

Massachusetts Federal Court Denies Motion to Dismiss Defamation Claim After Employee is Escorted Out of Work Following Termination

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The Federal District Court of Massachusetts recently denied a defendant company's motion to dismiss a defamation claim following the termination of the company's Vice President.

The plaintiff's former employee, Sandra Madden, was terminated from Ascensus College Savings Recordkeeping Services ("Ascensus") and subsequently filed suit alleging several claims such as breach of contract, violation of Federal Equal Pay Act, and gender discrimination. ACS moved to dismiss the following claims for failure to state a claim upon which relief can be granted: (1) breach of contract, (2) breach of implied covenant of good faith and fair dealing, and (3) defamation. The Court granted the motion to dismiss in part, but allowed the defamation claim to proceed.

Madden's defamation claim was based on the way Ascensus treated her at the time of her discharge. Specifically, after Ascensus informed her that she was being terminated, Ascensus personnel escorted her out of ACS' offices in front of her co-workers and suspended her email access.

Madden alleged that her treatment in that regard was unusual and that no prior Vice President or President of Ascensus had ever been treated in that manner when they were terminated. In her Complaint, Madden further alleged that the conduct was a "false statement" that "suggest[ed] that [she] had engaged in criminal activity" and "discredited her in a respectable class of the community."

In denying the motion to dismiss, the Court emphasized that, under Massachusetts law, conduct alone can support a defamation claim, citing



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the cases *Phelan v. May Dep't Store Co.*, 443 Mass. 52 (2004) and *Craig v. Merrimack Valley Hosp.*, 45 F. Supp. 3d 137 (D. Mass. 2014). Because a plaintiff has a relatively low threshold to defeat a motion to dismiss (which is filed prior to the discovery process), Madden was only required to allege a plausible claim that third parties would have reasonably understood Ascensus' conduct to be defamatory. Madden's complaint included three allegations supporting her claim that being walked out of the building after she was terminated constituted defamatory conduct. Thus, the Court denied Ascensus' motion to dismiss her defamation claim.

The Court made it clear that its decision to allow the defamation claim to survive did not mean that Madden's defamation claim would survive a motion for summary judgment (which is filed after discovery is completed), but that Madden had alleged sufficient facts regarding her defamation claim to survive a motion to dismiss that claim. So, what can employers learn from the court's denial of Ascensus' motion to dismiss Madden's defamation claim? The case and the court's ruling provides employers with a cautionary tale about how employees should be treated when they are being discharged – even when the discharge itself is lawful. When terminated employees are treated with dignity, respect and as much privacy as practicable, they often do not consider taking any legal action against their former employers. However, as the Madden case reflects, when such employees are treated in a harsh, disrespectful or embarrassing manner, they frequently obtain legal counsel and pursue legal claims which can be extremely costly for the former employer – even if the company can ultimately prevail on the merits of the case. Following the “golden rule” is the best approach – that is, management should treat such individuals the way management would want to be treated in similar circumstances. While that may not guaranty that the terminated employee will not file a lawsuit, it will certainly help reduce the chances of that happening.