February 16, 2011

In a groundbreaking decision on an issue of first impression, the New Jersey appellate court has held that a plaintiff may proceed with a punitive damages claim against her former employer despite the fact that a jury found that she failed in proving the common law tort of intentional infliction of emotional distress under New Jersey law. *Rusak v. Ryan Automotive, L.L.C.*, No. A-2002-09T1 (N.J. Super. Ct. App. Div. Feb. 8, 2011).

The Facts

The plaintiff, Judith Carrie Rusak, was the only full-time female sales associate at an auto dealership when she began working in 2001. She was successful and received awards for her sales performance during her first four years there. Things changed after the dealership hired a new male general manager. The new manager, among other things, allegedly screamed in Rusak’s face, told her sexually explicit stories, showed her and another female employee pornography, e-mailed pornographic pictures to her and another female employee and asked “which one [was theirs],” and used expletives after she complained about the pornography.

After a particularly explosive incident with the manager on February 25, 2006, Rusak did not return to work. Later testimony revealed that the dealership was going to terminate her based on alleged tardiness and other work-related concerns.

Rusak sued her former employer and manager for:

- a violation of the New Jersey Law Against Discrimination (“LAD”) in that she was discriminated against and harassed on the basis of her gender;
- retaliation in violation of the LAD; and
- the common law tort of intentional infliction of emotional distress.

She sought compensatory damages for lost wages and emotional distress, as well as punitive damages and counsel fees.

Trial Decision on Punitive Damages Claim

The trial court ruled that the trial should be separated into two parts: the liability phase and the punitive damages phase.

In the liability phase, the jury found the defendants liable for hostile work environment harassment and retaliation in violation of the LAD, Rusak’s first two claims. The jury awarded Rusak compensatory damages of just over $100,000 in lost wages and back pay (after accounting for taxes).

As to Rusak’s claim for intentional infliction of emotional distress, however, the jury ruled against Rusak. In response to two questions, it found the defendants’ actions were not sufficiently “willful, wanton and reckless” to warrant Rusak’s recovering any damages for emotional distress.
Subsequently, the defendants asserted, and the trial court agreed, the jury's negative findings as to emotional distress were a bridge to the claim for punitive damages and that no further proceedings were necessary (i.e., punitive damages cannot be assessed absent a finding of willful, wanton and reckless conduct or a finding that the defendants' conduct caused Rusak to suffer any emotional distress damages). Accordingly, without going to the punitive damages phase, the trial court dismissed the jury and the punitive damages claim. Rusak appealed the dismissal of her punitive damage claim.

Appeals Court Reverses
The Appellate Division reversed the trial court decision, holding that Rusak may still recover punitive damages under the LAD. It remanded the case for a new trial on punitive damages.

The Court ruled that the jury instruction on the intentional infliction of emotional distress claim improperly “co-opted” the “willful, wanton and reckless” standard from New Jersey's Punitive Damages Act and that “willful, wanton and reckless” conduct is not an element of a claim for intentional infliction of emotional distress.

According to the Court, a plaintiff may demonstrate her entitlement to punitive damages by establishing that the defendants acted with “actual malice” or conduct “accompanied by a wanton and reckless disregard of persons who foreseeably might be harmed by those acts or omissions.” It explained that a plaintiff need not establish that she suffered emotional distress damages to recover punitive damages because awarding each type of damages serves different purposes. The Court found that no bridge existed between the independent claims. Accordingly, the Court remanded the case for a new trial on punitive damages, directing that the second jury be told that it has been determined that the plaintiff did not suffer emotional distress under the LAD and it is not within the second jury's province to compensate the plaintiff for emotional distress.

Lessons
The Court’s groundbreaking decision provides employers with significant lessons. First, a plaintiff is entitled to argue her case to the jury if the elements of her claims differ, even though the conduct at issue may be the same.

Second, the Court clarifies what has to date been an unanswered question of New Jersey law: intentional infliction of emotional distress may not necessarily preclude a punitive damages trial on a plaintiff's underlying harassment and retaliation claims under the LAD.

Finally, jury instructions should be crafted carefully as a litigant may later try to use a jury's determination in the liability phase to impact the potential award in a subsequent punitive damages trial.

Jackson Lewis attorneys are available to answer inquiries regarding this case and other workplace laws.

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