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Summary of International Game Tech., Inc. v. Dist. Ct., 124 Nev. Adv. Op. No. 18

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International Game Tech., Inc. v. Dist. Ct., 124 Nev. Adv. Op. No. 18 (March 27, 2008)[1]

EMPLOYMENT - RETALIATION & REMEDIES

Summary

This opinion rejects International Game Technology's (hereinafter "IGT") challenge to the district court's denial of their motion to dismiss for failure to state a claim under Nevada False Claims Act's anti-retaliation provisions (hereinafter "FCA"). The Court also clarifies the meaning of the statute at issue, NRS 357.250.

Disposition/Outcome

Petition for writ of mandamus denied.

Factual and Procedural History

As an employee of IGT, James McAndrews (plaintiff) suspected that IGT "falsified tax records in order to fraudulently conceal or decrease the amount of sales and use tax it owed to the state."[2] He filed an action under Nevada's FCA and the court found McAndrews failed to state a claim under the FCA because the Nevada tax department governs revenue statutes and McAndrews' disagreement with IGT's interpretation did not create a claim under the FCA.

As a result of McAndrews filing an action against IGT, his work was suspended and he was only allowed on the premises to receive paychecks. After the opinion was issued, McAndrews was terminated and he brought this action against IGT for retaliation.

IGT filed a motion to dismiss, "arguing that NRS 357.250(2)(b) holds an employer liable only if it harassed, threatened with demotion or termination, or otherwise coerced the complaining employee into participation in fraudulent activity,"[3] and McAndrews failed to allege IGT pressured him into participation in a fraudulent activity. The district court denied the motion to dismiss. IGT filed a petition with the Court for a writ of mandamus.

Discussion

The Court begins by explaining a writ of mandamus "is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station[4] or to control an arbitrary or capricious exercise of discretion."[5] If there is an

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[1] By Krystal Gallagher.
[2] 124 Nev. Adv. Op. 18, p. 3 (March 27, 2008).
[3] 124 Nev. Adv. Op. 18, p. 4.
[4] NEV. REV. STAT. § 34.160; *see also* Smith v. Dist. Ct., 107 Nev. 674, 818 P.2d 849 (1991).
[5] Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

adequate and speedy legal remedy, the writ relief is not available.[6] The court generally declines to consider writ petitions that challenge a district court's order denying a motion to dismiss because "an appeal from the final judgment typically constitutes an adequate and speedy legal remedy."[7] The Court holds, "an appeal is not an adequate and speedy legal remedy, given the early stages of litigation and policies of judicial administration."[8]

As mentioned above, IGT argued the plaintiff failed to meet the statutory requirement of NRS 357.250(2)(b), interpreting the statute to require McAndrews to plead and show IGT pressured him into acting fraudulently in order to recover. The Court concludes that this subsection of the statute "qualifies or limits the liability imposed in subsection 1 by providing that an employee may recover for retaliatory conduct only if (a) the employee voluntarily engaged in the protected whistleblower activity, and (b) to the extent he participated in any fraudulent activity, his employer pressured him to do so."[9]

The Court further finds that a more "plausible" interpretation of the statute to be, "if the employee participated in fraudulent activity, he cannot recover unless his employer pressured him to do so, but if the employee did not participate in any fraudulent activity, the subsection does not apply and he need not show employer pressure."[10] The subsection allows an employee that did participate in the fraudulent activity to recover **if** he can show the employer harassed, threatened, or coerced his participation. The Court looks to the legislative intent of the FCA—prevent employers from precluding lawful FCA disclosures and from taking retaliatory employment action against employees who make such lawful disclosures.[11] If the Court adopted IGT's interpretation, it would leave employers free from liability and run counter to the policy behind the FCA.

The Court reads that statute as applying to "any such negative employer actions, whether or not harassment, threats, or coercion occurred."[12] In addition, "if the employee engaged in fraudulent activity, he can recover under NRS 357.250 'only if' he was harassed, threatened, or coerced by the employer into the fraudulent activity in the first instance."[13]

Conclusion

The Court denies IGT's petition for a writ of mandamus. NRS 357.250(2)(b) "does not limit recovery to only those employees whose employers pressured them into such activity. Instead, it simply does not apply to employees who did not engage in fraudulent activity."[14] The district court did not have to dismiss the complaint and IGT is not entitled to a writ of mandamus.

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[6] Nev. Rev. Stat. § 64.170; D.R. Horton v. Dist. Ct., 123 Nev. __. __. 168 P.3d 731, 736 (2007).
[7] 124 Nev. Adv. Op. 18, p. 5.
[8] 124 Nev. Adv. Op. 18, p. 6 (citing Smith v. Dist. Ct., 113 Nev. 1343, 1344-45, 950 P2d. 280, 281 (1997)).
[9] 124 Nev. Adv. Op. 18, p. 8.
[10] 124 Nev. Adv. Op. 18, p. 9.
[11] 124 Nev. Adv. Op. 18, p. 10 (citing Hearing on S.B. 418 before the Senate Government Affairs Comm., 70th Leg. (Nev., March 31, 1999)).
[12] 124 Nev. Adv. Op. 18, p. 11.
[13] 124 Nev. Adv. Op. 18, p. 11.
[14] 124 Nev. Adv. Op. 18, p. 13.