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Freeman v. Rothrock,

657 S.E.2d 389, N.C.App. (2008)

A discussion of the recent
North Carolina Court of Appeals'
decision and its practical impact on
hiring prospective employees and handling
Workers' Compensation claims.

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THE PARTIES

RANDY B. FREEMAN, Employee, Plaintiff

v.

J.L. ROTHROCK, Employer,

and

NORTH AMERICAN SPECIALTY, Carrier,
AEQUICAP CLAIMS SERVICES, INC.

(Formerly Claims Control, Inc.) Administrator,
Defendants



On March 4, 2008, the North Carolina Court of Appeals ruled that a workers' compensation claimant who lied on his job application by saying he had no prior back injuries could not recover workers' compensation benefits for a back injury he later suffered on the job.



For the first time ever, the Court of Appeals adopted the three-part "Larson test," and recognized intentional misrepresentation as a defense in a workers' compensation claim. In reaching their decision, the Court relied heavily on two longstanding principles of contract law, **Equitable Estoppel** and **Fraud in the Inducement**.



EQUITABLE ESTOPPEL



Estoppel is a legal doctrine recognized both in common law and in equity in various manners. It is meant to complement the requirement of consideration in contract law. In general, it protects a party who would suffer detriment if:

- The defendant has done or said something to induce an expectation;
- The Plaintiff reasonably relied on the expectation;
- The Plaintiff would suffer detriment if that expectation were false.



“The doctrine of equitable estoppel is based on an application of the golden rule to the everyday affairs of men. It requires that one should do unto others as, in equity and good conscience, he would have them do unto him, if their positions were reversed.... Its compulsion is one of fair play.”



“A wrongdoer is precluded from profiteering from his fraud or wilful misrepresentation in an ordinary civil suit.”



The Court of Appeals in Freeman v. Rothrock indicated the law of estoppel applies in workers' compensation proceedings as in all other cases.



FRAUD IN THE INDUCEMENT

Fraud in the inducement is another common law doctrine pertaining to contracts. In common terms it is fraud which intentionally causes a person to execute an instrument or make an agreement or render a judgment; for example, misleading someone about the true facts.



It is the use of deceit or trick to cause someone to act to his/her disadvantage, such as signing an agreement or deeding away real property. The core of this type of fraud is misleading the other party as to the facts upon which she will base her decision to act.



The essential elements of fraud in the inducement are:

- That Defendant made a false representation or concealed a material fact he had a duty to disclose;
- That the false representation related to a past or existing fact;
- That Defendant made the representation knowing it was false or made it recklessly without knowledge of its truth;
- That Defendant made the representation intending to deceive plaintiff;
- That Plaintiff reasonably relied on the representation and acted upon it; and
- That Plaintiff suffered injury.



Fraud in the inducement renders a contract void. The employer-employee relationship is one based in principles of contract. Therefore, fraud in the inducement of employment would render the employment contract void.



In Freeman v. Rothrock, the Court of Appeals held that in the absence of a valid employment contract, a claimant would fail to meet the statutory definition of an “employee” and therefore would lack standing under the Workers' Compensation Act.



THE LARSON TEST



Larson's Workers' Compensation Law

§ 66.04 (2006)

Pursuant to the Larson test, an employee may be barred from recovering workers' compensation benefits as a result of a false statement at the time of hiring when the employer proves:

1. The employee must have knowingly and willfully made a false representation as to his or her physical condition.
2. The employer must have relied upon the false representation and this reliance must have been a substantial factor in the hiring.
3. There must have been a causal connection between the false representation and the injury.



The Court of Appeals in Freeman v. Rothrock expressly stated there was no specific statutory basis for their use of the Larson test.

Instead, the Court found authority for the test using the common law doctrines of Equitable Estoppel and Fraud in the Inducement.



FACTS OF FREEMAN V. ROTHROCK



A majority of the Court of Appeals
said the employer met all three
prongs of the Larson Test:



FALSE REPRESENTATION

The Plaintiff, Randy Freeman, admitted in testimony before the Industrial Commission that he had denied having any prior back problems when he filled out a medical history questionnaire in his application for a truck driver job in February 2000. On the questionnaire, Plaintiff denied

- 1) suffering from any prior health conditions, including backache or a "herniated intervertebral disk (slipped disk);"
- 2) the existence of "any health-related reason" that might prevent plaintiff from performing the job for which he was applying;



- 3) having "any physical defects" or "work limitations" that would have prevented him "from performing certain kinds of work;"
- 4) having "any disabilities or impairments" that might have affected his performance in the position for which he was applying; and
- 5) having ever filed a workers' compensation claim.

In reality, Plaintiff had suffered back injuries in 1992 and 1996 and filed for workers' compensation benefits after both incidents. After the 1996 injury, he had received a permanent partial impairment rating and a restriction to light-to-medium duty work.



RELIANCE UPON THE FALSE REPRESENTATION

- The employer, J.L. Rothrock, is a trucking company.
- They would not have hired Plaintiff if they had known about his condition.
- The employer's hiring director testified that the company could not have made "reasonable accommodations" for Plaintiff.



CAUSAL CONNECTION BETWEEN THE FALSE REPRESENTATION AND THE INJURY

- Expert testimony from three doctors indicated that Plaintiff's prior back injuries placed him at a higher risk for the type of lower-back injury he suffered in March 2002 while cranking a dolly. Plaintiff had received workers' compensation benefits until December 2002, when the employer filed to terminate the payments.



CROSS YOUR FINGERS
WILL THE DECISION
BE UPHHELD?



Deputy Commissioner Bradley W. Houser wrote the Deputy level decision, which awarded WC benefits to Plaintiff.

Defendants appealed.



A full panel of the Industrial Commission ordered Plaintiff's WC benefits to continue.

Thomas Bolch and Pam Young wrote the decision.

Buck Lattimore dissented on grounds Plaintiff was unable to prove continuing disability.



The Court of Appeals reversed and remanded the Industrial Commission in a 2-1 decision.

Judge Barbara Jackson wrote the Court of Appeals' decision and Judge Robert Hunter concurred.



However, Judge James A. Wynn, Jr. dissented, citing a 2004 Court of Appeals decision, Hooker v. Stokes-Reynolds Hosp., 161 N.C. App. 111, which rejected the Larson test and warned against "judicial legislation" in construing the Workers' Compensation Act.



*Plaintiff has appealed to the
North Carolina Supreme
Court...we wait.*



RELYING UPON
FREEMAN v. ROTHROCK
TO BETTER SCREEN
PROSPECTIVE EMPLOYEES



Incorporate pointed questions in the hiring process so prospective employees are required to fully disclose pre-existing medical conditions and/or injuries.



Labor Intensive Positions Job Descriptions



Americans With Disabilities Act “ADA”

Medical History Questionnaire



Help from Prior Employers



RELYING UPON
FREEMAN v. ROTHROCK
TO IMPROVE
WORKERS' COMPENSATION
CLAIMS HANDLING



Plaintiff's Initial Report of Injury



How your employer
representative can assist
your claim investigation



Perfecting your Recorded Statement



Claim Denial
vs.
Claim Acceptance



What if Freeman v. Rothrock
is overturned?

