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Clarke v. Serv. Employees Int'l Union, 137 Nev. Adv. Op. 46 (October 10, 2021)¹

LMRDA'S PREEMPTION OF WRONGFUL TERMINATIONS

Summary

This is an appeal from a district court order granting summary judgment founded on the Labor Management Reporting and Disclosure Act (LMRDA)-based conflict preemption decision, arising from a dismissal of the appellant's wrongful for-cause termination claims against Nevada Services Employees International Union (SEIU). The question considered is whether appellant's wrongful termination claims against the union respondents were conflict-preempted by the LMRDA, which promotes union democracy. The standard for preemption analysis, adopted in *Nanopierce Techs., Inc. v. Depository Tr. & Clearing Corp.*, requires that the courts "must determine whether Congress expressly or impliedly intended to preempt state law"² and under the conflict preemption analysis, the court determines if a party's compliance with federal and state requirements is impossible or whether a state law poses an obstacle to the accomplishment of Congress's objectives in accordance with the federal statute's purpose and intended effects.³ The court held that the LMRDA does not preempt the appellant's wrongful termination claims since Nevada's wrongful termination claims do not "significantly conflict with any concrete federal interest" expressed by the LMRDA.⁴ The court further held that the district court did not err in granting summary judgment in the Union's favor, citing appellant's failed to establish an alter ego theory of liability. The court also affirmed the district court's discretion in denying a union respondent's motion for attorney fees as the Union's offer of judgment was not grossly unreasonable.

¹ Servando Martinez

² *Nanopierce Techs., Inc. v. Depository Tr. & Clearing Corp.*, 123 Nev. 362, 370 (2007)

³ *Id.* at 371-72.

⁴ 29 USC § 401

Procedural History and Facts

In August of 2016, the Local 1107 chapter of the Nevada Service Employees international Union hired Robert Clarke as the Director of Finance and Human Resources through an employment contract with a for-cause termination provision stating that “[t]ermination of this employment agreement may be initiated by the [Local 1107] President for cause.” Dana Gentry, Local 1107’s Communications Director, had a similar for-cause termination provision. Both “directors” served under the Local 1107 President, Cherie Mancini. Later that fall, SEIU recruited a hearing master who, in her April 2017 reports, concluded that the pattern of the Union’s internal needs indicates the President was “willing, and even inclined, to sideline her fellow officers so that she can function autocratically...” These reports led Local 1107’s Executive Board to vote for SEIU’s imposition of a trusteeship over the chapter. The appointed trustees then removed all board members from office, thus terminating Clarke and Gentry’s employment.⁵

Thereafter, Clarke and Gentry filed a wrongful termination complaint against the defendants. The Unions subsequently made an NRCP offer of judgment on Clarke and Gentry for \$30,000 each, on behalf of all defendants to dismiss all claims, to which Clarke and Gentry denied. Following this rejection, the Unions motioned for summary judgment arguing that Clarke and Gentry’s claims were preempted by the LMRDA. SEIU also moved for summary judgment declaring that they owed Clarke no duty as no employment contract existed between Clarke and the SEIU, specifically, where Clarke and Gentry opined that SEIU was the alter ego of chapter Local 1107. Ultimately, the district court granted summary judgment to both the Unions and SEIU. Afterwards, the Unions moved for attorney fees accrued through the NRCP 68 judgment,

⁵ The trusteeship was upheld in *Garcia v. Serv. Emps. Int’l Union*. (9th Cir. 2021)

to which the court denied lineating that the claim was not “grossly unreasonable” for the appellant to reject.

Discussion

The LMRDA does not preempt state law wrongful termination claims

The Court initially discussed matters of preemption in cohesion with the Unions’ claims. The Unions relied on *Finnegan v. Leu*⁶, arguing that LMRDA preempts Nevada’s wrongful termination laws. The Court considered conflict preemption as the “only potentially applicable” form of preemption here. The Court considered whether the act’s purpose if state law were to apply. The Court requires that there must be a “clear and manifest” indication of Congress’s intent to preempt state law.⁷ The Supreme Court has previously held that LMRDA’s prohibition against discipline “refers only to retaliatory actions that affect a union member’s rights or status *as a member of the union*”⁸ and that the LMRDA doesn’t put any restrictions on union leaders that keeps them from hiring a staff whose views are compatible with their own.⁹ Regardless, the Supreme Court noted that the LMRDA’s legislative history nor the act’s language indicated any intent to “address the issue of union patronage,”¹⁰ which the Court here used to outline that Congress has expressly shown when it meant for pre-emption to flow from the LMRDA.¹¹ Thus, the Court rejected the district court’s granting of summary judgment in favor of the Unions as, here, there is no “clear and manifest” indication of Congress’s intent to preempt wrongful termination claims, nor is there a “significant conflict” between Nevada’s state termination laws and the LMRDA’s federal interest.

⁶ *Finnegan v. Leu*, 456 US 431 (1982)

⁷ *See supra* note 2

⁸ *Finnegan* at 433-34 (emphasis in original)

⁹ *Id.* at 441.

¹⁰ *Id.*

¹¹ *Id.* (quoting *De Veau v. Braisted*, 363, U.S. 144, 156 (1960), acknowledging the LMRDA)

Clarke failed to show that a genuine dispute of material fact existed to preclude summary judgment in favor of SEIU

The Court analyzed the claims made by Clarke claiming that SEIU and Local 1107 were alter egos of one another. To do so, the Court must consider whether alter ego status exists, where one must show “that the subsidiary corporation is so organized and controlled... that it is a mere instrumentality or adjunct of another corporation.”¹² *The Trucks Ins. Exch. v. Palmer J. Swanson, Inc.* court established the preponderance of the evidence standard for proving alter ego liability. This standard requires that (1) the corporation must be influenced and governed by the person asserted to be its alter ego; (2) there must be such unity of interest and ownership that one is inseparable from the other; and (3) The facts must be such that adherence to the fiction of separate entity would, under the circumstances, sanction a fraud or promote injustice.

Here, Clarke failed to prove that there was a unity of interest or ownership between SEIU and Local 1107. Further, there was no evidence that the two entities were inseparable or that the trusteeship details a fraud or injustice. There was no evidence on the record that Clarke was under the impression that SEIU was his employer or responsible for his contract. The Court thus agreed with the lower court that Clarke did not show sufficient evidence to support the alter ego liability claim against SEIU and affirms the district court’s finding for summary judgment in favor of SEIU.

The district court did not abuse its discretion in denying SEIU’s motion for attorney fees

The Court first discussed whether the district court abused its discretion in denying SEIU’s motion for attorney fees based on their NRCP 68 offer of judgment. The Court considered whether SEIU met the requirements of NRCP 68. NRCP 68(c) states that “multiple

¹² *Bonanza Hotel Gift Shop, Inc. v. Bonanza No. 2*, 95 Nev. 463 (1979)

offerors can make an offer of judgment to multiple offerees.”¹³ Nonetheless, according to NRCP 68(f), “an offeror may recover its reasonable post-offer attorney fees if there offeree rejected its offer of judgment and did not obtain a more favorable judgment.”¹⁴ However, to award attorney fees under NRCP 68, the Court must consider the *Beatie* factors, which analyze (1) whether the plaintiffs claim was brought in good faith; (2) whether the defendants offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff s decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.¹⁵

The *Beatie* court established these factors as not singularly determinative and that the overseeing court has broad discretion to grant or deny an NRCP 68-based request if each factor is at least considered.¹⁶ Originally, the district court rejected the offer of judgment declaring that the offer was “grossly unreasonable” as the plaintiffs could not easily and properly analyze the Offer since it required a “global resolution” of all claims. In the instant case, the district courts findings that: (1) it would be impossible for either Clarke or Gentry to settle only with one of the defendants, if they felt inclined to do so, because the offer required both plaintiffs to settle with all defendants; (2) the offer required dismissal of all claims against all defendants even though one of the defendants was unrepresented by counsel and unaware of the offer; and (3) the offer did not state who would pay Clarke and Gentry if the offer were accepted were each affirmed by the Court, thus denying any abuse of discretion in the lower court’s decision to deny SEIU’s motion for attorney fees.

¹³ Nev R. Civ. P. 68

¹⁴ *Id.*

¹⁵ *Beatie v. Thomas*, 99 Nev. 579, 588 P.2d 268, 274 (1983)

¹⁶ *Yamaha Motor Co. U.S.A. v. Arnoult*, 114 Nev. 233, 252 (1998) (quoting *Beatie*)

Conclusion

The Court found that the LMRDA does not preempt Nevada wrongful terminations claims as LMRDA's purpose would not be significantly frustrated by permitting such claims. Thus, based on preemption, the district court erred in granting summary judgment against Clarke's claims. However, the Court affirmed the district court's finding that Clarke failed to show that a genuine dispute of material fact existed as Clarke was unable to satisfy the burden of proving that Local 1107 was an alter ego of SEIU, thus affirming the lower court's summary judgment in favor of SEIU. Lastly, the Court affirmed that the district court did not "abuse its discretion" by denying SEIU's motion for attorney fees. The district court's order in Docket No. 80520 was reversed and remanded for further proceedings Clarke's original preemption claims.

Concurrence in part and Dissent in part

Justice Herndon wrote an opinion concurring in part and dissenting in part. Justice Herndon, along with Justice Parraguirre and Justice Silver, concur with the affirmation of the district court's decision to deny the motions for attorney fees. In their opinion, they state that they would affirm the district court's decision to grant the Union's motion for summary judgment based on the preemption claim. Justice Herndon argues that "to limit [an appointed trustee's] ability to replace existing staff with those whose ideologies and goals aligned with the official's ... would only hamper the democratic process of the union", which is protected by the LMRDA "clear and manifest" purpose to safeguard a union's democratic processes. Therefore, Justice Herndon concludes that the district court did not err in granting the motion for summary judgment claiming that the LMRDA preempts Clarke's action.