1223-L003

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER

RECEIVED
SEP 23 2008
SEDOR, WENDLANDT & WANG

RICHARD PRALLE, et al,	)
Plaintiff,	)
	)
v.	)
	)
WILLOW AREA	)
COMMUNITY ORG. et al,	)
Defendants	)
	)

3PA-07-1083 CI

FINDINGS IN SUPPORT OF THE
ORDER GRANTING SUMMARY JUDGMENT

The court previously issued a brief order granting Defendant's motion for Summary Judgment and noting that these written findings would be forthcoming. The court apologizes for the delay. The issuance of this document will trigger any deadlines for appeals or other responsive motions.

The Law

Summary Judgment is appropriate "if the evidence in the record presents no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Yurioff v. American Honda Motor Company, Inc.*, 803 P.2d 386, 388 (Alaska 1990). "A material issue of fact exists where reasonable jurors could disagree on the resolution of a factual issue." *Ondrusek v. Murphy*, 120 P.3d 1053, 1056 (Alaska 2005). All relevant "facts are to be viewed in the light most favorable to the nonmoving party." *Riley v. Northern Commercial Co.*, 648 P.2d 961, 965 (Alaska 1982). "Where the record presents such an issue of fact, the question must be resolved at trial." *Id.*

In the context of an employment contract the issue of whether a breach was material is determined by the court as a matter of law. *Central Alaska Broadcasting, Inc. v. Bracale*, 637 P.2d 711, 714 (Alaska 1981). It is well established that as a general rule "only a material breach of contract justifies termination." *Id.* at 713. It is also a general rule that "an employee's willful refusal to obey the reasonable instructions of his employer is

grounds for discharge." *Id.* As such, "when an order given [by an employer] is reasonable and consistent with the [employment] contract, the failure to obey it is always a material breach as a matter of law." *Id.*

The Background

The Willow Area Community Organization (WACO) is a non-profit organization that, among other tasks, maintains and operates the Willow Community Center and Library. To accomplish this WACO employs a small janitorial staff. On June 30, 2006, Plaintiffs Richard and Delores Pralle (Pralles) signed a contract with WACO entitled Janitorial Services Contract for Willow Library. (See the attachment to the complaint.)

There had been a history of having two separate contracts, one for the library, and one a caretaker contract that encompassed the Willow Community Center. The duties under the two previous contracts overlapped and included cleaning services for a common area in the library and the restrooms. The Pralles had been under both contracts, but resigned from the caretaker contract effective August 4, 2006. They acknowledged that the library contract was a separate contract and stated, "We will continue to fulfill all duties as per the signed Library contract through June 30, 2007." (See pg 23 in support of Pralles' Motion for Summary Judgment.)

The Contract

The contract was to be for a period of one year, beginning July 1, 2006, subject to renewal by mutual consent. However, the contract also included the following terms:

> 8. TERMINATION
>
> Termination for cause: If, through any cause, the janitorial staff shall fail to fulfill its obligations under this contract, or shall violate any of the covenants, agreements or stipulations of this contract, the WACO Board shall thereupon have the right to

terminate this contract by giving written notice at least five (5) days before the effective date of such termination. In such event, all equipment, vehicles, supplies, reports or other materials shall be returned to WACO.

Termination for convenience: The WACO Board or the janitorial staff may terminate this contract at any time by giving written notice to the other party at least thirty (30) days before the effective date of such termination. In such event, all equipment, vehicles, supplies, reports or other materials shall be returned to WACO.

9. PROBATIONARY PERIOD

This contract is subject to a ninety (90) day probationary period, whereupon the WACO Board reserves the right to terminate this contract as above.

The Termination

By the terms set forth, above, it is clear that either party could have terminated the contract with a 30 day notice under the "Termination for convenience" paragraph of Item 8., which was reinforced by the probationary period in Item 9. The actions taken by WACO were taken within the 90 day probation period. Therefore, at the very least, if WACO's actions were to be considered as an invocation of the "Termination of Convenience" clause, Plaintiff's claim for the balance of the contract through June 30, 2007 as they have demanded would be without foundation. (See Nov. 6, 2006 letter from the Pralles, pg. 38 in support of Plaintiff's Motion for Summary Judgment.) No cause for the termination would have to have been shown under the "Termination for Convenience."

However, WACO also had the option of "Termination for Cause" which is what they used. Many of Plaintiff's arguments are that Plaintiff's actions were either not in violation of the express requirements of the Janitorial Duty List or were approved by an oral contract modification. Many of those issues are in dispute, and if those were the only issues, then summary judgment would not be appropriate. However, material issues which are undisputed exist which justify the termination.

Employer's Reasonable Instructions

It is not enough that an employee simply comply with the express terms of an employment contract or duty list. In Nyberg v. Univ. of Alaska 954 P2d 1376 (Alaska 1998) the Alaska Supreme Court wrote:

> An employee's willful refusal to obey an employer's reasonable instructions is a ground for discharge. See Helmuth v. Univ. of Alaska Fairbanks, 908 P.2d 1017, 1021 (Alaska 1995) (citing **Central Alaska Broad. v. Bracale,** 637 P.2d 711, 713 (Alaska 1981)). We have upheld a finding of insubordination where there was substantial evidence that an employee intentionally refused to comply with reasonable written and oral directives issued by the supervisor. See Helmuth, 908 P.2d at 1020 n. 7, 1023-24.

Plaintiffs were under the supervision of the WACO vice-chair, Lori Wiertsema. See item 3 of the contract. Since the Pralles were no longer under both the caretaker and janitorial contracts, it was reasonable for Wiertsema to address what were overlapping duties of those two positions. The overlap in duties included the cleaning of the restrooms which serve both the library and the Community Center. After Pralles resigned as caretakers, the Pralles and Wiertsema had conversations and written exchanges to address this issue.

While there are no transcripts or written notes regarding the August 4, 2006 conversation between the parties, there were follow up letters, one by Wiertsema on August 10, 2006, and a reply by the Pralles dated August 12, 2006. According to the Pralles' letter, on Aug. 4, 2006, the effective date of Pralles resignation as caretakers, Wiertsema had

agreed verbally with Pralles suggestion that they daily clean only the women's restroom and the front half of the hallway which is a common area shared by both the library and community hall patrons, (See p. 20 of the attachments in support of Pralles' motion for summary judgment.) Wiertsema called the Pralles on August 6th to address this matter. While the characterization of that call is in dispute, the contents are not. In that call, Wiertsema notified the Pralles that they were to clean both restrooms and the full hallway every other day. This would have been consistent with the requirement that "half of the time and cost spent will be covered by WACO" set forth in item 1 of the Janitorial Duty List for the Willow Library. It is also clear that Pralles refused to follow Wiertsema's directions that they clean the full required areas on only Tuesdays, Thursdays, and Saturdays. (See the August 10th and 12th letters noted above.)

In this case, we must determine whether Wiertsema's instructions to the Pralles were both reasonable and sufficiently clear to enable the Pralles to understand what was required by their employer. See id.; Bishop v. Municipality of Anchorage, 899 P.2d 149, 155 (Alaska 1995) (affirming a finding of insubordination where an employee refused to obey an order after being given "clear notice of what was required of him")

The instructions to the Pralles were clear. They were to clean the areas required by their contract and incorporated duty list only ½ of the time. While it is apparent that initially, on the date that Pralles were no longer going to do the caretaker's duties, the parties agreed on that schedule suggested by the Pralles, it is also clear that within 2 days, Wiertsema directed the Pralles to work on a different schedule. Pralles, in their Aug, 12, 2006 letter, refer to the August 6th call and the August 10th letter as breaking the August 4th verbal contract. As a matter of law, that claim must fall. Pralles were already under a duty to clean both restrooms and the common hallway area. An employer has a right to set the schedule of the working hours/days. The instructions by Wiertsema that the Pralles clean on alternate days is consistent with the requirement that they do only the job under the role of the janitorial contract and no longer under their joint role as both janitors and caretakers.

The instructions were both clear and reasonable as well as within Wiertsema's authority. Pralles unequivocal statement is that they were not going to abide by these instructions but were going to work at the schedule and only in the areas that they had suggested. They even went so far as to say they would "clean all of the joint-use areas if the monetary offer was right." (See August 12, 2006 letter.) They were already obligated to clean all of those areas, and their intentional refusal to do this was insubordinate. This is concrete evidence of their intent to disregard and not obey a clear, reasonable instruction from their employer, and therefore it is grounds for termination for cause. Further, Pralles submission of a specious timekeeping record would support a further finding of insubordination.

The Board of Directors' action

The Pralles maintain that he action taken by the Board in firing them was procedurally improper because of the motion made and vote cast by Kel Jacobs. Pralles contend that Kel Jacobs was ineligible to be a alternate area representative because he was a community organization representative. They cite Article V, section1 B. of the Bylaws of the Willow Area Community Organization. However, under section 1 C an community organization representative does have voting privileges, even though they cannot also be an alternate area representative. Even if Kel Jacob's vote were not to count, the issued would have passed 5-2. Therefore, Pralles' claim that the board acted illegitimately must also fail.

Defendant, as previously ruled, are entitled to summary judgment.

Dated this 19th day of Sept., 2008 at Palmer, AK.

David L. Zwink

District Court Magistrate

I certify that on 9/22/08
a copy of this document was sent to:
☐ CSED ☑ Attorney(s) of Record
☑ Plaintiff ☐ Defendant
☐ Other ______
at the address(es) of record.
Rec'd Jnl ______ Date ______ Deputy Clerk