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Eleventh Circuit Says Private Employers Can Deny Employment Based on Bankruptcy

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The 11th Circuit Court of Appeals, which governs all federal courts in Florida and therefore affects all Florida employers, recently held, in *Myers v. Toojay's Management Corporation*, No. 10-10774, 2011 WL 1843295 (11th Cir. May 17, 2011), that the Bankruptcy Code allows private employers – but not governmental employers – to deny employment to persons on the ground that they are or have been in bankruptcy.

The Plaintiff, Eric Myers, filed suit against Defendant Toojay's Management Corporation ("Toojay's"), claiming that Toojay's had refused to hire him, or in the alternative, had hired him and then improperly terminated him, due to the fact that he had previously filed for bankruptcy. In either case, Myers argued that Toojay's had engaged in bankruptcy discrimination in violation of 11 U.S.C. Section 525(b). On appeal, Myers sought review of orders by the trial court entering summary judgment against him on his refusal to hire claim and denying a motion for judgment as a matter of law and a motion for a new trial on his wrongful termination claim.

The primary issue on appeal was whether Section 525(b), which applies to private employers, prohibits such employers from denying a person employment because of a bankruptcy. The 11th Circuit, joining the 3rd and 5th Circuits, held that it does not. In so holding, the 11th Circuit explained that Section 525(b) – unlike Section 525(a), which applies to governmental units – does not contain language that expressly forbids denying employment because of a bankruptcy. Indeed, according to the 11th Circuit, a comparison of Sections 525(a) and 525(b) – conducted using established principles of statutory construction – makes evident the fact that the language in Section 525(b), in particular the phrase, "No private employer may . . . discriminate with respect to employment," does not prohibit discrimination in hiring, but rather, discrimination in some other aspect of employment such as promotions, demotions, hours, or pay.

The 11th Circuit also affirmed the trial court's denial of Myers' motion for judgment as a matter of law and motion for a new trial on his wrongful termination claim. Although the 11th Circuit recognized that Section 525(b) prohibits private employers from terminating an employee based on a bankruptcy filing, it noted that the factual basis for Myers' claim – that he was hired and then fired because of his bankruptcy filing – was rejected by the jury. Accordingly, the 11th Circuit affirmed the lower court's ruling.

Myers highlights the fact that the protections provided by the Bankruptcy Code against discriminatory actions by employers depend on whether the employer is a "governmental unit" or a "private employer." The 11th Circuit has made it clear that the Bankruptcy Code imposes greater restrictions on governmental employers than on private employers. Not only is it illegal for governmental employers to terminate or discriminate against employees because of bankruptcy, it is also illegal for such employers to refuse to hire persons on that ground.

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