

COURTHOUSE NEWS

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

Lessees of real property in Washington County filed a declaratory judgment action seeking interpretation of a rental adjustment clause in the lease agreement. The lease was for a 99 year term with rental adjustments in the 31st and 61st years of the lease. The first rental adjustment is due to occur in 2009. Plaintiffs claimed that they have attempted to sell their interest in the leased property and that they have been unable to do so because of a dispute with the defendant over interpretation of the rental adjustment clause.

Defendants moved to dismiss the action for lack of a justiciable controversy. Defendants argued that plaintiffs claims were unripe since the disputed clause would not take effect until 2009.

Defendants also argued that dismissal was proper under Fed. R. Civ. P. 19 for failure to join necessary parties -- a guarantor of the original lessee and the lessee of an adjoining parcel in which the lease contains an identical rent adjustment clause.

Judge Anna J. Brown denied the defendants' motion to dismiss under Fed. R. Civ. P. 12. The court noted that assuming plaintiffs' claims regarding their unsuccessful attempts to sell their lease interest were true, an actual present controversy exists between the parties. The court also denied the defendants' motion to dismiss for failure to join necessary parties; the court noted that joinder would destroy diversity jurisdiction and held that the parties identified were neither necessary nor indispensable. Principal Life Ins. Co. v. Robinson, CV 00-1345-BR (Opinion, July 5, 2001).

Plaintiffs' Counsel:

J. Stephen Werts

Defense Counsel:

William L. Larkins, Jr.

Criminal Law

Three individuals sitting in a van at 2:00 a.m. near a row of mail boxes in a remote area of South Salem raised the suspicion of a patrol officer. Upon siting the officer, the individuals began moving around the van in an apparent attempt to conceal

something in the back seat. Judge Anna J. Brown held that all of these circumstances were sufficient to give rise to reasonable suspicion to support a traffic stop.

The additional facts that some of the mailboxes were open, defendants' inconsistent stories explaining their presence and additional furtive movements directed to something concealed under the back seat combined to give rise to probable cause to believe that evidence of a crime would likely be found in the van. Thus, the court denied defendants' motions to suppress based upon a finding that the warrantless search was justified under the automobile exception. United States v. Gust, CR 01-161-BR (Opinion, June 27, 2001).

AUSA: Stephen Peifer

Defense: Helen Cooper,

Ruben Iniguez, Noel Grefenson

Employment

A former employee claimed that his employer breached an implied covenant not to terminate him without "just cause." One of plaintiff's co-workers had

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complained to management of harassment; the employer placed a video surveillance camera near that employee's work station and plaintiff was seen depositing a disfigured teddy bear in the employee's work area. Plaintiff was terminated based upon this incident. Plaintiff denied any malicious intent and argued that termination on this basis did not constitute "just cause."

Judge Anna J. Brown granted a defense motion for summary judgment against this claim. Plaintiff based his implied contract claim on three elements: (1) his subjective understanding; (2) longstanding corporate practice; and (3) progressive discipline described in a manager handbook.

Judge Brown held that plaintiff's subjective understanding was insufficient. The court also rejected the longstanding practice assertion, noting that: "[A]n employer is not required to fire an employee at random to retain its ability to terminate other employees at will in the future. . . . An employer's adherence to good business practices does not create a binding contractual obligation always to terminate employees only for cause." Bland v. Blount, 00-579-BR (Opinion, April 9, 2001).

Plaintiff's Counsel:
Michael Seidl

Defense Counsel:
Robert Lane Carey

Torts

Plaintiffs hired the services of an air ambulance to transport the father from Mexico to Portland to be screened for a heart transplant. Based on the company's representations and web site, they expected an American plane staffed by American doctors trained in cardiac care and carrying medical equipment. Instead, the company subcontracted the transport to another company which sent a Mexican plane with little if any medical equipment and medical personnel of unknown qualifications. Although plaintiff arrived safely in Portland, he and his family suffered great distress during the trip. Plaintiff and his family sued for breach of contract and numerous torts. Judge King dismissed all of the tort claims for various reasons, including lack of a special relationship and damages limited to emotional distress.

Julian-Ocampo v. Air Ambulance Network, Inc., CV00-1262-KI, (Opinion, July 27, 2001).

Plaintiffs' Counsel:
Stephen Griffith, Leta Gorman
Defense Counsel:
Gary Abbot, Annalie Herrmann

Procedure

Following a removal from state

court based upon diversity of citizenship, plaintiff moved to remand the action claiming that defendant should be treated as an Oregon resident because it is registered to do business in Oregon and it maintains offices and retail outlets in Oregon. Judge Janice M. Stewart rejected this argument noting that a corporation's citizenship is premised upon its state of incorporation and principal place of business.

Plaintiff also argued that remand was appropriate because he only sought up to \$74,000 in employment related losses. Judge Stewart rejected this argument as well, noting that plaintiff also sought attorney fees and punitive damages that would necessarily exceed \$1,000. Boos v. Pier 1 Imports-West, Inc., CV 01-562-ST (Findings and Recommendation, June 13, 2001; Adopted by Order of Judge Anna J. Brown, July 12, 2001).

Plaintiff's Counsel:
Roger Hennagin
Defense Counsel: Alan Lee

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