



DAVIS v. BAUGH INDUSTRIAL CONTRACTORS, INC.

Supreme Court of Washington 150 P.3d 545 (2007)

Case Background Glacier Northwest hired Baugh Industrial Contractors to build a processing facility that included a system of underground pipes. Three years later, Glacier suspected a leak in an underground pipe. It assigned an employee, Alan Davis, to uncover the leak, which he did. When he was down in a hole dug to get to the pipes, a concrete wall collapsed, killing him. Though the pipes were supposed to last 100 years, it is likely they had been damaged when installed, resulting in a leak. Tami Davis, Alan's daughter, sued Baugh, contending that negligent construction practices were the cause of Alan's death.

The trial court (called the superior court) held for Baugh and dismissed the suit. Under the traditional common law rule in Washington, the contractor was not liable for such an accident, so the risk of liability was on the property owner, Glacier. This decision was appealed to the Washington state high court that issued this decision.

Case Decision Chambers, Justice

Under the completion and acceptance doctrine, once an independent contractor finishes work on a project, and the work has been accepted by the owner, the contractor is no longer liable for injuries to third parties, even if the work was negligently performed.

Historically, after completion and acceptance, the risk of liability for the project belonged solely to the property owner. This court has not addressed this doctrine in over 40 years, and, in the meantime, 37 states have rejected it. Under the modern ... approach, a builder or construction contractor is liable for injury or damage to a third person as a result of negligent work even after completion and acceptance of that work, when it was reasonably foreseeable that a third person would be injured due to that negligence.

We join the vast majority of our sister states and abandon the ancient Completion and Acceptance Doctrine. We find it does not accord with currently accepted principles of liability ...

The Completion and Acceptance Doctrine is also grounded in the assumption that if owners of land inspect and accept the work, the owner should be responsible for any defects in that accepted work. While this assumption may have been well founded in the mists of history, it can no longer be justified. Today, wood and metal have been replaced with laminates, composites, and aggregates. Glue has been replaced with molecularly altered adhesives. Wiring, plumbing, and other mechanical components are increasingly concealed in conduits or buried under the earth. In short, construction has become highly

scientific and complex. Landowners increasingly hire contractors for their expertise and a non-expert landowner is often incapable of recognizing substandard performance....

We conclude that the Doctrine of Completion and Acceptance is outmoded, incorrect, and harmful and join the modern majority of states that have abandoned it in favor of the [modern] approach [holding a builder or contractor liable for injury due to negligent work]. We reverse the superior court order ... and remand for further proceedings in keeping with this holding.

Questions for Analysis

1. The court rejected the old common law rule concerning completion and acceptance of a construction job that was in effect prior to this decision and ordered a new trial. What was the key reason for that decision? How does the new rule affect liability?
2. A judge on the court dissented from the decision. Explaining his opposition to the decision of the majority, he said this change in the law should have been done by the legislature in a statute, not the court. Is there a practical problem with that view?



LAMSON v. CRATER LAKE MOTORS

Court of Appeals of Oregon 173 P 3d 1242 (2007)

Case Background For 15 years, Kevin Lamson was a sales manager for a car dealership. He liked the company's philosophy that "customers come first." The dealership was respected for not having aggressive sales tactics. Lamson had a reputation among "for adhering to a high standard of ethics and integrity."

When sales were lagging, Crater Lakes Motors hired a sales firm, Real Performance Marketing

(RPM), to run a five-day sales promotion. Lamson observed "a number of activities he considered to be unethical, unlawful, or both." RPM produced a video that said that "all vehicles" would be cut in price. In fact, only the vehicles pictured in the video were on sale. RPM also tried to "pack the payments" by providing customers life insurance and service contracts in purchase agreements without the customers' knowledge.

When Lamson complained to the general manager (GM), he was told to go home.

After the sale, relations worsened. The GM told Lamson that another sales manager was making an extra \$600 profit per sale. Lamson checked the records and found it was \$100 per sale. The GM hired RPM to run another sale. He and Lamson argued. Lamson said it sounded as if the GM wanted him out and the GM said, "You're right." He told Lamson to cooperate with RPM. Lamson sent the company owner a letter complaining of RPM's tactics, saying it violated company rules regarding sales ethics. He did not want to see "the values, ethics, morals, and honorable dealings" of the company lost. He asked him to rethink the "profit at any cost mentality."

The owner said that the company would still be "treating customers with the highest ethical standards" and that RPM promised "no misrepresentations or illegal statements." When Lamson did not cooperate with RPM during the next sale, he was fired. He sued for wrongful discharge, contending that he was fired for complaining about sales tactics that may have been illegal and that violated the company's code of ethics. The jury held for Lamson. The company appealed, contending that Lamson had no cause of action.

Case Decision Edmonds, Presiding Judge.

* * *

Nor can we conclude ... that plaintiff's internal complaints of unlawful sales practices are of the same public importance as the reports of health and safety violations in our earlier case law. Here, plaintiff did not report or threaten to report RPM's activities to anyone outside of defendant, and there is no evidence that defendant intended to "silence" him in a manner that would conceal illegal activities. On these facts, we cannot conclude that plaintiff's internal complaints about defendant's use of a sales firm serves a societal duty.... Thus, we conclude that plaintiff's internal complaints, standing alone, did not serve an important societal obligation for purposes of a common-law wrongful discharge claim.

* * *

In sum, the evidence, viewed in the light most favorable to plaintiff, does not establish a legally cognizable basis for a claim for wrongful discharge. The employment relationship between plaintiff and defendant was an at-will employment relationship, which meant that plaintiff could be discharged for any reason, unless the discharge was for exercising a job-related right reflecting an important public policy or for fulfilling an important public duty. Here, the evidence is undisputed that plaintiff was not explicitly or impliedly directed to participate in any unlawful activity.... Even if defendant's actions, viewed together as plaintiff posits, were pretextual because defendant no longer desired to employ plaintiff and expected that he would not attend the March 2004 sale, plaintiff was not discharged for fulfilling what the law would recognize as an important public duty. In other words, defendant took no action concerning plaintiff that amounted to a tort under the applicable law regarding at-will employment relationships. Regardless of whether plaintiff's refusal to work on the ground that his presence would "condone" RPM's sales tactics was laudable, his actions do not fall within the narrowly defined exceptions created by the law of wrongful discharge, and defendant's conduct is not actionable in a court of law.

For all of the reasons stated above, the trial court should have granted defendant's motion for a directed verdict. Reversed.

Questions for Analysis

1. Suppose some of the sale tactics used by RPM violated Oregon law. What could Lamson do about it? Unless he suffered the effects of an illegal practice by making a purchase based on such practice, he had no complaint at law. Who would know more about such practices: those involved in putting them in place or a customer? Do you think other car dealers would want to hire Lamson?
2. Why do you think the courts are shy to get involved in such incidents? Should the courts be enforcers of a company's ethical practices and codes of ethics?

Suggested Format for Case Analysis

1. **FACTS:** A concise statement of the important facts of the case- What basically occurred that gave rise to the dispute between the parties that wound up in litigation?
2. **PROCEDURAL HISTORY:** (If the information is provided; it may not be) what happened in court after suit was filed? Was there a dismissal; summary judgment; appeal; second appeal, etc?
3. **ISSUE:** What is the major issue that the court has to decide- (There may be more than one issue- what is the issue that relates to the material covered in the current chapter?)
4. **DECISION:** How did the court decide the case?
5. **LEGAL REASONING:** What does the Judge's opinion say about the legal basis for the decision.
6. **YOUR COMMENTS (optional):** Do you agree or disagree with the decision? Why?