

1991

Lee Ann Hodgson v. Bunzl Utah, Inc., a Utah Corporation and Carl A. Kruse : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Dean W. Sheffield; Attorney for Appellant.

Snow, Christensen and Martineau; Max D. Wheeler; Stanley J. Preston; Attorneys for Defendants.

Recommended Citation

Brief of Appellant, *Hodgson v. Bunzl Utah*, No. 910037.00 (Utah Supreme Court, 1991).
https://digitalcommons.law.byu.edu/byu_sc1/3402

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

Dean W. Sheffield, #0001
Attorney for Appellant
180 South 300 West, #224
Salt Lake City, Utah 84101
Telephone: 521-3911

STATE
DOCUMENT
KFU
45.9
.S9
DOCKET NO.

UTAH SUPREME COURT

BRIEF

910037

blue 2

IN THE SUPREME COURT OF THE
STATE OF UTAH

LEE ANN HODGSON

Plaintiff/Appellant,

vs.

BUNZL UTAH, INC., a Utah
Corporation and CARL A. KRUSE

Defendants/Appellees.

)
)
)
)
)
)
)
)
)
)

Case No. 910037

Priority No.

BRIEF OF APPELLANT
Subject to assignment to the Utah Court of Appeals

Appeal from final order of the
Third Judicial District Court, Salt Lake County,
State of Utah,
the Honorable Richard H. Moffat, presiding

DEAN W. SHEFFIELD
Attorney for Appellant
Westgate Business Center
180 South 300 West Suite 224
Salt Lake City, Utah 84101

SNOW, CHRISTENSEN and MARTINEAU
MAX D. WHEELER
STANLEY J. PRESTON
Attorneys for Defendants
P.O. Box 4500
Salt Lake City, Utah 84145

FILED

APR 1 1991

Clerk, Supreme Court, Utah

Dean W. Sheffield, #0001
Attorney for Appellant
180 South 300 West, #224
Salt Lake City, Utah 84101
Telephone: 521-3911

IN THE SUPREME COURT OF THE
STATE OF UTAH

LEE ANN HODGSON)	
)	
Plaintiff/Appellant,)	
)	
vs.)	Case No. 910037
)	
BUNZL UTAH, INC., a Utah)	Priority No.
Corporation and CARL A. KRUSE)	
)	
Defendants/Appellees.)	

BRIEF OF APPELLANT
Subject to assignment to the Utah Court of Appeals

Appeal from final order of the
Third Judicial District Court, Salt Lake County,
State of Utah,
the Honorable Richard H. Moffat, presiding

DEAN W. SHEFFIELD
Attorney for Appellant
Westgate Business Center
180 South 300 West Suite 224
Salt Lake City, Utah 84101

SNOW, CHRISTENSEN and MARTINEAU
MAX D. WHEELER
STANLEY J. PRESTON
Attorneys for Defendants
P.O. Box 4500
Salt Lake City, Utah 84145

TABLE OF CONTENTS

Table of Contents.....	Page <i>i</i>
Table of Authorities.....	<i>iii</i>
Statement of Jurisdiction.....	1
Statement of Issues.....	<i>ii</i>
Point I. In the absence of a written policy statement of the company, is the announced policy of the company an agreement upon which a prospective employee is entitled to rely? That is, did the statements of Mr. Frank to the effect that the company policy was that each employee would be given a warning and the opportunity to correct his or her deficiencies, become a term of the employment agreement?.....	5
Point II. Is evidence of that existing policy as related to and understood by supervisory personnel and transmitted to employees sufficient evidence to justify reversal of the summary judgment in order to determine the terms of the employment.....	5
Point III. Is the later production of a policy statement in the handbook with respect to at will employment sufficient to obviate the factual evidence that there were already incursions in the operation of the policy statement sufficient to justify the admission of evidentiary facts relative to the interpretations of that written policy statement, compelling a reversal of the Court's ruling as to the Summary Judgment.....	5
Point IV. Do the facts of this case justify a modification of the language and decisions in Utah cases limiting the right of employees to recover for breach of an implied covenant of fair dealing; bad faith discharge; defamation; retaliatory discharge?.....	6
Statement of the Case.....	1
Statement of Facts.....	1
Argument.....	6
Point I.....	6
Point II.....	8
Point III.....	9
Point IV.....	12

TABLE OF CONTENTS CONTINUED

Conclusion.....	12
Certificate of Mailing.....	13

TABLE OF AUTHORITIES

STATUTORY AUTHORITIES.....Page

Section 78-2-2, U.C.A. 1953, as amended.....	1
Rules 3 and 4, Rules of the Supreme Court.....	1

CASES CITED:

Berube vs. Fashion Centre Ltd. 771 P. 2d 1033, (Utah 1989).....	5,12
Caldwell vs. Ford, Bacon and Davis, Ut. Inc. 777 P. 2d 483, (Utah 1989).....	5
Gilmore vs. S.L. Area Community Action Program, 775 P. 2d 1096 (Utah 1989).....	5
Loose vs. Natural-All Corporation, 785 P. 2d 1096, (Utah 1989).....	5
Lowe vs. Sorenson Research Co., 779 P. 2d 668, (Utah 1989).....	5

STATEMENT OF JURISDICTION

Jurisdiction is conferred on this Court pursuant to Rules 3 and 4 of the Rules of the Supreme Court and by U.C.A. 78-2-2, 1953, as amended.

This is a civil case in which summary disposition was entered in favor of the Defendants in the Third Judicial District court, the Honorable Richard H. Moffat, presiding. No other appeals have been taken in this matter.

STATEMENT OF CASE

This is a Civil case on appeal from the Third Judicial District Court for Salt Lake County, Utah the Honorable Richard H. Moffat, presiding.

The appeal is from the Summary Judgment granted the Defendants on December 19, 1990.

STATEMENT OF FACTS

Lee Ann Hodgson an experienced and trained bookkeeper, was employed by Bunzl, Utah Inc., beginning in January 1986. Prior to her employment she was interviewed by Terry Frank, the Utah manager. Mr. Glen Rigby, in charge of the warehouse for Bunzl at that time was also present. Hodgson Dep. Vol. 1, P. 25-26.

In addition to the usual interview questions and discussion, indicating the newness of the company to Utah and its proposed staff expansion as it got bigger Hodgson Deposition V-I p. 24-28, Mr. Frank introduced the matter of at will employment, whereupon the following exchange took place: (Hodgson Dep. V.I. p. 29) P. 415, 416.

A. (Hodgson, Dep. V.I. p. 29 "and he talked a little bit about

at will employment. He asked me if I understood what it was and I said yes, but surely you would not fire someone without giving them a chance to correct deficiencies? And he said, "Oh, no. We have procedures that we follow for disciplinary action and you understand that with your raises, we give only merit raises." and,

A. (Hodgson) "my understanding was that I would be at will employment or employee, except when my performance was concerned. That I would be given a chance to know what my deficiencies were and a chance to correct them and at least a workable situation."

Ms. Hodgson was selected for employment and undertook the position offered her, as the sole staff office person.

Bunzl was a company new to Utah, engaged in the business of supplying wholesale companies with paper and other products. The operation began very small and expanded into supplying retail stores with paper products and similar products, apparently because the warehouse business was slow. Hodgson, Dep. V-1, p. 43 et seq., p. 50, 51.

Supplying retail stores increased the volume of work for Ms. Hodgson dramatically since it increased the volume of invoices greatly, but at the same time, dealing with smaller quantity of products to each store, hence a lower volume of profit.

Ms. Hodgson received three merit raises during her employment, including one at the beginning of 1988, just shortly before she was terminated, attesting to her successful performance of her duties.

By that time, the volume of work had expanded dramatically, over 75% by January 1988, even more by April, (Hodgson Dep. Vol.I. p. 89,

90,91, but the Bunzl Company, although it hired more drivers and warehouse personnel, did not add to its office staff, and Ms. Hodgson remained the sole office employee.

By reason of the extreme volume of work, Ms. Hodgson sought to have Mr. Kruse, the then manager provide her with staff support. Mr. Kruse indicated that they planned to hire another staff person, one Kathy Fletcher. Hodgson Dep., Vol. I, p. 88, 96, 97. However, he delayed that hiring and instead, provided Ms. Hodgson with temporary employees, hired from a Temporary Employment source for brief periods of time. The hirings were not co-ordinated with the work schedule, nor were the persons hired trained in the work, thus requiring additional time and effort on the part of Ms. Hodgson. Hodgson Dep. Vol. I p. 86, 87.

Ms. Hodgson began working ten or more hours daily and on Saturdays and at home on week nights and week ends in an effort to keep up with the volume of work. Hodgson Dep. Vol. I, p. 73-75.

When the load became impossible to handle and Ms. Hodgson found her health becoming impaired, she protested to Mr. Kruse about the situation and also discussed the problem with Bunzl national personnel. Hodgson Dep. V-2, p. 10, 11

A substantial part of the delay and time consumed, related to Mr. Kruse lack of managerial ability and his efforts to keep Corporate headquarters from recognizing his deficiencies. Hodgson Dep. Vol. I, p. 81-95.

On May 19, 1988 Mr. Kruse told Ms. Hodgson that on the following day he would have an analysis for her of the work program. Hodgson Dep Vol. 1, R. 425, 426

The following morning when she arrived, she was handed a termination letter. She had no warning nor inkling that she was being fired until that moment. Hodgson Dep Vol. I P. 94.

In early April 1987, sixteen months after her employment Ms. Hodgson and other employees were given an employees handbook for the first time. Hodgson Dep. Vol. 1, p. 47. The booklet embodied the at will concept, but also provided that the company could make modifications and changes in policy, rules and procedures as it saw fit. Handbook, R. 370

After the advent of the handbook, Mr. Glen Rigby was given a written memorandum warning, in which goals were set up for him to achieve, and he was given sixty days to make the changes. This warning was given him by Mr. Frank. R. 451, 452. He was later demoted. Hodgson Dep. Vol I p. 77. Ron Romero, a driver/warehouseman, was given a warning in writing pointing out his defective performance and was given a 90 probationary period. This warning was given by Glen Rigby, his supervisor, but it was directed to be done by Mr. Frank. Later, Mr. Romero was terminated. Ms. Hodgson prepared the documentation pursuant to directions from Mr. Rigby. Rigby Affidavit, R. 449

Two other instances of modification of the at will handbook provision include a note and second notice to Rodney Austin by Mr. Kruse, Affidavit Austin, R. 454 and a warning notice to Kathy Fletcher, who was "written up" on a Bunzl form by Linda Durant. At that time Ms. Fletcher was given thirty days to improve her performance or face discharge. Fletcher Affidavit, R. 457, 458. Both were after the handbook was distributed.

The questions presented by this appeal represent to a substantial extent what we believe to be logical extensions of the case law as set forth by this Court heretofore, *Berube vs. Fashion Centre Ltd.*, 771 P. 2d 1033 (Utah 1989; *Gilmore v. Salt Lake Area Community Action Program* 775 P. 2d 940 (Utah 1989); *Caldwell v. Ford, Bacon and Davis Utah Inc.*, 777 P. 2d 483, (Utah 1989); *Lowe v. Sorenson Research Co.*, 779 P. 2d 668 (Utah 1989); *Loose v. Natural-All Corporation*, 785 P. 2d 96 (Utah 1989); and cases cited and discussion in these cases.

Point I

In the absence of a written policy of the company, is the announced policy of the company an agreement upon which a prospective employee is entitled to rely?. That is, did the statement of Mr. Frank to the effect that the company policy was that each employee would be given a warning and the opportunity to correct his or her deficiencies, become a term of the employment agreement?

Point II

Is evidence of that existing policy as related and understood by supervisory personnel and transmitted to the employees sufficient evidence to require a trial on the merits and to justify reversal of the summary judgment to determine the terms of employment?

Point III

Is the later production of a policy statment in the handbook with respect to at will employment, sufficient to obviate the factual evidence that in fact there were already incursions in the operation of the policy statement sufficient to justify the admission of

evidentiary facts relative to the interpretations of that written policy statement, compelling a reversal of the Court's ruling as to the Summary Judgment?

May the written and disclosed policy statement be interpreted by the use of evidence of modification of that written policy, reflecting how the written policy statement was modified pursuant to the stated authorization in the handbook, to become a part of the employment agreement.

Point IV

Do the facts of this case justify a modification of the language and decisions in Utah cases limiting the right of employees to recover for breach of an implied covenant of fair dealing; bad faith discharge; defamation; retaliatory discharge?

We do not propose to burden the Court with a recital of the prior case law of this Court. However, attention is called to the cases cited herein, based upon the contention which we make, that a justified clarification of those cases is dictated in the present instance.

We propose to point out how and in what particulars the present case required the Court to re-think and/or extend its analysis of the at will doctrine it has heretofore announced.

I

ARGUMENT

The Plaintiff received an interpretation of the "at will" doctrine as it applied to the Bunzl Company at the time of her interview.

At that time in response to the "at will" statement of Mr. Frank, the manager interviewing her, she responded "Surely you would not fire someone without giving them a chance to correct deficiencies." The response: "Oh no, we would never do anything like that. We have procedures that we follow for disciplinary action, and you understand that with your raises, we give only merit raises." Hodgson Dep. p. 29, R:

At no point thereafter did Mr. Frank indicate anything which would even intimate that Ms. Hodgson's understanding of the company policy and his understanding thereof were different. Certainly at this point Mr. Frank had a duty to disabuse her mind that the limitation on the "at will" employment which had been explained to her did not really exist, if that was the case. She left the interview with the understanding as she put it, "That I would be given a chance to know what my deficiencies were and or chance to correct them and at least a workable situation." Hodgson Dep. Vol. 1, P. 29.

There was no handbook or written policy presented to Ms. Hodgson at the time of her employment.

At the time of her employment, the record reveals a statement by the prospective employer indicating that the company had "procedures in place" which constituted a modification of any strict "at will" policy of the company, with the clear knowledge of the interviewer, Mr. Frank, that it was the understanding of the proposed new employee that she would be given a chance to know her deficiencies and a chance to correct them. This understanding was solidified as time went on and she received three merit raises.

At this juncture, we believe the evidence justifies submission to the trier of facts of the issue of modification of the "at will" concept and the creation of an implied contractual obligation.

II

ARGUMENT

Mr. Glen Rigby, who succeeded Mr. Frank as Ms. Hodgson's supervisor had the same information that Ms. Hodgson had as to modified "at will" changes which he also received from Mr. Frank.

In fact, Mr. Frank by memorandum, did just such an evaluation of Mr. Rigby. See R. 451, 452

The substance of that evaluation is that Mr. Rigby must "show results or changes will be made."

In addition, during the period of April 1, 1986, Mr. Rigby was further instructed by Mr. Terry Frank, his supervisor concerning company policy. R. 449

At that time, Mr. Rigby had expressed concern to Mr. Frank about the poor performance of an employee, Ron Romero.

By affidavit, Mr. Rigby states that he was instructed that "it was company policy that no employee was to be discharged without being given every chance to improve his performance", and "that Mr. Romero was to be notified of this fact and given the opportunity to improve his performance." He states further, that "I was to document his performance and Mr. Romero was then notified that he was on ninety days probation." Affidavit Glen Rigby R 449.

That Ms. Hodgson was aware of the events is made clear by Mr. Rigby who had Ms. Hodgson prepare the document for his signature.

Mr. Romero's warning and probation occurred after the time the Bunzl Handbook was distributed, as was his termination.

Plaintiff's case at this point gains its strength factually from two separate incidents showing an announced deviation from a harsh "at will" policy in favor of exactly the modification of that doctrine as it was related to Ms. Hodgson at the time of her employment.

Plaintiff's position is that factually there is evidence for the trier of facts for a determination of a policy other than "at will" on the part of the Defendant company, a modification consisting of discharge for cause only. In other words, the manual was and is only a part of the total employment package, modified clearly by a well known and documented procedure followed in every discharge situation except that of Ms. Hodgson.

III

ARGUMENT

This argument embraces the "at will" language of the Bunzl Handbook.

The handbook states R. 370:

"The plans, policies, rules and procedures described in this Handbook are not conditions of employment. Bunzl reserves the right to modify, revoke, suspend, terminate, or change any or all such plans, policies, rules or procedures, in whole or in part, at any time with or without prior notice. The plans, policies, rules and procedures described in this Handbook supersede the terms and conditions of any previous plans, policies, rules and procedures."

The advent of the employee handbook sixteen months later, in April 1987, gives rise to the question of applicability of the orally

announced policies as stated by Mr. Frank at the onset of Ms. Hodgson's employment, and the initial conference between Mr. Frank and Mr. Rigby relative to Ron Romero, and conceivably the handbook may be construed to vitiate the announced company policy.

However, the Ron Romero termination and the sixty day probation of Glen Rigby, as drafted by Mr. Frank, both occurred after the handbook was distributed.

Whether the policy existed prior to the handbook distribution and was a continuing policy, or whether the policy was interrupted by issuance of the handbook, clearly it was the policy after the handbook was issued, and falls within the language of the handbook wherein Bunzl reserved the right to change or modify its rules, policies and procedures. A modification to discharge for cause only.

In point of fact, two additional instances re-affirm that the policy and rules of the Bunzl Company after the policy handbook distribution was clearly continued or modified in essentially the original form expressed by Mr. Frank.

Mr. Rodney Austin has filed his affidavit wherein he states that he apparently overstepped his position as driver/warehouseman by discussing a customer's order with the customer. Austin Affidavit, R. 454

He states that he was warned by his supervisor that he should not "play salesman", that he was warned a second time as to this conduct and that for any further infractions he could be terminated.

The other incident involved one Kathy Fletcher who was written up by Linda Durrant, the then operations manager. She was orally

warned that she had thirty days to improve her performance or face discharge. The form upon which she was "written up" was a form with a "Bunzl" heading on it which was then filed in her personnel file.

Fletcher Affidavit, R. 458

It is Plaintiff's contention that each and all of the instances which amounted to a deviation from the stated company policy, as contained in the handbook after the issuance of the handbook provide ample evidence for the trier of facts that the company policy was not that described in the handbook, but rather it was modified to discharge for cause only as the handbook said that it might be modified or changed.

The affidavits of Glen Rigby, Rodney Austin and Kathy Fletcher, along with the warning memorandum issued to Glen Rigby by Mr. Frank and the interview of Ms. Hodgson by Mr. Frank each discloses a promise not to discharge at will but for cause only, hence the Plaintiff is entitled to have her wrongful discharge claim decided as a factual matter at trial.

The Plaintiff is entitled to go to the trier of fact for a determination whether the at will provision of the policy handbook even applied to Ms. Hodgson who clearly was employed on the basis of a policy providing for notice of deficiency and an opportunity to improve performance; on the question of whether a continuation of that same policy after issuance of the handbook had the effect of a modification of the at will provisions of the handbook and did not in fact modify the language of the handbook to require notice of deficiencies and an opportunity to improve performance. In every

instance outlined above, persons other than Ms. Hodgson were given the required notice of deficiency and the opportunity for correction, whereas Plaintiff, Ms. Hodgson was summarily discharged. See Hodgson Dep. Vol. I. p. 94, R.

Point IV

ARGUMENT

Although the Court made no separate determination specifying the basis for its decision to grant the Summary Judgment, it is incumbent upon Plaintiff to raise the issues of Bad Faith Discharge, Publication of defamatory matter relating to her by Bunzl personnel and for Retalatory Discharge by the company's manager Carl Kruse. Plaintiff's deposition points out innumerable instances based upon which Mr. Kruse sought to protect his own inadequacies by shifting blame to the Plaintiff. See Hodgson deposition.

Plaintiff is cognizant of the limitations heretofore set by this Court relating to covenants of good faith and fair dealing in Berube, and necessarily concludes that the trial court acted in a Summary way as to these issues based upon Berube and cases cited therein. However, Plaintiff's factual picture in this regard goes far beyond the Berube discussion in terms of the ill-will and intentionally harmful conduct of her employer and justifies a review thereof.

It is submitted that Plaintiff has made a factual case justifying submission of these issues to the trier of facts.

CONCLUSION

Under the familiar principle announced many times by this Court, the Court is required to liberally review and construe all evidence

and reasonable inferences to be drawn therefrom in favor of the party who opposes the motion. Berube v. Fashion Centre Ltd, 771 P. 2d 1033 (Utah 1989). It is the position of the Plaintiff that the facts of this case when so construed justify the remand of this case for trial.

Respectfully Submitted,

Dean W. Sheffield
Attorney for Plaintiff

CERTIFICATE OF MAILING

I certify that four true and correct copies of the foregoing Brief of the Appellant were mailed to the Respondant by placing same in the U.S. Mail, first class postage prepaid and addressed to

SNOW, CHRISTENSEN and MARTINEAU

MAX D. WHEELER

STANLEY J. PRESTON

Attorneys for Defendants

P.O. Box 4500

Salt Lake City, Utah 84145

on the ____ day of _____ 1991.

Dean W. Sheffield, #0001
Attorney for Appellant
180 South 300 West, #224
Salt Lake City, Utah 84101
Telephone: 521-3911

IN THE SUPREME COURT OF THE
STATE OF UTAH

LEE ANN HODGSON)	
)	
Plaintiff/Appellant,)	
)	
vs.)	Case No. 910037
)	
BUNZL UTAH, INC., a Utah)	Priority No.
Corporation and CARL A. KRUSE)	
)	
Defendants/Appellees.)	

ADDENDUM TO BRIEF OF APPELLANT
Subject to assignment to the Utah Court of Appeals

Appeal from final order of the
Third Judicial District Court, Salt Lake County,
State of Utah,
the Honorable Richard H. Moffat, presiding

DEAN W. SHEFFIELD
Attorney for Appellant
Westgate Business Center
180 South 300 West Suite 224
Salt Lake City, Utah 84101

SNOW, CHRISTENSEN and MARTINEAU
MAX D. WHEELER
STANLEY J. PRESTON
Attorneys for Defendants
P.O. Box 4500
Salt Lake City, Utah 84145

ADDENDUM

Table of Contents.....	Page
Affidavit of Glen Rigby.....	1
Objectives For Bunzl Utah - Notice to Glen Rigby.....	2
Affidavit of Rodney Austin.....	4
Affidavit of Kathy Fletcher.....	5

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

GLEN RIGBY, being first duly sworn, on oath deposes and says:

1. That I am a former employee of Bunzl Utah, Inc., having served in the capacity Operations Manager/Buyer and Warehouseman between 10-28-85 and 1-30-89.

2. That approximately April 1986, I expressed my concern to Terry Frank, my supervisor, about the poor performance of Ron Romero, and the effect which that poor performance was having on the Bunzl Utah Corporation.

3. I was instructed by Mr. Frank that it was company policy that no employee was to be discharged without being given every chance to improve his performance; that Mr. Romero was to be notified of this fact and given the opportunity to improve his performance, and that I was to document Mr. Romero's performance thereafter. Mr. Romero was then notified that he was being placed on ninety days probation.

4. Later when Mr. Romero was terminated I dictated, signed and sent a letter to the State Unemployment Insurance office, detailing the circumstances involved in his termination and placed a copy in Mr. Romero's personnel file.

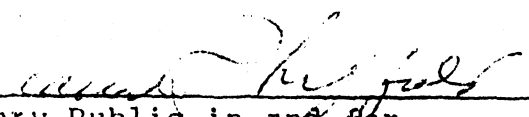
5. Lee Ann Hodgson, who was employed in the office of Bunzl Utah, Incorporated prepared the statement for me.


Glen Rigby

Sworn and Subscribed before me this 1st day of October, 1990.

My Commission Expires:

4-10-94


Notary Public in and for
Salt Lake County

1/23/87

Objectives for Bunzl Utah

1. Continue to call on A.G. at least once a month.
 2. Aggressively pursue all AG stores direct and any stores ~~buying~~ buying from street vendors.
 3. Increase sales to 100K per month by June 1.
 4. Expand on Fleming
 - A) Product dept.
 - B) Present AC-50 again.
 - C) Call on all dept. on a regular basis. Min. of every 2-3 weeks.
 5. Weekly call reports for you and Ben. Should be mailed no later than the following Monday.
 6. All price quotations below already established levels, such as Retail or Warehouse book price, must have my approval, either in writing or verbally.
- Any price quotations to Fleming, A.G., Thagge or any individual

EXHIBIT

0

8. Any new items or change of vendors must have my approval.
9. All Vendor negotiations must be made by me.
10. Notify me immediately with any vendor problems.
11. Sales calls made every day of the week. Buying can be done ~~either~~ either after 3:30pm or on Saturdays.

I will re-evaluate in 60 days.
We must have results or changes will be made

Signed Jerry Fran
Dated 4/23/87

Signed A. K. Kish
Dated 4/27/87

STATE OF WASHINGTON)
 : ss.
COUNTY OF Pierce)

RODNEY AUSTIN, being first duly sworn, on oath deposes and says:

1. I am a former employee of Bunzl Utah, Incorporated.
2. I was so employed between 6-22-87 and 9-30-88, and again, from 4-10-89 to 4-6-90, as a Driver/Warehousman.
3. That while I was thus employed approximately July 1989, in an effort to assist a customer of Bunzl Utah, Inc., I discussed the customer's order with that customer in a telephone conversation.
4. When management became aware of this matter, I was warned by my immediate supervisor that I should stop "playing salesman".
5. I was subsequently warned a second time that I was a driver, that I should not "play salesman", that if this continued the next follow up would be by the Operations Manager and for any further infraction of the rules could result in termination by her.

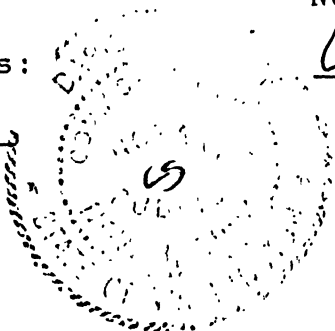
Rodney Austin
Rodney Austin

Sworn and subscribed before me this 1st day of October, 1990.

Darice C. Cheff
Notary Public in and for
Washington

My Commission Expires:

11-3-93



AFFIDAVIT

STATE OF UTAH)
 : ss
County of Salt Lake)

KATHY FLETCHER, being first duly sworn, on oath deposes and says:

1. That she is a former employee of Bunzl, Utah, Inc., having been employed by said company from August 2, 1988 to April 20, 1990.

3. That several months prior to the time that Lee Ann Hodgson was terminated, the manager, Carl Kruse had contacted her about part time employment, indicating that a position was available with Bunzl since the company was expanding rapidly, and that Lee Ann Hodgson needed additional help in the office for this reason.

4. At that time, I was working for Alpha Beta, and the job proposed fitted well into my plans, since I wanted a part time job.

5. I gave notice to my employer, and terminated at that job, because of the job offered me by Mr. Kruse.

6. However, Mr. Kruse did not contact me as to the date on which I should come to work, and I sought on many occasions to reach him. Mr. Kruse, when I finally contacted him was totally evasive about my coming to work.

7. That I finally discovered from Lee Ann Hodgson when I inquired of her, that so far as she was aware, no provision

had been made for her actual employment.

8. It was several months after I terminated my employment with Alph Beta that I was employed by Bunzl, Utah Inc., and I was employed at that point only when my former supervisor at Alph Beta found out that I had not been hired, and Mr. Kruse was faced with the loss of the Alpha Beta Account unless he lived up to his obligation to me, unless he hired me. By this time Lee Ann Hodgson had been terminated. At the time I began work, the office staff consisted of Linda Durrant and her daughter. Shortly after I was employed by Bunzl, another girl was also hired to work in the office.

9. My position was part time, however, I was working from 9:00 a.m. to 3:00 p.m. officially, and I was beginning at about 8:20 a.m. each morning and staying until approximately 4:00 p.m.

10 During the latter part of my tenure with Bunzl, I was written up by Linda Durrant, then Operations Manager, for what she perceived to be an infraction. I was orally warned that I had thirty days to improve my performance and for failure to do so I could be discharged. The form upon which I was written up, was a form with the Bunzl heading on it. I was given a copy of the warning and was required to sign it by Linda Durrant. The form was filed in my personnel file.

Dated this 30 day of September 1990.

Kathy Sticher

Sworn and subscribed before me this 30 day of September 1990.

David Huppel
Notary Public in and for

My commission expires: