**Whistleblowing – There’s a Right Way and a Wrong Way**

Patrick Drummond was appointed president of Land Learning Foundation in 2007. While working for the Foundation, Mr. Drummond came to believe that the owners of the Foundation were using it to engage in illegal tax fraud. This made him very uncomfortable. He tried to discuss the situation with the Foundation’s owners on a number of occasions. He wanted to give them an opportunity to explain what they were doing, but they kept blowing it off. When he finally got the courage to come right out and confront them with what he suspected they were doing and that he thought it was illegal, they terminated his employment. After he was terminated, Mr. Drummond reported his suspicions to the Internal Revenue Service and the Army Corps of Engineers.

Mr. Drummond thought he was doing the right thing by giving his employers an opportunity to explain what they were doing and he didn’t think that it was fair for them to retaliate by terminating his employment. Mr. Drummond knew that he was an employee-at-will, but he thought surely there must be some exception to the employment-at-will doctrine to cover situations like these, so he contacted a lawyer and sued his former employers for wrongful termination. Are there exceptions to the employee-at-will doctrine? Would any of them apply to Mr. Drummond’s situation? Will Mr. Drummond succeed in his lawsuit?

**Land Learning Foundation**

Two brothers, Brad and Bryce Evans, owned Evans & Evans Outdoor, LLC; Evans & Evans Farms, LLC and Evans Equipment Company, Inc. In 2007, the Evans brothers formed Land Learning Foundation, a Missouri non-profit corporation with a principal place of business located in Keytesville, Missouri (the “Foundation”). The Foundation was committed to 1) restoring and preserving wildlife habitat 2) preserving traditional sporting activities 3) ensuring the co-existence and compatibility between humans and wildlife and 4) increasing educational opportunities related to agriculture (Land Learning Foundation, 2014). The Foundation had three initiatives: 1) educational initiatives that focus on young, underprivileged and physically challenged sportsmen with the goal of making it possible for them to realize their dreams, 2) science and learning initiatives that provide for educational development and 3) co-existence and compatibility initiatives that guarantee preservation for posterity (Land Learning Foundation, 2014).

**Mr. Drummond**

The Evans brothers hired Patrick Drummond to work for them, their three companies and the Foundation in 2005. They later appointed Mr. Drummond the president of the Foundation. Mr. Drummond’s duties included marketing property to hunters who paid for guided hunts. The Evans brothers directed and managed Mr. Drummond in the performance of his duties and he reported directly to them. During the course of his employment by the Foundation, Mr. Drummond began to suspect that the Evans brothers were using the Foundation to engage in an illegal tax fraud scheme. In particular, Mr. Drummond was concerned that the receipt of $175,000 in public funds for a conservation easement was either illegal or fraudulent. He believed that the Evans brothers’ receipt of the grant for a conservation easement was inconsistent with what the brothers really intended to do with the property. He confronted the Evans brothers with his concerns several times. On December 6, 2010, the brothers met with Mr. Drummond to discuss ongoing projects. Unfortunately, the discussions became heated. Eventually, the brothers heard enough and they terminated Mr. Drummond’s employment, stating that “he was not the man for the job” (Appellants brief, 2011).

After he was terminated, Mr. Drummond reported his suspicions to both the Internal Revenue Service and the Army Corp of Engineers. He also filed a lawsuit against the Evans brothers, their companies and the Foundation for wrongful termination. In his lawsuit, Mr. Drummond claimed that he was fired in retaliation for his objection to what he suspected was illegal conduct by the Evans brothers and the Foundation (Appellants brief, 2011).

**The Employment-at-Will Doctrine**

Since the last half of the 19th century, absent an employment contract to the contrary, most employees in the United States have been employees-at-will (Muhl, 2001). The employment-at-will doctrine provides that, unless an employment contract specifically says otherwise, either the employer or the employee may terminate an employment relationship at any time, with or without cause (National Conference of State Legislatures2, 2013). Today, while every state except Montana recognizes the employment-at-will doctrine, most states have created exceptions to protect employees from being arbitrarily dismissed by their employers (National Conference of State Legislatures1, 2013). Those exceptions generally fall under one of three theories: contract theory, tort theory or public policy theory (National Conference of State Legislatures2, 2013). If an employee is terminated under circumstances that fall under any of these exceptions, the employee may have a claim for wrongful termination.

In his lawsuit, Mr. Drummond’s attorney claimed that even though Mr. Drummond was an employee-at-will, his termination was wrongful because it violated public policy (Appellants brief, 2011). In particular, he argued that under the public policy exception to the employment-at-will doctrine, Mr. Drummond’s employers should not have been allowed to terminate him in retaliation for his blowing the whistle on what he believed to be their illegal activities (Appellants brief, 2011). In their response, the Evans brothers did not argue that firing an employee in retaliation for whistleblowing did not violate public policy. Instead, they argued that Mr. Drummond could not have been fired in retaliation for whistleblowing because Mr. Drummond had never actually “blown the whistle” before he was terminated (Appellants brief, 2011).

Will Mr. Drummond be successful in his claim for wrongful termination?

**References:**

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