

Nelson & Dahle, P.C.

316 North 26th Street Billings, Montana 59101 p: 406.867.7000

DISTRICT COURT

Delaware v. K-Designers & Judson, Yellowstone DV 94-903, 4/4/96 .

VERDICT: \$1,185, wage claim.

A 12-0 Billings jury found that K-Designers owed Frank Delaware no wages on 9/20/93 when he ceased working for K- Designers which it had failed to pay him within 3 days thereafter, but that it owed \$1,185 after the 3-day period of the Montana Wage Payment Act.

Delaware , 39, was employed as sales manager 9/90-9/93. In 9/93 the company was restructured and Delaware was offered a sales position. He said he would stay on only at the same pay level (\$100,000/yr). When K-Designers did not accept his demand he did not return to work. He and owner Lee Judson disputed the amount of commissions he was owed. He sued in 7/94 alleging constructive discharge and nonpayment of commissions under the Wage Act. Following Howard (Mont. 1995) (termination from managerial position with offer of sales position was actual discharge) he abandoned constructive discharge and pled actual discharge. He acknowledged that the existing management structure was not working and had to be changed. Judge Holmstrom ruled on summary judgment that K-Designers had a legitimate business reason for eliminating the sales manager position.

Delaware claimed that Judson was alter ego of K-Decorators and Judson Enterprises. For purposes of trial of the wage dispute the parties stipulated that Judson was a proper defendant and dismissed Judson Enterprises.

Delaware asked the jury for \$70,000 plus 100% penalty on his wage claim. Holmstrom ruled that the Act applied to all monies due within 3 days of the end of his employment and that award of a penalty was for the jury's discretion. He also ruled that commissions coming due after 3 days were not subject to the penalty provisions of the Act.

Both sides claim fees as prevailing party.

Plaintiff's Expert: CPA Jerry Hansen, Billings (deposed).

Defendant's Experts: CPA Robert Everson, Billings ; Robert Robertson, Billings (employment, deposed).

Demand, \$225,000 in 1994, offer, \$50,000 before summary judgment, \$32,500 offer of judgment on wage claim in 5/95 (wages & penalties plus reasonable fees to date of offer), \$35,000 2 days before trial.

Jury deliberated 1½ hours 4th day.

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Craig Holt, Billings , for Delaware ; Randall Nelson (Felt, Martin, Frazier & Nelson), Billings , for K-Designers.