that when terms of an employee manual constitute an employment contract, the proper interpretation of the unambiguous terms of the manual is an issue for the court.

2. Rule 24(j) Citation of New Authority:

At pages 72-77 of Mr. Heslop's initial brief, pages 8-19 of Heslop's reply brief, and pages 20-25 of the bank's reply brief, the public policy exception to the at-will-employment rule is addressed.

Heslop is seeking relief from this court in the form of reversal of the trial court's dismissal of his public policy claims.

In Johnson v. Morton Thiokol, Inc., supra, at footnote 7, the majority opinion discussed the public policy exception as follows:

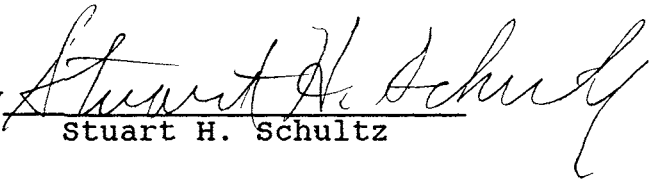
There is dictum in Berube and in Hodges v. Gibson Products Co., 811 P.2d 151 (Utah 1991), suggesting that Justices Durham, Stewart, and Zimmerman would recognize a public policy exception to the at-will doctrine. . . . Such an exception would prevent employers from terminating employees for reasons that violate public policy. However, these justices do not agree on the nature of such an exception. . . . In any event, the public policy exception has yet to be clearly established in Utah. [emphasis added]

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I have enclosed nine copies with this original in accordance with Rule 24(j).

Very truly yours,

STRONG & HANNI

By   
Stuart H. Schultz

SHS:mrs

cc: Ronald E. Griffin