

Recent Employment Law Opinions — March 2008
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Non-compete agreements; breach of contract – employment at-will; tortious interference

Amigo Broadcasting LP v. Spanish Broadcasting Sys. Inc., No. 06-50748, 521 F.3d 472 (5th Cir. Mar. 13, 2008)

This appeal primarily involves the construction and interpretation of a written employment agreement. The court of appeals concludes that language in the contract limited the right of the employees to terminate the at-will agreement, and such a construction of the agreement supported a determination that the employees breached the agreement.

The court also concludes that a competitor's use of the two employees' radio names and likenesses for business purposes without the permission of the original employer violated a license agreement. The court concludes that this restraint on trade was permissible and not violative of public policy. Nonetheless, the appellate court affirmed a dismissal of the breach of license agreement because the employer had failed to provide sufficient evidence that a breach of the agreement caused any damages.

In a cross-issue, the employer complained that the district court erred in dismissing a tortious interference with employment agreement claim. The court of appeals sustained the complaint after concluding that the employer had submitted evidence of willful and intentional acts of interference, knowledge of the interference, and proximate cause and damages stemming from the conduct.

Waiver of immunity

City of Dallas v. DeQuire, No. 06-0543, 249 S.W.3d 428 (Tex. Mar. 28 2008) (per curiam)

The Plaintiffs are Dallas police officers who sued the city for breach of contract, asserting that the city's failure to promote them was a violation of the City's civil service rules.

After the trial court granted the City's plea to the jurisdiction on grounds of immunity, the court of appeals—in reliance on the Supreme Court of Texas' first opinion in *Reata Constructon Corp. v. City of Dallas*—reversed, holding that the City's request for attorney's fees was an affirmative counterclaim waiving immunity from suit.

The Supreme Court of Texas reverses and remands the case to the court of appeals, directing the court of appeals to give the parties opportunity to argue any ground for waiver remaining under the Court's decisions, including whether the City's immunity from suit is waived by section 271.151-.160 of the Local Government Code, which was enacted while the case was on appeal.

Note: The operative language of the new Local Government Code sections is found in Section 271.152, and provides for a limited waiver of immunity for contracts for goods and services as follows:

A local governmental entity that is authorized by statute or the constitution to enter into a contract and that enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract, subject to the terms and conditions of this subchapter.

Although the Act was effective September 1, 2005, Section 2 of the Act essentially provides that if immunity was already waived prior to the effective date of the Act, then the new law does not apply, but if the immunity was not waived prior to the effective date, the Act applies to a claim that arose prior to the effective date of the Act.

Teacher contract disputes – exclusive jurisdiction – limitations defense

O’Neal v. Ector Cty I.S.D., No. 07-0084, 251 S.W.3d 50 (Tex. Mar. 28, 2008) (per curiam)

This opinion holds that when an agency such as the Texas Education Commission has exclusive jurisdiction over a claim with jurisdiction to award damages, a claimant need not file a separate suit to toll the running of the statute of limitations.

After O’Neal was terminated from the Ector I.S.D., she filed a grievance, which the school board denied as untimely and the Education Commissioner affirmed. Two years later, the Travis County District Court reversed, and the proceedings were remanded to the Commissioner. Three years later, the Commissioner found that the I.S.D. had violated O’Neil’s right to a Chapter 21 hearing on her termination and the case was remanded to the school board for findings. Shortly before the fourth anniversary of the administrative proceedings, O’Neal filed a breach of contract suit to toll the running of the statute of limitations. The Board filed a plea to the jurisdiction, which was granted, and the court of appeals affirmed.

The supreme court holds that because the agency had exclusive jurisdiction to resolve O’Neal’s dispute, she had to exhaust her administrative remedies first. The court noted that if there is exclusive jurisdiction as to some claims but not others, the trial court may abate its proceedings until the administrative proceedings are concluded. Finally, the court holds that because Chapter 21 of the Education Code grants administrative jurisdiction to award damages to O’Neal, she did not have to file a separate suite to obtain them and the general limitations period did not apply since Chapter 21 has its own deadlines for appeal.

Texas Whistleblower Act -- jurisdictional prerequisites

City of Dallas v. Watts, No. 05-07-00996-CV, 248 S.W.3d 918 (Tex. App.—Dallas Mar. 31, 2008, n.p.h.)

This appeal considers the issue of whether a public employee was jurisdictionally barred from bringing suit for failure to satisfy the administrative procedures of his municipal employer.

The Texas Whistleblower Act requires a public employee to initiate an action under the grievance or appeal procedures of the employing state or local government entity before bringing suit under the Act. The City of Dallas' personnel rules require an employee to "personally appeal" at his termination hearing and to be "willing to discuss the evidence and answer questions." Further, if the employee fails to personally appear, the matter will be considered as having been accepted and the decision becomes nonappealable.

Under the facts of this case, Watts, the employee, personally appeared at the place and time set for the hearing. The Department Director did not convene the hearing at the designated time and Watts had left by the time the hearing was convened.

The court of appeals observes that the City's personnel manual does not define the phrases "personal appearance" or "willing to discuss." The court holds that the evidence does not establish the City's plea to the jurisdiction as a matter of law. Instead, the court holds that there is a fact issue as to whether Watt's actions were sufficient to initiate the City's procedures for purposes of the Act.

Texas Whistleblower Act – violation of law; First Amendment claim

Guillaume v. City of Greenville, No. 05-06-01282-CV, 247 S.W.3d 457 (Tex. App.—Dallas Mar. 6, 2008, no pet.)

This case arises from a dispute between a city employee and the city's City Manager regarding disclosures of errors in drafts of the City's budget to the City Council. After the employee advised the council of an error, and of the fact he had warned the City Manager of the error, he went to lunch and returned to his office to see that his computer had been removed from the office. Believing he had been fired, he went home. A city attorney asked the employee if he had resigned and the employee said he had not. Thereafter, the City Manager informed the employee that he had been terminated.

The employee filed this action for violations of the Texas Whistleblower Act and for violation of his First Amendment right of free speech. With respect to the employee's whistleblower claim, the opinion considers whether the conduct the employee reported to the council—the failure to disclose an error in the draft budget—was a violation of the City's charter and, therefore a violation of law. After review of the requirements of the City's charter, the court of appeals holds that there is no violation of the charter, and the court affirms the summary judgment.

In addressing the First Amendment claim, the court of appeals points out that the First Amendment protects public employees from retaliation for the exercise of their free-speech rights in some circumstances. The court holds that the causation standard applicable to whistleblower claims is also applicable to this claim. Based upon a review of the evidence, the court concludes that a reasonable jury could find that the employees comments to the City council caused the City Manager to fire the employee sooner than she otherwise would have and that it also caused her not to offer the employee 30 days' notice of his termination. Therefore, the court reversed the summary judgment with respect to this claim.

Notably, on appeal, the city asked the court of appeals to affirm the First Amendment claim based upon the Supreme Court's holding in *Garcetti v. Ceballos*, 126 S. Ct. 1951 (2006), which was decided the day before the trial court signed its summary judgment. Because the City had not raised this ground in its motion for summary judgment, the court holds that it could not affirm based on a ground not presented to the trial court.