

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Civil Rights

Owners of an auto wrecking business filed an action against a City claiming that the City Council's adoption of an ordinance regulating the auto wrecking business violated their constitutional rights to due process and equal protection. Plaintiffs argued that the new ordinance made it virtually impossible for them to obtain a permit renewal and that City employees conspired against them for racially discriminatory reasons.

Judge Robert Jones dismissed all claims against the individual defendants in a prior, published opinion at 231 F. Supp. 2d 1019 (2002). After granting plaintiffs leave to replead their claims against the City, Judge Jones granted the City's motion for summary judgment. The court concluded that the plaintiffs failed to demonstrate that they possessed any constitutionally protected property interests in the annual renewal of their auto wrecker's permit. Judge Jones also rejected plaintiffs' attempt to claim that the City ordinance was preempted by state statutes because that issue was already previously litigated in

state court; the doctrine of issue preclusion under the Full Faith and Credit clause of Article IV of the U.S. constitution precluded the challenge.

Plaintiffs' failure to come forward with any evidence of a conspiracy caused the court to reject the § 1985 claim. Finally, Judge Jones dismissed the equal protection claim because the challenged ordinance was a generally applicable policy and there was no evidence that any other potential applicant would be treated any differently. Thornton v. City of St. Helens, CV 02-325-JO (Opinion, Nov. 5, 2003).

Plaintiffs' Counsel:

James Huffman

Defense Counsel:

Steven A. Kraemer

Unfair Competition

Plaintiff wanted to enter into a joint venture with another company to market a computer game owned by a third party. Plaintiff drafted a series of business plans which it distributed to at least 25 companies, without any express

restriction on use of the information. Plaintiff ultimately entered into negotiations with defendant about a possible joint venture. These negotiations took place over a three month period and, during that time, the parties executed two written non-disclosure agreements. The joint venture was never achieved.

Approximately one month after the negotiations broke off, defendant hired one of plaintiff's employees and later purchased the computer game that was the subject of the parties' negotiations. Plaintiff then filed an action asserting claims for breach of the two written non-disclosure agreements, violations of the Oregon Uniform Trade Secrets Act (OUTSA), and various common law claims.

Judge Anna J. Brown held that plaintiff's prior disclosures within the circulated business plans barred any claims premised upon the later written non-disclosure agreements absent evidence that the defendant used any information gleaned solely from the negotiations. Further, the court noted that because neither written

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agreement included a covenant not to compete, plaintiff could not challenge defendant's use of its idea.

Judge Brown found that plaintiff took no steps to protect its allegedly confidential trade information from disclosure and, thus, it could not sustain a claim under OUTSA. The court concluded that OUTSA provides an exclusive and comprehensive remedy and, thus, plaintiff's common law claims for unjust enrichment, quasi-contract, usurpation of corporate opportunity, unfair competition and misappropriation of trade secrets were all preempted. nMotion, Inc. v. Environmental Tectonics Corp., CV 01-524-BR (Opinion, Oct. 27, 2003).

Plaintiff's Counsel:

Michael Ratoza

Defense Counsel: David Axelrod

Employment

A truck driver filed an action against his former employer alleging that he was terminated in violation of his contract and in retaliation for filing a workers compensation claim. Judge Anna J. Brown rejected plaintiff's breach of contract claims because those claims were premised upon a Collective Bargaining Agreement and, thus, were preempted by ERISA. The court also rejected

plaintiff's alternative theory that his employee handbook created an employment contract because such a claim was contrary to an express provision of the CBA and a disclaimer within the handbook.

Judge Brown determined that plaintiff stated a prima facie claim for retaliatory discharge based upon the temporal proximity between his worker's comp claim and his termination. However, the court noted the absence of any evidence of pretext. Defendant came forward with undisputed evidence that plaintiff had violated the company's daily call-in rule regarding absences from work. Judge Brown noted that Oregon law imposes a but/for test in mixed motive cases and she held that plaintiff failed to prove that defendant would not have terminated him but for his worker's compensation claim. Tchir v. Unified Western Grocers, Inc., CV 02-303-BR (Opinion, Oct. 24, 2003).

Plaintiff's Counsel:

Daniel W. Dickerson

Defense Counsel:

Paul C. Buchanan

Environment

The American Forest Resource Council was denied

leave to intervene in a spotted owl case. The organization never explained why its interests were not adequately represented by the existing defendants. Judge Panner also questioned whether the interests the organization asserted met the requirements of Rule 24. Oregon Natural Resources Council v. Allen, et al., CV 03-888-PA (Opinion, Nov. 4, 2003)
Counsel: Scott Horngren (for proposed intervenor)

Labor

Judge Jelderks held that ERISA does not preempt the State of Oregon's authority, under ORS Chapter 660, to regulate employee apprenticeship programs and to approve (or disapprove) the formation of new local joint committees to operate apprenticeship programs. The Plaintiffs sought to establish their own apprenticeship programs in lieu of participating in the existing State-approved programs. Oregon-Columbia Brick Masons Joint Apprenticeship Training Committee v. Oregon Bureau of Labor and Industries, CV 02-1711-JE (Opinion, Sept. 18, 2003).

Plaintiffs' Counsel:

John Spencer Stewart

Defense Counsel: John Urquhart