

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
A Court Publication Supported by the Attorney Admissions Fund
Vol. VII, No. 12, May 21, 2001

Contracts

A former employee filed an action for fraud and breach of contract against his employer. Although the plaintiff's employment was initiated by written contract, plaintiff argued that the contract was subsequently orally modified on two different occasions. Defendant moved for summary judgment against the oral contract claims, arguing that the written contract governed and that plaintiff was terminated in accordance with the terms of that written agreement.

Judge Robert E. Jones denied the defense motion, noting that there was no dispute that the written contract was, at a minimum, at least orally modified. The court found that genuine issues of material fact existed relative to whether the written contract was re-assigned or replaced by an oral contract. Judge Jones also rejected defendant's argument that the claims were barred under the statute of frauds given evidence of partial performance. Finally, Judge Jones found that plaintiff

had come forward with sufficient prima facie proof to sustain a fraud claim relative to a second alleged oral contract claim, despite the defense that plaintiff continued to work for the defendant after discovering the alleged fraud. Hand v. Starr-Wood Cardiac Group, CV 99-1091-JO (Opinion, Feb., 2001).

Plaintiff's Counsel:

Steven Brischetto

Defense Counsel:

Alison E. Brody

Procedure

In a defamation action against an internet website, plaintiff named a foundation and 1-100 John Does as defendants. An individual, operating under the computer name "InternetZorro" came forward claiming to be one of the John Does described in the complaint. Plaintiff moved to strike this person's answer, arguing that it is up to the plaintiff to name the parties and that an individual cannot insert himself into a case.

Judge Dennis J. Hubel noted the absence of any controlling authority on this issue. The court held that

when an individual admits to being a John Doe described in a complaint, he may voluntarily appear. Accordingly, the court denied plaintiff's motion to strike InternetZorro's answer.

The foundation defendant sought to set aside a default, arguing that it's lack of counsel and confusion over whether two individuals could represent the foundation should excuse its failure to timely defend the action. Judge Hubel rejected these arguments, noting that the individuals representing the foundation had both actual and constructive knowledge of the complaint. The court held that the foundation had engaged in culpable conduct and thus, none of the grounds for sustaining relief from an entry of default applied. Zwebner v. John Does Anonymous Foundation, Inc., CV 00-1322-HU (Opinion, Feb. 28, 2001).

Plaintiff's Counsel:

Renee Rothauge

Defense Counsel:

George Fisher

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Law

Plaintiff obtained an FHA loan secured by his farm property and defaulted on the loan. He conveyed the property to the FHA by deed in lieu of foreclosure with a lease, buy-back provision. Plaintiff orally accepted the option to purchase and later provided a written acceptance. FHA then obtained an appraisal of the property and the parties disputed the appropriate date for the valuation: either the date of the oral acceptance or the written acceptance. FHA took the position that the written acceptance was the only effective date because the contract required written notification of an exercise of the purchase option. The parties' dispute went through two administrative appeal hearings which ultimately upheld the FHA's valuation.

On appeal to the district court, plaintiff argued that the appeal department had no authority to decide a question of law, citing several federal regulations which discuss the appeal department's "fact-finding" functions. Judge Robert E. Jones rejected this argument and found that the decision not to consider the oral exercise of the lease option as the valuation date was neither arbitrary nor capricious. The court also granted a defense

motion for summary judgment on counterclaims for past due rent. Judge Jones held that plaintiff had no right not to pay rent just because issues remained regarding the purchase price. Nichols v. Glickman, CV 00-340-JO (Opinion, March, 2001).

Plaintiffs' Counsel:

James Van Ness

Defense Counsel: Tim Simmons

Social Security

Judge Robert E. Jones granted in part and denied in part a social security claimant's attorney fee petition. At the district court level, plaintiff obtained a remand, but without an award of benefits. He then sought to alter or amend the district court's judgment, filed an appeal to the Ninth Circuit, requested a rehearing en banc and filed a petition for certiorari to the U.S. Supreme Court, all of which was unsuccessful. Plaintiff sought attorney fees for all time expended. Judge Jones held that plaintiff was not entitled to recover fees for his attempt to alter or amend the trial court judgment, his request for rehearing en banc or his Supreme Court petition since none of these actions provided any additional benefit to his case. However, the court found that fees expended on the initial 9th Circuit appeal could be recovered because, in affirming the district court, the Appeals

Court found that additional issues, not included in the trial court's order, should also be considered upon remand to the ALJ. Harman v. SSA, CV 97-6251-JO (Opinion, March, 2001).

Employment

A company filed an action against three former employees alleging breaches of non-competition and confidentiality agreements. At issue was whether the contracts were valid under O.R.S. 653.295(1) because some of the former employees did not sign the agreements until several days after their employment commenced. Judge John Jelderks held that the Oregon statute should be strictly applied and that the agreements signed days after employment commenced were invalid. The court held that as to other employees, plaintiff was estopped from enforcing the agreement because it told the employees that there were no contracts and/or that they were missing from personnel files. IKON Office Solutions, Inc. v. American Office Products, Inc., CV 00-64-JE (Opinion, April 26, 2001).

Plaintiffs' Counsel:

Mark Friedman

Defense Counsel:

Jeffrey M. Edelson