

IN THE SUPREME COURT OF THE STATE OF NEVADA

MOHAMMAD ABBAS, N/K/A  
MARSHALL KAHN,  
Appellant,  
vs.  
LUCKY CAB COMPANY,  
Respondent.

No. 50904

**FILED**

**SEP 09 2009**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in an employment action. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant Mohammad Abbas, now known as Marshall Kahn, was employed as a taxicab driver for respondent Lucky Cab Company from October 1996 until he was terminated on August 22, 2007.<sup>1</sup> Abbas then filed a district court complaint alleging that Lucky Cab tortiously discharged him in violation of public policy because he complained about excessive "trip charges" assessed against him by the company, that the company converted his funds by assessing the allegedly excessive trip charges, and that he was defamed when the company provided an employment reference to a potential employer.

Following discovery, Lucky Cab filed a motion for summary judgment on Abbas's claims for tortious discharge and defamation, which Abbas opposed.<sup>2</sup> The district court granted the motion and this appeal

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<sup>1</sup>Abbas voluntarily resigned on June 2, 1997, but was rehired on June 13, 1997.

<sup>2</sup>The district court had previously dismissed Abbas's conversion claim.

followed. On appeal, Abbas challenges only the district court's grant of summary judgment on his tortious discharge claim.

We review an order granting summary judgment de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Id. The pleadings and other proof must be construed in a light most favorable to the nonmoving party. Id. But once the movant has properly supported the summary judgment motion, the nonmoving party may not rest upon general allegations and conclusions and must instead set forth, by affidavit or otherwise, specific facts demonstrating the existence of a genuine issue of material fact for trial to avoid having summary judgment entered against him. Id. at 731-32, 121 P.3d at 1030-31; NRCP 56(e).

A tortious discharge, or public policy tort, is one of three discrete employment claims for relief recognized in Nevada. D'Angelo v. Gardner, 107 Nev. 704, 711-12, 819 P.2d 206, 211-12 (1991). A tortious discharge may arise regardless of an employee's at-will status, when no comprehensive statutory remedy exists and the employer terminates an employee for reasons which violate public policy or the discharge is in retaliation for the employee's actions that "are consistent with or supportive of sound public policy and the common good." Id. at 712, 718, 722, 819 P.2d at 212, 216, 218. We have stated, however, that "public policy tortious discharge actions are severely limited to those rare and exceptional cases where the employer's conduct violates strong and compelling public policy." Sands Regent v. Valgardson, 105 Nev. 436, 440, 777 P.2d 898, 900 (1989). This court has recognized that claims for tortious discharge can arise when an employee is terminated for whistleblowing activities that involve reporting an employer's alleged

illegal activities to the appropriate governmental authorities. Allum v. Valley Bank of Nevada, 114 Nev. 1313, 970 P.2d 1062 (1998); Wiltsie v. Baby Grand Corp., 105 Nev. 291, 774 P.2d 432 (1989). We have also recognized the availability of a cause of action for tortious discharge when an employee is terminated for refusing to participate in an employer's alleged illegal conduct. Allum, 114 Nev. 1313, 970 P.2d 1062; see Bigelow v. Bullard, 111 Nev. 1178, 1187, 901 P.2d 630, 635 (1995). Here, Abbas contends that the district court erred in granting summary judgment on his tortious discharge claim. Abbas argues that he should be allowed to maintain a cause of action for tortious discharge under both whistleblowing and refusal to participate in illegal activities theories and contends that genuine issues of material fact exist regarding whether he was in fact tortiously discharged on either of these bases.

Having considered the parties' arguments and reviewed the record on appeal, we conclude that the district court properly determined that no genuine issues of material fact existed regarding Abbas's tortious discharge claim, and thus, summary judgment was properly granted in favor of Lucky Cab. See Wood, 121 Nev. at 729, 121 P.3d at 1029. In particular, the evidence shows that Abbas was acting in his private interests and not to further the public good as he did not report his concerns about the company's allegedly excessive trip charges to any appropriate governmental authority before his termination. Moreover, despite Abbas's unsupported claims that Lucky Cab collected excessive trip charges from drivers, the record reveals that the Taxicab Authority's response to Abbas's post-termination inquiry indicated that Lucky Cab did not violate any laws regulating the cab industry or trip charges, as there is no regulation of trip charges that the company could impose on its employees and the 20-cent limit under NRS 706.8826(3) applies only to

the amount that taxicab companies can charge passengers for the Taxicab Authority Fund. Finally, while Abbas made unsupported claims that his failure to comply with the company's tip declaration policy was a mere pretext for his discharge, Lucky Cab provided evidence of the policy in its handbook, Abbas's signed agreement to abide by the policy, trip sheets showing that Abbas failed to declare tip income, testimony by the general manager that Abbas had been warned to comply with the policy, the termination letter stating that Abbas had continually failed to comply with federal laws requiring the reporting of tip income for tax purposes, and the unemployment division's notice showing that Lucky Cab claimed to have discharged Abbas for refusing to comply with federal law to report tip income. Accordingly, as the district court did not err in granting summary judgment to Lucky Cab on Abbas's tortious discharge claim, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

Parraguirre, J.  
Parraguirre

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Michael Villani, District Judge  
Janet Trost, Settlement Judge  
Kristina S. Holman  
Howard & Howard  
Eighth District Court Clerk

<sup>3</sup>We further deny respondent's request for sanctions for appellant's alleged violations of NRAP 28 and 30.