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COURT OF APPEALS OVERTURNS RULING PROTECTING BUSINESS CIVIL LIBERTIES

(Riverdale Mills Corporation v. Pimpare)

Last week, the United States Court of Appeals for the First Circuit overturned a district court ruling that had found Environmental Protection Agency (EPA) agents potentially liable for violating the Fourth Amendment rights of a small business when they conducted a warrantless search of company premises and tested the company's rinsewater. In doing so, the court of appeals rejected the EPA's arguments that the court should adopt a per se rule that businesses never have a privacy interest under the Fourth Amendment in rinsewater generated from their manufacturing processes; nevertheless, the court held that based on the facts in the case, the company's expectation of privacy was not sufficient to establish a Fourth Amendment violation.

WLF filed the lawsuit in late 2000 in federal court in Worcester, Massachusetts, on behalf of the Riverdale Mills Corporation (RMC) and its owner and president, James M. Knott, Sr., against the United States under the Federal Tort Claims Act for malicious prosecution of RMC and Knott for allegedly violating the Clean Water Act in late 1997. The complaint also named two EPA agents who were sued individually in a so-called "Bivens" action for violating RMC's and Knott's constitutional rights under the Fourth and Fifth Amendments by conducting unlawful searches and seizures.

RMC, a small business located in Northbridge, Massachusetts, is an environmental award-winning, energy efficient facility that manufactures galvanized and plastic-coated welded steel wire mesh used for lobster traps, aquaculture, erosion control, and other purposes. The complaint recounts EPA's malicious and selective criminal investigation and felony indictment against RMC and Knott for allegedly violating an EPA regulation by discharging rinsewater from RMC's facility on October 21, 1997 and November 7, 1997, with a pH level of less than 5.0 standard units, into the public sewer. The sewer eventually reaches the Town of Northbridge's publicly owned treatment works (POTW).

There were no allegations by the EPA that the POTW was damaged in any way by RMC's rinsewater (which, by volume, is approximately eight percent of the amount RMC is allowed by EPA to discharge, and which accounts for less than two-tenths of one percent of the capacity of the POTW). Nor were there any allegations that RMC's rinsewater caused the POTW to violate any EPA regulations governing the POTW's discharge of rinsewater into the Blackstone River. Thus, even if there were violations of the pH levels as EPA alleged, they would have been harmless technical infractions.

In the course of defending themselves against the unprecedented felony criminal charges for the alleged trivial infractions, Knott and RMC demanded that the government turn over the original log books of the EPA agents who took pH readings on October 21 and November 7, 1997. The log books revealed that a lawful pH reading of 7 taken during the initial raid was altered so that the 7 was made to look like a 4, and that other 7's were altered to look like 2's. The pH readings taken by the EPA during the November 7, 1997 raid on RMC all show pH readings of 5 or above, in compliance with EPA regulations where the public sewer line actually connects to RMC's discharge pipe.

Judge Gorton suppressed the evidence of pH readings of rinsewater taken on October 21, 1997, because EPA agents had violated RMC's and Knott's Fourth Amendment rights against unreasonable searches and seizures when it took tests and readings without any RMC employee present to witness the testing, as expressly required by Knott as a condition for the consensual search. A week before the scheduled trial in May 1999, all charges against RMC and Knott were suddenly dropped.

On November 1, 2004, following a bench trial, the district court rejected the claim for malicious prosecution against the United States, although it reiterated its earlier ruling this year that two EPA agents violated the Fourth Amendment rights of the business and its owner by searching its premises without a warrant to test the company's wastewater. In its decision, the district court expressly "reproved [the EPA] for its sloppy recording of pH values . . . subsequent heavy-handed treatment of RMC . . . [and causing] taxpayers unnecessary expense." However, the court held that the actions of the EPA agents did not rise to the level of malicious prosecution which is an exceedingly high standard for a plaintiff to meet under the Federal Tort Claims Act.

In the meantime, the government appealed an earlier adverse ruling against the two EPA agents, arguing that no Fourth Amendment violation took place and that in any event, the agents were entitled to qualified immunity from suit. On November 2, 2004, WLF attorneys argued the appeal before the First Circuit. In its recent ruling, the court of appeals ruled that since the wastewater was "irretrievably" discharged through pipes to the treatment works, the expectation of privacy was diminished even though the pipe and street adjacent to the plant where the testing took place were owned by Mr. Knott and even though the agents violated Mr. Knott's condition on his consent that an RMC employee accompany them on their inspection. WLF attorneys worked with local counsel Warren G. Miller of Boston.

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