



South Carolina court says 'NO' to employee's claims against Boeing

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Employees and their counsel have been very aggressive in attempting to couch employment claims as state-law matters and filing claims in state court instead of federal court to try to avoid the federal judiciary. For various reasons, many cases should be filed in federal court, and companies must take procedural steps to get cases in the correct court. That happened in a recent case in South Carolina. The district judge provided an excellent analysis on why (at least in the case before him) the tactic of couching a claim as a state-law matter may not be the best way for a former employee to try his case. Read on to see what the court did.

Background

The case arose out of James Martin's employment with and termination from the Boeing Company. He was enrolled in Trident Technical College's "Ready South Carolina" program when he was offered a "Fabricator B" position with Boeing in its interior responsibility center in Ladson. The job functions included "basic organic chemical conversion and paint preparation," but Martin worked in the paint booth almost exclusively. His daily routine involved painting exclusively.

During his employment at Boeing, Martin allegedly made several internal complaints about hazardous work conditions in the paint booth—specifically, exposure to hazardous materials and a lack of protective gear. However, he did not file a complaint with state or federal occupational safety and health officials. In August 2014, he approached his manager and indicated that he would no longer paint because of the safety concerns. Martin was then escorted to

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HR, and he again indicated that he would not paint. At that point, he was terminated for "insubordination."

Martin initially filed a complaint in the Court of Common Pleas for Charleston County, and Boeing had the case moved to federal court on August 11, 2016. On August 29, 2016, Martin filed an amended complaint containing four claims: (1) wrongful termination in violation of public policy, (2) defamation, (3) breach of contract, and (4) negligent representation.

The next month, Martin filed a motion to amend the amended complaint. Boeing filed a response and a motion to dismiss for failure to state a claim.

Court's decision

The court had to deal with two procedural issues. The first was Boeing's motion to dismiss, which, at its core, is a challenge to the legal sufficiency of the complaint showing that a party is entitled to relief. The second procedural issue was whether the court would permit another amendment to a complaint that had already been amended.

Martin's proposed second amendment sought to add additional facts to fully illuminate his claims and remove the negligent representation claim. Boeing challenged the proposed amendment as futile, arguing that the additional facts Martin wanted to add were immaterial allegations in a useless attempt to support his remaining claims. Boeing did not challenge Martin's decision to drop his negligent representation claim from the second amended complaint.

The court analyzed the alleged futility of Martin's remaining claims against Boeing for wrongful discharge in violation of public policy, breach of contract, and defamation. In setting out the standard it would use in its analysis, the court noted that a futile amendment fails to state a claim for relief that is plausible on its face and that for a request to amend to be denied because of futility, the amendment must be clearly insufficient or frivolous on its face.

With that in mind, the court noted that in his proposed amended complaint, Martin added language stating he did not file a complaint with state or federal occupational safety and health agencies because he reasonably believed that his termination would be overturned since he was not insubordinate and made valid complaints regarding safety in the facility. Boeing argued that he did not have a claim for wrongful discharge in violation of public policy because he had an existing statutory remedy for wrongful termination.

The court found that Martin had an existing federal statutory remedy for wrongful termination through the Occupational Safety and Health Act (OSH Act), which outlines a procedure for employees to obtain relief for wrongful discharge or discrimination. He also had a state statutory remedy under the South Carolina Code, which allows an employee alleging discharge or discrimination in violation of South Carolina's occupational safety and health statute to file a complaint with the South Carolina Department of Labor.

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The court acknowledged that South Carolina recognizes a narrow public-policy exception to the employment-at-will doctrine but found that Martin's allegations did not fit within the exception. The court found that his proposed second amended complaint was futile regarding the wrongful discharge claim because he had existing statutory remedies for his occupational safety and retaliation claims under the OSH Act and Occupational Safety and Health Administration (OSHA) regulations. Further, with regard to Martin's claim that he reported his concerns of unsafe work conditions, the court found that his proposed second amended complaint was futile because he failed to point to any source that states employees have a right to make internal complaints about alleged violations of the regulations that would constitute a clear mandate of public policy.

The court next addressed Martin's claim of breach of contract. He alleged that Boeing made promises that he would be employed as a Fabricator B and that the company breached that contract by forcing him to perform tasks that were incompatible with his job description. He claimed that the job description did not express any requirement that he paint while performing his job functions and thus was patently false. Boeing argued that the breach of contract claim failed because even with the proposed amendment, Martin did not make sufficient factual allegations to establish an employment contract with the company.

The court correctly noted that in South Carolina, the presumption is that employees are employed at will and that an employee who sues his employer must make sufficient factual allegations to establish the existence of an employment contract beyond the at-will relationship to survive a motion to dismiss. The court found that Martin's allegation that Boeing breached a contract by forcing him to perform tasks that were incompatible with his job description did not establish a right to relief above a speculative level. Accordingly, the court held that Martin's second proposed amended complaint was futile regarding his breach of contract claim because he failed to make sufficient factual allegations that established the existence of an employment contract beyond the at-will relationship.

Next, the court addressed Martin's defamation claim. In his proposed second amended complaint, Martin wanted to add that Boeing published his termination to nonmanagement employees who had no need or right to know the purported reason for his discharge. Boeing argued that his allegation did not state a legally sufficient claim for defamation. The company claimed that even if Martin sufficiently pleaded defamation, he did not sufficiently claim that the alleged internal communication was not entitled to qualified privilege under South Carolina's intracorporate privilege provision. Boeing further argued that the proposed second amended complaint did not state a legally sufficient defamation claim because he did not sufficiently articulate the content of the alleged statement regarding his termination or specifically state to whom the statement was allegedly published.

The court found that Martin did not specifically identify the statement that was allegedly published, the person who made the statement, or the person to whom the statement was made. Accordingly, the court

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held that the attempted amendment was insufficient to state a claim for defamation under South Carolina law. The court denied Martin's motion to amend and granted Boeing's motion to dismiss the remaining claims.

Lessons for employers

While this decision is from only one federal judge in South Carolina, there is much to grab on to from a business point of view. The court said a job description is not an employment contract. Employees' lawyers will look for ways to get around this decision, and employers should continue reviewing their job descriptions. Consider including language that the job description is not an employment contract if you do not already have such language. Remember the conspicuous disclaimer guidance from South Carolina's handbook statute.

Next, employees' attorneys try to use state law-based public-policy and defamation allegations to bypass federal law and federal court jurisdiction. In this case, the court read case law as it was written, applied case law to the facts of the case, and did not expand potential claims. From an employer's perspective, this outcome is a refreshing analysis that does not throw every decision an employer makes into lengthy and costly litigation.

For more information on the BLR, [click here](#). For more information on the South Carolina Employment Law Letter, [click here](#).