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No. 74265-5

COURT OF APPEALS DIVISION I OF THE STATE OF
WASHINGTON

In the Matter of
DENISE SMITH

DENISE SMITH, a single woman,
Plaintiff - Appellant,

v.

SONITROL PACIFIC,
Defendant - Defendant.

OPENING BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

The Court committed error by granting the motion for summary judgment as to the Retaliation cause of action when the Court failed to properly consider the Complaint, the pleading requirements of CR 8A and dismissed this claim as being insufficiently pled.

II. STATEMENT OF THE CASE

On January 9, 2013, Denise Smith reported to Mattie Mackenzie, Sonitrol’s HR representative in Portland that Joe Bullis, the Vice President for Operations and General Manager of the Everett branch, was consuming alcohol during the workdays. Moody Decl., Exhibit 1. CP 1282-1287. During his deposition Mr. Bullis acknowledged having this discussion with Ms. Mackenzie on January 9. Bullis Dep., Pg. 32. Ln. 3-5. CP 1146. He also acknowledged that he would go drinking during the lunch hour and return to work at Sonitrol. Bullis Dep., Pg. 30 Ln. 6-14. CP 1146.

On January 15, 2013, Ms. Smith met with the owner of Sonitrol Everett, Beau Bradley, and discussed with him directly some of her concerns and frustrations in the workplace. Smith Decl. ¶ 10. CP 1174. These included concerns that Mr. Bullis was consuming alcohol at lunch with the Verification Center Manager Michelle Evans and then returning to work. She also discussed the fact that one of the operators, Jeff

1 LaMont, who was monitoring several accounts in the Oregon area, and
2 in fact was the supervisor on her shift had a criminal conviction which
3 prevented him from possessing the required license to monitor the
4 Oregon locations. Smith Decl. ¶ 10. CP 1174. On January 22, 2013,
5 Ms. Smith's employment was terminated.
6

7 Ms. Smith testified in her declaration that she had been
8 discussing her concerns regarding the alcohol consumption of Ms. Evans
9 as well as Mr. Bullis for with management for a period of several years.
10 Smith Decl. ¶ 6-7. CP 1172-1173. She brought this directly to the
11 attention of Ms. Evans herself who is her immediate supervisor. During
12 their respective depositions both Ms. Evans and Mr. Bullis
13 acknowledged prior to January 2013 consuming alcohol during lunch
14 periods and then returning to work. Evans Dep., Pg. 76, Ln. 9-11, Bullis
15 Dep. Pg. 31, Ln. 13-18. CP 1150-1151.
16

17 Ms. Smith had also reported to Ms. Evans as early as 2007 that
18 Sontirol employees Robin Goings and Mr. LaMont were drinking
19 alcohol before coming to work as well. This is reflected in an email
20 dated June 20, 2012, which was sent from Ms. Smith to Ms. Evans
21 specifically addressing this issue. Moody Decl. Exhibit 1. CP 1282-
22 1287.
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1 On January 9, 2013, being greatly concerned about the welfare of
2 this company Ms. Smith called Ms. Mackenzie and informed her of the
3 alcohol consumption of Mr. Bullis. Smith Decl. ¶ 7. CP 1173. Ms.
4 Mackenzie had a discussion with Mr. Bullis regarding this, and Mr.
5 Bullis acknowledged on January 9th that he had a drinking problem.
6 This is reflected in her notes. Moody Decl. Exhibit 3. CP 1291-1292.
7

8 Initially operator Jeff LaMont was Ms. Smith's subordinate.
9 Smith Decl. ¶ 10. CP 1174. Once Ms. Smith requested her demotion for
10 reasons outlined in her declaration Mr. LaMont became her supervisor.
11 Smith Decl. ¶ 8. CP 1173. During a work shift they were required to
12 monitor multiple locations in Oregon and as such they were required to
13 have the appropriate license from the State of Oregon.
14

15 Ms. Smith became aware that Mr. LaMont had a criminal
16 conviction which prevented him from having the appropriate license to
17 monitor the Oregon accounts. Smith Decl. ¶ 10. CP 1174. Ms. Smith
18 brought this to the attention of Ms. Evans on multiple occasions, but Ms.
19 Evans ignored this concern. Smith Decl. ¶ 10. CP 1174.
20

21 In her January 15, 2013 meeting with Mr. Bradley, Ms. Smith
22 brought this directly to his attention. Smith Decl. ¶ 10. CP 1174. This is
23 acknowledged in his notes in which he referenced this conversation.
24 Moody Decl. Exhibit 4. CP 1295-1296. During his deposition Mr.
25

1 LaMont acknowledged that he has a gross misdemeanor conviction for
2 criminal impersonation from the Marysville Municipal Court. This
3 criminal conviction would prevent him from obtaining the appropriate
4 license in the State of Oregon to monitor security alarm systems.
5 LaMont Dep. Pg. 4-5. CP 1152. Moody Decl. Exhibit 5. CP 1297. He
6 was also specifically questioned regarding his ability to maintain the
7 necessary license in Oregon with his criminal conviction. LaMont Dep.
8 Pg. 4-5. CP 1152

10 III. SUMMARY JUDGMENT STANDARD

11 Summary judgment is proper where there are no genuine issues
12 of material fact and the moving party is entitled to judgment as a matter
13 of law. *Westberry v. Interstate Distributor Co.*, 164 Wn.App 196, 204,
14 263 P.3d 1251 (2011). A trial is not useless, but is absolutely necessary
15 where there is a genuine issue as to any material fact. *Preston v.*
16 *Duncan*, 55 Wn.2d 678, 681, 349 P.2d 605 (1960). A material fact is
17 one upon which all or part of the outcome of litigation depends. *Hill v.*
18 *Cox*, 110 Wn.App. 394, 402-403 41 P.3d 495 (2002).

19
20 The principles regarding a motion for summary judgment have
21 been long established. While often noting the beneficial use to which
22 summary judgments may be put in dismissing unfounded claims, courts
23 have at the same time recognized they must be employed with caution
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1 lest worthwhile causes be dismissed short of a determination of their true
2 merit. *Smith v. Acme Paving Co.*, 16 Wn.App. 389, 392, 558 P.2d 811
3 (1976). In *Meissner v. Simpson Timber Co.*, 69 Wn.2d 949, 951, 421
4 P.2d 674 (1966) the Court noted:

5 The object and function of summary judgment procedure is the
6 avoidance of a useless trial. *Blaise v. Underwood*, 62 Wn.2d
7 195, 381 P.2d 966 (1963). A summary judgment is properly
8 granted if the pleadings, affidavits, depositions or admissions on
9 file show that there is no genuine issue as to any material fact,
10 and that the moving party is entitled to judgment as a matter of
11 law. *Blaise v. Underwood, supra; Capitol Hill Methodist*
12 *Church of Seattle v. City of Seattle*, 52 Wn.2d 359, 324 P.2d
13 1113 (1958); . . . In ruling upon such motion, it is the duty of the
14 trial court to consider all evidence and all reasonable inferences
15 therefrom most favorable to the nonmoving party. *Reed v.*
16 *Streib*, 65 Wn.2d 700, 399 P.2d 338 (1965); *Blaise v.*
17 *Underwood, supra*. If, from this evidence, reasonable men could
18 reach only one conclusion, the motion should be granted. *Blaise*
19 *v. Underwood, supra; Wood v. City of Seattle*, 57 Wn.2d 469, 358
20 P.2d 140 (1960).

21 Stated another way it is not the function of the trial court to
22 weigh the evidence thus to be considered and so construed, and
23 summary judgment of dismissal must be denied if a right of
24 recovery is indicated under any provable set of facts. *Fleming v.*
25 *Smith*, 64 Wn.2d 181, 390 P.2d 990 (1964)

Smith v. Acme Paving Co., Supra at 392-393.

 While stated nearly 40 years ago all of these principles remain as
applicable today as they did when these decisions were initially issued.

To overcome summary judgment a plaintiff has only a burden of
production, not persuasion, and this may be proved to direct or

1 circumstantial evidence. *Scrivener v. Clark College*, 181 Wn.2d 439,
2 447, 334 P.3d 541 (2014). The employee is not required to produce
3 evidence beyond that offered to establish the prima facie case, nor
4 introduce direct or “smoking gun” evidence. *Id.* at 89. Circumstantial,
5 indirect, and inferential evidence will suffice to discharge the plaintiff’s
6 burden. *Id.* at 89.

8 **IV. WRONGFUL TERMINATION/RETALIATION**

9 The prima facie elements of a retaliation case require the plaintiff
10 to show (1) that she engaged in statutorily protected activity, (2) her
11 employer took adverse employment action against her, and (3) a causal
12 link between the activity and the adverse action. *Short v. Battle Ground*
13 *Sch. Dist.*, 169 Wn.App. 188, 205, 279 P.3d 902 (2012). *Short* also held
14 that an employee engages in Washington Law Against Discrimination
15 (WLAD) protected activity when he or she opposes employment
16 practices forbidden by antidiscrimination law or other practices he or she
17 reasonably believed to be discriminatory. *Id.* at 205. It is not necessary
18 that the complained about activity be actually unlawful because “[a]n
19 employee who opposes employment practices reasonably believed to be
20 discriminatory is protected by the ‘opposition’ quote whether or not the
21 practice is actually discriminatory.” *Graves v. Dep’t of Game*, 76
22 Wn.App. 705, 712, 887 P.2d 424 (1994). Further, “[t]o determine
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whether an employee was engaged in protected opposition activity, the court must balance the setting in which the activity arose in the interests and motives of the employer and employee.” *Estevez v. Faculty Club of Univ. of Wash.*, 129 Wn.App. 774, 798, 120 P.3d 5798 (2005).

Ms. Smith engaged in protected statutory activity in the following ways.

1. She brought to the attention of her employer activities of sexual harassment protected by RCW 49.60 et. seq. Smith Decl. ¶ 17-20. CP 1177-1178
2. She brought safety related concerns to the attention of her employer protected by RCW 19.17.160. Smith Decl. ¶ 7. CP 1173, Smith Decl. ¶ 10. CP 1174
3. She brought safety related licensing issues to the attention of her employer regarding the failure to comply with the licensing requirements of Oregon directly relevant to this employer and protected by ORS 659A.199(1). Smith Decl. ¶ 10. CP 1174
4. She brought to the attention of her employer the fact that several senior members of management were consuming alcohol during the work day. Under the unique facts of this

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case this activity is protected by Oregon Revised Statutes (ORS) 659A.199(1). Smith Decl. ¶ 6-7. CP 1172-1173

One week after bringing to Ms. Mackenzie’s attention her concerns regarding managers consuming alcohol during the workday and to the attention of the owner of the company directly both the concerns regarding alcohol and the licensing issues regarding Mr. LaMont, Ms. Smith’s employment was terminated. Ms. Smith engaged in statutorily protected activity, she clearly experienced an adverse employment action by being terminated, and the causal connection between these two, is for the purposes of summary judgment, established by the close proximity in time between the reporting of these concerns and her termination. It has been held that close proximity in time between the adverse employment action and the protected activity, along with evidence of satisfactory work performance, can suggest an improper motive. *Campbell v. State*, 129 Wn.App. 10, 23, 118 P.3d 888 (2005).

For the purposes of a motion for summary judgment Ms. Smith has fully met her burden and the granting of summary judgment on the Retaliation claim was legal error.

In response it will be argued that a complaint cannot be amended in responding to a motion for summary judgment and the creation of

1 new legal theories should be disregarded by the court. In support of this
2 argument citation will be made to *Camp Fin., L.L.C. v. Brazinton*, 133
3 Wn.App. 156 (2006). This reliance is misplaced because the *Camp Fin*
4 decision is distinguishable from the current circumstances. In *Camp Fin*
5 the responding party raised for the first time in the response to motion
6 for summary judgment a constitutional challenge which was a wholly
7 new cause of action. The Court held that this was improper because an
8 opposing party is entitled to fair notice of the claims against which one
9 must defend and “[i]nsufficient pleadings are, then, prejudicial.” *Id.* at
10 162.
11

12 This case simply does not apply to the current circumstances
13 because Ms. Smith is not raising a wholly new cause of action or legal
14 theory. Her initial Complaint clearly pled the cause of action for
15 Retaliation which put Sonitrol on notice that Ms. Smith was alleging she
16 engaged in statutorily protected activity, suffered an adverse
17 employment action and a causal connection existed between her
18 termination and her statutorily protected activity.
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20 It is conceded that in the original Complaint there was no
21 mention of the licensing and safety issues under Oregon law. This
22 however is not fatal to this claim. As the Washington State Supreme
23 Court has stated:
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Moreover, Washington’s notice pleading rule does not require parties to state all the facts supporting their claims in their initial complaint. CR 8(a) provides that: “a pleading which sets forth a claim for relief. . . shall contain . . . *a short and plain statement of the claim* showing that the pleader is entitled to relief. . . (Italics ours.) The notice pleading rule contemplates that discovery will provide parties with the opportunity to learn more detailed information about the nature of the complaint. A court should thus be reluctant to impose sanctions for factual errors or deficiencies and a complaint before there has been an opportunity for discovery. *Rachel V. Banana Republic, Inc.*, 831 F.2d 1503, 1508 (9th Cir. 1987) (citing *Greenberrg v. Sala*, 822 F.2d 882, 885 (9th Cir. 1987).

Bryant v. Joseph Tree, 119 Wn.2d 216, 221 829 P.2d 1099 (1992)

This is exactly what took place in this matter. When the original Complaint was drafted several years prior to Sonitrol filing this motion for summary judgment the significance of the licensing issues was not fully developed. Additional discovery including the personal notes of Mr. Bradley and verification of the licensing concerns regarding Mr. Lamont were developed in discovery. This new information in turn further developed the cause of action. There is no prejudice to Sonitrol as the Defendant was clearly aware of the nature of the cause of action and its elements of proof.

Washington is a notice pleading state that allows the court to liberally construe a party’s complaint. *Dewey v. Tacoma Sch. Dist. No. 10*, 95 Wn.App. 18, 23, 974 P.2d 847 (1999). It has been noted that the

1 pleadings purpose “is to facilitate proper decision on the merits, not to
2 erect formal and burdensome impediments to the litigation process.”
3 *State v. Adams*, 107 Wn.2d 611, 620 732 P.2d 149 (1987). CR 8(a)
4 requires that a complaint for relief contain (1) a short and plain
5 statement of the claim showing that the pleader is entitled to relief and
6 (2) a demand for judgment for the relief to which he deems himself
7 entitled.
8

9 The nature of the claim is retaliation, and this was clearly pled.
10 A demand for judgment for relief was also made. The requirements of
11 CR 8(a) were squarely met. Judge Fair dismissed this cause of action
12 because no mention of the Oregon regulations was made; but they did
13 not need to be, and this is where Judge Fair committed error.
14

15 By dismissing the Retaliation cause of action because
16 subsequently developed facts were not included in the original
17 Complaint the Court has failed to follow the direction of CR 8(a) and the
18 *Bryant* decision. Essentially, Ms. Smith has been held to a higher
19 standard of pleading than is contemplated in Washington.
20

21 Mr. Bradley in his notes dated January 15, 2012 clearly wrote
22 “she was mad and felt we had over responded – it made accusations
23 against Robin (Lamont) and Jeff as being bigger threats than herself.”
24 “Said they both had criminal backgrounds and that Robin had been shot
25

1 at when he was breaking into car.” Being the owner of the company
2 providing security alarm monitoring services in the State of Oregon Mr.
3 Bradley was aware of the impact a criminal conviction of one of his
4 employees would have upon his ability to perform that service in
5 Oregon. Mr. LaMont himself was directly questioned regarding his
6 criminal conviction as well as his licensing issues in Oregon during his
7 deposition at which of course Counsel for Sonitrol was present. This
8 deposition occurred several months prior to the motion for summary
9 judgment. LaMont Dep. Pg. 4-5. CP 1152. Moody Decl. Exhibit 5. CP
10 1297.
11

12 Counsel will argue that they merely thought Mr. Lamont’s
13 credibility was being challenged. This is nonsense. Counsel for Sonitrol
14 made a tactical decision to not engage in any discovery regarding these
15 developing issues hoping to successfully make the very argument which
16 they have, i.e. they were somehow unaware of the significance of the
17 discovery being developed which allegedly created some new legal
18 theory and now are prejudiced.
19

20 Sonitrol was not prejudiced, they were fully aware of the legal
21 theories being prosecuted in this lawsuit, fully aware of the factual
22 evidence being developed in discovery, and of course fully aware that
23 Retaliation with its attendant elements was a cause of action being
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1 pursued in this matter. Unlike the holding in *Camp Fin* for example no
2 new cause of action was raised in response to this motion for summary
3 judgment. The cause of action remains identical to what was in the
4 original Complaint. All that has occurred during the several year period
5 of time between the drafting of the Complaint and the motion for
6 summary judgment was a further development of the facts, which is
7 exactly what is contemplated by the Court in *Bryant*.
8

9 **V. STATUTORILY PROTECTED ACTIVITIES**

10 **SEXUAL HARASSMENT; RCW 49.60.210**

11 Ms. Smith on numerous occasions brought to the attention of her
12 immediate supervisor, Ms. Evans, her displeasure with the inappropriate
13 sexual and physical contact forced upon her. This included the
14 numerous occasions Ms. Evans personally physically touched Ms.
15 Smith's buttocks and her breasts. Smith Decl. ¶ 11. CP 1175. RCW
16 49.60.210(1) specifically makes it an unfair practice for an employer to
17 "discharge, expel, or otherwise discriminate against any person because
18 he or she has opposed any practices forbidden by this chapter . . ." Ms.
19 Smith's complaints to Ms. Evans concerning the inappropriate sexual
20 conduct in the work environment clearly fall within the protection of the
21 Washington Law Against Discrimination in RCW 49.60. As such the
22 complaints of Ms. Smith regarding sexual harassment are protected
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1 activity and thereby fully satisfy the first element of a retaliation claim.
2 These allegations were also clearly stated in paragraphs 3.19, 3.20, 3.21,
3 3.22, 3.23, 3.24, 3.26, and 3.27 of the Complaint. This is of course no
4 surprise to Sonitrol.

5
6 **WISHA**

7 By law Ms. Smith has a right pursuant to RCW 49.17.160 to be
8 free from discharge or discrimination because she raised safety related
9 issues in the workplace. The purpose of WISHA codified in RCW 49.17
10 et.seq. is to make workplace conditions as safe and healthful as possible.
11 RCW 49.17.10. WISHA requires every person who has employees to
12 (1) “furnish each of his or her employees employment and a place of
13 employment free from recognized hazards that are causing or [are] likely
14 to cause death or serious physical harm” and (2) “comply with industrial
15 safety and health standards promulgated under WISHA.” WAC 296-
16 360-010(1).
17

18 Reporting to her manager, HR representative, as well as the
19 company owner that senior managers were consuming alcohol during
20 the work day, driving a motor vehicle, and returning to work under the
21 influence of alcohol arguably creates a safety hazard in the work place.
22 This is a potential violation of WISHA and Ms. Smith’s actions were
23 protected by RCW 49.17.160.
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1 **OREGON LICENSE**

2 Ms. Smith stated explicitly to Ms. Evans as well as Mr. Bradley
3 her concern that a fellow employee and supervisor, Jeff LaMont, was
4 continuing to both monitor and actually supervise the accounts located
5 in Oregon despite the fact that he had a criminal conviction. Smith Decl.
6 ¶ 4. CP 1172. OAR 259-060-0010(3) clearly defines the term “Alarm
7 Monitoring Facility” to mean any organization with the primary
8 responsibility of reviewing incoming traffic transmitted to alarm
9 receiving equipment and follows up with actions that may include
10 notification of public agencies to address imminent threats related to
11 public safety. CP 1318. OAR 259-060-0010(17) defines “Executive
12 Manager” to mean a person who is authorized to act on behalf of the
13 company or business in matter of licensure as well as someone who is
14 authorized to hire and terminate personnel. CP 1319. These individuals
15 would include Ms. Evans, Mr. Bullis, and Mr. Bradley. OAR 259-060-
16 0015(1) prohibits a person from acting as a private security provider
17 unless that person is certified or licensed under the Private Security
18 Services Providers Act “and these rules.” CP 1321. The definitions
19 contained in OAR 259-060-0010(27) and (28) for Private Security
20 Professional and Private Security Providers would include Mr. LaMont,
21 Ms. Evans, Mr. Bradley and Mr. Bullis. CP 1320. Pursuant to OAR
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1 259-060-0120(3) a certified private security alarm Monitor professional,
2 such as Mr. LaMont is authorized to perform the duties defined in OAR
3 259-060-0010. CP 1329. Finally, pursuant to OAR 259-060-0130(3)
4 private security executive managers are responsible for ensuring
5 compliance of all private security providers employed by businesses or
6 entities by which the executive managers employ or contract. CP 1330.
7

8 OAR 259-060-0300 addresses the circumstances under which a
9 private security clearance or license may be revoked. CP 1334-1338.
10 OAR 259-060-0300(2) states that the Department “must deny or revoke
11 a certification or license” of any applicant or private security provider
12 after written notice and hearing, if requested, upon a finding that the
13 applicant or private security provider has engaged in: (E) any
14 misdemeanor arising from conduct while in duty as a private security
15 provider and specifically Oregon Revised Statute 162.365 (Criminal
16 Impersonation). CP 1334. Mr. LaMont has a conviction in the State of
17 Washington for criminal impersonation. LaMont Decl. Pg. 4-5. CP
18 1152.
19

20 ORS 659A.199(1) makes it an unlawful employment practice for
21 an employer to discharge, demote, suspend or in any manner
22 discriminate or retaliate against an employee with regard to promotion,
23 compensation or other terms, conditions or privileges of employment
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1 “for the reason that the employee has in good faith reported information
2 that the employee believes is evidence of a violation of the state or
3 federal law, rule or regulation.” Ms. Smith brought the fact regarding
4 Mr. LaMont’s criminal conviction to Ms. Evans’ attention of on multiple
5 occasions. Smith Decl. ¶ 4. CP 1172. His continued monitoring and
6 supervision of the Oregon accounts is a direct violation of OAR 259-
7 060-0300(2). CP 1334. Ms. Smith also brought this to Mr. Bradley’s
8 attention on January 15, 2013. Smith Decl. ¶ 4. CP 1172. One week
9 later she was fired by Mr. Bullis under the direction of Mr. Bradley.
10 Smith Decl. ¶ 5. CP 1172. Ms. Smith’s activities in bringing this
11 violation of the Oregon administrative rules to the attention of Ms.
12 Evans, Mr. Bradley, and Mr. Bullis is protected activity and a violation
13 of ORS 659A.199.
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16 ALCOHOL

17 Ms. Smith brought Ms. Evans and Mr. Bullis alcohol
18 consumption during the workday to the attention of not only Ms. Evans,
19 but also to Ms. Mackenzie and Mr. Bradley directly. Smith Decl. ¶ 4.
20 CP 1172. The definition of executive manager contained in Oregon
21 Administrative Regulation (OAR) 259-060-0010(17) would include both
22 Ms. Evans and Mr. Bullis. Both of these individuals are arguably
23 committing a misdemeanor within the State of Washington by
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1 consuming alcohol and driving a motor vehicle should their blood-
2 alcohol level be above .08. CP 1319. A misdemeanor conviction
3 pursuant to OAR 259-060-0300(2)(E) would deny both Ms. Evans and
4 Mr. Bullis their personal licenses which they are required to maintain in
5 their capacities. CP 1334. Oregon Revised Statutes (ORS) 659A.199(1)
6 makes it a prohibited employment practice to discriminate against Ms.
7 Smith because she reported this activity.
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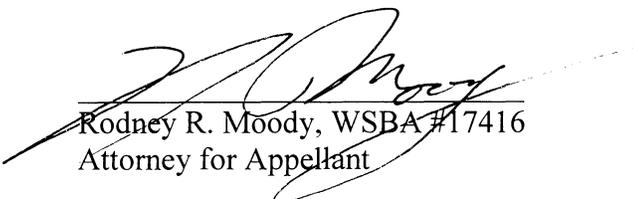
9 The above discussion outlines the statutorily protected activities
10 in which Ms. Smith engaged. The first element of a retaliation claim,
11 i.e. engaging in statutorily protected activity, is established for the
12 purposes of the summary judgment motion. The remaining third
13 element that a causal link between the activity and the adverse
14 employment action is also established. The Defendant of course
15 disputes that Ms. Smith was performing satisfactorily. As the Defendant
16 acknowledges Ms. Smith had a successful work history exceeding 15
17 years while employed for Sonitrol. Throughout 15 years of employment
18 Ms. Smith had not failed to dispatch on even a single occasion to a fire
19 alarm on her monitor. Evans Dep., Pg. 92, Ln. 18-21, Bullis Dep., Pg.
20 72, Ln. 13-16. CP 1160. The evidence also shows that other operators
21 have failed to dispatch on a fire alarm and not been terminated on the
22 first offense. Moody Decl., Exhibit 7, Exhibit 8. CP 1302-1307. Ms.
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There can be no showing of prejudice under the circumstances. Sonitrol was both aware clearly of the Retaliation claim being alleged in the Complaint as well as the elements which make up this cause of action. Sonitrol was also aware of the factual evidence developed during discovery which was for the most part developed from Mr. Bradley and the current employees of Sonitrol.

This simply is not a case where in response to a motion for summary judgment an entirely new legal theory or cause of action is advanced for the first time. The Court failed to properly consider the requirements of notice pleading in granting summary judgment. It is respectfully submitted this decision was legal error and should be reversed.

RESPECTFULLY SUBMITTED this 18th day of March, 2016.


Rodney R. Moody, WSBA #17416
Attorney for Appellant

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CERTIFICATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that I caused to be delivered via US Mail and Personal Service the foregoing to:

Counsel for Defendant
Ms. Portia Moore,
Mr. Joseph P. Hoag,
Mr. Anthony S. Wisen
Davis Wright Tremaine, LLP
777 108th Avenue NE
Bellevue, WA 98004-5149

DATED this 18th day of March, 2016,



John Catanzaro
Paralegal to Rodney R. Moody