

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*January Term 2008*

**CHRISTOPHER FOX,**  
Appellant,

v.

**CITY OF POMPANO BEACH,** a municipal corporation,  
Appellee.

No. 4D07-892

[March 19, 2008]

STEVENSON, J.

This is an appeal by Christopher Fox from an adverse summary judgment on his Florida Whistle-blower's Act claim against the City of Pompano Beach. The trial court entered final summary judgment in favor of the City on statute of limitations grounds. Because we find that a genuine issue of material fact exists regarding when the City terminated Fox's employment, we reverse. In addition, we reverse the trial court's order striking Fox's request for a jury trial.

Florida's public sector Whistle-blower's Act provides that "[a]n agency or independent contractor shall not dismiss, discipline, or take any other adverse personnel action against an employee for disclosing information pursuant to the provisions of this section." § 112.3187(4)(a), Fla. Stat. (2003). If the local governmental authority has not established an administrative appeal procedure for handling Whistle-blower complaints, an employee has "180 days after the action prohibited by this section" within which to file a civil action. § 112.3187(8)(b), Fla. Stat. (2003); *Bridges v. City of Boynton Beach*, 927 So. 2d 1061 (Fla. 4th DCA 2006). An "adverse personnel action" is defined by the Act as:

the discharge, suspension, transfer, or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment by an agency or independent contractor.

§ 112.3187(3)(c), Fla. Stat. (2003).

The facts pertinent to this appeal may be briefly summarized. The City employed Fox as a Utilities Maintenance Supervisor at its water treatment plant. In August of 2002, Fox contacted the Florida Department of Health to report the City's plan to use recycled water for irrigation in a manner that Fox believed was inconsistent with health ordinances in effect at that time. On September 10, 2002, the City demoted Fox, effective October 7, 2002. On September 27, 2002, Fox sent a letter to a City Commissioner detailing alleged conditions at the treatment plant that Fox believed were illegal and an endangerment to public health. Thereafter, the City discharged Fox, effective November 12, 2002. Fox appealed his discharge to the City's Employees' Board of Appeals. While his appeal was pending, on December 12, 2002, Fox's attorney sent a letter to the assistant city attorney inquiring whether the City had an administrative procedure for handling Whistle-blower complaints so that Fox could conform to the procedures outlined in the Whistle-blower's Act within the applicable time periods.<sup>1</sup> More than three months later, by letter dated March 20, 2003, the City responded that the City's Employees' Board of Appeals was not a Whistle-blower's Act administrative procedure and "should Fox withdraw his appeal from Board review, his termination will be considered final by the City." On March 25, 2003, Fox withdrew his appeal that was pending before the Employees' Board of Appeals. On June 12, 2003, Fox filed this Florida Whistle-blower action in circuit court. The City moved for summary judgment on statute of limitations grounds, arguing that Fox's limitation period expired on May 11, 2003, 180 days after the November 12, 2002 termination date. The court agreed and granted summary judgment in favor of the City.

We reverse and hold that Fox is entitled to argue to the fact-finder that an adverse personnel action pursuant to the Florida Whistle-

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<sup>1</sup> Section 112.3187(8)(b), Florida Statutes, provides:

Within 60 days after the action prohibited by this section, any local public employee protected by this section may file a complaint with the appropriate local governmental authority, if that authority has established by ordinance an administrative procedure for handling such complaints . . . . Within 180 days after entry of a final decision by the local governmental authority, the public employee who filed the complaint may bring a civil action in any court of competent jurisdiction. If the local governmental authority has not established an administrative procedure by ordinance or contract, a local public employee may, within 180 days after the action prohibited by this section, bring a civil action in a court of competent jurisdiction.

blower's Act took place on March 25, 2003, and that the 180-day limitations period began to run from that date. Pursuant to Fox's amended complaint, he suffered an adverse personnel action on March 25, 2003, when he withdrew his direct appeal from before the City's Employees' Board of Appeals in reliance upon the City's advisement that the withdrawal of his appeal would render his termination "final."<sup>2</sup> To the extent that the City disputes that matter, a genuine issue of material fact exists that should be resolved by the finder of fact, not on summary judgment. See *Patten v. Winderman*, 965 So. 2d 1222, 1224 (Fla. 4th DCA 2007) ("If the evidence raises any issue of material fact, if it is conflicting, if it will permit different reasonable inferences, or if it tends to prove the issues, it should be submitted to the jury as a question of fact to be determined by it.") (quoting *Moore v. Morris*, 475 So. 2d 666, 668 (Fla. 1985)).

Additionally, Fox should not be precluded from presenting his alternative legal theories, including his equitable estoppel claim, to the fact-finder. Equitable estoppel can be raised to bar a defendant from unfairly claiming the benefit of the statute of limitations where a plaintiff can show that the defendant induced the plaintiff to forego suit until after the limitations period has ended. See *Major League Baseball v. Morsani*, 790 So. 2d 1071, 1078 (Fla. 2001) (noting that the purpose behind the statute of limitations is defeated if a defendant causes the plaintiff to untimely file, and thus the principle behind equitable estoppel applies where enforcement of the statute of limitations would cause injustice); *Ryan v. Lobo De Gonzalez*, 841 So. 2d 510, 517-18 (Fla. 4th DCA 2003). Fox's estoppel claim encompasses his allegations that the City failed to confirm whether the Employees' Board of Appeals was a Whistle-blower's Act administrative procedure until more than three months after his written request (while his limitations period may have been running), and that the City's letter signified that its termination of Fox was not yet final while Fox's appeal was pending before the Employees' Board of Appeals.

We reject the City's assertion that a showing of misconduct or intentional deceit is essential to Fox's equitable estoppel claim. Despite language in our supreme court's decision in *Morsani* stating that equitable estoppel involves misconduct, the opinion cited with approval

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<sup>2</sup> We acknowledge that Fox stipulated for trial purposes that the effective date of his termination was November 12, 2002. Under the facts presented, and upon review of his amended complaint, we find that such stipulation does not preclude Fox from arguing, in opposition to the City's statute of limitations defense, that his final termination date was March 25, 2003.

many cases where the equitable estoppel doctrine had been applied to bar the statute of limitations defense because a defendant's actions caused a plaintiff to be put in a "Catch-22" with regard to filing, or merely where a defendant agreed to allow plaintiff an extension of time and later changed its position, attempting to assert the statute of limitations defense. Under those circumstances, the cited decisions did not require that a plaintiff make an affirmative showing that the defendant engaged in misconduct. Accordingly, as Fox alleges similar circumstances here, we conclude that he need not prove misconduct to prevail on his equitable estoppel claim. See *Morsani*, 790 So. 2d at 1078 n.21; see, e.g., *Alachua County v. Cheshire*, 603 So. 2d 1334, 1337 (Fla. 1st DCA 1992) (holding it was unnecessary to prove intentional deceit to invoke estoppel against the government where the government made repeated representations to plaintiff that induced plaintiff into forbearing suit within the statute of limitations period); *Jaszay v. H.B. Corp.*, 598 So. 2d 112, 113 (Fla. 4th DCA 1992) (stating defendant was estopped from asserting the statute of limitations defense because it had stipulated to a sixty-day extension); *Salcedo v. Asociacion Cubana, Inc.*, 368 So. 2d 1337, 1339 (Fla. 3d DCA 1979) (stating defendant was estopped from asserting the statute of limitations defense where defendant created the delay when it successfully moved to have case dismissed and sent to mediation).

We further hold that a Whistle-blower's Act plaintiff is entitled to a jury trial so long as the plaintiff requests the legal relief provided for under the Act. The right to a trial by jury is a fundamental right under both the United States and Florida constitutions. See, e.g., *Blair v. State*, 698 So. 2d 1210, 1212–13 (Fla. 1997). Questions regarding the right to a jury trial should be resolved in favor of the right to a jury trial, except where a remedy is wholly equitable in nature. See *Hansard Constr. Corp. v. Rite Aid of Fla., Inc.*, 783 So. 2d 307, 308 (Fla. 4th DCA 2001). In *Rite Aid*, this Court considered whether the right to a jury trial attached in an action brought pursuant to the Uniform Fraudulent Transfer Act, which contained a catch-all relief provision allowing for "[a]ny other relief the circumstances may require." *Id.* (quoting § 726.108(1)(c)3., Fla. Stat.). We concluded that the catch-all relief provision permitted the recovery of money damages, a legal rather than equitable remedy, and thus, as the plaintiffs had requested "any relief available," the right to a jury trial attached. *Id.* at 308–09. By comparison, section 112.3187(9)(c) of the Whistle-blower's Act permits a plaintiff to recover "[c]ompensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the adverse action." Unquestionably, this compensatory remedy consists of money damages, which are legal rather than equitable in nature. In his amended complaint, Fox requested "[s]uch other relief as

is permitted by statute.” Hence, Fox is entitled to a jury trial because his prayer for relief encompassed the remunerative relief afforded by the legislature pursuant to the Whistle-blower’s Act.

*Reversed and Remanded.*

FARMER and TAYLOR, JJ., concur.

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Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ronald J. Rothschild, Judge; L.T. Case No. 03-10250 08.

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***Not final until disposition of timely filed motion for rehearing.***