No. 21693 - Albert Coerte Voorhees v. Guyan Machinery Company, a West Virginia corporation and Robert Shell, Jr.

Workman, J., dissenting:

I respectfully dissent from the majority's opinion insofar as it upholds the punitive damages award, and undermines the law concerning mitigation of damages. First, I find no basis for the jury's punitive damages award against Guyan Machinery Co. (hereinafter referred to as Guyan). Mr. Voorhees' complaint predicated Guyan's liability on the acts of Robert Shell, chairman of the board of directors of Guyan, as follows:

> Upon learning that the plaintiff had obtained said employment, the defendant, Robert Shell, Jr., as an officer and director of the defendant corporation, Guyan Machinery Company, Inc., and in the course of his employment of said corporation, called officials of the said Polydeck Screen Corporation and threatened to involve them in a lawsuit if they continued their employment of the plaintiff. As a direct and approximate result thereof, the plaintiff's employment was terminated.

By special interrogatories, however, the jury found that Robert Shell, the only defendant actor in this case, was not acting maliciously when he informed Polydeck Screen Corporation (hereinafter referred to as Polydeck) of the noncompetition agreement Guyan had with Mr. Voorhees, but rather was acting "for the purpose of protecting the legitimate business interest of Guyan

. . . ." Even though Mr. Voorhees based his claim against Guyan on the actions of Mr. Shell, the jury assessed punitive damages against Guyan, for the same act on which it exonerated Mr. Shell. These two findings by the jury, which were upheld by the majority, are not only contrary, but illogical as well.

The majority upholds these two contrary jury findings by stating that

> The jury obviously concluded that Mr. Shell was legitimately ignorant of the law that applies to the enforcement of noncompetition agreements and that he acted in good faith. At the same time, however, the jury also must have concluded that the corporation, Guyan Machinery, had an obligation to place matters of this sort in the hands of competent lawyers and that the corporation's entrustment of matters of this type to a layman constituted such willful and wanton negligence as to amount to reckless and willful disregard of the rights of others-- in other words, the act was intentional on the part of the corporation.

The majority's reasoning that the jury must have concluded that Guyan "had an obligation to place matters of this sort in the hands of competent lawyers and that the corporation's entrustment of matters of this type to a layman" is what justified the punitive damage award is not only speculative, but also absurd! A corporation has no voice, action or intent, except that which is imputed to it from the words, deeds and thoughts of its agents. Thus, "[a] corporation

can only act through its employees and, consequently, the acts of its employees, within the scope of their employment, constitute the acts of the corporation." United States v. T.I.M.E.-D.C., Inc., 381 F.Supp. 730, 738 (W.D. Va. 1974). Accordingly, when Mr. Shell called Polydeck, he was speaking not only for himself, but for the corporation. Consequently, if Mr. Shell's actions were not malicious, than neither were the corporation's, and punitive damages were improperly awarded.

Moreover, the pronouncement by the majority that a corporation's failure to place these types of matters in the hands of competent lawyers constitutes a per se intentional act on the part of the corporation warranting a punitive damage award is reprehensible and flies in the face of the law of this state. See Mace v. Charleston Area Medical Cntr. Found., 188 W. Va. 57, 67, 422 S.E.2d 624, 634 (1992) ("The right to punitive damages is incumbent upon proof of further evidence of egregious conduct by the employer." (citing Harless v. First Nat'l Bank in Fairmont, 169 W. Va. 673, 289 S.E.2d 692 (1982)). The majority's pronouncement essentially eliminates the need to prove any evidence of egregious conduct by the corporation. According to the majority, no corporate official can even make a telephone call or write a letter if a potential dispute exists unless he calls a lawyer first. The

majority opinion should be entitled the lawyers full employment case. To say that Guyan is subject to punitive damages because they didn't immediately turn this over to a lawyer instead of making a call that even the jury found to be in the legitimate business interest of the company is immensely unfair to corporate entities.

I also disagree with the breadth of the new law enunciated by the majority in syllabus point four, which provides: "If anything has occurred to render further association between the parties offensive or degrading to the employee, an offer of further employment by the employer will not diminish the employee's recovery if the offer is not accepted." (Emphasis added). As written, this syllabus point threatens to undermine the well-established mitigation of damages principle. The term "anything" is overbroad and should be more narrowly stated to focus only on conduct in the realm of the law establishing tortious interference. Further, the determination of what is considered offensive or degrading to an employee should be governed by a reasonableness standard.

Based on the foregoing, I dissent.