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ALERT

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Ninth Circuit

Circuit Reverses District Court Finding After a Bench Trial that Migrant Farm Worker Signed Arbitration under Undue Influence and Economic Duress

Martinez-Gonzalez was a migrant farm worker from Mexico. He accepted a job at a lettuce farm in California. During orientation, the employer told him and other new employees to sign paperwork and to do it quickly. The employment package contained an arbitration agreement. The agreement was written in Spanish. Company representatives didn't explain the contents of the agreement, didn't give him a copy, and didn't suggest he consult an attorney before signing. The Company did not tell him he had to sign the agreement as a condition of employment.

Two years later, Martinez-Gonzalez filed a class and collective action for unpaid wages and missed breaks. The district court held a two-day bench trial to determine the enforceability of the arbitration agreement. The district court refused to enforce the agreements on the grounds of undue influence and economic duress. The Ninth Circuit reversed 2-1.

Applying California law, the majority held that there was no economic duress because the company hadn't committed any "wrongful acts" and there were reasonable alternatives available to the plaintiff, such as asking whether signing the arbitration agreement was a mandatory condition of employment. He also could have revoked the arbitration agreements within 10 days of signing.

The majority ruled there was no "undue influence." The majority ruled that Martinez-Gonzalez was not unduly susceptible to undue influence because he had a secondary school education and could read Spanish. The majority also thought it significant that the plaintiff later voluntarily quit. The majority disagreed with the district court that there was excessive pressure on the plaintiff to sign the agreement. The employer didn't preclude the plaintiff from consulting an attorney and its instructions that people should sign in a hurry was an attempt at efficiency.

Dissenting, Judge Rawlinson pointed out that the majority failed to apply the clearly erroneous standards to the district court's ultimate factual determinations. The dissent also noted that where, as here, factual findings are entered after a bench trial with live witnesses, the district court's determinations are entitled to special deference.

The dissent would have ruled that the circumstances under which the employer provided the agreements (after 12 hours of transportation, in a parking lot, with no explanation, constituted a wrongful act. The dissent would have upheld the district court's factual finding that the plaintiff had no alternative but to sign as he had no other employment prospects in the United States.

The dissent accused the majority of turning a blind eye to the plaintiff's dire circumstances and the realities of migrant workers. Judge Rawlinson also accused the majority of gaslighting by saying that facts don't matter to her or to the district court. Much of her dissent was devoted to the facts found by the district court that the majority omitted.

Martinez-Gonzalez v. Elkhorn Packaging Co., LLC, 17 F.4th 875 (9th Cir. 11/3/21) (Bumatay, Siler (6th Cir), Rawlinson)

Court Rather than Arbitrator Should Decide Whether an Agreement to Arbitrate Was Formed Regardless of Clause in Arbitration Agreement Delegating that Role to Arbitrator

The Plaintiff, Ahlstrom, was employed as a loan officer from July 20, 2015, to December 9, 2016. It was undisputed that his actual employer was DHIM, although D.R. Horton is the parent company of DHIM. Ahlstrom signed a Mutual Arbitration Agreement ("MMA"). The MMA provided that "[t]he undersigned employee and D.R. Horton, Inc., [not DHIM, the actual employer] voluntarily and knowingly enter into this Mutual Arbitration Agreement . . . ." The MAA contained a delegation clause providing that the arbitrator "shall have exclusive authority to resolve any dispute relating to the formation, enforceability, applicability, or interpretation of this [MAA]."

On March 27, 2019, Ahlstrom filed a putative state court class action, naming DHIM as the defendant-employer. Ahlstrom alleged employment-related causes of action and the Defendant removed the claim to federal court. On July 22, 2019, DHIM moved to compel arbitration and to dismiss the putative class claims. Ahlstrom opposed the motion, contending that the MAA was never properly formed due to a failure to satisfy a condition precedent in the MAA. The district court granted DHIM's motion. Citing the MAA's delegation clause, the district court concluded that formation issues, including Ahlstrom's condition precedent argument, could not be decided by the court, and were instead delegated to the arbitrator. Ahlstrom appealed and the Ninth Circuit reversed.

The Ninth Circuit recognized that "courts should order arbitration of a dispute only where the court is satisfied that neither the formation of the parties' arbitration agreement nor . . . its enforceability or applicability to the dispute is in issue." *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 299 (2010). Thus, "[w]here a party contests either or both matters, the court must resolve the disagreement." *Id.* at 299–300 (internal quotation marks omitted) (citation omitted). The court rejected the employer's argument that the parties may agree to delegate issues of formation to an arbitrator. "A court should order arbitration only if it is convinced an agreement has been formed." The court joined the Fifth and Tenth Circuits in holding that the parties cannot delegate issues of formation of the arbitration agreement to the arbitrator.

The court found that a contract has not been formed here because the MAA was between the employee and D.R. Horton and not the actual employer, DHIM. The court relied upon the fundamental principle that corporations, including parent companies and subsidiaries, are treated as distinct entities. "Put simply, the MAA, as drafted, describes and governs a relationship between Ahlstrom and D.R. Horton that does not exist, and thus does not constitute a properly formed agreement to arbitrate."

Ahlstrom v. DHI Mortgage Company Ltd., L.P., 21 F.4th 631 (9th Cir. 12/29/2021) (Pregerson (C.D. Cal.), Wardlaw, Berzon)

Washington Court of Appeals

Salaried Employee Does Not Have Good Cause to Quit Job Where Employer Temporarily Increases Work Hours Without Proportionate Increase in Salary

Sherry worked as a Rite-Aid store leader. She was salaried, full-time, non-exempt, and made less than $50,000 per year. In November 2018, her assistant manager was discharged, and the Company searched for a replacement. As a result, the employee weekly work hours increased from 50 to 65-70. She quit two months later after suffering a panic attack and workplace stress. At

the time, the assistant manager position was still vacant.

Sherry applied for unemployment benefits. She argued that the increase in her work hours constituted a 25% reduction in her usual compensation and therefore constituted good cause to quit. The Employment Security Department ("ESD"), an ALJ, the ESD Commissioner, and the Superior Court all rejected her argument. So did the appellate court.

Because the facts were undisputed, the court's review was legal only. The court rejected the employee's claim that a 25% increase in work hours for a salaried employee was a reduction in usual compensation within the meaning of RCW 50.20.050(2)(b)(v). Here, the employee's usual compensation was her annual salary, which was not reduced. With a salaried employee, the compensation is the same regardless of how many hours are worked.

The court also rejected the employee's argument that ESD misinterpreted the statute by ruling that she did not have good cause to quit. Even though the statute must be liberally interpreted, that can't override the express terms of the statute.

The majority also reasoned that the employee's interpretation of the statute would defeat the nature of salaried work and apply equally to all salaried employees including highly compensated ones. The majority thought this was an absurd result. The majority rejected the employee's argument that ESD's interpretation of the statute amounted to an impermissible waiver of statutory rights. Because the employee didn't meet the statutory definition of good cause to quit, there was no waiver of rights.

Sherry v. State of Washington, Employment Security Dep't., -- Wn. App. 2d ---, 498 P.3d 580 (Div. 2 11/9/2021) (Worswick, Lee, Glasgow).

Summary Judgment Reversed in Pregnancy Discrimination Suit

The Plaintiff, Crabtree, filed a lawsuit against Jefferson Healthcare alleging that Jefferson Healthcare terminated her because of her pregnancy in violation of the Washington Law Against Discrimination (WLAD). The trial court granted summary judgment, Crabtree appealed, and the Court of Appeals reversed.

Crabtree started working at Jefferson Healthcare as the manager of patient access services in May 2018. Her job duties, *inter alia,* included overseeing three registration desks. She supervised up to 20 employees at a time and managed those employees' hours, schedules, and personnel issues. In November 2018, Crabtree received a mixed performance evaluation with ratings of "meets expectations" and "needs improvement." Both her immediate and second level supervisors provided a narrative of her strengths and weaknesses.

In December 2018, Crabtree informed her second level supervisor that she was pregnant. The supervisor responded: "Wow. Poor Jen. She's going to be without a whole staff this spring/summer." When Crabtree's immediate supervisor was informed of her pregnancy, she inquired whether Crabtree would be willing to return from maternity leave in a lesser role. Crabtree said, "no. I like my job." The supervisor also mentioned that another manager, Straughn-Morse, was also pregnant which would have left only one manager to work if both took maternity leave at the same time.

In February 2019, Crabtree met with HR to discuss her options for taking maternity leave. A day after Crabtree's meeting with HR, the supervisor met with Crabtree to notify her that she was placing Crabtree on a 30-day performance improvement plan (PIP). The supervisor also stated that she did not "feel confident that [Crabtree] will be successful in filling the gaps

within the 30 days" and suggested that Crabtree should look for other jobs. The PIP had three goals and four "checkpoint" dates when the supervisor and Crabtree would meet to check progress. After the first meeting, the supervisor said that she was doing well with meeting her goals and that what the supervisor was "hearing and seeing is the right thing." Crabtree was concerned about meeting all goals by the deadline but was told that a good faith effort was sufficient.

Before the PIP ended, Jefferson Healthcare terminated Crabtree because HR reasoned that it became "abundantly clear that [Crabtree] would not be able to complete or make significant progress on her [PIP]."

The other manager in Crabtree's group who was pregnant, Straughn-Morse, was given additional responsibilities without additional pay. She declined to accept the additional responsibilities and accepted a lesser job with less pay. Although the record was unclear about whether she was demoted or willingly accepted the lesser role, the Court construed the facts in a light most favorable to Crabtree.

The Court of Appeals adopted the familiar burden-shifting *McDonnell Douglas* model for cases alleging discrimination under the WLAD. The parties agreed that the first two steps of the burden-shifting model were satisfied and focused on whether the alleged nondiscriminatory reason was a pretext of discrimination. To satisfy her burden, "'[a]n employee does not *need* to disprove each of the employer's articulated reasons . . . ." Nor does an employee need to prove that discrimination was the only motivating factor in her termination. "An employer may be motivated by multiple purposes, both legitimate and illegitimate, when making employment decisions and still be liable under the WLAD." Crabtree can alternatively meet her burden to show pretext by showing that discrimination was a substantial motivating factor for her termination.

Crabtree established that her immediate supervisor told her that she was satisfying her PIP and that her best good faith efforts to complete her goals on time would be sufficient. She offered evidence to rebut the employer's articulated reason that she did not complete her PIP goals. The Court also acknowledged that "evidence of employer treatment of other employees" is permissible to show "motive or intent for harassment or discharge." Here, the treatment of a similarly situated manager, Straughn-Morse, supported Crabtree's claim. The only other pregnant manager had to take a lower paying position around the same time. Both of the pregnant women on the same team could not maintain their managerial roles after they announced their pregnancy.

The court rejected the employer's argument that comments made by management were insufficient "stray remarks." "*Scrivener* made clear that stray remarks can be considered in determining whether the evidence in its entirety creates a genuine issue of material fact, and Crabtree does not rely solely on manager remarks."

Crabtree v. Jefferson County Public Hospital District No 2, --- Wn. App. 2d ---, 500 P.3d 203 (Div. 2. 12/14/2021) (Worwick, Glasgow, Cruser)

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