

STATE OF MICHIGAN  
COURT OF APPEALS

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V. J. BRANDON GOICHAJ,

Plaintiff-Appellant,

v

LENDER LTD., d/b/a HOMETOWN  
MORTGAGE LENDING,

Defendant-Appellee.

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UNPUBLISHED  
December 1, 2005

No. 262823  
Wayne Circuit Court  
LC No. 04-431801-CL

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's orders granting defendant summary disposition and denying a motion for reconsideration. We affirm.

Plaintiff served as an officer for defendant, a provider of loans for home mortgages. The federal Real Estate Settlement Procedures Act<sup>1</sup> prohibits the use of bribes or kickbacks in connection with mortgage-customer referrals. 12 USC 2607(a) and (b). Suspecting that such violations were occurring within defendant's operation, plaintiff reported his suspicions to the United States Department of Housing and Urban Development. Plaintiff maintains that defendant then retaliated with a campaign of harassment, resulting in his constructive discharge.

Plaintiff filed suit, initially asserting a violation of his rights under the Whistleblowers' Protection Act, MCL 15.361 *et seq.* Then, conceding that state law did not provide whistleblower protection to persons reporting to federal agencies, plaintiff asserted instead that he was constructively discharged in violation of public policy.

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<sup>1</sup> 12 USC 2601 *et seq.*

The trial court initially granted defendant's motion for summary disposition on the ground that plaintiff failed to respond to it. However, after plaintiff filed a motion for reconsideration, the trial court addressed and rejected plaintiff's arguments.<sup>2</sup>

In general, "either party to an employment contract for an indefinite term may terminate it at any time for any, or no, reason." *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692, 694-695; 316 NW2d 710 (1982). However, an exception exists "based on the principle that some grounds for discharging an employee are so contrary to public policy as to be actionable." *Id.* Normally such public policy is spelled out legislatively, but sometimes courts recognize "sufficient legislative expression of policy to imply a cause of action for wrongful termination even in the absence of an explicit prohibition on retaliatory discharges." *Id.* Accordingly, a cause of action for wrongful discharge may lie if the employee was terminated because of "the failure or refusal to violate a law in the course of employment" or if termination was in retaliation for "the employee's exercise of a right conferred by a well-established legislative enactment." *Id.* at 695-696. See also *Dudewicz v Norris Schmid, Inc*, 443 Mich 68, 79-80; 503 NW2d 645 (1993).

The trial court held that plaintiff's actions in reporting suspected misdeeds to the federal agency had no special "statutory blessing" and that plaintiff offered no evidence that he was discharged for refusing to break the law. On appeal, plaintiff does not dispute the latter prong of the trial court's reasoning, but he argues that the trial court erred in failing to recognize that his actions did enjoy statutory protection and that he was insulated from employment retaliation on public policy grounds. We disagree.

Plaintiff points to 12 USC 2607(d)(5), which provides as follows: "In any private action brought pursuant to this subsection, the court may award to the prevailing party the court costs of the action together with reasonable attorneys fees." This provision clearly envisions private actions but does not imply that general public-spirited whistleblowers, as opposed to persons actually suffering damages from the forbidden practices, can sue to enforce this legislative scheme.

In arguing that Congress has encouraged mortgage lenders to implement internal procedures to avoid improper kickbacks or referral fees, plaintiff cites 12 USC 2607(d)(3), which provides:

No person or persons shall be liable for a violation of the provisions of subsection (c)(4)(A) of this section if such person or persons proves by a preponderance of the evidence that such violation was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures that are reasonably adapted to avoid such error.

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<sup>2</sup> The trial court referred to the resulting order as a denial of reconsideration. However, because the court in fact decided this case on the merits, we will review the decision accordingly.

12 USC 2607(c)(4)(A) in turn establishes that affiliated business arrangements do not constitute violations if proper disclosures and estimates are provided. Plaintiff suggests that legislation shielding from liability lenders who can show the “maintenance of procedures . . . reasonably adapted to avoid . . . error” in providing disclosures or estimates constitutes congressional authorization to lenders’ officers to report violations. This reasoning is strained.

Although plaintiff had a right to displease his employer and report whatever misconduct concerned him to whatever authorities he chose, he was not in this instance acting in furtherance of a sufficiently identified legislative right so as to insulate him from termination of his at-will employment in response. As the trial court noted, plaintiff’s conduct may have been commendable, but it was not protected from his employer’s retaliation. The trial court correctly granted defendant’s motion for summary disposition.

Affirmed.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Patrick M. Meter