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EMPLOYMENT LAW

Dispute Over Resignation Leads to Reversal of Summary Judgment for Employer

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Special to the Legal

Employers often believe that having a troubled or troubling employee resign from employment is a panacea to avoid litigation. As such, employers often propose that, instead of terminating an employee or providing him or her corrective action, they will simply ask the employee to resign. This only works, however, if there is absolute certainty that the employee will “take the bait” and actually resign. If the employee balks, the employer has created an additional layer of problems for itself.

One of the pitfalls of the “why don’t you resign” approach was discussed in the recent U.S. Court of Appeals for the Third Circuit decision, *Burton v. Teleflex*, ___ F.3d ___, 2013 US App. LEXIS 3538 (3d Cir. Feb. 20, 2013).

SUGGESTION THAT BURTON RESIGN

Mary Burton founded a medical device company that was purchased by Teleflex in 2007. Burton then went to work for Teleflex under an employment agreement that provided, in part, that she could resign her employment with 30 days’ written notice or could be terminated by the company “without cause” with 30 days’ written notice or “with



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cause” immediately, again, with written notice. Burton was to receive severance if she was terminated without cause.

After the sale, Burton, who was 67 at the time, became vice president of new business development for the division of Teleflex that had taken over her former company. In this role, she initially reported to Edward Boarini. As the court observed, the relationship between Burton and Boarini was “strained.” A few months after Burton joined Teleflex, she was effectively demoted, as her former sales team was now directed to report to a younger man, the opinion said.

On June 3, 2008, Boarini told Burton that he wanted to talk with her while the two were at a trade show. It is undisputed that after a few minutes of awkward conversation, Burton asked Boarini if he wanted her

to resign. Boarini not only declined this to be his motive, but told Burton that he wanted her to work for Teleflex for a long time. Burton asked again about resignation and again Boarini declined. When she asked a third time, however, there was no dispute that Boarini told Burton that, “You should think about it,” according to the opinion.

The real confusion ensued shortly thereafter, as two other Teleflex employees at the trade show claimed that Burton told them immediately after the conversation that she had resigned. The next day, however, Burton met with one of these employees to discuss a work-related matter with long-range goals. Burton left on a pre-planned vacation shortly thereafter.

‘ACCEPTANCE’ OF BURTON’S RESIGNATION

When Burton returned from her vacation, she received a letter from Teleflex accepting her resignation and offering her six months of severance in exchange for an extension of her restrictive covenant and a general release. On that same date, Teleflex notified its customers that Burton had resigned “to pursue other opportunities.”

Burton claimed that she had not resigned and contacted an attorney. Notably, Burton

never submitted a letter of resignation (as required by her contract). Moreover, Teleflex's HR form, which had termination options of (among others) "quit without notice," "retired" or "resigned," instead was blank with a narrative that Burton had "left the company to pursue other opportunities," the opinion said. Thereafter, Burton communicated with Teleflex only through her attorney. Severance negotiations broke down and, after exhausting the administrative process, Burton subsequently brought litigation against Teleflex claiming that she had been discriminated against on the basis of her age and gender. She also brought various state law claims.

QUESTION OF FACT ABOUT RESIGNATION

The U.S. District Court for the Eastern District of Pennsylvania granted summary judgment to Teleflex, finding that there was no genuine issue of fact that Teleflex legitimately believed that Burton had resigned and there was no evidence of pretext. The court also dismissed the state law claims. Burton appealed.

The appellate panel found that the district court had erred by crediting the testimony of Teleflex's witnesses while disbelieving Burton herself. The court observed that, while there was evidence that Burton had resigned, it was refuted by the fact that "Burton never told anyone to whom she reported that she was resigning, Teleflex relied on hearsay statements to conclude Burton had resigned and Teleflex never once asked Burton if she had resigned."

The court also noted that the HR form did not state that Burton had resigned (despite a place for such a designation) and that no Teleflex employee could explain why the form had been completed in this way. Furthermore, Teleflex's belief that Burton had resigned could have been compromised by the fact

that she had discussed future Teleflex plans with a co-worker after she had purportedly "resigned." Further, shortly after leaving the company, Burton told former co-workers that she had been terminated. In this light, the court found that there was, in fact, sufficient evidence to believe that Burton had been terminated. This "disbelief" of Teleflex's legitimate non-discriminatory reason for ending Burton's employment, in combination with her prima facie case (under both Title VII and the Age Discrimination in Employment Act), warranted reversal of the district court's decision granting summary judgment as to Burton's discrimination claims.

The principal lesson of the case is the care with which employers should approach resignation discussions with employees.

STATE LAW CLAIMS

The court also reversed summary judgment on Burton's breach of contract action. Under her employment contract, if Burton was terminated without cause, she was entitled to severance pay.

Two other state law findings are notable. First, the court interpreted Pennsylvania law to find that summary judgment in favor of Teleflex should be affirmed on her claim of "breach of the covenant of good faith and fair dealing," which was pled as a separate cause of action. The court found that the duty is part of a breach of contract action and (citing Pennsylvania law) "does not create independent substantive rights."

Secondly, the court affirmed dismissal of Burton's defamation claim, based upon the letter sent by Teleflex to its customers stating that Burton had resigned to pursue other opportunities. The court found that, even if the statements were false, it would not reflect negatively on her "integrity and would not cause the recipients of the communication to distrust her."

The principal lesson of the *Burton* case is the care with which employers should approach resignation discussions with employees. In reflecting on the conversation at issue, it appears as though Boarini entered the conversation with the intention of ending Burton's employment. Yet, as noted, he twice refused her offer to resign. Moreover, the legitimate question is raised of how the company intended to proceed if Burton had flatly rejected the resignation suggestion. While she would have remained an employee, every decision in the future that affected her would have had, at its core, her knowledge that Teleflex wanted her to resign — that is, did not want her to continue her employment. This would have almost certainly led to future litigation, the avoidance of which appears to have been Teleflex's goal. In the end, the company likely would have been saved significant time and money by simply terminating Burton's employment and paying her the severance under the contract. •