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February 25, 2022

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Feb 25 2022

SC Court of Appeals

Via email

Jenny Abbott Kitchings
South Carolina Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, South Carolina 29211

RE: Liam Wallis vs. The Boeing Company
Case No.: 2019-CP-10-1379
Appellate case number: 2021-001439

Dear Ms. Kitchings:

Enclosed for the Court's information, please find a copy of the transcript of hearing which we received on Tuesday, February 22, 2022. By copy of this letter with enclosure, I am furnishing a copy to opposing counsel.

Thank you for your assistance. Should you have any questions, please do not hesitate to contact this office.

With kindest regards, I remain,

Very truly yours,

Michael Ellis

Enclosure

cc: Cherie W. Blackburn, Esquire (via email)

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1 STATE OF SOUTH CAROLINA) IN THE COURT
2) OF COMMON PLEAS
3 COUNTY OF CHARLESTON) OF THE NINTH
4) JUDICIAL CIRCUIT
5)
6 LIAM WALLIS,)
7)
8 Plaintiff,) TRANSCRIPT OF RECORD
9) 2019-CP-10-01379
10 vs.)
11)
12 THE BOEING COMPANY,)
13 ANTHONY TIMMS, AND)
14 MONICA WILLIAMS,)
15)
16 Defendants.)
17)

11 -----
12 February 27, 2020
13 Charleston, South Carolina

14 B E F O R E:

15 HONORABLE PERRY M. BUCKNER, III, Judge.
16

17 A P P E A R A N C E S

18 MICHAEL ELLIS, ESQUIRE
19 For Plaintiff

20 CHERIE BLACKBURN, ESQUIRE
21 For Defendants

22 Proceedings recorded by DCRP,
23 Digital Courtroom Recorder Project

24 Transcribed by:
25 Julie A. Cendroski,
Circuit Court Reporter III
Seventh Judicial Circuit

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EXHIBITS

MARKED ENTERED

NO EXHIBITS PROFFERED;

1 LIAM WALLIS VS. THE BOEING COMPANY, ET AL.

2 THE COURT: All right. Our next motion, which
3 I've got quite a packet on, is 2019-1379, Liam Wallis,
4 Plaintiff, versus Boeing Company, Anthony Timms, and
5 Monica Williams. I'd ask that counsel identify
6 themselves and who they represent, beginning with
7 counsel for the plaintiff.

8 MR. ELLIS: Good morning, Your Honor. Michael
9 Ellis of Query, Sautter & Associates on behalf of the
10 plaintiff, Liam Wallis.

11 THE COURT: All right. Now, hold one second.
12 Let me catch you up. We've updated a lot and every
13 number I've got has changed now, so give me a moment.
14 This is 76 on the updated roster? All right. Mr.
15 Ellis, happy to have you.

16 Counsel for the defendant, Boeing?

17 MS. BLACKBURN: Your Honor, I'm Cherie Blackburn
18 with Nexsen Pruitt and I represent all of the defendants
19 named in the lawsuit.

20 THE COURT: So all the individual defendants and
21 The Boeing Company?

22 MS. BLACKBURN: Yes, Your Honor.

23 THE COURT: All right. For some reason, Ms.
24 Blackburn, I have down Melissa Spence. Is that your
25 firm?

1 MS. BLACKBURN: She is. She is an attorney who
2 works with me.

3 THE COURT: All right. Happy to have you, Ms.
4 Blackburn.

5 MS. BLACKBURN: Thank you.

6 THE COURT: And who's at the table with you?

7 MS. BLACKBURN: Your Honor, the individual
8 defendants, Andy Williams -- Andy Timms, I'm sorry.
9 Andy Timms and Monica ---

10 THE COURT: Anthony Timms.

11 MR. TIMMS: Yes.

12 MS. BLACKBURN: Anthony Timms and Monica
13 Williams, who have been named individually in the
14 lawsuit. And I also have Edward Wall, who is in-house
15 counsel with The Boeing Company.

16 MR. WALL: Good morning, Judge.

17 THE COURT: Happy to have you as well.

18 MR. WALL: Thank you.

19 THE COURT: All right.

20 MR. ELLIS: Your Honor, would you like paper
21 copies? I don't know if you have paper copies of my
22 memos?

23 THE COURT: I already have paper copies --

24 MR. ELLIS: Okay.

25 THE COURT: -- of everything you filed.

1 MR. ELLIS: Thank you.

2 THE COURT: If you don't -- Payton knows this.
3 Because I'm 70 years and I've been on the bench 20
4 years, one of my law clerk's job is to print out every
5 single motion I'm gonna hear in advance. So when I say
6 I've got a packet on you, I've got a packet on you.
7 I've read it, so that means you don't have to trace the
8 history of your motion or your case with me. Hopefully
9 it will save us some time.

10 Let me introduce to you all our court monitor,
11 Mrs. Leanna Teller. She is not a court reporter. This
12 is an electronic courtroom. She's recording the
13 proceedings, so you're gonna need to use my microphone
14 at the rostrum. You can bring your file with you.

15 The young man to my right is my law clerk. Take
16 the blame, take the bullet, keep the notes. His name is
17 Austin McCoy. He does a great job for me. I can't tell
18 you what a hard worker he is, and I -- let's see,
19 Austin, I worked you until, what, 9:45 last night?

20 Most people don't realize what my lawyers, they
21 know, law clerks are invaluable. Austin, because he
22 scored so high on the bar, and you young lawyers
23 understand this, our old ones didn't have this
24 opportunity, he -- we have reciprocity with other
25 states, so he's applied -- he doesn't have to take the

1 bar in Colorado, he's applied to be a member of the
2 Colorado bar because of his score on the South Carolina
3 bar because he thinks living in Colorado would be a
4 dream come true for him.

5 So he's gonna be a member of the Colorado bar.
6 I'm really proud of him because he works extremely hard.
7 He does a great job for me.

8 For those of you that I haven't met, my name is
9 Perry Buckner. I practiced law for 25 years and have
10 been on the bench 20, so I've had 45 years in our
11 profession. And I've read every single thing that
12 Austin has printed out for me, which is, I might add,
13 somewhat verbose, but I think we're ready. And I'm
14 happy now to hear from the moving party.

15 MS. BLACKBURN: Thank you, Judge Buckner.

16 THE COURT: Yes.

17 MS. BLACKBURN: As you know, we're here on our
18 Motion to Dismiss all ---

19 THE COURT: And let's define the parameters. I'm
20 confined to the pleadings.

21 MS. BLACKBURN: Yes, Your Honor, I know. And I
22 understand that you have to ---

23 THE COURT: Then don't go outside of them.

24 MS. BLACKBURN: I'm not.

25 THE COURT: I'm not converting it to a Rule 56

1 strictly based on the pleadings.

2 MS. BLACKBURN: I promise you I will not go
3 outside the pleadings.

4 THE COURT: I promise you I won't allow you to --

5 MS. BLACKBURN: We ---

6 THE COURT: -- because it's my call, not yours.

7 MS. BLACKBURN: I understand that.

8 THE COURT: Proceed.

9 MS. BLACKBURN: We have -- we've moved to dismiss
10 two of the three causes of action, the wrongful
11 termination in violation of public policy, and the civil
12 conspiracy cause of action. And if Your Honor -- I was
13 gonna go over just very briefly the allegations in the
14 complaint, not necessarily the -- just what's alleged.

15 The plaintiff worked as a quality assurance
16 conformity manager for Boeing. Ms. Williams, Monica
17 Williams, who's individually named, was his first line
18 supervisor. Mr. Timms was his senior level manager, two
19 levels above him.

20 He alleges he discovered safety concerns or
21 discrepancies in connection with his inspections of the
22 aircraft. He alleges that he reported those to Ms.
23 Williams. He alleges that he complained to Mr. Timms
24 that Ms. Williams treated him harshly for documenting
25 his findings of discrepancies. And he alleges that

1 after reporting that to Mr. Timms, Mr. Timms told him he
2 could look for another job and he was subsequently
3 terminated in June of 2017.

4 I'd like to start with the civil conspiracy
5 claim. The allegations against Mr. Timms and Ms.
6 Williams are that -- are solely in their capacity as
7 managers of Boeing, yet they have been named
8 individually in this lawsuit. They're not defendants in
9 the lawsuit. It's public record. They have to explain
10 why they've been sued.

11 Ms. Williams actually traveled from San Antonio
12 for this hearing. She works for Boeing, but she's in
13 San Antonio now. And if you look at the pleadings taken
14 in a light most favorable to the plaintiff, there is --
15 they do not state a cause of action for civil
16 conspiracy.

17 The allegations regarding civil conspiracy are
18 that they conspired to have him terminated after he
19 refused to fraudulently document planes as having no
20 discrepancies. They did it to minimize the findings
21 Boeing reported to their boss in an attempt to further
22 their claims or their careers at Boeing. They conspired
23 to deny him access to the internal computer system that
24 allowed plaintiff to verify whether planes were ready
25 for inspection.

1 And, Your Honor, as you know, the elements of a
2 conspiracy require that there is a -- they allege two or
3 more persons combining for the purpose of injuring the
4 plaintiff that cause special damages to the plaintiff.
5 The plaintiff's cause of action is barred by the
6 intra-corporate conspiracy doctrine because he alleges
7 that his termination was in retaliation for Boeing's
8 scheme. And this is alleged in the complaint, Boeing's
9 scheme of fraudulently concealing these non-conformity
10 -- non-conformities in the aircraft. He tries to make
11 Monica Williams and Anthony Timms part of that scheme,
12 but he alleges it's Boeing's scheme.

13 And if you look at the case law, we've cited them
14 in our brief, our courts are clear that a corporation
15 cannot conspire with itself. And the employees of a
16 corporation cannot conspire with the corporation when
17 they are acting in -- within the scope of their
18 employment.

19 There's even a case, Lawson versus South Carolina
20 Department of Corrections, where the Supreme Court has
21 said that two employees, two agents discussing the
22 termination of the plaintiff is not a civil conspiracy,
23 does not allege civil conspiracy. In this case, we
24 actually do not have an allegation of the two
25 individuals, Ms. Williams and Mr. Timms, communicating

1 to each other.

2 Again, it goes back to the scheme that the
3 plaintiff alleges Boeing was engaged in, not the
4 individual. There's no -- there is no allegation to
5 indicate that they were not acting within the scope of
6 their employment. And if you look at what the case law
7 says about acting within the scope of your employment,
8 an act, if it's reasonably necessary to accomplish the
9 purpose of employment and it's in furtherance of the
10 employee's -- of the employer's business, then it is an
11 act within the scope of employment. So two employees,
12 if they were discussing the termination, if they played
13 a role in the termination ---

14 THE COURT: The relief you asked there, would be
15 relief as to the individual defendants, if you were
16 correct. Meaning that, you say that there can't be a
17 conspiracy if it's within the course and scope of their
18 corporate duties for the individual defendants. I
19 understand that. Let's move on.

20 MS. BLACKBURN: Okay. So, Your Honor, with
21 regard to the special damages, because they have to show
22 the special damages.

23 THE COURT: They absolutely do.

24 MS. BLACKBURN: The damages that they've alleged
25 are the same damages that arise out of the wrongful

1 termination claim. They haven't alleged damages that
2 are attributable only to the conspiracy itself. And our
3 appellate courts have made clear that they have to be
4 separate and independent damages that do not overlap.
5 Mr. Wallis alleges -- he's alleged that he's suffered
6 special damages, and he identifies those special damages
7 as being blacklisted.

8 So, I believe, the argument is, well, for the
9 wrongful termination it's wages, lost wages. For the
10 civil conspiracy, it's being blacklisted. The problem
11 is that the allegation as to being blacklisted is that
12 Boeing blacklisted him in the community. So it's not an
13 allegation that Ms. Williams or Mr. Timms blacklisted
14 him. So there's no evidence here, Your Honor, of
15 special damages.

16 If I can move on to the wrongful termination in
17 violation ---

18 THE COURT: You can.

19 MS. BLACKBURN: The primary argument on that is
20 that Mr. Wallis has a statutory remedy. It is well
21 settled in South Carolina that if there is a statutory
22 remedy to the plaintiff, there can be no cause of action
23 for wrongful termination, and we cite those cases in our
24 brief.

25 In this case, the statutory remedy is the Wendell

1 H. Ford Aviation Investment and Reform Act for the 21st
2 Century, commonly referred to as Air 21. And Air 21
3 gives Mr. Wallis a remedy in that if he is -- he
4 believes he is discriminated against or discharged for
5 raising safety concerns related to the aircraft, he can
6 make a claim under Air 21.

7 There are a couple of cases out there where the
8 district court has dismissed the cause of action for
9 wrongful termination because of Air 21. One of them is
10 the *Hobek* case filed against Boeing. He was a quality
11 manager for Boeing, much like Mr. Wallis. He said he
12 reported safety concerns, he was terminated. He claimed
13 wrongful termination in violation of public policy in
14 the District Court case. District Court found that
15 cause of action could not go forward because he had a
16 statutory remedy.

17 The other case, Your Honor, Lugo versus Boeing,
18 was decided by Judge Gergel in January. And I actually
19 have a copy of his order if you'd like to see it, like
20 to have it.

21 THE COURT: Does counsel have a copy?

22 MS. BLACKBURN: I've got one for him too.

23 THE COURT: Give him one, hand it up.

24 MS. BLACKBURN: May I approach, Your Honor?

25 THE COURT: You may. Let the record reflect I'm

1 being handed an order, an opinion in the United States
2 District Court, Case 219-CV-2995-RMG, and it is the
3 order of Judge Gergel dated January 30th, 2020.

4 Proceed.

5 And, Your Honor, in that case the plaintiff made
6 a very similar allegation that he was terminated because
7 of raising safety concerns and tried to argue that the
8 safety concerns related to his role as an employee and
9 his duties for Boeing, not FAA regulations. And Judge
10 Gergel in a footnote says that argument is incorrect
11 against the statute; that Air 21 does provide him a
12 statutory remedy. And because of the South Carolina law
13 that says you can't have a wrongful termination claim if
14 you have a statutory remedy, Judge Gergel dismissed the
15 wrongful termination in violation of public policy
16 claim.

17 I'll also add that Mr. Wallis also has to show a
18 clear mandate of public policy, and we don't have
19 allegations sufficient to show a clear argument mandate
20 of personal -- of public policy. There is another case,
21 it's a District Court case, that I believe the plaintiff
22 cites in his memorandum. Desmarais versus Scientific
23 Research Authority. And in that case ---

24 THE COURT: That's where the plaintiff argues
25 that termination of plaintiff falls within the public

1 policy exception for at-will employment on the basis
2 that the safety and lives of the people of this State is
3 a mandate of public policy, citing South Carolina
4 Constitution, Article 12, Section 1. What's your
5 response to that? Obviously, that section says the
6 health, welfare, and safety of the lives and property of
7 the people of this state are matters of public concern.
8 Is that not also the public policy of South Carolina, as
9 reflected in the South Carolina constitution?

10 MS. BLACKBURN: Your Honor, no. We do not
11 believe that is the public policy. That statute goes on
12 to state that they are setting up -- the purpose is to
13 set up state agencies to protect the public policy or
14 the concerns. So our position is, no, that statute does
15 not create a public policy sufficient for a wrongful
16 termination in violation of public policy.

17 THE COURT: You think it has to be case law to
18 create public policy?

19 MS. BLACKBURN: No, Your Honor, not necessarily.
20 I think there needs to be guidance. There's guidance in
21 the case law. And, of course, right now we have two,
22 two situations that our appellate courts have said, you
23 know, constitute wrongful termination in violation of
24 public policy, which is basically the employer requires
25 the employee as a condition of employment to break the

1 law or the wrongful termination itself is illegal.

2 And there have been other cases that have come
3 before the court. To date, this is the guidance that
4 we're given. In the Desmarais versus South Carolina
5 Research -- or Scientific Research, the allegations were
6 similar in that they were safety concerns raised
7 regarding the aircraft. And the argument was in the
8 complaint, this affects the safety of the public and,
9 therefore, it's a public policy.

10 And the District Court said that does not create
11 -- I believe that was Judge Norton's opinion. That does
12 not create a clear mandate of public policy. That's the
13 closest case, I guess, that we have addressing these
14 types of allegations, and they found that there was not
15 a cause -- the cause of action could go forward.

16 Despite that, Your Honor, even if there were a
17 question about the public policy, the statutory remedy
18 language is clear in the case law. So for those
19 reasons, Your Honor, we'd move to dismiss the two causes
20 of actions for wrongful termination and civil
21 conspiracy.

22 THE COURT: Thank you very much.

23 MS. BLACKBURN: Thank you.

24 THE COURT: Let me hear from you, Mr. Ellis.

25 MR. ELLIS: Thank you, Your Honor. And just as a

1 matter of housekeeping, this is the first time I've
2 actually had a case come back from across the street
3 over to here.

4 THE COURT: Well, believe me, Judge Norton loves
5 to send me notes when he remands cases to the state
6 court. So it's not a very complicated procedure as far
7 as the federal judges are concerned. They just send it
8 back to the State Court and say let them handle it. But
9 what is it that confuses you or causes you questions?

10 MR. ELLIS: Well, I notice in looking in the
11 on-line file this morning, the amended complaint is not
12 in the State -- we amended our complaint at the federal
13 level.

14 THE COURT: So you've got an amendment while the
15 case was still pending in the federal court?

16 MR. ELLIS: Yes, Your Honor.

17 THE COURT: And you noticed it isn't filed in the
18 clerk's file in state court?

19 MR. ELLIS: Yes, Your Honor.

20 THE COURT: I assume, counsel, you'll have no
21 objection to him handing me his amended complaint
22 because you've been served with it, have you not?

23 MS. BLACKBURN: Absolutely no objection. And,
24 Your Honor, our argument is based on the amended
25 complaint.

1 THE COURT: I thought it was too. That's why I
2 don't understand why -- I started thinking to myself,
3 gosh, I've been sitting here listening 15 minutes of an
4 argument. All right. It's clear I've been handed -- so
5 that the record's clear, since it apparently isn't in
6 the State file. Believe me, there are many things
7 sometimes in the state system that are difficult to
8 locate as to whether or not they've been filed. The
9 amended complaint that I've been handed is dated May 1st
10 -- well, the Certificate of Service is dated May 1st.
11 Hold on.

12 MR. ELLIS: Well, Your Honor, it was filed --

13 THE COURT: What date?

14 MR. ELLIS: -- May 1st, 2019.

15 THE COURT: All right. And it was filed in
16 Federal Court May 1st, 2019. And it is the complaint
17 upon which the 12(b) motion is now being made. I'm
18 confined to the pleadings, as you know. Mr. Ellis,
19 we're talking about civil conspiracy and wrongful
20 termination. Let's begin in the order in which it's
21 alleged with civil conspiracy.

22 MR. ELLIS: Thank you, Your Honor. And, again,
23 thank you, Your Honor, for pointing out that this motion
24 is constrained to our pleadings --

25 THE COURT: Absolutely.

1 MR. ELLIS: -- the amended complaint. We have
2 alleged ---

3 THE COURT: Although, there is -- I'll point this
4 out to you because apparently my lawyers don't realize
5 probably the best case there is in South Carolina from
6 the Supreme Court is a Charleston case. And we're not
7 doing it today, but you need to read it, because it
8 really is a great -- Beard versus Charle -- B-e-a-r-d
9 versus Charleston County. My law clerk will get you the
10 cite. And it deals with the issue of under what
11 circumstances a court may convert a 12(b) motion to a
12 Rule 56 motion for summary judgment. And there are
13 inherent problems, due process problems.

14 For instance, if all of a sudden she files her
15 motion and you came here to argue on the pleadings, then
16 I convert it to a Rule 56, which means we go outside the
17 pleadings and consider depositions and affidavits, how
18 much time do you have to get a reply to do? Boop.

19 And so, notice and opportunity to be heard is
20 always a problem in a conversion. And most lawyers
21 don't even realize that our rules, when you file a
22 motion, we have time deadlines for affidavits. Were you
23 aware of that? Do you know where it is? Can you quote
24 it to me?

25 MS. BLACKBURN: I can't quote it, but I know it

1 has to be filed so many days prior to the hearing.

2 THE COURT: So that he has a chance to get reply
3 affidavits. It's in Rule 5 of the Rules of Civil
4 Procedure. All right. So take a look at *Beard*, it
5 would be good for you.

6 Let's talk about civil conspiracy. She says that
7 I should dismiss this complaint because your complaint
8 fails to allege civil conspiracy. The argument is
9 basically that you've got these individual defendants,
10 who are present, Mr. Timms and Ms. Williams, and the
11 argument is that this is a corporate conspiracy or, as
12 she likes to call it, a Boeing conspiracy, quoting some
13 excerpts from your amended complaint, and that the
14 individuals can't conspire with a corporation. Let me
15 hear from you.

16 MR. ELLIS: Thank you, Your Honor. And it is
17 plaintiff's position that the civil conspiracy
18 allegation was properly pled in our amended complaint.
19 In our amended complaint we do specifically say Anthony
20 Timms and Monica Williams conspired to have plaintiff
21 terminated in paragraph 45.

22 THE COURT: We agree that there has to be a
23 combination of two or more persons for the purpose of
24 injuring the plaintiff and causing the plaintiff special
25 damages. Do you agree those are the elements?

1 MR. ELLIS: Yes, Your Honor, I do.

2 THE COURT: Okay.

3 MR. ELLIS: And there are special damages in this
4 because part of the conspiracy or the result of the
5 conspiracy was that Liam Wallis was fired for
6 fraudulently documenting repairs to the plane, just
7 filing fraudulent documents. So that's what goes into
8 his employment file as a result of their conspiracy.

9 THE COURT: I understand that you allege that,
10 but what I'm asking you now is let's talk about the
11 question that she argues as to whether or not Mr. Timms
12 and Ms. Williams conspired to have the plaintiff
13 terminated or was this a Boeing conspiracy, because
14 that's the basis of her argument.

15 MR. ELLIS: Well, Your Honor, we pled that it is
16 an Anthony Timms, Monica Williams conspiracy, not a
17 Boeing conspiracy.

18 THE COURT: You agree that they were in the line
19 of supervision to your client, one directly over your
20 client and one right above the one that was directly
21 over your client? I've forgotten which was which.

22 MR. ELLIS: And, yes, Your Honor, I do agree. Of
23 course, all inferences to be drawn --

24 THE COURT: Absolutely.

25 MR. ELLIS: -- should be in the light most

1 favorable to the plaintiff and ---

2 THE COURT: Ms. Blackburn understands the light
3 that I have to take it.

4 MR. ELLIS: And any reasonable inference can be
5 drawn that Boeing does not have a policy that encourages
6 their employees to conspire against one another on a
7 regular basis. So any conspiracy by Anthony Timms and
8 Monica Williams, it would be reasonable to infer that
9 that is contrary to Boeing policy, it's not a Boeing --
10 they do not conspire with Boeing to terminate Mr.
11 Wallis.

12 THE COURT: What special damages do you think
13 exist here for purposes of civil conspiracy?

14 MR. ELLIS: That the result of their conspiracy
15 was the documenting that he was fired for filing
16 fraudulent documents concerning his work duties. So
17 going forward whenever he's applying for further
18 aviation industry jobs, when the question comes up, why
19 did you leave Boeing? Well, I was fired because I filed
20 fraudulent documents, is the reason that I was given.
21 Let me explain to you why. I mean, that's gonna be,
22 that's gonna be a hard sale. It' gonna result in
23 him ---

24 THE COURT: You allege that Mr. Timms and Ms.
25 Williams caused him damage from future wages as well in

1 your complaint?

2 MR. ELLIS: It is, it is gaining employment
3 within the aviation industry, Your Honor. It has
4 blacklisted him from the entire aviation industry and
5 he's, since his 2017 firing, has been searching for jobs
6 in the aviation industry and has not been able to find
7 any aviation industry jobs, despite him being one of the
8 more qualified applicants for the jobs he's been
9 applying for.

10 THE COURT: In response to her argument that
11 intra-corporate conspiracy doctrine, which basically
12 says civil conspiracy cannot exist when the acts of
13 those of employees or directors in their official
14 capacity conspiring with a corporation, if you will, and
15 you say that your complaint is sufficient on that
16 ground; is that correct, counsel?

17 MR. ELLIS: Yes, Your Honor. And if you look at
18 paragraph 58 of our amended complaint, we also allege
19 the loss of standing has been tarnished by the
20 individual defendant's civil conspiracy.

21 THE COURT: All right. I've looked at your
22 paragraph 58. Anything else you want to tell me on
23 civil conspiracy?

24 MR. ELLIS: Just to reiterate that the
25 intra-corporate conspiracy doctrine only applies to

1 conspiring with the corporation and our allegations as
2 pled are only ---

3 THE COURT: She argues that your complaint
4 alleges a corporate conspiracy or a Boeing conspiracy.
5 Do you agree?

6 MR. ELLIS: I do not agree, Your Honor. I -- the
7 allegations of civil conspiracy are against the
8 individual defendants alone, not Boeing.

9 THE COURT: All right. Let's turn to wrongful
10 termination.

11 MR. ELLIS: Thank you, Your Honor. And, Your
12 Honor, we would first point out that the safety of the
13 flying public, especially since it considers South
14 Carolinian citizens fly on planes made by Boeing, that
15 this is clearly a public policy issue. Whether the
16 safety of ---

17 THE COURT: You can certainly ask her about South
18 Carolina Constitution Article 12, Section 1, which she
19 denies is a public policy, but I understand that's your
20 argument.

21 MR. ELLIS: Okay.

22 THE COURT: Go ahead.

23 MR. ELLIS: Well, and, Your Honor, as far as the
24 statutory remedy goes, Mr. Wallis is not a member of the
25 protected class under this Air 21 statute that Ms.

1 Blackburn talked about. Air 21 only applies to
2 whistleblowers providing information relating to any
3 violation or alleged violation of any order, regulation,
4 or standard of the Federal Aviation Administration or
5 any other provision of federal law relating to air cargo
6 safety under this subtitle or any other law of the
7 United States.

8 Mr. Wallis was a conformity manager at Boeing.
9 His job was to make sure that Boeings were built in
10 accordance with the Boeing's standards and policies, so
11 -- and that includes the safety of Boeing planes as laid
12 out by Boeing. And ---

13 THE COURT: So your position is that Air 21 is
14 not a statutory remedy?

15 MR. ELLIS: Correct, Your Honor.

16 THE COURT: And wrongful termination, you concede
17 if it were a statutory remedy there can be no wrongful
18 termination?

19 MR. ELLIS: I agree that South Carolina law does
20 not allow for a common law tort of wrongful termination
21 when there is a statutory remedy, but in this case there
22 is no statutory remedy, as Mr. Wallis does not fall
23 within a protected class.

24 THE COURT: I think I understand your public
25 policy argument. Anything else you want to tell me on

1 wrongful termination?

2 MR. ELLIS: Nothing further, Your Honor.

3 THE COURT: Thank you very much.

4 Briefly in reply, Ms. Blackburn. I've got a lot
5 of people waiting. Please be patient today because
6 we're overbooked. Roy, I know you can sit back there in
7 the back row and enjoy the show.

8 MS. BLACKBURN: Your Honor, just with regard to
9 the special damages, Mr. Ellis mentioned more than once
10 termination. That is -- those are the damages that
11 arise out of that termination. That it's out of the
12 wrongful termination is no different from the civil
13 conspiracy.

14 The ability to find future employment, the reason
15 he alleges is because of the termination. The
16 termination was, in his allegations, wrongful, so it's
17 not special damages under civil conspiracy.

18 The only other thing I'll add is with regard to
19 the question of whether Mr. Wallis is covered under Air
20 21, the same argument that he raises is an argument that
21 the plaintiff raised in the Lugo versus Boeing case and
22 that Judge Gergel addressed in his order.

23 THE COURT: That you handed me the order for?

24 MS. BLACKBURN: Yes, Your Honor.

25 THE COURT: Thank you very much.

1 MS. BLACKBURN: Thank you.

2 THE COURT: All right. Take notes. I'm gonna
3 ask you both to submit proposed orders to me. You will
4 submit them to me within seven days of today. You will
5 send my law clerk a working copy, as well as myself.
6 And because we have some crazy rules in South Carolina,
7 do not file any proposed order. You will e-mail your
8 orders to me, so I don't want you being charged or your
9 clients being charged for a proposed order, particularly
10 when it's subject to my editing.

11 Please submit your orders to me at
12 Pbucknerlc@sccourts.org. That's my law clerk's address,
13 Austin McCoy. And to me at Pbucknerj@sccourts.org.
14 Submit them in Word format, not Word Perfect. Please
15 submit them within seven days of today, copying opposing
16 counsel on any transmittal to the court, whether it be
17 by e-mail, United States mail, facsimile, or any type of
18 communication.

19 The record is now closed. I have with me your
20 memorandum. I have with me also your memorandum in
21 opposition, and I have the pleadings. I was given
22 during the hearing the order of Judge Gergel, which I
23 placed on the record. And because Mr. Ellis says he's
24 never been back to State Court on remand, I accepted a
25 copy of his amended complaint, which everybody is using

1 as the complaint for purposes of this 12(b) motion.
2 That's all the documents that I have. I'll look forward
3 to getting your orders within seven days of today.

4 I want to thank you both for being well prepared.
5 I appreciate that very much. I hope you have a nice
6 day.

7 MR. ELLIS: Thank you, Your Honor.

8 MS. BLACKBURN: Thank you, Your Honor.

9 THE COURT: Thank you.

10 (Hearing concluded at 11:04 a.m.)

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12 --- THIS ENDS REQUESTED TRANSCRIPT ---

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1 COURT REPORTER CERTIFICATE

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I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability from the Digital Court Reporter Program, the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court of Common Pleas in Charleston County, South Carolina, on the 20th day of February, 2020.

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s/Julie A Cendroski
Julie A. Cendroski
Circuit Court Reporter III
Seventh Judicial Circuit