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Clerk, Supreme Court of Appeals

Record No. 7303

In the
Supreme Court of Appeals of Virginia
at Richmond

AMERICAN AIRCRAFT ENGINEERING CORPORATION, ET AL.

v.

ROBERT C. MELTON

FROM THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

F. MATHER ARCHER
ATTORNEY AT LAW
10560 MAIN STREET
FAIRFAX, VIRGINIA 22030

410 THE MOSBY

AREA CODE 703
TELEPHONE 591-3440

December 23, 1969

Hon. Howard G. Turner, Clerk
Supreme Court of Appeals
Supreme Court of Appeals Building
Richmond, Virginia 23210

Re: American Aircraft Engineering Corporation, et al. vs. Robert C. Melton
Record No. 7303

Dear Mr. Turner:

In connection with the above case, my client, the

done further in his behalf, he will not be heard in oral argument, and that the appeal will be decided upon the record and the brief and argument of counsel for appellant. However, I am wondering whether there is anything further that I must or ought to file in this connection, as I dislike leaving any court wondering what happened to one of the parties and his counsel; and whether or not there are any particular ramifications that might result to my client in this regard.

I shall appreciate any help you can give me.

Thank you.

Very truly yours,

F. Mather Archer

FMA:pdc

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7303

AMERICAN AIRCRAFT ENGINEERING CORPORATION AND U. S. ELECTRONICS CORPORATION, Plaintiffs in error,

against

ROBERT C. MELTON, Defendant in error.

From the Circuit Court of the City of Alexandria
Percy Thornton, Jr., Judge

Upon the petition of American Aircraft Engineering Corporation, and U. S. Electronics Corporation a writ of error is awarded them to a judgment rendered by the Circuit Court of the City of Alexandria on the 27th day of February, 1969, in a certain motion for judgment then therein depending, wherein Robert C. Melton was plaintiff and the petitioners were defendants; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said court below in the penalty of $300, with condition as the law directs.

RECORD

page 1 }

* * * * *

MOTION FOR JUDGMENT

The Plaintiff, Robert C. Melton, moves this Honorable Court for judgment against the Defendants, jointly and severally; and in support thereof, avers as follows.

1. The Defendant, American Aircraft Engineering Corporation, is a Maryland Corporation transacting business in Virginia, at 800 Slaters Lane, Alexandria.

2. The Defendant, U. S. Electronics Corporation, is a Delaware Corporation, transacting business in Virginia, at 800 Slaters Lane, Alexandria.

3. On or about March 1, 1967, the Plaintiff, at the behest of Leon Frenk (President and Director of both Defendants) and after considerable negotiation, was employed by the Defendants in the position of general manager of each of said corporations for a minimum term of one year beginning March 13, 1967. The terms of the Plaintiff's employment are set out in full in the written contract of employment, dated March 1, 1967, an attested copy of which is attached hereto, made a part hereof by reference, and marked "Exhibit A."

page 2 } 4. The Plaintiff, in performance of said contract, began his employment and continued the same until November 27, 1967. On or about November 21, 1967, the Plaintiff tendered to the Defendants, in writing, his resignation, the same to become effective December 15, 1967.

5. The Plaintiff's said resignation was never accepted by the Defendants. On the contrary, on or about November 27, 1967, the Defendants demanded that the Plaintiff leave the plant at 800 Slaters Lane in Alexandria, Virginia, with no reason being given for such demand. On or about December 4, 1967, upon inquiry being made by the Plaintiff of him, said Leon Frenk informed the Plaintiff that his resignation was "accepted effective November 21, 1967."

6. In fact, the Plaintiff had never tendered a resignation to be effective November 21, 1967, but had made the tender set forth in Paragraph 5, above; and his said resignation has never been accepted by the Defendants. In lieu of acceptance of his said resignation, the Defendants chose to terminate the Plaintiff's employment under said contract as of November 27, 1967.

7. By the terms of said contract, as a result of the Defend-

ants' termination of Plaintiff's employment, the Plaintiff is entitled to severance pay totalling $3,000.00. The Defendants have failed and refused to pay said sum.

8. In addition, by the terms of said contract, the Plaintiff is entitled to the sum of $3,000.00, termed a bonus in said contract, which the Defendants have failed and refused to pay.

9. Furthermore, by the terms of said contract, the Plaintiff was entitled to vacation time which he did not use. The Defendants have failed and refuse to pay him vacation pay for three weeks in the amount of $750.00.

10. The Defendants have failed and refused to pay the Plaintiff the balance of his salary for the month of November, 1967, in the sum of $500.00 less a credit of $192.30, or a total of $307.70, for the period November 21, 1967 through November 27, 1967.

page 3 } 11. In consequence of the Defendants' breach of said contract, as aforesaid, the Plaintiff has suffered damages in the sum of $7,057.70.

WHEREFORE, the Plaintiff moves the Court for judgment against the Defendants, jointly and severally, in the sum of $7,057.70, together with interest at 6% from November 27, 1967 and his costs in this behalf expended.

Robert C. Melton

Phillips, Kendrick, Gearheart & Aylor

By: F. Mather Archer
F. Mather Archer
Counsel for Plaintiff
P. O. Box 665
Springfield, Virginia 22150

Filed in the Clerk's Office of the Corporation/Circuit Court on the 16 day of April, 1968.

Teste: Alvin W. Frinks, Clerk

By: Katherine F. Bradfield
Deputy Clerk

* * * * *

page 24 }

INTERROGATORIES TO PLAINTIFF

Pursuant to Rule 4:8, Plaintiff is required to answer each of the following Interrogatories under oath and to file said answers with the Court and serve a copy thereof upon Defendants' attorney within ten (10) days of receipt hereof by Plaintiff's attorney:

1. By which Defendant were you employed?
2. By which Defendant were you paid?
3. If you claim to have worked for both Defendants, describe the nature of your activities for each.
4. Prior to your resignation letter of November 21, 1967, whom had you informed that you were leaving Defendants' employ and when and how did you so inform each of them?
5. What services did you render for each of Defendants after November 21, 1967, specifying the date of each and the hours devoted thereto?
6. What reason did you give Defendants for your resignation?
7. Did you, at or about the same time, decline to undertake any assignment for or from Defendants? If so, please describe the same, the date thereof, your reasons and how you communicated them to Defendants.
8. When and how did Defendants respond to your resignation?
9. Where are you now employed and at what salary? When did you apply therefor and when were you accepted?
10. How much time did you take off from your work for Defendants during the time you were with them?

page 25 }

* * * * *

NATHAN L. SILBERBERG
Attorney for Defendants
1001 Pennsylvania Building
Washington, D.C. 20004
DI 7-4550

Filed Clerk of Courts City of Alexandria Apr 30 10:54 AM '68.

Alvin W. Frinks, Clerk

By A.W.F., Clerk.

* * * * *

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ANSWER OF DEFENDANT AMERICAN AIRCRAFT

Answering the Motion for Judgment, Defendant American Aircraft Engineering Corporation:

1-2. Admits the allegations of Paragraphs 1 and 2.

3. Admits the authenticity of the document attached to the Motion for Judgment but denies the other allegations of Paragraph 3.

4. Admits that Plaintiff submitted his resignation on November 21, 1967, but denies the other allegations of Paragraph 4.

5. Admits that the resignation was promptly accepted and that Plaintiff was asked to leave the premises but denies the other allegations of Paragraph 5.

6. Denies the allegations of Paragraph 6, as set forth therein, but admits receipt of Plaintiff's resignation and acceptance thereof.

7-9. Denies the allegations of Paragraphs 7, 8 and 9.

10. Admits that it did not pay Plaintiff after his resignation but denies the other allegations of Paragraph 10.

11. Denies the allegations of Paragraph 11.

BY WAY OF FURTHER DEFENSES, DEFENDANT ALLEGES:

12. The Motion for Judgment fails to set forth a cause of action for the relief therein sought.

13. To induce Defendant to engage him, Plaintiff misrepresented his experience and abilities as to Defendant's business.

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14. After entering upon his duties, Plaintiff failed to perform the same in manner he had promised Defendant.

WHEREFORE Defendant moves that the Motion for Judgment be dismissed, with costs.

* * * * *

Nathan L. Silberberg
Attorney for Defendants
1001 Pennsylvania Building
Washington, D. C. 20004
DI 7-4550

Filed 5/15/68.

Alvin W. Frinks, Clerk.

page 30 }

* * * * *

RESPONSE TO INTERROGATORIES

Now comes the Plaintiff and presents the following in response to the interrogatories received by him on May 2, 1968:

1. The Plaintiff was employed by both Defendants.

2. To the best of the Plaintiff's knowledge, he was paid by both Defendants, by checks imprinted with the name, "U. S. Electronics Corporation," and signed by Leon Frenk for U. S. Electronics Corporation.

3. The nature of the activities of the Plaintiff in his employment for both Defendants was general management.

4. Prior to the date of the Plaintiff's resignation letter of November 21, 1967, the Plaintiff had informed no one he was leaving the Defendants' employ. During the day of November 21, 1967, and prior to the actual delivery of said resignation letter, the Plaintiff informed the supervisor of each department orally.

5. Subsequent to November 21, 1967, and on November 22, 23 and 24, 1967, the Plaintiff performed his duties as general manager as he had done since the beginning of his employment, and, on each such date, the Plaintiff performed his said employment from on or about 7:15 a. m. to on or about 5:30 p. m. On November 27, 1967, the Plaintiff reported to work on or about 7:15 a. m., intending and prepared to perform his usual duties as general manager, and continued to do so until on or about 10:30 a. m., at which time he was ad-
page 31 } vised that his employment was terminated and that he was to leave the premises.

6. Increasing difficulty of ability to produce on schedule, to plan an effective organization and to maintain his health.

7. The Plaintiff, on November 21, 1967, declined to accompany Mr. Leon Frenk on a trip to Europe which was, at that time, tentatively scheduled for the first part of December, 1967, because the Plaintiff considered that the best interests of the Defendants would not be served by his making the trip, due to his forthcoming resignation on December 15, 1967.

8. On November 24, 1967, Mr. Leon Frenk calling Plaintiff into his office for the purpose of discussing his forthcoming resignation, but the resignation was not discussed. On November 27, 1967, Defendants informed Plaintiff that he was no longer employed and that he was to leave the premises that day, with no reference to Plaintiff's forthcoming resignation being made. On December 5, 1967, Defendants orally informed

Plaintiff that his resignation had been accepted effective November 21, 1967 and that a letter had been mailed to the Plaintiff so stating.

9. Objected to.

10. During the time when the Plaintiff was employed by the Defendants, the Plaintiff was absent from work three (3) consecutive days in August, 1967; the first two (2) days because of illness and the third day upon the advice of Mr. Leon Frenk that he remain at home and rest.

Robert C. Melton

Subscribed and sworn to before me this 15th day of May, 1968.

Nancy L. Hughes
Notary Public

My commission expires on June 2, 1971.

Phillips, Kendrick, Gearheart & Aylor

By: F. Mather Archer
F. Mather Archer
Counsel for Plaintiff
P. O. Box 665
Springfield, Virginia

Filed Clerk of Courts City of Alexandria May 17 9:54 AM '68.

Alvin W. Frinks, Clerk

By Alvin W. Frinks, Clerk.

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RESPONSE TO INTERROGATORIES

Now comes the Plaintiff and presents the following in response to Interrogatory Number 9:

9. a.) United States Government.
   b.) $9,971.00 gross, annually.
   c.) January 5, 1968.
   d.) February 9, 1968.

Robert C. Melton

Subscribed and sworn to before me this 22nd day of May, 1968. My commission expires June 2, 1971.

Nancy L. Hughes
Notary Public

Phillips, Kendrick, Gearheart & Aylor

By: F. Mather Archer
F. Mather Archer
Counsel for Plaintiff
P .O. Box 665
Springfield, Virginia

Filed Clerk of Courts City of Alexandria May 24 10:35 AM '68.
Alvin W. Frinks, Clerk
By K. F. Bradfield, Deputy Clerk.

* * * * *

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FINAL JUDGMENT ORDER

This 16th day of December, 1968 came the parties to this cause, in person and by counsel; and the Defendant, American Aircraft Engineering Corporation, having filed its proper response to the Plaintiff's motion for judgment, and the Defendant U. S. Electronics Corporation having failed to file any response to said motion for judgment; issue was joined upon all the pleadings heretofore filed. Thereupon, the parties having waived trial by jury and elected to submit all matters of law and fact to the court for hearing and determination, without the intervention of a jury; and the court having heard the evidence and arguments of counsel, finds that the Plaintiff is entitled to salary, based upon annual remuneration of $15,000.00, in the amount of $10,690.17 for the period March 13, 1967 through November 27, 1967, less the sum of $8,305.20 heretofore paid to the Plaintiff by
page 37 } the Defendants on account of salary, or a total sum of $2,384.97; and the court further finds in favor of the Defendants on the questions of severance pay and

vacation pay as claimed in the motion for judgment. It is therefore,

ADJUDGED AND ORDERED that judgment be, and the same hereby is rendered for the Plaintiff, Robert C. Melton, against the Defendants, American Aircraft Engineering Corporation and U. S. Electronics Corporation, joint and severally, in the amount of $2,384.87, as the balance of salary earned by the Plaintiff and unpaid, together with interest thereon from November 27, 1967, until the same is paid, and the Plaintiff's costs in this behalf expended.

The Plaintiff excepts to so much of the judgment of the Court as is rendered in favor of the Defendants; and the Defendants except to so much of the judgment of the Court as is rendered in favor of the Plaintiff.

AND THIS ORDER IS FINAL.

Entered: February 27, 1969

Percy Thornton, Jr.
Judge

F. Mather Archer, Attorney for p. q.
10560 Main Street
Fairfax, Virginia 22030

Seen and excepted to:

Nathan L. Silberberg, Attorney for p. d.
927 South Walter Reed Drive
Arlington, Virginia 22204

* * * * *

page 40 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Defendants American Aircraft Engineering Corporation and U. S. Electronics Corporation hereby appeal from the judgment entered herein against them on the 27th day of February, 1969, and announce their intention of applying for a Writ of Error and *Supersedeas* to the Supreme Court of Appeals.

ASSIGNMENTS OF ERROR

1. The Trial Court erred in denying Defendants' motion to strike the evidence at the close of Plaintiff's case.
2. The Trial Court erred in finding for Plaintiff, although he failed to prove his claim by a fair preponderance of the evidence.
3. The Trial Court erred in concluding that, notwithstanding his breach of a fixed-term employment contract, Plaintiff was entitled to recover part of what that contract designated as a bonus, and salary for time beyond his leaving such employment.

Nathan L. Silberberg
Attorney for Defendants
1001 Pennsylvania Building
Washington, D. C. 20004
DI 7-4550

Filed Clerk of Courts City of Alexandria Apr 15 10:02 AM '69.

Alvin W. Frinks, Clerk.
By K. F. Bradfield, Deputy Clerk.

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ASSIGNMENTS OF CROSS-ERROR

The Plaintiff, Robert C. Melton, herewith assigns Cross-Error to the judgment of the Circuit Court of Alexandria as follows:

1. The trial court erred in denying the Plaintiff severance pay in accordance with the contract of employment and the evidence.

F. Mather Archer
F. Mather Archer, Attorney for Plaintiff
10560 Main Street, Suite 410
Fairfax, Virginia

* * * * *

Filed Clerk of Courts City of Alexandria Apr 28 11:18 AM '69.

Alvin W. Frinks, Clerk

By Alvin W. Frinks, Clerk.

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STATEMENT OF TESTIMONY

This case was heard by the Honorable Percy Thornton, without a jury, on the 16th day of December, 1968.

PLAINTIFF'S CASE

ROBERT C. MELTON

Plaintiff testified that he had worked for Defendants under a Memorandum of Employment dated March 1, 1967 (Pl. Ex. 1); that he submitted a letter of resignation dated November 21, 1967 (Pl. Ex. 2), said resignation to be effective December 15, 1967; that he had been called November 24, 1967, to the office of Leon Frenk, Defendants' president, concerning his resignation; that the discussion held that day pertained to a proposed trip to Europe and that no definite conclusion was reached regarding the trip or the Plaintiff's resignation; that he heard nothing further until Mr. Abse called him on the 27th to tell him that he was through as of then, and to leave the plant, and that he had left immediately, returning only to pick up his salary check on December 5, 1969; that he had been paid salary, through November 21, 1967, but had not been paid salary through November 27, 1967; that he had not received severance pay upon termination of his employment by the Defendants; that he had taken no vacation, but had not applied for any, and that he had not received
page 47 } any vacation pay; that the Defendants had not indicated to him any acceptance of his resignation until he had received a written acceptance of his resignation some months later, in April, 1968, and then only after he had contacted Mr. Abse therefor; that he had returned to work for Defense Supply Agency, his previous employer, in February, 1968.

Upon cross-examination by the Defendants, he testified that he was currently earning $9,800.00 per year as against $9,600.00 from the same agency before he joined Defendants but denied that he had been seeking to re-enter Government employ when he resigned from Defendants.

Defendant's motion to strike the evidence was denied.

DEFENDANTS' CASE

DAVID I. ABSE'

A director of Defendants and executive assistant to Leon Frenk, he testified that he was principally concerned with plant production; that the meeting in the latter's office on November 24 was called by him (Abse) on the basis of the letter of resignation and that the resignation had been accepted and Plaintiff had been told to leave the premises that day. He identified a letter from Plaintiff, dated November 21, wherein the latter declined to make a planned trip to Europe for Defendants. (D. Ex. C)

HORACE FRENK

As an officer of the Defendants, he testified that he had mailed a check and covering letter to Plaintiff (D. Ex. A, B.) on November 27, thereby concluding Defendants' relations with and responsibilities to Plaintiff.

Percy Thornton, Jr.
Judge

Dated: May 5, 1969

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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