

MARIN COUNTY

EMPLOYMENT

Sexual Harassment — Hostile Work Environment — Retaliation

Car dealership argued GM voluntarily resigned

ARBITRATION **Defense**

CASE Ellen Beller v. Sonnen Motorcars, LLC and Peter Sonnen, No. CIV 083892
COURT Superior Court of Marin County, Marin, CA
NEUTRAL(S) Michael Loeb
DATE 4/11/2011

PLAINTIFF

ATTORNEY(S) Karine Bohbot, Bohbot & Riles, LLP, Oakland, CA

DEFENSE

ATTORNEY(S) Daniel P. Costa, The Costa Law Firm, Gold River, CA
 Derek B. Egge, The Costa Law Firm, Gold River, CA

FACTS & ALLEGATIONS In January 2006, plaintiff Ellen Beller, 47, was hired as general manager of Sonnen Porsche as an “at-will” employee. Beller claimed that although she initially applied to hold the GM position for Sonnen’s Porsche dealership only, due to Sonnen terminating its GM at the VW/Audi dealership, Beller agreed to undertake the management responsibilities for both dealerships, as well as assist in the business office.

In the fall of 2006, Peter Sonnen, owner of Sonnen Porsche, claimed he became increasingly concerned about Beller’s management capabilities. He said he received complaints from other employees about her management style, attendance at meetings and work, and her appearance. Sonnen claimed he began counseling Beller and sent her an e-mail in February 2007 in regards to her performance issues and absences. After reviewing the e-mail, Beller decided to resign her position.

Beller sued Sonnen and Sonnen Motorcars LLC, doing business as Sonnen Porsche, alleging gender discrimination, sexual harassment, disability discrimination, retaliation, failure to accommodate, failure to engage in an interactive process, bad faith, and constructive discharge resulting in breach of a written or oral employment contract. The matter proceeded to arbitration.

Beller contended that from the beginning of her employment, Sonnen made inappropriate comments of a sexual nature. She claimed that she wasn’t initially concerned with the comments, given the male-dominated industry, but that she began to feel adverse treatment once Sonnen was able to find

another male employee to take on the GM position at the VW/Audi dealership. Beller alleged Sonnen became hostile toward her since he was no longer as dependent on her for the VW/Audi dealership and business office.

Beller also alleged that once she complained to Sonnen about his conduct, Sonnen created an intolerable working environment for her. She claimed Sonnen began to criticize her work performance, take responsibilities away from her and embarrass her in front of subordinates, among other conduct not faced by any other male employees. Beller claimed that as a result of this hostile environment, she became ill. She alleged that rather than engage in an interactive process to determine whether she required reasonable accommodations for her medical condition, Sonnen reprimanded her for needing time off due to her illness. Beller alleged she was given no alternative but to resign.

Sonnen argued that Beller was not subjected to gender discrimination or a hostile work environment. He further claimed that she was not subjected to an adverse employment action (constructive discharge) because she voluntarily quit her position.

Sonnen contended that Beller created an atmosphere of turmoil, low morale and gossip amongst her staff, and that issues arose with respect to content on her MySpace account, attire and staff interaction. Sonnen argued that Beller failed to perform her duties in a manner that was up to his standards, and that overall, it was Beller’s inability to take constructive criticism that led her to voluntarily quit.

In regards to her disability/failure to accommodate claims, Sonnen argued that Beller failed to establish an actionable “physical disability” or “medical condition,” and that she failed to initiate the interactive process, specifically identifying her alleged disability and limitations, and suggesting certain reasonable accommodations.

INJURIES/DAMAGES *emotional distress*

Beller alleged that she suffered lost earnings, including salary and commissions, as a result of her constructive discharge. Her expert economist claimed that Beller suffered a total economic loss of \$154,000, based on Beller’s compensation agreement.

Beller also claimed emotional distress damages, as well as attorney costs and fees and punitive damages.

The defense contended that Beller was not entitled to any damages, as she was not subjected to discrimination or harassment. However, in the alternative, the defendants argued that Beller was not entitled to more than two or three months of lost wages because she obtained other comparable work shortly after resigning from Sonnen.

Further, Sonnen argued that in regards to damages for emotional distress, due consideration should be given to the amount of outside stressors being felt by Beller at or about the time of her resignation and that an appropriate apportionment should be made.

RESULT The arbitrator found for the defense as to all of Beller’s claims.

DEMAND \$800,000
OFFER \$75,000 (CCP 998), plus reasonable attorney fees to be determined by the court
INSURER(S) Federated Mutual Insurance Co.
PLAINTIFF EXPERT(S) Phillip H. Allman, Ph.D., economics, San Francisco, CA
 Valerie Fox, psychology/counseling, Napa, CA
DEFENSE EXPERT(S) None reported

EDITOR'S NOTE This report is based on information that was provided by plaintiff's and defense counsel.

—Dan Israeli

SONOMA COUNTY

MEDICAL MALPRACTICE

Dentist — Informed Consent — Negligent Treatment

Dentist argued procedures met the standard of care

VERDICT Defense
CASE Susan Aldrich and Scott Aldrich v. Patricia A. Murray, Patricia A. Murray Dental Corporation, No. SCV 242308
COURT Superior Court of Sonoma County, Sonoma, CA
JUDGE Elliot Daum
DATE 4/13/2011
PLAINTIFF ATTORNEY(S) Douglas C. Fladseth, Law Offices of Douglas C. Fladseth, Santa Rosa, CA
DEFENSE ATTORNEY(S) Arthur W. Curley, Bradley, Curley, Asiano, Barrabee, Abel & Kowalski, P.C., Larkspur, CA
 Carolyn Gyermek, Bradley, Curley, Asiano, Barrabee, Abel & Kowalski, P.C., Lakspur, CA

FACTS & ALLEGATIONS In February 2007, plaintiff Susan Aldrich, 58, a home care provider, underwent sinus augmentation surgery and soft-tissue graft surgery performed by Dr. Patricia Murray, a dentist and periodontist, in Santa Rosa. Aldrich claimed that as a result of the procedure, she suffered from an oro-antral fistula, chronic sinusitis and paresthesia of her lip.

Aldrich sued Murray and her corporation for dental malpractice.

Aldrich claimed that prior to seeing Murray she visited six other dentists for dental implants and related surgeries. She was initially seen by Murray on Aug. 11, 2006, on referral from Dr. Harry Albers, a general dentist in Santa Rosa, for an implant consultation due to missing teeth, ill-fitting dentures and a desire to improve her appearance.

X-rays were taken at the Aug. 11 appointment. Murray initially developed a treatment plan which included the extraction of teeth nos. 4, 5, 6 (upper right), 20, 21 and 27 (lower front) with placement of implants in those areas. Aldrich also suffered from long-term tooth and associated bone loss. The treatment plan included guided tissue regeneration due to tissue and bone loss on the upper left and soft-tissue grafts at 22-23 and 25-26 due to loss of attached gums in that area.

Aldrich was seen for six pre-surgical visits by Murray in anticipation of surgery. On Sept. 22, a full scan X-ray was taken. On Oct. 3, Aldrich was provided with prescriptions for pain medication and antibiotics for the proposed surgery. The treatment plan developed in September was not completed as planned because Aldrich canceled and instead sought additional consultations with other dentists.

Aldrich returned to Murray on Feb. 1, 2007, after she obtained opinions and estimates from three other dentists.

On Feb. 6, Murray provided Aldrich with a revised treatment plan which included sinus lifts (surgically lifting the membrane on the floor of the lower sinus and placing bone grafting material); ridge augmentations (building up bone of the jaw); osseous (bone reshaping) surgery; and free soft-tissue grafts (replacing the gums lost to recession). Aldrich was provided with prescriptions for pre-operative antibiotics and pain medication.

On Feb. 14, Murray performed bilateral sinus lifts with bone graft material and also placed bone graft material in the area of teeth nos. 7 to 10. Murray was aware of a perforation of the right sinus membrane (agreed to be a risk of surgery) and therefore placed Biomed Extend in the area to contain the graft. There was also a small gum tissue perforation in the flap raised to expose the bone over the sinus at tooth no. 11 on the left.

Aldrich contacted Murray's office several times during the evening of Feb. 14. At approximately 12:30 a.m. on Feb. 15, Aldrich, accompanied by her husband and daughter, was met by Murray at her office to evaluate Aldrich's representations of excessive bleeding. Murray examined Aldrich and only found she had a small amount of oozing from the bone graft area on the lower arch. The crestal incisions were intact.

On Feb. 16 and Feb. 18, Aldrich was seen at a Kaiser clinic in Santa Rosa for complaints of pain and swelling. The nurse practitioner noted slight swelling and bruising on Feb. 16, which was resolving by the next visit on Feb. 18. On Feb. 18, the nurse practitioner ordered a non-emergent sinus CT scan. Aldrich was not referred to anyone and was not advised to return unless her symptoms worsened.