

Wine store manager can bring public policy claim

Alleges he was fired over tax-withholding complaint

By: Pat Murphy ◉ May 19, 2016



The former manager of a beer and wine store could pursue an action for wrongful discharge based on an allegation that he was fired because he complained to his bosses about being paid “under the table” to avoid federal and state tax withholding, a Superior Court judge has ruled.

The plaintiff argued that the alleged retaliation fell within the scope of the public policy exception to the employment-at-will

doctrine.

Judge Robert B. Gordon agreed, denying in part the defendants’ motion to dismiss.

“By insisting that he be placed on the company payroll so that proper and legally required withholdings could be made, [the plaintiff] plainly placed himself within the purview of the public policy doctrine’s protections,” the judge wrote.

The 20-page decision is *Rodden v. Savin Hill Enterprises, LLC, et al.*, Lawyers Weekly No. 12-036-16. The full text of the ruling can be ordered by clicking here.

Prime example

The plaintiff was represented by his nephew, Framingham attorney Timothy D. Rodden Jr.

Rodden said it was important for the court to recognize a public policy claim in the context of the case.

“It’s within the public policy for each member of society that is working to make their contributions not only to federal and state income tax but also to other payroll deductions,” he said.

Boston attorneys Ryan C. Siden and Stephanie Taverna Siden represented the defendants in the case, which included Savin Hill Enterprises d/b/a Savin Hill Specialties, and two of the LLC’s corporate agents, Karen Diep and Mateo Van.

Ryan Siden emphasized the fact that the court dismissed five of the six claims against his clients, including a claim for promissory estoppel based on an allegation that the defendants lured the plaintiff to come work for them with promises of long-term employment and a share of the profits from the new store.

“This is about a disgruntled ex-contractor who put forth an ill-conceived, completely frivolous complaint,” he said, adding that the plaintiff was unable to point to anything specific said or done by his clients that would support a finding of justifiable reliance.

Regarding the public policy claim, Siden said his clients were prepared to show that they engaged in no wrongdoing.

Boston employment attorney Juliet A. Davison said the case is a good example of a public policy claim under Massachusetts law, noting that courts tend to distinguish between cases in which there clearly is a public impact or a public aspect of the violation versus cases in which the effect of the alleged violation is internal.

“This claim that was brought here clearly is a matter of public dimension in that it asserts this gentleman was terminated because he insisted that he be compensated consistent with applicable laws with regard to withholding and reporting,” she said.

Employment attorney David Conforto said the plaintiff’s claim fell squarely within the public policy doctrine.

“Sometimes a public policy claim is a common law claim, meaning it doesn’t rely on a particular statute,” Conforto

said. "Here, [the plaintiff] is exercising a protected right or reporting something that is illegal, and in doing so the employer retaliated against him."

Courts have construed the public policy exception to the at-will doctrine narrowly, observed defense attorney John Gannon of Springfield. (See sidebar.)

"The Rodden case fits nicely among those cases where the employee is terminated for raising unlawful conduct by the employer," Gannon said. "That's one of the few types of cases where the employee would get to go forward on their violation of public policy claim."

Gannon added that the case stands as a hard lesson to all employers.

"If an employee complains about unlawful practices, the employer needs to take that complaint seriously and certainly can't take any negative action against the employee on the basis of those complaints," he said.

Retaliatory discharge?

Plaintiff William Rodden began working for the defendants in February 2014 after leaving a job at a John Dewar & Company gourmet food store. According to the plaintiff, the defendants induced him to leave Dewar because they wanted his knowledge, expertise and industry connections to open a high-end craft beer and wine store in Dorchester.

The plaintiff alleged that, in order to get him to switch jobs, the defendants promised him "job security" and a "comparable" salary. In addition, the defendants allegedly assured the plaintiff that he would be the store's general manager "going forward" with the potential to share in the profits.

Once hired, the plaintiff proceeded to arrange for necessary liquor licenses and permits, set up the Savin Hill store's retail space, select the store's inventory, and put in place the business's sales and management systems.

According to the plaintiff, the relationship soured after the store opened in April 2014, with the defendants becoming hypercritical of his job performance, blaming him for problems that were not his fault.

The plaintiff had his own complaints, including that the defendants paid him under the table. When the plaintiff repeatedly demanded to be placed on the payroll for tax purposes, Diep allegedly said: "Let me explain something to you, Bill. We're Vietnamese, we don't pay taxes."

The defendants terminated the plaintiff after he had been on the job for less than four months. According to the plaintiff, the defendants fired him shortly after he requested an IRS Form 1099 so that he could pay his own taxes.

The plaintiff alleged that the defendants' criticisms of his job performance were pretextual. He speculated that the defendants only wanted his expertise to start up the business and always intended to replace him with a friend once the store was up and running.

The plaintiff sued the defendants in state court in 2015, asserting claims of promissory estoppel, fraudulent misrepresentation, unjust enrichment, tortious interference, and breach of an implied covenant of good faith and fair dealing.

In addition, the plaintiff asserted a claim for wrongful discharge in violation of public policy.

One claim survives

Gordon granted the defendants' motion to dismiss with respect to all but the plaintiff's public policy claim.

Of note, the judge found that the plaintiff could not show reasonable reliance necessary to establish promissory estoppel because none of the defendants' alleged promises of long-term employment were sufficiently definite under state law.

"In the case at bar, plaintiff's charge that the Savin Hill defendants promised him that he would serve as the store's General Manager for the 'long term,' would enjoy unspecified 'job security,' and would 'potentially share in the future profits of the business' once it became profitable represent precisely the kind of vague and indefinite statements upon which reasonable reliance may not rest," Gordon wrote.

However, the judge decided that the plaintiff had a viable public policy claim based on the allegation that he lost his job because he had made internal complaints about Savin Hill's violation of state and federal employment tax law.

The judge observed that Massachusetts law recognizes a cause of action for employees who are terminated for asserting a "legally guaranteed right," for doing what the law requires, or for refusing to do what is prohibited by

law.

“The [Supreme Judicial Court in 1997] approved public policy relief for employees discharged for reporting violations of criminal law,” the judge wrote, “and numerous lower courts have since applied the doctrine to protect employees who otherwise ‘blow the whistle’ — internally or externally — about an employer’s perceived violations of law.”

Gordon concluded that the allegations of the plaintiff’s complaint sufficiently stated a public policy claim under those standards.

“Whether the Complaint’s allegations are characterized as a refusal to accede to a violation of law (viz., under-the-table employee compensation), or a call to do what the law requires (viz., report tax withholdings), or an internal blowing of the whistle on unlawful business practices, there can be little doubt that plaintiff has put forward allegations sufficient to sustain the claim that his discharge violated Massachusetts public policy,” Gordon wrote.

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Rodden v. Savin Hill Enterprises, LLC, et al.

THE ISSUE: Could the former manager of a beer and wine store pursue an action for wrongful discharge in violation of public policy based on an allegation that he was fired after complaining to his bosses about being paid “under the table”?

DECISION: Yes (Superior Court)

LAWYERS: Timothy D. Rodden Jr. of Framingham (plaintiff)

Ryan C. Siden and Stephanie Taverna Siden, of Boston (defense)

SIDEBAR: 1st Circuit rejects public policy claim

A recent federal court decision illustrates just how narrowly judges can interpret Massachusetts’ public policy exception to the at-will employment doctrine.

In *Murray v. Warren Pumps, LLC, et al.* (Lawyers Weekly No. 01-106-16), a plaintiff who lost his job as a safety inspector at a pump manufacturing plant sued the employer for both disability discrimination and wrongful discharge in violation of public policy.

With regard to the public policy claim, the plaintiff alleged that he lost his job because he complained to upper management about unsafe welding practices by workers in the manufacturing process, which he believed amounted to violations of state or federal law.

U.S. District Court Judge Douglas P. Woodlock granted the employer’s motion for summary judgment on all claims, and last month the 1st U.S. Circuit Court of Appeals affirmed.

Writing for a unanimous court, Chief Judge Jeffrey R. Howard observed that “Massachusetts cases warn that the public policy exception is purposely circumscribed, so that the general rule preserving employer prerogative does not morph into an edict requiring just cause to terminate an at-will employee.”

Howard concluded that the plaintiff’s public policy claim could not go forward because there was no evidence that the employer “asked him to deceive anyone about the legality of the company’s conduct or fired him for refusing to engage in conduct tantamount to fraud or known illegalities.”

According to Howard, the plaintiff relied on a “hodgepodge” of miscellaneous state laws, federal regulations and professional standards to argue that his termination violated clearly defined public policy.

“He provides, however, no cases showing that Massachusetts courts have ever relied on federal authority as the sole source for the state common law wrongful discharge claim,” the judge wrote. “Additionally, many of the federal regulations and state statutes remain decidedly unrelated to, or have no more than a general connection to, the particular substance of certain workplace complaints that he described. And [the plaintiff] fails to explain how professional standards embody a well-defined public policy in the Commonwealth.”

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