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This week we bring you a case from the Eleventh Circuit Court of Appeals where an employee was properly discharged after posting pictures of herself and her co-workers on her MySpace page. Also included is a case from the Alabama Supreme Court regarding a bank's ability to recover under a letter of credit in a commercial transaction involving several controlling documents that were required to be construed together.

Marshall v. City of Savannah, Georgia, United States Court of Appeals, Eleventh Circuit (No. 09-13444 Feb. 17, 2010) (Employee who posts work related images on her personal web page is rightfully terminated based on the photos and her response to the reprimand received.) Tiffany Marshall (Marshall) was hired by the City of Savannah in September 2006 as a firefighter trainee on a probationary status. After beginning training, Marshall posted pictures on her MySpace page of her and her firefighter co-workers in uniform. One of these photos was taken from the fire department's web page and depicted the diversity of the fire department. Displayed beside these photos, however, were two other photographs of Marshall; one photo depicted Marshall partially covered by a towel and the other depicted Marshall apparently without clothing. The caption for the latter photo alluded to Marshall's modeling aspirations. The Chief of Savannah Fire was alerted to the photos by an anonymous source and the site was investigated by department's public information officer. Marshall was given an oral reprimand for posting the photos and ordered to take them down. The basis for the department's objection was that the use of the department photos in conjunction with the photos of the scantily clad Marshall discredited the department's image and Marshall was using her status as a fire fighter to "seek personal publicity," which was against department rules. The department issued a general order to all employees directing any and all photos or images of Savannah Fire employees to be removed from personal web pages within one week.

When Marshall was directly confronted about the photos, she became combative and asserted that there were others who also used department photos on their personal MySpace pages. The department Chief asked for those individuals' names and Marshall refused to cooperate. She further refused to take down all of the photos depicting firefighters in uniform. Three days after the meeting, Marshall was terminated for her refusal to comply with department policy, disrespect toward the administration, and disregard for her oath as a firefighter employee. Marshall sued for sex discrimination under Title VII and 42 U.S.C. § 1983. She claimed that she was singled out as a female employee because similarly situated male employees were not treated similarly. Marshall also brought a claim for retaliation and a claim asserting that her right to freedom of speech was being violated.

The department moved for summary judgment on all counts and the district court granted the department's motion, holding that all of Marshall's claims were dismissed. The court found that Marshall did not prove her prima facie case for gender discrimination because she simply did not establish that similarly situated male employees were treated differently. The other claims were disposed of on procedural grounds for Marshall's failure to properly assert those claims. Marshall appealed the decision on her gender discrimination claims and the Eleventh Circuit Court of Appeals upheld the district court's ruling. The Court of Appeals found that Marshall had failed to show all of the elements necessary to prove her case. The court also found that Marshall's termination was not based solely on the photographs, but was in conjunction with the insubordination shown to her employer after the incident was brought to her attention.

This case, while typical of the standards used in employment discrimination cases, is somewhat atypical in its facts and therefore interesting in that it involves what is quickly becoming an issue in the employment realm. Employers are more and more frequently having to deal with employees who post work related information and images on their personal web pages. Under circumstances such as Marshall's, these employees may be subject to reprimand and even termination if there is a legitimate basis for the employer's objection to the content.

Diamond v. Bank of Alabama, Alabama Supreme Court (No. 1051033, Feb. 19, 2010) (Bank was able to recover its full exposure amount against letter of credit obligor and its guarantors, despite the fact that a separate, but related, line of credit for the same debt had expired.) Premier Business Centers, Inc. (PBC) entered into a lease with Gateway Alabama Properties, Inc. for almost 20,000 square feet of space in a corporate office center in Birmingham, Alabama. As security for this lease, PBC was required to put up a letter of credit in favor of Gateway. Bank of Alabama (the Bank) issued a \$200,000.00 letter of credit for the benefit of Gateway. The Bank required collateral from PBC in the form of a blanket lien and also personal guaranties from the two primary owners of PBC, Richard A. Diamond and O. Williams Evans. Diamond and Evans executed these personal guaranties in favor of the Bank. The letter of credit stipulated that it was to expire on August 1, 2004, but would be automatically extended without amendment from the expiration date. PBC also executed a promissory note in favor of the Bank, agreeing to pay up to \$200,000.00 for funds advanced under the letter of credit, plus interest. PBC also executed a line of credit agreement in favor of the Bank, agreeing to be responsible for any and all sums advanced up to \$200,000.00. The line of credit expired on August 1, 2004, and did not have any provisions for renewal.

On August 10, 2004, the Bank issued a check for \$54,942.88 to Gateway in accord with the terms of the letter of credit. On August 24, 2004, an additional \$145,057.12 was issued to Gateway. Demand was made on PBC, Diamond, and Evans to promptly reimburse the Bank and when reimbursement was not made, the Bank sued all three for the amounts issued under the letter of credit. PBC, Diamond, and Evans all asserted that because the line of credit had expired on August 1, 2004, any amounts funded after that date by the Bank were not the responsibility of the borrowers. The Bank moved for summary judgment and the trial court awarded the Bank \$200,000.00 in damages and \$132,601.67 in attorney fees. Diamond appealed the judgment and the Bank cross appealed, asserting that it was also entitled to interest on the judgment.

The Alabama Supreme Court examined the loan documents and found that the letter of credit would automatically renew. Diamond's guaranty also automatically renewed and would be extended to the extent the promissory note securing the letter would be extended. The note contained language allowing the Bank to extend the note without notice to the obligor or the guarantors. There was no provision contained in the line of credit for its extension past the expiration date and, therefore, the line of credit did expire on August 1, 2004. The court also found that there was no money owed by PBC, Diamond, or Evans as of August 1, 2004, the date the line of credit expired.

The court found that even though the line of credit had expired, the obligations underlying the note, the letter of credit, and the guaranties could all be extended beyond the date of expiration of the line of credit. The obligations of the note and guaranties existed independent of the obligations of the letter of credit, although all of the documents concerned the same subject matter and transaction. The note referred only to the letter of credit and the guaranties, and did not reference or incorporate the line of credit. Therefore, the Bank properly advanced funds to Gateway for which PBC, Diamond, and Evans were all jointly and severally liable. The court also found that the trial court did not address how much interest the Bank would be entitled to under the note and remanded the case to the trial court for consideration of this issue to award the Bank appropriate interest.

This decision underscores the principle that in a complex commercial transaction involving multiple iterations of the parties' obligations, it is important to read all of the provisions together to make sure that the obligations are completely understood.



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