Squires v. Goodyear Tires & Rubber Co.

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INTRODUCTION

Plaintiff Tim Squires appeals from a judgment entered after a jury returned a verdict in favor of defendants Goodyear Tire & Rubber Company and others (hereinafter defendant) on plaintiff's causes of action arising out of his allegedly wrongful termination. Plaintiff challenges two modifications to jury instructions, asserting that the modifications were erroneous and prejudiced his case. Inasmuch as we discern no error, we affirm the judgment.

FACTS [1]

Defendant employed plaintiff in 1986 as manager of a retail tire store. Plaintiff earned a salary, as well as personal incentive commissions based upon sales of merchandise.

As store manager, plaintiff was aware of defendant's personnel policies. He received an administrative manual, which reflected the use of counseling and a progressive disciplinary system. Plaintiff understood that the purpose of these measures was to alter employee behavior. He also understood that the administrative manual contained exceptions to the progressive discipline pattern: insubordination or theft could lead to immediate termination. The first paragraph of the manual states, "The provisions contained in this manual are not intended to create nor to be construed to constitute a contract or implied contract of continued employment or future employment with any associate or associates. The use of the terms `permanent' or `regular' to describe associates wherever used herein is not intended nor is it to be construed to constitute a contract with any associate(s)."

For several years, the store plaintiff managed had a sales relationship with an independent tire dealer, J & G Tires, which purchased both new and used tires from the store. The bulk of these purchases were of used tires.

In early 1996, defendant issued a company directive forbidding all stores from selling more than four

used tires to any person or business unless the purchaser possessed a valid waste hauler's permit issued by the state. Defendant circulated a policy memorandum and an agreement letter to this effect to all branch managers. Plaintiff signed the agreement letter on January 23, 1996, promising to abide by the terms of the directive. The policy memorandum warned managers that "failure to implement the above procedures may lead to disciplinary action up to and including discharge." The agreement letter plaintiff signed confirmed his understanding of the policies, as well as his understanding that "failure to implement this policy may result in my removal from store manager position or discharge."

Plaintiff did not follow the company directive. He ignored it "[b]ecause it interfered with a lot of our accounts."

In April 1997, defendant held a meeting for branch managers, again warning them to abide by the used tire sales policy. Plaintiff understood that defendant was adamant about enforcement of the policy. He consequently informed J & G Tires that he no longer could sell it used tires.

Later, however, plaintiff devised a means of selling used tires to J & G Tires once again, despite his understanding of defendant's policy and of defendant's intent to enforce it. He realized that his failure to abide by the policy could lead to his removal from his position or his discharge.

Plaintiff sold used tires to J & G Tires by recording all such sales on invoices as sales of road hazard insurance, which could be purchased with new tires. The price of road hazard insurance approximated the average price of a used tire. Plaintiff instructed other employees of the store he managed to record used tire sales as road hazard insurance sales. By pursuing this course, plaintiff recovered a substantial amount of J & G Tires' used tires business.

In January 1998, defendant promoted plaintiff to dealer sales manager, which meant he no longer would manage a store but would act as a customer representative to independent tire dealerships in the Los Angeles area. Plaintiff received a raise in compensation when he received the promotion.

Plaintiff explained the procedure for selling used tires in defiance of defendant's directive to his replacement, Jeff Smith (Smith). When Smith asked what the auditor had said about this practice, plaintiff told him not to worry; the auditor had not appeared for some time.

Concerned, Smith contacted his superiors and asked them about the improperly coded invoices. District manager Greg Whorley (Whorley) promptly undertook an investigation. At Whorley's behest, the company auditor also conducted an investigation.

When confronted with the results of the investigation, plaintiff initially denied recording sales of used tires as sales of road hazard insurance. He ultimately admitted doing so, however. Plaintiff stated that he did not agree with defendant's policy regarding the sale of used tires. In his opinion, he

should be permitted to sell them. Plaintiff also admitted that he had received bonus sales commissions based upon the improperly coded invoices.

A comprehensive internal audit report states that plaintiff knowingly coded invoices improperly in violation of company policies. He had received at least $897 in commissions to which he was not entitled. Defendant thereupon terminated plaintiff's employment for violation of company policy and manipulation of company funds.

CONTENTIONS

Plaintiff contends the trial court erred prejudicially when it instructed the jury that it could find that there is an implied promise not to discharge an employee except for good cause when there is "an actual, mutual understanding between the employee and the employer" to that effect. The contention lacks merit.

Plaintiff further contends the trial court erred prejudicially when it instructed the jury that the mere existence of a progressive disciplinary system does not establish that there is such an implied promise but is one factor to be considered among others. This contention is equally devoid of merit.

DISCUSSION

Mutual Understanding

The trial court instructed the jury with the first paragraph of BAJI No. 10.12. The instruction stated, "An obligation in an employment contract for an unspecified term not to discharge an employee except for good cause is implied and becomes a term of that contract even though not expressly stated by the employee and employer, when from all of the circumstances surrounding the employment, whether from words or conduct, it is reasonable to conclude the existence of an actual, mutual understanding between the employee and the employer on such a particular term and condition of employment." It is plaintiff's contention that the requirement of "an actual, mutual understanding between the employee and the employer" is erroneous. Plaintiff misreads the applicable judicial authority.

In Guz v. Bechtel National, Inc. (2000) 24 Cal.4th 317, the Supreme Court recently revisited this subject. The court notes that notwithstanding the presumption embodied in Labor Code section 2922 that employment is at will, the parties to an employment contract "are free to define their relationship, including the terms on which it can be ended, as they wish." (Guz, supra, at p. 336.) Specifically, "[t]he parties may define for themselves what cause or causes will permit an employee's termination and may specify the procedures under which termination shall occur. The agreement may restrict the employer's termination rights to a greater degree in some situations, while leaving the employer freer to act as it sees fit in others.

"The contractual understanding need not be express, but may be implied in fact, arising from the parties' conduct evidencing their actual mutual intent to create such enforceable limitations. [Citation.] In Foley[v. Interactive Data Corp. (1988) 47 Cal.3d 654], we identified several factors, apart from express terms, that may bear upon `the existence and content of an . . . [implied-in-fact] agreement' placing limits on the employer's right to discharge an employee. [Citation.] These factors might include `"the personnel policies or practices of the employer, the employee's longevity of service, actions or communications by the employer reflecting assurances of continued employment, and the practices of the industry in which the employee is engaged."' [Citation.]

"Foley asserted that `the totality of the circumstances' must be examined to determine whether the parties' conduct, considered in the context of surrounding circumstances, gave rise to an implied-in-fact contract limiting the employer's termination rights. [Citation.] We did not suggest, however, that every vague combination of Foley factors, shaken together in a bag, necessarily allows a finding that the employee had a right to be discharged only for good cause, as determined in court.

"On the contrary, `courts seek to enforce the actual understanding' of the parties to an employment agreement. [Citation.] Whether that understanding arises from express mutual words of agreement, or from the parties' conduct evidencing a similar meeting of minds, the exact terms to which the parties have assented deserve equally precise scrutiny. As Foley indicated, it is the `nature of [an implied-in-fact] contract' that must be determined from the `totality of the circumstances.' [Citation.]" (Guz v. Bechtel National, Inc., supra, 24 Cal.4th at pp. 336-337, italics added; original italics largely omitted.)

In the same vein, the Supreme Court notes that "even if a handbook disclaimer [of intent to vary the at-will nature of the contract] is not controlling [citation] in every case, neither can such a provision be ignored in determining whether the parties' conduct was intended, and reasonably understood, to create binding limits on an employer's statutory right to terminate the relationship at will." (Guz v. Bechtel National, Inc., supra, 24 Cal.4th at p. 340, italics added.) It is in this context of the parties' mutual intent and understanding that the court holds that "[w]hen an employer promulgates formal personnel policies and procedures in handbooks, manuals, and memoranda disseminated to employees, a strong inference may arise that the employer intended workers to rely on these policies as terms and conditions of their employment, and that employees did reasonably so rely." (Id. at p. 344, italics added.)

In short, the Supreme Court makes very clear in Guz, drawing upon the language used in Foley, that the question to be answered in determining whether there are implied-in-fact contractual terms is whether the totality of the circumstances supports an inference that the parties mutually intended to and did agree to such terms. The trial court did not err in modifying BAJI No. 10.12 accordingly.

Existence of Progressive Disciplinary Policy

The trial court instructed the jury on the factors that may be considered in determining whether the parties mutually agreed that the employee would not be discharged without good cause. It then added the following: "Further, the mere existence of a progressive discipline system does not establish that the employer had impliedly contracted to terminate only for cause but is a factor you can consider along with all the other relevant evidence." It is plaintiff's view that this statement is erroneous, that in fact the mere existence of progressive disciplinary policies does establish the existence of an implied-in-fact promise to terminate employment only for good cause. Once again, plaintiff misreads the pertinent judicial authorities.

In neither Foley nor Guz has the Supreme Court made such a radical statement. In both cases, the court simply has noted that an inference drawn from the employee's reliance on the employer's personnel policies that there is an implied promise not to terminate employment except for good cause is permissible. (Guz v. Bechtel National, Inc., supra, 24 Cal.4th at p. 344; Foley v. Interactive Data Corp., supra, 47 Cal.3d at p. 681.) In neither case has the court held that the inference is compelled.

Where there is language that can be construed as expressing the at-will nature of the employment, such as that often found in handbook disclaimers, the mere existence of counseling or a progressive disciplinary procedure is not enough to rebut the presumption of at-will employment. As noted in Davis v. Consolidated Freightways (1994) 29 Cal.App.4th 354, if the existence of such a procedure were considered adequate to rebut the presumption, an employer wishing to retain the advantage of the presumption would be forced to terminate employees for even the most minor infraction. The law does not require such caprice. (At p. 367; but see Kelecheva v. Multivision Cable T.V. Corp. (1993) 18 Cal.App.4th 521, 532-533 [when the employer admits the employee's right to rely on personnel policies, certain circumstances, including use of progressive disciplinary stages, are sufficient to rebut presumption].) Documenting counseling or progressive discipline serves a purpose other than establishing cause; it can dispel any inference that the employer has acted for a wrongful purpose such as discrimination. (Davis, supra, at pp. 367-368.)

There is a disclaimer in this case. Defendant's employment policy manual states that "[t]he provisions contained in this manual are not intended to create nor to be construed to constitute a contract of continued employment or future employment for any associate or associates." It is reasonable to equate "a contract of continued employment or future employment" with a promise not to terminate the employment except for good cause. As the Supreme Court states in Foley, "The presumption that an employment relationship of indefinite duration is intended to be terminable at will is . . . `subject, like any presumption, to contrary evidence. This may take the form of an agreement, express or implied, that . . . the employment relationship will continue indefinitely, pending the occurrence of some event such as the employer's dissatisfaction with the employee's services or the existence of some "cause" for termination.' [Citation.]" (Foley v. Interactive Data Corp., supra, 47 Cal.3d at p. 680, italics added.) The trial court accordingly did not err in instructing the jury that the existence of a progressive disciplinary system is not enough, standing alone, to

establish an implied agreement to terminate employment only for good cause.

The judgment is affirmed.

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We concur:

ORTEGA, J.

VOGEL (MIRIAM A.), J.

1. Inasmuch as plaintiff does not challenge the sufficiency of the evidence to sustain the judgment and we need not assess the prejudicial effect of error, we set forth the facts as briefly as possible.