



FILED

SEP 16 2010

**COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON**

No. 289681

**COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON**

ANJELIA NEUSON, APPELLANT

v.

MACY'S, INC., RESPONDENT

APPELLANT'S REPLY BRIEF

GREGORY G. STAEHELI

WSBA # 04452

Attorney for Appellant

301 W. Indiana Ave.

Spokane, WA 99205

(509) 326-3000

I. SUMMARY OF REPLY

1. Macy's claims Neuson is bound to terms and conditions of a past employment which had ended. This is not the law in the State of Washington as articulated in *Hubbard v. Spokane County*, 146 W.2d 699, 50 P.3d 602 (2002).
2. As a "new hire" Macys contends as a factual matter that Neuson as a "new hire" received a new arbitration proposal on October 4, 2006. Macy's written record is dated October 4, 2006, and Macy's recorded a driver's license which had not yet been issued. This fact supports Neuson's claim that no meeting took place and destroys Macy's claim that such a meeting took place.
3. The presumption of mailing is irrelevant because it relates to a past employment which ended. If it was relevant, Macy's has not produced the requisite proof required for a presumption under *Kaiser Aluminum v. Labor & Industries*, 57 Wn.App 886, 790 P.2d 1254 (1990). Not a single copy

of a letter about arbitration has been produced with Neuson's name and address on it.

II. ARGUMENT

In forty- four (44) pages of Respondent's brief, Macy's has not contested the fact that they are trying to base an arbitration agreement between Macy's and Neuson on an employment agreement which had ended. There is no written contract nor is there an implied contract that says Neuson is bound to the terms of a contract which had ended. *Hubbard v. Spokane County, supra*. While it is disputed by Neuson that she ever received arbitration proposals under her old employment which ended, Macy's has no case law or facts upon which to impose any condition relating to an employment which had ended. It has been highlighted by Appellant that Macy's has not produced a copy of a single letter on arbitration with her name and address on it, however this is also relating to claims based on a past employment which had ended.

Macy's considered her a "new hire" in September, 2006. As a "new hire" Macy's claims she was given a new arbitration proposal on October 4, 2006. If they considered her bound after her termination in July, 2006, why present a new arbitration proposal?

Macy's points out that we asserted that the date of issuance on the driver's license was not October 13, 2006, as set out in Appellant's brief. They are correct. They then argue that the disputed October 4, 2006, meeting took place when they claim Neuson received a new arbitration proposal. As a matter of fact, not argument, the date of issuance on the driver's license recorded by Macy's had not been issued on October 4, 2006, it was issued under the license number NEUSOAY452PL and the date of issuance is October 11, 2006, seven days after Macy's claims and Neuson denies that a meeting took place. (CP 485) Appellant's respectfully asks the Court to look at the copy of the driver's license. (CP 485)

Macy's argues that the October 13, 2006, recorded date on the Macy's form is on a line for the expiration date. What they don't acknowledge is that the past license number upon which has an October 13, 2006, expiration date is under the number HARRIAY450PL.

This is not the license number recorded by Macy's it is recorded under the NEUSUAY452PL her married name.

The issuance date is October 11, 2006. Please see the copies of the licenses attached to Neuson's Affidavit (CP 485).

III. SUMMARY

1. Macy's cannot bind Neuson to the terms and conditions of a past employment issue.
2. It is an irrelevant issue as to whether Macy's met the presumption of mailing regarding terms and conditions of a past employment.
3. Even if it was relevant, the requirement for the presumption has not been met.

4. Macy's has no copy of a single letter on arbitration with Neuson's name and address on it despite the fact that there is a designated space for such.
5. The claimed meeting on October 4, 2006, is based on a recorded driver's license which had not been issued until October 11, 2006.
6. The court resolved disputed issues of fact and credibility in a motion for summary judgment.
7. The order ordering mandatory arbitration should be reversed and the issues of fact on this subject should be resolved by a jury trial.

While this case was pending Neuson was contacted by Macy's corporate headquarters and was asked if a three year old Silverdale address was still accurate. (CP 519) Neuson identified the name of the Macy's employee and the phone number. (CP 519) This was never contested by Macy's which claims they have had accurate records of addresses for Neuson at all times.

Macy's puffs about self-serving declarations which run counter to their affidavits which contend no arbitration proposals were given to Macy's employees by management and management never knew the choice of the employees.

Macy's simply calls the affidavit of Neuson and Boholst on this subject "self serving declarations". Where are the Macy's managers to contest this? Instead we have declarations not from the managers but from someone who claims what the corporation policy was.

IV. CONCLUSION

The trial court resolved issues of fact relating to terms and conditions which related to an employment which had ended. The trial court resolved disputed issues of fact and credibility relating to a claimed meeting on October 4, 2006 when Macy's own records record a driver's license which had not yet been issued. The order of dismissal should be reversed.

Dated this 15 day of September, 2010.



Gregory G. Staeheli, WSBA 4452
Attorney for Appellant

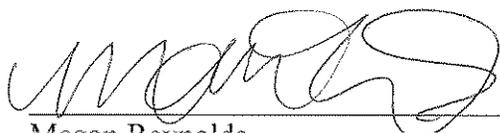
CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of September, 2010, I caused to be served a true and correct copy of the Appellant's Reply Brief by the method indicated below, and addressed to the following:

Kristin Bell
Jackson Lewis LLP
One Union Square
600 University Street, Ste 2900
Seattle, WA 98101
FAX (206) 405-4450

US Mail
 Hand Delivered
 Overnight Mail
 Facsimile

Betty Thorne Tierney
Law Department, Macy's, Inc.
611 Olive Street, 10th Floor
St. Louis, MO 63101
FAX (314) 342-6384



Megan Reynolds