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Summary of Karen Brown v. Eddie World, Inc.; and Stagecoach Hotel and Casino, Inc., 131 Nev. Adv. Op. 19 (April 16, 2015)

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TORT LIABILITY: COMMON LAW THIRD-PARTY RETALIATORY DISCHARGE

Summary

While acknowledging the enforcement gaming laws as a fundamental public policy in Nevada, the Court declined to recognize a common law cause of action for third-party retaliatory discharge.

Background

Respondent Eddie World, Inc., owned and operated a nut and candy store on land owned by Stagecoach Hotel and Casino (collectively “Stagecoach”). Stagecoach employed appellant Karen Brown as an assistant manager of the nut and candy store. Donald Allen filed a complaint with the Nevada Gaming Control Board (NGCB) regarding Stagecoach’s slot machines. Stagecoach knew Allen and Brown were engaged, but Stagecoach never employed Allen.

Shortly after the NGCB informed Stagecoach of Allen’s complaint, Stagecoach began assigning Brown’s job duties to other employees and subsequently terminated her employment. Brown filed a complaint in district court alleging her termination was in retaliation for Allen’s complaint to the NGCB, and her discharge was tortious and in violation of public policy. The district court granted Stagecoach’s motion to dismiss for failure to state a claim because Nevada has not recognized a cause of action for third-party retaliatory discharge. Brown appealed to the Nevada Supreme Court.

Discussion

On appeal, Brown asked the Court to recognize for the first time, a common law cause of action for third-party retaliatory discharge. The Court relied on Nevada precedent, and case law from other states in reaching its conclusion. The Court acknowledged that an at-will employee may generally be discharged without cause at the will of the employer, but commits a tortious discharge by terminating employees for reasons that violate public policy.² More importantly, a tortious discharge claim arises out of the employer-employee relationship, requiring retaliation based on the employee’s acts which are consistent with sound public policy and the common good.³ Tortious discharge actions are severely limited to those rare and exceptional cases where the employer’s conduct violates strong and compelling public policy.⁴

The Court emphasized the importance of the gaming industry in Nevada, acknowledging that Nevada’s economy, welfare, and success relies on strict regulation. With this in mind, the

¹ By Daven Cameron.

² *DAngelo v. Gardner*, 107 Nev. 704, 712, 819 P.2d 206 (1991).

³ *Id.* at 719.

⁴ *Sands Regent v. Valgardson*, 105 Nev. 436, 440, 777 P.2d 898 (1989).

Court examined how other jurisdictions have addressed the issue of third-party retaliatory discharge claims. The Court found that other courts have recognized third-party retaliatory discharge claims arising under federal statutes. However, those decisions relied upon broad statutory language, not common law, and thus it was unpersuasive to the Court.

The Court found only one case addressing the common law claim of third-party retaliatory discharge. A Wisconsin court declined to recognize a common law cause of action for third-party retaliatory discharge because finding otherwise would “have no logical stopping point.” Accordingly, the doctrine of tortious discharge in violation of public policy would remain narrow in scope. The Court found the Wisconsin rationale persuasive.

Tortious discharge requires an employer-employee relationship, and the discharge must be in retaliation for the employee’s actions. In the present case, Stagecoach never employed Allen, therefore the most basic requirement of an employer-employee relationship is not satisfied. Allen was neither a Stagecoach employee nor under any obligation to report alleged gaming violations. The Court found that recognizing the common law third-party retaliation to the present case would have no logical stopping point in Nevada jurisprudence.

Conclusion

While recognizing that enforcing gaming laws is a compelling public policy in Nevada, the Court denied to recognize a common law claim for third-party retaliatory discharge because tortious discharge claims are severely limited.