

DISCUSSION

Okpik v. City of Barrow, 230 P.3d 672 (Alaska 2010)

In April of this year, the Alaska Supreme Court issued an opinion in Okpik v. City of Barrow, confirming the evidentiary threshold to overcome summary judgment in a breach of covenant claim is low. This opinion provides a good example of the broad scope of the implied covenant of good faith and fair dealing in Alaska employment claims.

Lucy Okpik began working for the City in 1994 as chief accountant, and in 1997 was appointed by the then mayor to the position of Finance Director. Nathaniel Olemaun was elected mayor in October 2004, and shortly thereafter, he advised all staff that he was placing them in “acting” status. There was no dispute that from October 2004 to March of 2005, Mayor Olemaun was overpaid approximately \$20,000, but the parties disputed how and why the overpayment occurred. Okpik claimed Olemaun instructed her to pay him at the higher rate; Olemaun claimed that when he discovered he was being overpaid in the fall of 2004, he instructed Okpik to correct the problem but she did not.

On April 14, 2005, Olemaun told Okpik he was demoting her to senior accountant and intended to advertise for a new Finance Director, but he asked her to remain in the position until a new director was hired. Olemaun told Okpik the City had experienced budget problems during her eight year tenure, and he believed the City would benefit from a finance director with “more training, better qualifications, and more experience.” He asked her to stay on to train her successor. The next day, Okpik submitted her resignation, disputing Olemaun’s claim that she was not qualified, and stating she could not work under those circumstances.

In May of 2005, Okpik met with a city council member and revealed the overpayments to Olemaun. The City conducted an independent investigation that found Olemaun had been overpaid nearly \$20,000 and recommended he be required to reimburse the City, although the investigator could not determine who was at fault.

Okpik filed suit in April of 2006, alleging violation of her due process rights under § 1983, violation of the Alaska Whistleblower Act, wrongful constructive discharge, and negligent and intentional infliction of emotional distress. Summary judgment was granted on all of Okpik’s claims, except for the wrongful discharge claim.

On the constructive discharge claim, the trial court concluded a reasonable person in her position could have felt compelled to resign, and that a jury could find that the employer’s actions breached the covenant of good faith and fair dealing. The City filed for reconsideration, which the court granted, and reversing its ruling on the covenant claim. Okpik appealed.

The Alaska Supreme Court affirmed in part and reversed in part. The Court held that Okpik's § 1983 claim was properly dismissed. As a confidential employee who served at the mayor's pleasure, she had no property interest in continued employment and thus no valid due process claim. The Court also held that Okpik's whistleblower claim was properly dismissed because the statute only protects employees who blow the whistle during their employment, and Okpik didn't report the overpayment until after she had already resigned.

But the Court reversed summary judgment on Okpik's wrongful discharge claim. In doing so, it noted the two elements of a wrongful discharge claim that a plaintiff must prove: (1) she was discharged by her employer and (2) the employer breached a contract or committed a tort in connection with the termination.

The Court found Okpik's constructive discharge satisfied the first element. Although the City argued on appeal that Okpik was not constructively discharged, it never challenged the superior court's conclusion that she had presented sufficient evidence to survive summary judgment on this issue, and thus waived its right to contest the ruling.

Breach of the covenant of good faith and fair dealing satisfies the second element. A breach of the covenant may be either subjective, where the employer acts with a bad faith purpose such as to deprive an employee of a benefit of the contract; or objective, where the employer does not act in a manner which a reasonable person would regard as fair. Okpik argued she had presented sufficient evidence from which a jury could conclude that Olemaun improperly received city funds and demoted her to cover it up, in violation of public policy. The City argued Okpik was replaced based on legitimate business reasons.

The Court concluded that although the facts, taken separately, failed to establish a causal connection between the City's actions and Okpik's discharge, taken together and construed in the Okpik's favor, they were sufficient to meet the evidentiary burden for purposes of surviving summary judgment. The court reiterated that the evidentiary threshold to preclude summary judgment is low, and the question of whether or not the covenant of good faith and fair dealing has been breached is ordinarily one for the trier of fact. A fact finder could decide that Okpik's evidence showed the alleged reasons for her demotion were pretextual and that she actually was demoted for an improper purpose; her evidence taken together created an issue of material fact about whether the City objectively breached the covenant of good faith and fair dealing.

Material disputed facts relied upon were that Okpik did not have control over the Mayor's pay, but the Mayor did; that her demotion was a cover up of the Mayor's

overpayments; and that she had performed the finance director job for eight years with favorable job evaluations, belying the Mayor's claim he needed someone more qualified.