Kelli Rawlinson

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| Statutory Elements | Relevant Facts | Element Satisfied?  Additional Facts Needed?  Additional Research Needed? |
| 1. ∏ exercised rights listed under N.C.G.S § 95-241(a) | Kinglsey exercised right by filing an internal complaint about Brett Bosworth.   * claim: Brett was unethical in handling of IPO account * Refusing to “fudge” the books for Brett | Satisfied, this internal compliant satisfies NCGS & the securities law requirement. |
| 1. ∏ suffered an adverse employment action   (discharge, suspension, demotin, retaliatory relocation, etc.) | * Unfairly taken off Smart-Tek IPO * File was taking (including prelims and research) * Relocated to a basement office (for the rest of the month – 25 more days) * Told to “grow a pair” by Brett | Satisfied by: taking Kingsley off IPO, and what seemed to be retaliatory relocation to basement. This could be challenged by PCM b/c it was only temporary to accommodate Austrian team. |
| 1. the alleged retaliatory action was taken because the employee exercised his rights under N.C.G.S § 95-241(a) | * Happened w/in a few days of telling Brett of unethical handling * Brett told Kinglsey that if Kingsley could not build the book he would do it. | Facts needed to show that relocation was based on that. But, Brett saying that Kingsley could turn in file and not worry about it anymore, and the threat about taking over if Kinglsey couldn’t build the book could satisfy. |

**Statutory Elements Chart – Retaliation Claim**

**Statutory Elements Chart - Public Policy Tort (Wrongful Discharge)**

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| Statutory Elements | Relevant Facts | Element Satisfied?  Additional Facts Needed?  Additional Research Needed? |
| Wrongful discharge if: |  |  |
| 1. at-will employee | Kinglsey is a junior SP at PCM, (assuming) in NC, an at-will employment state. | Satisfied. |
| 1. termination for: | Kingsley was not discharged, simply had file taken and relocated. | Not satisfied. |
| 1. unlawful purpose or reason; | * Bosworth told Kingsley relocated temporarily (until end of month) to accommodate Austrian team * Bosworth (manager) took file from Kinglsey (junior SP) | Not satisfied. Not unlawful acts by Bosworth to take a file from a subordinate or temporarily relocate to accommodate visiting team. |
| 1. that contravenes public policy | * Fudging lists | Satisfied. Public policy: Prevention of fudging books. |

**Whistleblower Analysis**

1. **Retaliation.**

The applicable statute that applies to this jurisdiction is the North Carolina Retaliatory Discrimination Act (REDA). REDA is a source of protection for whistleblowers in the form of statutory state law. This governs potential liability for whistleblower retaliations. North Carolina’s Retaliatory Discrimination Act states: “[n]o person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to … [f]ile a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to . . . Article 16 of this Chapter. Since North Carolina recognizes a whistleblower protection, the state also recognizes an overlapping tort for wrongful discharge.

In *Pierce v. Atlantic Group, Inc*., 724 S.E. 2d 68 (N.C. App. 2012), the court found that the plaintiff in that case who called an ethics hotline to report retaliatory treatment he had been receiving following his suggestion regarding concern about occupational health and safety in the context of his employment with Atlantic Group did not satisfy an initiation of inquiry. The elements applied here are that in order to state a claim under REDA, a plaintiff must show (1) that he exercised his rights as listed under N.C.G.S § 95-241(a), (2) that he suffered an adverse employment action, and (3) that the alleged retaliatory action was taken because the employee exercised his rights under N.C.G.S. § 95-241(a).

Here, Taylor Kinglsey believes Brett Bosworth “Brett”, and in return has file a claim that he retaliated against him/her by: taking Kinglsey off of the Smart-Tek IPO, taking the file of research and prelims, and moving Kinglsey to a basement in the office for rest of the month. Kingsley’s belief for this is telling Brett this his handling of the account was unethical. In applying the same elements at Pierce, Kinglsey has a right to assert a claim and he did that internally when he/she alleged retaliation by Brett for criticizing Brett’s handling of an IPO as unethical and deceptive. Second, Kingsley experienced adverse employment by being relocated to the basemen and having file of prelims and research taken by Brett. Brett may challenge this by saying that the relocation is temporary for the remainder of the short month of February, and it was only to accommodate the visiting Austrian team. Brett may further assert that in his position as a manager, it is not adverse treatment to take an junior SP off of an assignment and take it over. Finally, since Brett previously encouraged Kinglsey to “fudge” the books and even “grow a pair” in doing so, coupled with the threat that he would take it over, this is likely enough to show that this was retaliatory action.

Thus, it is likely that Brett has retaliated against Kingsley.

1. **Securities law violation.**

Considering that the manager’s conduct would violate federal securities law, it is important to note that federal law prohibits employees from retaliating against employees for internally or externally reporting information about securities law violations. Here, Kingsley internally reported his complaint stating Brett was unethical and deceptive in handling the IPO. Thus, Brett could not retaliate against Kinglsey, as it would further be in violation of securities law. Although a member of an employment practice group of a large firm- where I do not practice securities law, Sarbanes-Oxley Act required attorneys practicing before the SEC to report evidence of a material violation of securities law up the corporate ladder. The Sarbanes-Oxley act prohibits publicly traded companies from retaliating against employees who provide information or assist in an investigation of fraud or violation of federal securities law. In handling this matter, I would not be required to report such violation by Prestige Capital Management if it found that Brett committed securities fraud. However, employee Kingsley will likely be able to rely on provisions of federal securities law to support the statutory and tort claims under North Carolina law.

1. **Wrongful Discharge.**

Laws protecting whistleblowers from employer retaliation can derive form the tort of wrongful discharge in violation of public policy. Tort claims in employment law are often asserted because the remedies are usually more generous compared to contract remedies and they can be asserted against employers, and against supervisors in individualized capacities. Many instances of employment deal with at-will employment. North Carolina is an at-will employment state. However may courts have eroded the at-will rule by applying contract or tort principles to restrict employer’s ability to fire employees. Courts are more likely to apply tort doctrines like wrongful discharge in violation of public policy. This allows an employee to serve the public interest notwithstanding the employer’s displeasure. Successful claims for wrongful discharge in violation of public policy fall into one of four categories: refusing to commit an unlawful act, exercising a statutory right, fulfilling a public obligation, or whistleblowing. As with employee Taylor Kinglsey, the issue here is one of whistleblowing.

In *Coman v. Thomas Mfg Co*., 325 N.C. 172 (1989), a whistleblowing truck driver’s employer required him to violate Department of Transportation regulations and when he refused to do so, his pay was reduced by half. This court found that this violated federal regulations and public policy of North Carolina because actions committed against eh safety of the traveling public is public policy of the state. In *Garner v. Rentenbaugh Constructors Inc*., 515 S.E. 2d 438 (N.C. 1999), the court held that there is no rise to a claim for wrongful discharge because terminating an employee for drug use is permissible. In both of these cases the rule that governs wrongful discharge is that an employer wrongfully discharges an at-will employee if the termination is done for an unlawful reason or purpose that violates public policy. Courts have recognized a public policy exception to the employment-at-will rule.

Here, like in the *Coman* case Kinglsey refused to do an illegal act, “fudge” books and ultimately criticized Brett’s handling of Smart-Tek’s IPO as unethical and deceptive. Assuming that PCM is in North Carolina. North Carolina is an at-will-employment state. Thus, Kingsley is an at-will employee. Here, Kingsley has not been terminated like the plaintiff in the *Garner* case, thus that element is not satisfied. Kingsley has had the IPO file full of research and prelims taken, and temporarily located to a basement office, these things do not equate to a discharge. Although Brett’s language of “don’t worry your pretty little head” and to “grow a pair”, is not ideal it is also not illegal, unlawful, nor does it exhibit retaliatory motive. Further, Brett backed up his decisions for Kingsley with reasonable explanations: accommodating Austrian team. Although it is not stated, Brett could claim that as a manager he can remove any junior SP from a project at any time. Finally, Kingsley can assert the public policy exception. The public policy issue would be to prevent “fudging” books or deter other employees from reporting unethical or deceptive keeping of books. However, this may not be public concern. It is likely not enough to implicate the public policy exception.

Thus, it is unlikely that Kingsley has a wrongful discharge claim to assert against PCM and Brett Bosworth even though there may be a public policy argument about companies fudging books because he was not wrongfully discharged and all of Brett’s actions can be reasonably explained.