24 Mass. App. Ct. 386 (1987)

509 N.E.2d 297

TIBOR GLAZ
vs.
RALSTON PURINA COMPANY.

Appeals Court of Massachusetts, Middlesex.

May 8, 1987.

June 25, 1987.

FINE, J.

Tibor Glaz, a former marketing executive employed for more than sixteen years by the Ralston Purina Company (Ralston), appeals from the entry of summary judgment in favor of Ralston on various claims arising out of Glaz's discharge from employment in 1975. The only such claim which is not clearly time-barred, frivolous, or inadequately argued on appeal alleges a bad faith discharge in breach of his employment contract.

Before the judge when he ruled on the summary judgment motion were a stipulation of the parties and portions of Glaz's deposition. The stipulation set forth these facts. Born and raised in Hungary, Glaz left in 1956 and became a United States citizen. In 1958 he was hired by Ralston. He advanced rapidly in the company as he moved from posts in the United States to various locations in Western Europe. In 1967, he became the manager of Ralston's new export department for Eastern Europe and was assigned to Brussels. Throughout his employment, Glaz was an at-will employee whose only compensation was in the form of salary. He established an excellent performance record for developing a new market for Ralston's products in Eastern Europe, particularly Hungary.

On or about August 1, 1972, Glaz was arrested and imprisoned by authorities in Hungary. In the spring of 1973, he was tried on a lengthy indictment alleging violations of bribery, exchange, and customs laws. He was convicted "on some part of the indictment" and sentenced to three years in prison and a $10,000 fine. He suffered, physically and emotionally, from the mistreatment he received over the course of the twenty-seven months he spent in custody in Hungary. Throughout this period, Ralston paid Glaz's salary, directing it to his wife. Ralston also paid legal expenses, as well as expenses incurred by Glaz's wife for travel related to Glaz's imprisonment. Glaz was released from prison in late 1974. On January 10, 1975, while he was in St. Louis, Missouri, at Ralston's corporate headquarters, Ralston terminated his employment. Ralston paid his salary through Janaury 31, 1975, and an additional $42,500 "as part of a termination package." "Glaz was terminated by Ralston ... because of his arrest, conviction and imprisonment by authorities of the government of Hungary."

There was very little in the stipulation that related to the substance of the charges against Glaz in Hungary. The parties stipulated that Ralston, as a matter of corporate policy and practice, had complete control over the disbursement of funds, including all disbursements for the Hungarian account made by Glaz, and also that, prior to his arrest, Glaz had advised Ralston, both orally and in writing, "to proceed slowly and not maintain an aggressive pricing policy." Also before the motion judge, but, in his view, entitled to "no weight," was certain deposition testimony in which Glaz attributed his arrest to two factors: Ralston's success in penetrating the market for its products in Hungary; and the rapidly growing power in that country of the Stalinists who were opposed to the influx of western products and techniques. The judge properly disregarded these deposition excerpts which were conclusory in nature and based on hearsay. See *Madsen* v. *Erwin*, 395 Mass. 715, 721 (1985).

Glaz's theory of liability was that his discharge was wrongful because it was in violation of public policy. Noting the absence of even a hint that Ralston was retaliating against Glaz for anything when it discharged him, the judge concluded that the discharge did not violate public policy.

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Traditionally an employer had the right to terminate an at-will employee with or without cause. Implicit in all contracts, however, is a covenant of good faith and fair dealing. *Fortune* v. *National Cash Register Co.*, 373 Mass. 96, 102-104 (1977). Invoking that principle, an exception to the at-will rule, inapplicable here, was made in cases of overreaching by an employer for his financial gain. See *Fortune*v. *National Cash Register Co.*, 373 Mass. at 104-105; *Maddaloni* v. *Western Mass. Bus Lines, Inc.*, 386 Mass. 877, 881-884 (1982). Compare *Gram* v. *Liberty Mut. Ins. Co.*, 384 Mass. 659, 672 (1981); *Tenedios* v. *Wm. Filene's Sons Co.*, 20 Mass. App. Ct. 252, 254-255 (1985). Recently a further exception was recognized, also based on the implied covenant of good faith, for an employee discharged for reasons violating public policy. In *DeRose* v. *Putnam Management Co.*, 398 Mass. 205 (1986), an employee, fired for refusing to tailor his testimony at a criminal trial in accordance with the employer's wishes, was allowed to recover contract damages. See also *Gram* v. *Liberty Mut. Ins. Co.*, 384 Mass. at 668 n. 6. Compare *Cort* v. *Bristol-Myers Co.*, 385 Mass. 300 (1982); *Federici* v. *Mansfield Credit Union*, 399 Mass. 592 (1987).

Glaz suggests that Ralston's act of firing him because of the arrest, conviction and imprisonment in Hungary violated public policy because that arrest, conviction and imprisonment resulted from policies pursued by Ralston which were the subject of warnings to Ralston by Glaz. Given Glaz's long tenure with Ralston and the poor treatment to which he was subjected in Hungary, it may well have been "bad, unjust, and unkind" in the circumstances for Ralston to fire him upon his return. Cf. *Richey* v. *American Auto. Assn. Inc.*, 380 Mass. 835, 839 (1980). There are limits, however, to the public policy exception to the at-will rule. An employee must be able to point to some clearly-defined and well-established public policy that is threatened by the employer's

action. That would be the case if the termination were in retaliation for performing an important and socially desirable act, exercising a statutory right, or refusing to commit an unlawful act. See Note, Protecting Employees at Will Against Wrongful Discharge: The Public Policy Exception, 96 Harv. L. Rev. 1931, 1936-1937 (1983). Glaz does not claim that he was discharged for exercising a statutory right or refusing to commit an unlawful act. The only suggestion, then, is whether he was discharged because of his performance of some act so socially desirable that public policy would encourage it.

We are not so naive as to assume necessarily that Glaz was in fact guilty of commiting illegal or immoral acts in Hungary. His lack of control over Ralston's funds is at least suggestive of innocence. We also may not assume, however, that Glaz did nothing at all to bring about his difficulties in Hungary except to engage in conduct which was both beneficial to Ralston and also in strict accordance with Hungarian law. His deposition testimony in which he speculates about the reason for his apprehension was properly disregarded by the motion judge. It is true that Glaz's conduct may have been lawful, of benefit to Ralston, and even insisted upon by Ralston in the face of contrary advice. Glaz has not shown, however, that his conduct was of any particular social utility. He failed to meet his burden, therefore, of presenting facts showing retaliation by Ralston against him for conduct that public policy would specifically encourage. Compare *Cloutier* v. *Great Atl. & Pac. Tea Co.*, 121 N.H. 915 (1981).

Judgment affirmed.