

Alabama High Court Reaffirms Sovereign Immunity and Choice of Law Protections.

Up until 2000, Ellis Johnson was employed as an assistant football coach at the University of Alabama (UA). Mr. Johnson's contract was terminated at the same time that the contract of the head football coach, Mike Dubose, was terminated. Mr. Johnson's employment contract had a liquidated damages clause requiring UA to pay him the amount of his base salary for the remainder of the contract's term if his contract was terminated without cause. After leaving UA, Johnson accepted a lower paying position as head football coach at The Citadel. Johnson made a claim against UA for liquidated damages. After negotiations with UA failed, Johnson sued the University of Alabama, its president, and its athletic director for breach of employment contract, fraud, and other claims. *Johnson v. Sorensen*, 914 So.2d 830 (Ala. 2005).

UA defended by claiming that Johnson's suit was barred by sovereign immunity and that he was not owed any liquidated damages. The University pointed out that the employment contract contained a provision stating the institution was not waiving its right to claim any "exemptions, privileges and immunities as may be provided by law." The contract was signed by Sorensen, who was then the UA President. The trial court entered a summary judgment for all the defendants, and Johnson appealed.

With regard to UA's sovereign immunity defense, the Alabama Supreme Court simply reiterated established law:

Under Article 1, § 14, Alabama Constitution of 1901, the State and its agencies have absolute immunity from suit in any court. ... This immunity extends to the state's institutions of higher learning. ... State officers and employees, in their official capacities and individually, are also absolutely immune from suit when the action is, in effect, one against the state. ... *Those dealing with the State are charged with knowledge of its immunity.*

Johnson, 914 So.2d at 835 (emphasis added).

The defense of "state agent immunity" of state officials sued individually was similarly addressed by the Court, which quoted from an important 2000 case, *Ex parte Cranman*, 792 So.2d 392 (Ala. 2000), as follows:

A State agent shall be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent's

-
- 2) exercising his or her judgment in the administration of a department or agency of government, including, but not limited to, examples such as:
 - a) making administrative adjudications;
 - b) allocating resources;
 - c) negotiating contracts;

d) hiring, firing, transferring, assigning, or supervising personnel; or

....

5) exercising judgment in the discharge of duties imposed by statute, rule, or regulation in releasing prisoners, counseling or releasing persons of unsound mind, or educating students.

Johnson, 914 So.2d at 836.

Applying these legal principles, the Court held that Johnson's claim for liquidated damages arising from breach of his employment contract was barred by the University's sovereign immunity and the UA administrators' "state agent immunity."

As a final legal maneuver, Johnson claimed the UA officials were guilty of fraud in suppressing information that the sovereign immunity doctrine prevented his employment contract from being enforced in an Alabama court. In dealing with this last claim, the Court noted that in order to state a claim based upon fraudulent suppression a plaintiff must prove several elements, the first of which was that the defendant had a duty to disclose an existing material fact. In this case, the Court held that the University officials had no duty to disclose the doctrine of sovereign immunity to Johnson, because he was presumed to be aware of it: "Those dealing with the State are charged with knowledge of its immunity." *Johnson*, 914 So.2d at 838. There is no duty to disclose facts that are presumed to be known.

Another element of fraudulent suppression is the defendant's knowledge of the material fact that was not disclosed. Here, President Sorensen and the athletic director did not have actual, in depth, knowledge of the legal ramifications of sovereign immunity and the impact it might have on the enforceability of Johnson's employment contract. Finally, the Court observed that this claim really did not involve a "material fact" at all. A statement, or failure to make a statement, regarding the applicability of the doctrine of sovereign immunity is regarded as related to a point of law or legal opinion, not a matter of fact.

This case is potentially important to UAH and its officials because it demonstrates the great advantage afforded to public entities and their employees by the doctrines of sovereign immunity and state agent immunity. Enforcement of what appeared to be a clear remedy given to Johnson in his employment contract was negated by these immunities. Equally significant, the Court held that full knowledge of sovereign immunity will be imputed to every person who contracts with the University. Because Alabama law in this regard is favorable, the University must seek to include in its contracts a provision stating that it is the law of Alabama, not that of another state, that will apply to and govern all issues relating to the agreement. Finally, though Johnson lost his lawsuit in the courts, he was not left entirely without a remedy. Claims against public agencies and institutions can always be brought before a special administrative body created by the Legislature to hear such claims, the Alabama Board of Adjustment.