

SUPREME JUDICIAL COURT OF MASSACHUSETTS

Smith v. Winter Place LLC

447 Mass. 363 (2006) · Decided August 1, 2006

SUMMARY

The Massachusetts Supreme Judicial Court held that G. L. c. 149, § 148A protects employees from retaliation for making internal complaints about alleged wage-law violations, even when they do not report those complaints to the Attorney General. The court reversed summary judgment against one employee, affirmed the denial of summary judgment for two others, and affirmed summary judgment against a manager whose conduct merely conveyed the employees’ complaints to management.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Cordy, J.
JURISDICTION	Massachusetts
DECIDED	August 1, 2006
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiffs appealed interlocutory summary-judgment rulings in retaliation claims under the Massachusetts wage laws. The Superior Court granted summary judgment for the defendants as to Kimball and Sosnitsky, denied summary judgment as to Smith and Porter, and reported the central legal question under Mass. R. Civ. P. 64(a). The Supreme Judicial Court granted direct appellate review.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether the record, viewed in the light most favorable to the nonmoving party, presents a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court opinion; binding precedent in Massachusetts.
PARTIES	Samantha Smith, Bruce Porter, Charles Kimball, Pierre Sosnitsky v. Winter Place LLC, Paul Licari, Lydia Shire

TOPICS

- retaliation
- wage and hour
- statutory interpretation
- summary judgment
- appellate procedure

PRACTICE AREAS

employment law

wage and hour

retaliation

statutory interpretation

civil procedure

QUESTIONS PRESENTED

1. Whether G. L. c. 149, § 148A, protects employees from retaliation for making internal complaints about alleged wage-law violations when they have not complained to the Attorney General.
2. Whether Sosnitsky's act of conveying the servers' complaints to higher management constituted protected activity under G. L. c. 149, § 148A.
3. Whether summary judgment was proper as to the individual plaintiffs in light of the evidence concerning their complaints and alleged retaliatory terminations.

HOLDINGS

1. Section 148A prohibits retaliation against an employee for making an internal complaint to the employer or its management about a reasonably perceived violation of the Massachusetts wage laws, even if the employee never reports the matter to the Attorney General.
2. The internal complaints made by the server plaintiffs to management constituted protected activity under § 148A, so summary judgment against Kimball was improper.
3. Sosnitsky was not protected by § 148A merely because he conveyed the servers' complaints to higher management; the statute protects an employee's own action to seek rights or, in appropriate circumstances, action asserting or complaining on behalf of another employee.

KEY QUOTATIONS

“Does G. L. c. 149, § 148A, prohibit employers from retaliating against employees for making internal allegations of wage violations, even if those employees never brought their allegations to the attention of the Attorney General?” (447 Mass. at 365)

“The plain language of the first paragraph of § 148A extends the protection of the statute to employees who are penalized for taking “any action” to seek their rights under the laws governing wages and hours.” (447 Mass. at 367)

“The mere conveying of employee complaints by Sosnitsky to higher management (about a system Sosnitsky himself created and implemented) does not amount to asserting their rights, or complaining on their behalf.” (447 Mass. at 369)

FACTUAL BACKGROUND

Locke-Ober instituted a tip-pooling system requiring servers to share tips with busboys, bartenders, and the maitre d'. The servers believed the system violated Massachusetts wage laws because the maitre d', who was also a manager, received a portion of their tips. Smith and Porter complained to the Attorney General's office, while all of the server plaintiffs complained internally to Sosnitsky; after Sosnitsky conveyed the complaints to owner Paul Licari, Licari stated that the employees should be dismissed, and the servers were fired. Sosnitsky was later fired and claimed that he was terminated for conveying the servers' complaints.

PROCEDURAL HISTORY

The Superior Court granted the defendants summary judgment against Kimball and Sosnitsky, reasoning that their protected complaints had not been made to the Attorney General's office, while denying summary judgment against Smith and Porter because they had complained to that office before termination. The case was reported to the Appeals Court, and the Supreme Judicial Court granted direct appellate review. The Supreme Judicial Court answered the reported question affirmatively, reversed summary judgment against Kimball, affirmed the denial of summary judgment as to Smith and Porter, affirmed summary judgment against Sosnitsky, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the Superior Court for further proceedings consistent with the opinion. Summary judgment against Kimball was reversed, the denial of summary judgment as to Smith and Porter was affirmed, and summary judgment against Sosnitsky was affirmed.

CASES CITED

- Simon v. State Examiners of Electricians, 395 Mass. 238, 242 (1985)
- Dahill v. Police Department of Boston, 434 Mass. 233, 239 (2001)
- Jackson v. Birmingham Board of Education, 544 U.S. 167 (2004)
- Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 121 (2000)
- Tate v. Department of Mental Health, 419 Mass. 356, 364 (1995)