

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

PHILIP BART KENDALL and
TERRY RAHLFS,

Plaintiff,

vs.

THE HOME DEPOT, INC., a
foreign corporation authorized to do business
in Alaska, and BILLY PARKER,

Defendant.

JAN 22 2008

Case No. 3AN- 06-13817 Civil

ORDER ON MOTION FOR RECONSIDERATION

Plaintiffs Philip Bart Kendall and Terry Rahlfs move for reconsideration of the court's grant of complete summary judgment against them. They raise issues regarding the burden of proof applied by the court and the nature of the covenant of good faith and fair dealing.

Plaintiffs posit that the court may have required a showing of both subjective and objective bad faith. The court in fact recognizes that these are alternative variants of bad faith claims, and that either suffices on its own.¹ But in this case neither plaintiff articulated a subjective-bad-faith theory.

¹ See Kendall Order 13.

Plaintiffs also suspect that, as to the discrimination claims, the court required a substantive showing of pretext beyond simply raising a material fact issue. Although the quoted formulations of the McDonnell-Douglas test are trial-based, the court was mindful that a vastly lower standard applies at the summary judgment stage. In fact, the court's decision was predicated upon failures to state *prima facie* cases. The court adverted to the paper-thin standard of proof for a *prima facie* claim.²

Lastly, plaintiffs urge that the court's articulation of the covenant of good faith as consisting of defined categories of proscribed employer conduct, rather than broad-based standards of general fairness, is unduly narrow. But a contention that the covenant expansively "means what it says" was definitively rejected in *Era Aviation v. Seekins*.³ That court held that any reason suffices to terminate an at-will employee, even a mere personality clash, unless the actual reason is an explicitly forbidden one:

Hence, in the at-will employment context, it is insufficient to show that an employee was discharged for reasons unrelated to job performance; instead, the employee must show a purpose that is, in itself, improper or impermissible.⁴

In its order, this court reframed the implications of *Era Aviation*, stating that a firing for even mean-spirited reasons might survive

² *Id.* at 27 ("Mr. Kendall is obliged to present some modicum of a [*prima facie*] case.")

³ 973 P.2d 1137, 1140 (Alaska 1999).

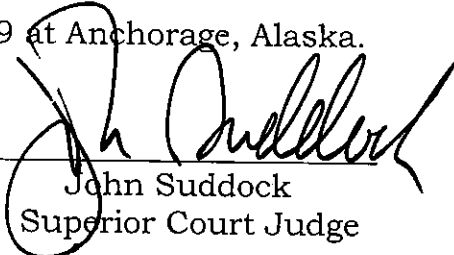
⁴ *Id.* at 1141.

scrutiny unless it fit neatly into a bad-faith pigeonhole. The court's blunt summary of "acceptable" rationales was intended to caution litigants from relying on discredited Queensberry rules. Employment law, like politics, "ain't beanbag". The price of misjudgment includes prevailing party attorney fees, a doubly unfortunate blow for a plaintiff-employee who may already have been in some sense victimized by the circumstances of his termination.

ORDER

The court **Denies** plaintiffs' Motion for Reconsideration of the court's grant of summary judgment to Home Depot and Billy Parker.

Dated this 21st day of January, 2009 at Anchorage, Alaska.


John Suddock
Superior Court Judge

I certify that on 1/21/09 a copy
of this order was mailed to counsel
at their address of record.
Joe Josephson
Peter Partnow

Mary Brault
Judicial Assistant