

Termination of Employee Refusing to Perform Copyright Infringement Was Illegal

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The Texas Court of Appeals for the Second District found that an employee was wrongfully terminated from an architecture firm when he refused to engage in behavior that he believed would expose him to liability for criminal copyright infringement. ***Young v. Nortex Foundation Designs***, Case No. 02-11-00470 (Tex. App., Feb. 7, 2013).

Young, employed by an architecture firm as a drafter, was asked to design a foundation plan based on the copyrighted architectural designs provided to him by his employer. The architectural designs he was asked to work on had a black stamp stating “if this stamp is not red it is an illegal set of plans.” The stamp also stated “reproduction of these plans by any means is prohibited by federal law.” In light of the black stamp Young told his supervisor that he was uncomfortable working on the plans. His supervisor told Young that he would be fired if he refused the assignment. Young refused and was terminated. He subsequently filed a claim for wrongful termination.

At trial, the jury found in favor of Young and awarded him damages. After the verdict, the defendant filed a motion for judgment notwithstanding the verdict and reiterated its argument that it had never asked Young to perform an illegal act because the homeowner owned the original design, and the copies were made on her behalf (and were therefore authorized). After the trial court granted the motion, Young appealed.

The appellate court reversed. In an employment-at-will state, such as Texas, where this case was played out, either party can terminate the relationship at any time without notice or explanation. However, there exists a narrow public policy exception to this rule (explained in *Sabine Pilot Service, v. Hauck*) to the effect that an employer may not fire an employee for refusing to perform an illegal act. The policy is predicated on the proposition an employee should not be forced to choose between losing his or her employment and engaging in a criminal act.

The trial court found that this exception did not apply because the homeowner had a red-stamped version of the architectural plans, which the employer knew about. The trial court reasoned that therefore the employer had a right to request that Young work on the plans.

However, the appeals court noted that the case law exception above was not entirely on point, because in *Sabine Pilot* the employee was terminated for refusing to dump waste, an action that both

the employer and the employee knew to be illegal. In this case however, only the employer knew that the action was not illegal. The Court explained that “the copyright holder in this case (the creator of the architectural plan) granted the homeowner a license to make reproductions and derivative works from red-stamped copies. The holder did not grant the licensee the right to use black-stamped copies. To use black-stamped copies therefore would be to exceed the scope of the license granted and would violate the copyright.” Accordingly, the Court concluded that the employee could not be terminated for refusing to perform an act that he believed was illegal.

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