# STATE OF MICHIGAN

# COURT OF APPEALS

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| CURTIS BATTEN,<br><br>Plaintiff-Appellant/Cross-Appellee, | UNPUBLISHED<br>August 17, 2004 |
| v | No. 247072<br>Oakland Circuit Court |
| AERODYNAMICS, INC.,<br><br>Defendant-Appellee/Cross-Appellant. | LC No. 01-033086-CL |

Before: Cavanagh, P.J., and Jansen and Saad, JJ.

PER CURIAM.

I

Plaintiff Curtis Batten, a pilot, concedes that under Michigan law, he is an at-will employee; however, he says that defendant Aerodynamics, Inc., fired him because he refused to violate FAA regulations and thus, his firing violated Michigan's public policy. The trial court held that the only admissible evidence showed that defendant fired plaintiff because one of its primary customers, Michael Jordan, expressed dissatisfaction with plaintiff and thus, refused to fly on any flight where plaintiff was a crew member. The trial court properly concluded and ruled that plaintiff failed to introduce any admissible evidence that defendant's motivation for firing plaintiff was "anything other than its desire to meet the needs of its customers and run a profitable business."[1] Therefore, we affirm the trial court's grant of summary disposition in favor of defendant because plaintiff failed to show that defendant fired him because he adhered to FAA regulations.

II

We review a trial court's decision on a motion for summary disposition de novo on appeal. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Pursuant to MCR 2.116(C)(10), a motion for summary disposition may be granted when the moving party is

[1] Trial Court's Opinion and Order Granting Defendant's Motion for Summary Disposition, p. 3.

entitled to judgment as a matter of law, or the affidavits or other proofs show that there is no genuine issue of material fact. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998).

III

Though plaintiff admits he was an at-will employee, he contends that his firing by defendant violated Michigan's public policy. An at-will employee may have a cause of action for wrongful discharge if the termination of employment was contrary to public policy. *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692; 316 NW2d 710 (1982); *Vagts v Perry Drug Stores, Inc*, 204 Mich App 481, 484; 516 NW2d 102 (1994). *Suchodolski* provides three examples of public policy exceptions to the employment at will doctrine. An at-will employee's discharge violates public policy if any one of the following occurs: (1) the employee is discharged in violation of an explicit legislative statement prohibiting discharge of employees who act in accordance with a statutory right or duty; (2) the employee is discharged for the failure or refusal to violate the law in the course of employment; or (3) the employee is discharged for exercising a right conferred by a well-established legislative enactment. *Suchodolski*, *supra* at 695-696; *Vagts*, *supra* at 484.

Plaintiff says he was fired because he refused to violate the law. Plaintiff does not contend that defendant instructed or required him to violate Federal Aviation Administration ("FAA") regulations. But, he claims he was fired because he executed certain FAA-required safety maneuvers.

It is recognized that "an employer at will is not free to discharge an employee when the reason for the discharge is an intention on the part of the employer to contravene the public policy of this state." *Garavaglia v Centra, Inc*, 211 Mich App 625, 631; 536 NW2d 805 (1995). Plaintiff failed to come forward with any evidence that the "reason" for his discharge by defendant was premised on an intention to "contravene public policy." Plaintiff acknowledges defendant never discouraged his compliance with FAA safety regulations. In fact, plaintiff acknowledged that part of the training provided by defendant for his certification as a Gulfstream pilot included "go-around" procedures. Defendant did not discipline or otherwise intervene in plaintiff's piloting immediately subsequent to the execution of "go-around" maneuvers. Plaintiff also acknowledges that defendant never disciplined or questioned plaintiff's judgment regarding the necessity of executing the safety maneuvers, other than to conduct an investigation of the incidents which included input by plaintiff and his co-pilot.

Defendant's customer complained of plaintiff's abilities and refused to have plaintiff as a member of his flight crew on future excursions. The fact that the complaint was coincidental to plaintiff's performance of safety maneuvers is insufficient, in and of itself, to demonstrate causation for discharge. As a result, the trial court correctly stated:

> The defendant argues that it is entitled to summary disposition because it has offered a legitimate alternative explanation for the discharge . . . . The Plaintiff has argued that this was merely a pretext for firing him. The plaintiff argues that he was a competent and well qualified pilot who was fired for exercising his judgment and performing a go-around.

> There is no actual evidence that this was a discharge in violation of public policy. No one ever requested that the plaintiff fly in an unsafe manner and there is no evidence that the plaintiff was fired for refusing or failing to fly in an unsafe manner. The undisputed evidence shows that after the two go-arounds Michael Jordan was uncomfortable flying with the plaintiff, regardless of whether the go-arounds were the proper flight procedure under the circumstances. Plaintiff has not presented any evidence that the defendant was motivated by anything other than its desire to meet the needs of its customers and run a profitable business.[2]

Accordingly, we conclude that plaintiff has failed to demonstrate that his discharge was for any reason other than a business determination by defendant to discharge their least senior pilot who could no longer fly for their most significant customer. "[T]he short time between plaintiff's participation in protected activity and the termination of plaintiff's employment, without more, is insufficient to establish that the stated reason [for discharge] was a mere pretext." *Taylor v Modern Engineering, Inc*, 252 Mich App 655, 659; 653 NW2d 625 (2002).

Plaintiff has also failed to present any admissible evidence that a causal connection exists between the protected activity and his discharge. There simply is no evidence plaintiff was discharged for following FAA safety regulations. Rather, plaintiff was discharged based on his reduced value and flexibility as a pilot for defendant given his preclusion from flying for defendant's most significant customer. While plaintiff raises questions regarding the "soundness of defendant's business judgment," it is insufficient to demonstrate the existence of a genuine issue of fact. *Dubey v Stroh Brewery Co*, 185 Mich App 561, 566; 462 NW2d 758 (1990). In accordance with *Suchodolski*, "this case involves only a . . . management dispute and lacks the kind of violation of a clearly mandated public policy that would support an action for retaliatory discharge." *Suchodolski, supra* at 696.

We hold that the trial court properly granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). Because we hold that plaintiff failed to present sufficient admissible evidence to overcome summary dispoaition, we decline to address plaintiff's remaining issues on appeal and defendant's issue on cross-appeal.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Henry William Saad

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[2] Trial Court's Opinion, *supra* at pp. 2-3.