

DEC 09 2011

State of Minnesota
Dakota County

District Court
First Judicial District

Court File Number: **19HA-CV-11-401**

Case Type: Contract

MICHAEL LEO PUKLICH, JR.
7975 STONE CREEK DR STE 120
CHANHASSEN MN 55317

Notice of:

<input checked="" type="checkbox"/>	Filing of Order
<input checked="" type="checkbox"/>	Entry of Judgment
<input type="checkbox"/>	Docketing of Judgment

Moshe B Git vs AER Services, Inc, Ravenswood Budlong Congregation

You are hereby notified that the following occurred regarding the above-entitled matter:

<input checked="" type="checkbox"/>	An Order was filed on December 07, 2011.
<input checked="" type="checkbox"/>	Judgment was entered on December 07, 2011.
<input type="checkbox"/>	You are notified that judgment was docketed on at in the amount of \$. Costs and interest will accrue on this amount from the date of entry until the judgment is satisfied in full.

Dated: December 7, 2011

Carolyn M. Renn
Court Administrator
Dakota County District Court
1560 Highway 55 Hastings MN 55033
651-438-8100

cc: PAUL JOSEPH BOSMAN

A true and correct copy of this Notice has been served by mail upon the parties named herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

STATE OF MINNESOTA
DAKOTA COUNTY

DISTRICT COURT
FIRST JUDICIAL DISTRICT
Case Type: Contract

Moshe B. Git,

Plaintiff,

vs.

AER Services, Inc.,

Defendant.

Court File No. 19HA-CV-11-401

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER
AND JUDGMENT**

The above-entitled matter came on before Arlene M. Asencio Perkkio, Judge of District Court, at the Dakota County Government Center, for trial on August 29 and 30, 2011.

Plaintiff was represented by Paul J. Bosman, Bittle Bosman, LLC.

Defendants were represented by Michael L. Puklich, Neaton & Puklich, PLLP.

Based upon the evidence presented, arguments of counsel, and applicable law, the court makes the following:

FINDINGS OF FACT

1. Defendant AER Services, Inc. (hereinafter "AER") is a small, closely held corporation that provides kosher meat processing services.
2. AER's business is based on its reputation of providing genuine kosher products to AER's customers.
3. AER employed Plaintiff, Moshe Git, as a Mashgiach.
4. A Mashgiach is responsible for the supervision and observation of the meat packing and shipping process to ensure compliance with Jewish dietary laws and the overall kosher process.

FILED
CAROLYN M. RENN, Court Administrator

DAKOTA COUNTY

SEP 28 2011

5. Plaintiff and Defendant executed a document entitled “General Release,” governing employment of Plaintiff by Defendant as a Mashgiach. This document’s purpose was to resolve a prior lawsuit between Plaintiff and Defendant. Since that time, it has operated as an employment agreement between Plaintiff and Defendant.
6. The General Release provides Plaintiff may be terminated from his employment with Defendant only if he is grossly negligent.
7. Plaintiff was terminated on June 1, 2010.
8. Plaintiff worked for Defendant at Dakota Premium Plant (hereinafter “Dakota Plant”) in South St. Paul, Minnesota.
9. AER does not own the Dakota Plant.
10. Other companies and organizations perform religious meat processing services at the Dakota Plant, including Islamic halal slaughter.
11. On Friday, May 28, 2010 Plaintiff reported for work at 6:00 a.m. and left around 12:00 noon. This was an ordinary work schedule for Plaintiff.
12. Around 3:00 p.m. on Friday, May 28, 2010, an AER employee, Meir Igel, a bodek,¹ called Plaintiff to report an issue relating to the validity of the kosher process.
13. Igel was concerned the May 28, 2010 kosher meat processing was invalid because cattle slaughtered by the halal slaughterer were marked kosher.
14. Igel believed for meat to be kosher, it must be slaughtered by a Jew.

¹ A bodek is a trained examiner who is involved in the kosher process. In the kosher process there are two bodeks working at the same time—an internal bodek (who examines the inner part of the animal) and an external bodek (who examines the outer part of the animal).

15. Igel thought the last part of what was marked as the kosher slaughter for that day may have been the beginning part of the halal slaughter.
16. Mixing of kosher slaughter with halal slaughter would render the meat non-kosher.
17. Friday, May 28, 2010, like all Fridays, is Shabbat, the Jewish Sabbath. Shabbat begins at sunset on Friday and ends at sunset on Saturday.
18. Observant Jews are forbidden to work during Shabbat. Plaintiff and Defendant's other employees, observe Shabbat and do not work.
19. The court takes judicial notice Shabbat began on May 28, 2010 at 8:29 p.m. (Central Daylight Time) and ended on May 29, 2010 at 9:43 p.m. (Central Daylight Time).
20. Plaintiff had five and a half hours on Friday, May 28, 2010 to resolve the issue Igel brought to his attention prior to the commencement of Shabbat.
21. Pursuant to the "General Release", Plaintiff possessed Hashgacha² authority in the kosher process, including the marking done by the bodekim.
22. Igel had no supervisory authority over Plaintiff.
23. Plaintiff was not required to, nor did he, take direction from Igel.

² Hashgacha refers to kosher supervision.

24. The “General Release” [Exhibit 1] states: in the event of an issue with the kosher marking done by the bodekim, Plaintiff is required to contact the bodek in charge and attempt to resolve the issue. In the event Plaintiff cannot resolve the matter with the bodek, Plaintiff is to contact Rabbi Moshe Fyzakov.
25. Potential “mixing” between the kosher slaughter and the halal slaughter is an issue involving the kosher marking done by the bodekim.
26. The possible “mixing” was reported by a bodek.
27. Josef Ben-Zaken was the bodek in charge on Friday, May 28, 2010.
28. Plaintiff did not contact Josef Ben-Zaken about the potential “mixing” on Friday, May 28, 2010; after Shabbat on Saturday, May 29, 2010; on Sunday, May 30, 2010; or on Memorial Day, Monday, May 31, 2010.
29. Ben-Zaken was available by telephone during the entire three day weekend, with the exception of his observance of Shabbat. Ben-Zaken even worked at the Dakota Plant on Sunday, May 30, 2010.
30. Plaintiff contacted no one about the potential “mixing” until Plaintiff reported for work on Tuesday, June 1, 2010 at 6:00 am.
31. Plaintiff had access to the plant twenty-four hours a day, seven days a week.
32. At 6:00 a.m. on Tuesday, June 1, 2010, Plaintiff contacted the Dakota Plant manager about identifying the cows marked kosher at the end of Friday’s kosher slaughter.

33. The plant manager is not an AER employee.
34. The plant manager indicated the last cows slaughtered on Friday could not be separated because the tags had been removed.
35. Plaintiff did not at any point between May 28, 2010 and June 1, 2010 contact Rabbi Moshe Fyzakov to discuss this issue.
36. Rabbi Fyzakov was in Israel during the relevant time period of May 28, 2010 – June 1, 2010.
37. Rabbi Fyzakov's cell phone number is posted in the Rabbi break room at the Dakota Plant.
38. Plaintiff had access to the phone number.
39. Plaintiff had previously contacted Rabbi Fyzakov while Rabbi Fyzakov was in Israel and instructed Ben-Zaken on how to reach Rabbi Fyzakov in Israel.
40. Plaintiff had Rabbi Fyzakov's email address and had previously sent Rabbi Fyzakov emails.
41. The possible labeling as kosher cattle which were slaughtered by a non-Jew required immediate attention.
42. Plaintiff worked as a Mashgiach for over ten years, during which he oversaw the kosher slaughter process at the Dakota Plant.
43. The Court does not find credible Plaintiff's explanation he believed he could locate and "pull out" the "at issue" cows, the last of the kosher slaughter, when he arrived to work at 6:00 a.m. on June 1, 2010.

44. The tags, which uniquely identify each carcass, are removed and the cows are placed in separate coolers at 3 a.m. on the day they are to be packed in combos. Once these tags are removed, there is no way to determine which were last to be slaughtered. The cattle are also rearranged in the cooler by USDA employees as part of the USDA's grading process.
45. At 3:00 a.m. on June 1, 2010, the tags were removed.
46. Plaintiff should have known, based on his ten years of experience, the tags would have been removed by the time he arrived, and he would not have been able to distinguish which cows were the last of the kosher slaughter.
47. Plaintiff's failure to notify anybody of the potential "mixing" issue until June 1, 2010 demonstrated a substantial lack of concern for the job he was charged with performing and was grossly negligent.
48. There is no reasonable explanation for Plaintiff waiting until June 1, 2010 to address the potential "mixing" which occurred on May 28, 2010.
49. On June 1, 2010, Plaintiff came to the plant and attempted to remove the last cows from the previous Friday, May 28, 2010's slaughter but was told by Dakota Plant employees the at issue carcasses could not be identified.
50. At approximately 6:15 a.m. on Tuesday June 1, 2010 Plaintiff attempted to contact Rabbi Aryeh Ralbag by cell phone to address the possible mixing. Plaintiff was unsuccessful.
51. Rabbi Ralbag is the supervising Rabbi for ConAgra and has authority over issues relating to the kosher process at the Dakota Plant.

52. At approximately 6:30 a.m. on June 1, 2010, Plaintiff successfully contacted Rabbi Ralbag's son and informed him of the potential issue. Rabbi Ralbag's son did not provide any instruction or guidance to Plaintiff. Plaintiff then returned to work supervising the kosher process on the boning floor and began marking combos that were to be filled with the kosher meat.³
53. Plaintiff continued to try to contact Rabbi Ralbag.
54. At approximately 7:15 a.m. on Tuesday, June 1, 2010 Plaintiff spoke to Rabbi Ralbag and informed him of the potential mixing of the kosher and halal slaughter.
55. Following his conversation with Rabbi Ralbag, Plaintiff informed the management at the Dakota Plant the meat was not kosher and began removing the kosher markings from combos Plaintiff had previously marked as kosher.
56. Plaintiff also ceased Plaintiff's supervisory duties.
57. Between 8:00 a.m. and 9:00 a.m. on Tuesday, June 1, 2010 Plaintiff spoke to Ben-Zaken and informed Ben-Zaken of the potential mixing of the kosher and halal slaughter.
58. Plaintiff did not inform Ben-Zaken Plaintiff had notified management at the Dakota Plant the meat was not kosher.

³ Combos refer to a box into which the kosher meat is loaded. Combos that contain kosher meat have a marking placed on them designating the meat inside as kosher.

59. Plaintiff did not inform Ben-Zaken Plaintiff was ceasing his supervisory duties. Because meat produced without supervision is not kosher, none of the rest of that day's production could have properly been labeled kosher.
60. Plaintiff ceased supervising the meat before Rabbi Ralbag had completed his investigation.
61. Plaintiff left the Dakota Plant during the pendency of the investigation.
62. Plaintiff's information may have aided the investigation.
63. One hour after Plaintiff left the plant, Rabbi Ralbag made a determination the carcasses had been slaughtered as part of the kosher slaughter.
64. Ben-Zaken contacted Plaintiff, informed him of Rabbi Ralbag's decision, and asked Plaintiff to return to the plant to finish packing the combos.
65. Plaintiff declined to return to the plant and asked Ben-Zaken to close the remaining combos and thereby certify them as kosher, even though Plaintiff had not supervised the production.
66. Rabbi Fyzakov, who made the decision to terminate Plaintiff's employment, did not know about Plaintiff's authorization of Ben-Zaken to close unsupervised combos until the depositions for this case were being taken, long after Plaintiff was fired.
67. Plaintiff's decision to contact Dakota Plant employees and tell them the meat was not kosher resulted in much of the June 1, 2010 meat production being sold as not kosher, even though there was no problem with the slaughter. This decreased Defendant's revenues.

68. On June 1, 2010 Rabbi Fyzakov decided to fire Plaintiff. He asked Ben-Zaken to call Plaintiff and inform him of this decision, which Ben-Zaken did.

CONCLUSIONS OF LAW

The “General Release” [Exhibit 1] is the document governing the rights of the parties as to Plaintiff's employment with Defendant. The General Release specifies Plaintiff's employment may be terminated for gross negligence or willful failure or refusal to perform his work duties.

Gross negligence is negligence of the highest degree. *High v. Supreme Lodge of the World*, 214 Minn. 164, 170, 7 N.W.2d 675, 679 (1943). A further explanation of “gross negligence” is given in *State v. Bolsinger*, 221 Minn. 154, 21 N.W.2d 480 (1946):

“Gross negligence” is substantially and appreciably higher in magnitude than ordinary negligence. It is materially more want of care than constitutes simple inadvertence. It is an act or omission respecting legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care. * * * But it is something less than the willful, wanton, and reckless conduct which renders a defendant who has injured another liable to the latter even though guilty of contributory negligence, or which renders a defendant in rightful possession of real estate liable to a trespasser whom he has injured. *Id.* at 159, 21 N.W.2d at 485.

The standard of willful failure to perform a specific duty has also been addressed by Minnesota Courts. In *Davis v. Hennepin County*, 559 N.W.2d 117, 122 (Minn. App. 1997), a case involving the question whether an employer's managers acted willfully or maliciously in the context of an issue relating to official immunity, the Court stated that “the same evidence necessary to prove discrimination also satisfies the evidentiary requirement for demonstrating willful or malicious conduct for purposes of official immunity.” Both require a finding the defendant acted intentionally, and the inquiry for each focuses on the objective

reasonableness of the defendant's actions. *Davis* at 123, citing *Beaulieu*, 518 N.W.2d at 571 (making same comparison with respect to discrimination in public services, Minn. Stat. § 363.03, Subd. 4 (1990)). See also, *Beehner v. Cragun Corp.*, 636 N.W.2d 821, 829 (Minn. App. 2001) (Willful and wanton conduct is the failure to exercise ordinary care after discovering a person or property in a position of peril, citing, *Bryant v. N. Pac. Ry. Co.*, 221 Minn. 577, 585, 23 N.W.2d 174, 179 (1946)).

Plaintiff engaged in gross negligence by failing to address the potential “mixing” of kosher and halal slaughter in a timely manner.

Despite knowing of the problem with the kosher process on Friday, May 28, 2010, Plaintiff waited until Tuesday, June 1, 2010 to advise anybody of the issue. Had Plaintiff contacted either Rabbi Fyzakov, Defendant AER, Josef Ben-Zaken or Rabbi Ralbag on Friday, Sunday or Monday, the investigative process could have begun. Had this occurred, the entire meat production may have been properly designated as kosher. At the very least, those cows which were suspected of having been slaughtered by a non-Jew could have been isolated, mitigating Defendant's losses. Instead, Plaintiff chose to do nothing. Plaintiff's failure to notify anybody about this issue until Tuesday, June 1, 2010 exceeds simple negligence or inadvertence; it demonstrates a complete and utter lack of care.

Plaintiff had a duty to supervise and authorize meat as kosher. In the event of any problems with the process, Plaintiff was to follow the plan outlined in the “General Release.” Failure to follow that process was a breach of duty. By failing to follow the process, an entire day's worth of meat, which was rightfully kosher, had to be sold at a reduced price as non-kosher. Plaintiff's conduct is gross negligence because he not only failed to follow the agreed upon process; he did nothing.

Plaintiff, at a minimum, should have contacted Ben-Zaken on Friday, May 28, 2011 prior to Shabbat. Had Plaintiff acted in accordance with the "General Release," Ben-Zaken would have begun the necessary steps prior to Shabbat on Friday, May 28, 2010. The Court finds Plaintiff's failure to act to be grossly negligent.

On the morning of June 1, Plaintiff contacted management at the Dakota Plant and notified them the meat was not kosher. Plaintiff proceeded to remove the kosher markings from all of the combos; unilaterally invalidating all of the kosher meat while an investigation into the kosher status of the meat was pending. Plaintiff failed to notify anybody at AER he told Dakota Premium management the meat was not kosher and Plaintiff removed the kosher markings from the combos. Plaintiff's assertion that he acted "as a result of the conversations" he had with Rabbi Ralbag are inexplicable given Plaintiff knew there was a dispute over whether the meat was kosher, had no authority to contact Dakota Plant management and was told Rabbi Ralbag was investigating the issue. Plaintiff's actions were grossly negligent. The result of Plaintiff's conduct was the employees of the Dakota Plant sold as the meat as non-kosher and at a reduced price.

In violation of Plaintiff's employment obligations, Plaintiff took it upon himself to stop supervising the meat on June 1, 2010 at around 7:15 a.m. Plaintiff failed to tell anyone he stopped supervising the meat, and later authorized the closing of two combos as kosher. Supervising the kosher process and closing of the combos are two of Plaintiff's specific Hashgacha duties. Plaintiff did not challenge or present an explanation or excuse for this action. According to every witness, including Plaintiff, a Mashgiach must supervise the process for meat to be kosher. Plaintiff admittedly did not do this but then proceeded to use his authority to permit the certification of the meat as kosher.

The Court recognizes those who keep kosher rely on individuals such as Plaintiff to ensure the validity of the process and the kosher status of the meat. Plaintiff compromised this trust, which placed AER's reputation in jeopardy. While Plaintiff's acts were grossly negligent, the Court notes Rabbi Fyzakov, who made the decision to fire Plaintiff, was unaware of this until long after the decision was made.

While the sealing of unsupervised combos was unknown to Defendant's agent, Rabbi Fyzakov, at the time Plaintiff was fired, there was ample evidence Plaintiff had been grossly negligent. Specifically, Defendant was aware Plaintiff had delayed in taking action until Tuesday; Plaintiff failed to contact the bodek in charge, Ben-Zaken, as required by the written employment agreement; Plaintiff contacted the management at the Dakota Plant, which was beyond the scope of his authority; and Plaintiff left the plant while the investigation was going on. The Court concludes these facts, together with Plaintiff's authorization to seal unsupervised combos, constitutes gross negligence by Plaintiff, and Defendant did not breach the employment agreement contained in the General Release.

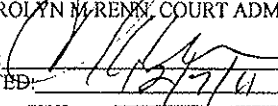
Based upon these Findings of Fact and Conclusions of Law, the Court **ORDERS** Plaintiff's claim dismissed with prejudice.

Dated this 27th day of September, 2011.

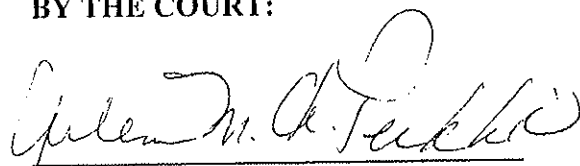


JUDGMENT

I HEREBY CERTIFY THAT THE ABOVE ORDER
CONSTITUTES THE JUDGMENT OF THIS COURT
CAROLYN M. RENN, COURT ADMINISTRATOR

BY: 
DATED: 9/27/11 (SEAL)

BY THE COURT:



The Honorable Arlene Asencio Perkkio
Judge of District Court