

Wilentz Wins Dismissal of Employment Claims Against CPR Restoration in the U.S. District Court for the Eastern District of Pennsylvania

08/21/16

A Wilentz litigation team led by Daniel S. Bernheim, 3d, prevailed on behalf of CPR Restoration & Cleaning Service, LLC (“CPR LLC”) and CPR Restoration, Inc. (“CPR Inc.”), collectively “CPR,” in litigation brought in the U.S. District Court for the Eastern District of Pennsylvania by former company supervisor Stanley Kieffer. CPR provides emergency remediation services at commercial and residential properties that have sustained damage by water, fire, smoke, mold, sewage and wind in the greater Philadelphia region and northern New Jersey.

In *Stanley Kieffer v. CPR Restoration & Cleaning Service, LLC, et al.*, Kieffer alleged that he had been constructively discharged by CPR from his employment in violation of the Family & Medical Leave Act (“FMLA”) and the Americans with Disabilities Act (“ADA”). CPR denied all allegations of the Plaintiff’s lawsuit and moved for Summary Judgment, seeking dismissal of all claims.

Plaintiff argued that the CPR Defendants – neither of which employed 50 or more individuals, as required for FMLA applicability – should be treated as either a “joint employer” or an “integrated employer” for the purposes of the whether the FMLA would apply after the plaintiff needed indefinite time off from work for medical reasons. The District Court agreed with CPR’s position that neither doctrine applied and also held, as Wilentz’s attorneys argued, that the Plaintiff was not a ‘qualified individual’ as defined under the ADA. Specifically, with regard to Plaintiff’s argument that CPR should have provided him with a driver to and from work as a ‘reasonable accommodation’ under the ADA, the Court explained, “As Kieffer was unable to perform physical labor as a result of his shoulder injury, he would not have been able to perform the essential – *i.e.*, physical – functions of the job even if his request for a driver had been granted.” In dismissing Plaintiff’s ADA claims against CPR LLC, the Court held that “Because Kieffer would not have been able to perform the essential duties of his position with or without accommodation, Kieffer was not a qualified individual during this period.”

With respect to Kieffer’s claims of subsequent retaliation after being rehired by CPR Inc., during which time the only medical ailment which interfered with Kieffer’s work was a “very bad cold,” the District Court expressly adopted CPR’s argument on Summary Judgment that the common cold “is precisely the kind of ‘transitory and minor’ impairment that is not considered a disability under the ADA.” Thus, as CPR Inc. was entitled to judgment as a matter of law in its favor on Plaintiff’s claims that CPR violated the ADA.

CPR also prevailed on its Summary Judgment Motion with respect to Plaintiff’s claims, brought under Pennsylvania common law, for alleged retaliation for Kieffer’s exercise of his worker’s compensation rights (a right which CPR fully supported). As the Court held, “there is no evidence that the company opposed or otherwise impeded his pursuit of benefits.” With no viable statutory or common law claims remaining, the Plaintiff’s lawsuit against CPR was dismissed.

Attorney

- Daniel S. Bernheim, 3d

Practice

- Business & Commercial Litigation