THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

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SC Court of Appeals

Case No. 2019-CP-10-01379

LIAM WALLIS...Appellant,

v.

THE BOEING COMPANY, ANTHONY TIMMS, and MONICA WILLIAMS......Respondents.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. The Circuit Court erred in granting Defendants' Motion to Reconsider their Rule 12(b)(6) Motion to Dismiss Appellant's Claim of Wrongful Termination Under the Public Policy Exception.
2. The Circuit Court Erred in Finding that Appellant Had a Statutory Remedy Under 49 U.S.C. §42121(a)(1).

STATEMENT OF THE CASE

On March 18, 2019 Plaintiff Appellant filed a complaint against Defendant Respondents for wrongful termination in violation of public policy and civil conspiracy against Respondents Monica Williams Anthony Timms, after he was terminated from his position as a Quality Assurance Conformity Manager at Boeing South Carolina, following reports to Timms and Williams regarding concerns over systematic violations of Boeing's engineering standards and practices—the purpose of his role as a Quality Assurance Conformity Manager. (See Complaint).

On October 11, 2019 Respondents filed a Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim related to Appellant's wrongful termination claim and civil conspiracy claim. The Court denied Defendant's Motion to Dismiss on March 19, 2020.

On March 26, 2020, Respondents filed a Motion to Reconsider the Order Denying their Rule (12)(b)(6) Motion to Dismiss. The Court denied the Motion in part related to Appellant's civil conspiracy claim, but granted the Motion in part regarding Appellant's wrongful termination claim, on the basis that Appellant had a statutory remedy under 49 U.S.C. 42121(a)(1). The Order was filed on April 23, 2020.

Appellant filed a Motion to Reconsider the April 23, 2020 Order on May 4, 2020, which was denied by the newly presiding Honorable Roger M. Young on the grounds that he could not change the order of another Circuit Court Judge. This Order was filed on November 9, 2021.

Appellant now appeals to this Honorable Court both the April 23, 2020 Order Granting the Motion to Reconsider related to the Appellant's wrongful termination claim, and the November 9, 2021 Order Denying the Appellant's Motion to Reconsider the April 23, 2020 Order.

STATEMENT OF FACTS

Appellant was hired by The Boeing Company ("Boeing") in April of 2011 as a Quality Assurance Conformity Manager (hereinafter "QACM"). QACM's are Boeing employees tasked with inspecting all newly manufactured aircraft for compliance with Boeing's internal engineering and safety specifications. QACM's are paid on an hourly basis and do not have any executive or administrative duties.

Any non-conformity found by a QACM is referred to as "a finding" and must be documented; all repairs and subsequent inspections must also be well documented. Findings must be properly addressed in accordance with Boeing policies.

In August 2016, Appellant took leave for an injury under the Family and Medical Leave Act. During his absence, Respondent Monica Williams ("Williams") was promoted to supervise Appellant and the other Conformity Managers. Appellant returned to work in January 2017 on a medically restricted basis. Upon Appellant's return, he observed a back log of non-conformities or findings that needed to be inspected by the QACM's, fixed, and signed off by the QACM's. Upon making an inquiry, Appellant's colleagues informed him that following Williams's promotion, all Boeing policies and procedures were disregarded.

Appellant discovered that while he was out on medical leave, Boeing engaged in a number of violations of their own engineering and repair specifications and violated internal policy and safety procedures.[1]

[1] Appellant discovered that Boeing engaged in: (a) "Goldplating" which is repeating a test until it is successful and then having the records show that the test was successful on the first attempt; (b) Knowingly using out of date engineering specifications; (c) Knowingly using uncertified technicians to perform maintenance and repairs; (d) Violating the internal Boeing policy and procedures that were put in place to achieve final approval of each stage

Upon confronting Williams about all the Boeing policy violations and safety concerns he discovered, Appellant was told by Williams that he was not to write up any findings of non-conformity without first receiving permission from them. Despite this order, Appellant continued to do his job of inspecting all newly manufactured aircraft to ensure the safety of the public that relies upon Boeing's internal engineering and safety specifications and documented his findings of non-conformities.

On March 9, 2017, Appellant complained to Respondent Anthony Timms ("Timms"), Williams' supervisor, that Williams continuously removed documents from his desk and treated him harshly for documenting his findings of non-conformity, and creating a hostile work environment including but not limited to making threats against Appellant's life. Anthony Timms informed Appellant that Boeing no longer needed him, and that he would not be eligible for any more raises or promotions. The day after Appellant spoke with Anthony Timms, Defendant Williams told Appellant that he needed to start looking for another job.

While conducting an inspection of the first barrel section of carbon fiber fuselage in the production of Boeing's 787, that came off the new enclave oven in Boeing's building 19a, Appellant discovered that the barrel was manufactured using obsolete engineering, that all subsequent barrels were manufactured using obsolete engineering, undocumented repairs were made to the barrels, and that a fictitious QACM signed off on the repairs. Appellant feared that there was an escapement of all barrels produced in the new enclave oven, meaning that non-conforming aircraft barrels were being used to manufacture aircraft that were making their way into the fleet of aircraft used to transport passengers and freight. Appellant brought these non-

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of production and make the plane immediately saleable; (e) Disabling the automated system that notified all pertinent employees of mandatory inspections of newly manufactured aircraft; and (f) Submitting conformities without documented repairs.

conformities with Boeing's engineering specifications to management's attention and the investigation was pulled from Appellant and reassigned to Williams.

Appellant pursued the matter, demanding that management of Boeing comply with Boeing's policies and self-report this escapement as required. Directly after Appellant's ultimatum to Boeing, he was informed by human resources that Boeing would no longer honor his medical work restrictions and Appellant was placed on a leave of absence without pay. Appellant had his doctor lift the restrictions and he returned to work after being gone for a week. Upon his return to Boeing, Appellant's every action was unduly scrutinized by Williams and Timms in an attempt to find justification for Appellant's termination. Appellant was wrongfully terminated from Boeing on June 15, 2017.

Based upon information and belief, Boeing sacrificed compliance with their own policies and regulations put in place for the protection of the public in exchange for the expedited completion of aircraft and profit from the sale of those aircraft. Boeing presented Appellant with the dilemma of choosing to maintain his livelihood by cooperating in Boeing's scheme of fraudulently concealing non-conformities in the aircraft they were selling, or complying with Boeing's established safety specifications and protecting the public that relies upon those regulations for their safety in air travel. Based upon information and belief, Boeing continues to manufacture and place into the stream of commerce non-conforming barrels.

STANDARD OF REVIEW

"Dismissal of an action pursuant to Rule 12(b)(6) is appealable." Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). The Appellate Court's determination of whether the Circuit Court erred in dismissing the Appellant's wrongful termination cause of action is a question of law to be reviewed *de novo*. Upon review of a dismissal of an action pursuant to Rule 12(b)(6), the appellate court applies the same standard of review implemented by the trial court. Id.

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action. Flateau v. Harrelson, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003). A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). "A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case." Flateau, 355 S.C. at 202, 584 S.E.2d at 415. The trial court's grant of a motion to dismiss will be sustained if the facts alleged in the complaint do not support relief under any theory of law. Tatum v. Medical Univ. of South Carolina, 346 S.C. 194, 552 S.E.2d 18 (2001).

ARGUMENT

I. 49 U.S. CODE § 42121 IS NOT AN ADMINISTRATIVE REMEDY AVAILABLE TO APPELLANT BECAUSE APPELLANT DID NOT MAKE FAA RELATED COMPLAINTS TO EMPLOYER

Respondents claim Appellant is barred from asserting a claim for wrongful discharge under the public policy exception to the doctrine of at-will employment, because 49 U.S.C. § 42121 (hereinafter known as "AIR 21") is the proper statutory remedy available to Appellant.[2] To prevail on their argument, Respondents must show that the remedy provided in AIR 21 is available to the Appellant.

[2] "The public policy exception does not, however, extend to situations where the employee has an existing statutory remedy for wrongful termination" Barron v. Labor Finders of South Carolina, 713 S.E.2d 634, 637 (S.C. 2011).

In the case of b., 374 S.E.2d 910 (Ct.App.1988), Judge Bell provided guidance for determining when a statute applies to an Appellant's claims. In that case, Appellant sought to impose a statutory duty to act upon Defendant. The court held that for Defendant to owe Appellant a duty,

> "...the Appellant must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the Appellant has suffered, and (2) that he is a member of the class of persons the statute intended to protect" Rayfield v. SC Dept. of Corr., 374 S.E.2d 910 (Ct. App. 1988).

In support of their holding, the Rayfield court cited to Bell v. Atlantic Coast Line Railway Co., 24 S.E.2d 177, 183 (1943).

> "An action for negligence based upon an alleged violation of a statute...cannot be maintained where it appears that the statute...was enacted...for a purpose wholly different from that of preventing the injury of which complaint is made. To afford a right of action for injury from the violation of a statute...the complainant's injury must have been such as the statute...was intended to prevent. If none of the consequences which the enactment was designed to guard against have resulted from its breach, such a breach does not constitute an actionable wrong, even though some other injurious consequence has resulted. It is not enough for a Appellant to show that the defendant neglected a duty imposed by the statute and that he would not have been injured if the duty had been performed. He must go further and show that his injury was caused by his exposure to a hazard from which it was the purpose of the statute to protect him" Rayfield, at 915 *citing to* Bell, supra.

Using Judge Bell's analysis, this Court must determine (1) whether the essential purpose of AIR 21 is to protect from the kind of harm the Appellant has suffered, and (2) whether the Appellant is a member of the class of persons the statute intended to protect. The pertinent part of AIR 21 provides:

> **§42121. Protection of employees providing air safety information**
>
> (a) Discrimination Against Airline Employees.—No air carrier or contractor or subcontractor of an air carrier may discharge an employee or otherwise discriminate against an employee with

respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States;

(2) has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States;

(3) testified or is about to testify in such a proceeding; or

(4) assisted or participated or is about to assist or participate in such a proceeding.

§ 42121(a)(1)-(a)(4) provides anti-discrimination protection for employees providing air safety information to either their employer or the Federal Government. The protected air safety information is "...any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States" id. at (a)(1). A reading of this statute clearly and unambiguously shows that that Congress intended for AIR 21 to only protect those employees that are reporting to the employer or the Federal government:

- any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration, or
- any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature" Charleston County Sch. Dist. V. State Budget and Control Bd., 313 S.C. 1, 5 (S.C. 1993) *citing to* Bankers Trust of South Carolina v. Bruce, 275 S.C. 35 (1980). "Under the plain

meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute" Hodges v. Rainey, 341 S.C. 79, 85 (S.C. 2000) *citing to* In re Vincent J., 333 S.C. 233 (S.C. 1998). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning" id.

a. The Circuit Court Improperly Relied Upon Carlos Lugo v. The Boeing Company in its Order Granting Defendant's Motion to Reconsider

Both the Circuit Court and the Defendants relied upon Carlos Lugo v. The Boeing Company, case no. 2:19-cv-2995-RMG to expand AIR 21 beyond its clear and unambiguous meaning to show that a statutory remedy is available to Appellant. However, in that case Judge Gergel found that the Appellant did in fact engage in activity protected by AIR 21 because his complaint alleged the reporting of safety conditions that violated Federal Aviation Administration regulations.[3]

This Court must determine whether any allegations pled by Appellant in his Amended Complaint invokes the protection provided for in AIR 21.[4] Appellant's Amended Complaint is replete with concerns about violations of Boeing's safety procedures,[5] but does not allege any violations of Federal Aviation Administration requirements or Federal law relating to air carrier safety. For example, Appellant's chief concerns were related to nonconformities with Boeing's own engineering standards.

Appellant did not raise concerns to Boeing of FAA violations or federal aviation standards; he has not pled "...his exposure to a hazard from which it was the purpose of the statute to protect

[3] "To the extent Appellant's complaint concerns his wrongful termination for reporting safety conditions that violated, *inter alia*, Federal Aviation Administration regulations, Appellant has an existing statutory remedy, AIR21" Lugo, supra at 5.
[4] "A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true" Fabian v. Lindsay, 410 S.C. 475, 481 (S.C.2014).
[5] *Amended Complaint*, paragraphs 15, 24, 25, 26, 35, 37, and 42

him"[6] and he is not "...a member of the class of persons the statute intended to protect"[7]. Therefore, Appellant is not barred by AIR21 from proceeding with his claim of wrongful discharge under the public policy exception to the doctrine of at-will employment.

In Debbie Simpson v. United Parcel Service, ARB Case No.: 06-065 **(Exhibit A)**, the Administrative Review Board affirmed the Administrative Law Judge's dismissal of the Complainant's AIR 21 claim based upon her failing to have engaged in protected activity. The Review Board specified that "[p]rotected activities under AIR 21include: providing to the employer or (with knowledge of the employer) the Federal Government 'information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety...'" Simpson, at 5 *citing to* 49 U.S.C.A. § 42121(a)(1). The Administrative Review Board further stated that to qualify for relief under AIR 21, a Complainant's "...**allegations under AIR 21 must at least relate to violations of FAA orders, regulations, or standards (or any other violations of federal law relating to aviation safety**) (emphasis added)" Simpson, at 5. Nowhere in the present complaint has Appellant alleged to have engaged in the defined protected activity that makes AIR 21 an available statutory remedy.

> "In ruling on a motion to dismiss a complaint for failure to state facts sufficient to constitute a cause of action, **the court must look to the allegations set forth in the complaint.** A defendant cannot assert an affirmative defense on a Rule 12(b)(6) motion unless the allegations of the complaint demonstrate the existence of the affirmative defense" Crocker v. Barr, 295 S.C. 195, 197 (Ct.App. 1988). (emphasis added)

Appellant's pled allegations do not invoke any statutory remedies including AIR21, leaving his only actionable recourse as wrongful discharge under the public policy exception to the doctrine of at-will employment.

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[6] Bell v. Atlantic Coast Line Railway Co., 24 S.E.2d 177 (1943)
[7] Rayfield v. SC Dept. of Corr., 374 S.E.2d 910 (Ct. App. 1988)

II. APPELLANT HAS PROPERLY PLED THE PUBLIC POLICY EXCEPTION TO THE DOCTRINE OF EMPLOYMENT AT WILL

South Carolina recognized the public policy exception to the doctrine of employment at will in Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219 (S.C.1985).[8] South Carolina recognizes public policy to be that which is "...derived or derivable by clear implication from the established law of the state, as found in its Constitution, statutes, and judicial decisions" Batchelor v. American Health Ins. Co., 107 S.E.2d 36, 38 (S.C.1959). In the Constitution, South Carolina clearly implicates the "health, welfare and safety of the lives of the people of this State" to be a mandate of public policy.[9]

Appellant falls into the exact class that is meant to be protected by the public policy exception to the doctrine of at-will employment. Appellant alleges that Boeing placed him in the position that he had to choose between sacrificing the safety, welfare, and health of the persons of this State to maintain his career and livelihood from Boeing, or sacrificing his career and livelihood for the maintenance of the safety, welfare, and health of the persons of this State.[10] Appellant alleges to have been wrongfully terminated for choosing public policy over his career and livelihood, which is in violation of a clear mandate of public policy.

As Respondents' March 26, 2020 Motion to Reconsider was based upon Rule 12(b)(6), this Court's review is limited to whether Appellant properly pled a public policy exception to the doctrine of at-will employment.[11] In his Amended Complaint, Appellant pled that his job duties with Boeing included "...inspecting all newly manufactured aircraft for compliance with Boeing's internal engineering and safety specifications" *Amended Complaint* para. 13. Appellant pled that

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[8] "Where the retaliatory discharge of an at-will employee constitutes violation of a clear mandate of public policy, a cause of action in tort for wrongful discharge arises" Ludwick at 225.

[9] "The health, welfare, and safety of the lives and property of the people of this State and the conservation of its natural resources are matters of public concern" S.C.Const. Art. XII § 1.

[10] *Amended Complaint* paragraph 43

[11] "A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true" Fabian v. Lindsay, 410 S.C. 475, 481 (S.C.2014)

he was out of work due to a medical issue and upon his return discovered that Boeing had engaged in a systematic disregard for Boeing's safety standards regarding planes being newly manufactured.[12] Appellant pled that, despite Boeing's policy of disregarding the safety of the manufactured planes, he "...continued to do his job of inspecting all newly manufactured aircraft to ensure the safety of the public that relies upon Boeing's internal engineering and safety specifications and documented his findings and non-conformities" *Amended Complaint*, para. 26. Appellant pled that the performance of his job duties finding non-conformities with Boeing's safety standards resulted in delay of production while addressing those non-conformities and that Boeing management engaged in harassment of Appellant in retaliation.[13] Appellant pled that he "...was wrongfully terminated from Boeing on June 15, 2017" *Amended Complaint*, para. 41. Appellant pled that his termination was in retaliation for not endangering the health, welfare, and safety of the lives of the people of this State.[14] Appellant properly pled the elements of wrongful termination in violation of public policy.[15]

Viewed in the light most favorable to the Appellant and with every doubt resolved in his behalf, the Amended Complaint states a valid claim for relief for wrongful discharge in violation of public policy.

CONCLUSION

The Air 21 Act is not a remedy available to the Appellant, because he did not assert claims of FAA violations by his employer to the FAA or to Boeing. Therefore, Appellant is entitled to bring claims of wrongful termination under the public policy exception to the doctrine of at-will employment. Appellant respectfully requests that this Honorable Court reverse the April 23, 2020

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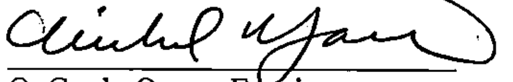
[12] *Amended Complaint* paragraphs 18, 23, and 24.
[13] *Amended Complaint* paragraphs, 14, 15, 21, 25, 27, 28, 29, 30, 37, 38, and 40
[14] *Amended Complaint* paragraph 43
[15] *Amended Complaint* paragraphs 52-55; "A cause of action for wrongful discharge of an at-will employee shall exist only where the alleged retaliatory discharge constitutes a clear violation of a mandate of public policy" Ludwick, supra. at 225.

Circuit Court Order granting in part Respondents' 12(b)(6) Motion; and reverse the November 9, 2021 Circuit Court Order Denying Motion to Reconsider the Order Granting Defendant's Motion to Dismiss.

Respectfully Submitted By,



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I certify that I have served the Initial Brief of Appellant upon Cherie W. Blackburn, attorneys for Respondent by depositing a copy of it in the United States Mail, with sufficient postage attached thereto and addressed as follow:

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

Dear Ms. Kitchings:

Enclosed herewith for filing, please find an original and one copy of Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal regarding the referenced matter. Please file the original and return a clocked copy to me in the enclosed envelope. By copy of this letter with enclosure I am serving Cherie W. Blackburn, attorney for Respondents.

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

Sincerely,

TO'Brien
Tracey O'Brien
Assistant to O. Grady Query

Enclosures

cc: Cherie W. Blackburn, Esquire

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