

Harvey Gorman v. Sterling & Morgan, P.A.

STATEMENT OF THE CASE

This case involves a wrongful discharge claim arising out of the plaintiff's termination from his employment as an associate at the law firm of Sterling & Morgan in Metropol, New State on December 20, YR-2. The Plaintiff filed his Complaint and Demand for Jury on January 30, YR-1, in the Metropol County Court of Common Pleas for New State.

The Plaintiff, Harvey Gorman, was born on November 25, YR-33. He and his wife, Juanita, were married on December 1, YR-10. They have two children: Vicki was born in YR-7 and Norman was born in YR-5. The children attend the P. N. Harkins Preparatory School in Rocky Mount.

Mr. Gorman attended high school in Rocky Mount, Home State where his father had been a successful farmer. A National Merit semi-finalist, Mr. Gorman was admitted to Dartmouth but shortly before the end of his senior year in high school, his father suffered a debilitating heart attack. Because of the resulting financial pressure, he was forced to attend the University of Home State. After college, Mr. Gorman entered the Peace Corps and received a two-year assignment to the Philippines, where he met and married Juanita. In the middle of his second year in the Philippines, Gorman was arrested for possession of marijuana. He agreed to enter a plea equivalent to "no contest" in the States. He agreed to leave the country immediately in return for a reduced sentence. He was required to resign from the Peace Corps six months early.

Upon his return to the U.S., Mr. Gorman was accepted to and attended law school at the University of Home State, where he served as associate editor of the Environmental Law Quarterly. Upon graduation from law school in YR-6, he took and passed the New State bar exam and began to work as an associate with Sterling & Morgan, P.A., a highly-regarded mid-to-large firm in New State. His starting salary was \$100,000.

Mr. Gorman was immediately assigned to the firm's litigation department. During the first three years of his practice, he gained the respect and affection of both the partners and associates in the firm. He received a raise and year-end bonus almost every year of his employment with the firm. Several times during his third year he was contacted by headhunters but each time, he declined to pursue other opportunities. In early YR-2, he mentioned to a younger partner the possibility of applying for a job with the United States Attorney's Office. The partner told him to "wait until you make partner and then take a leave to go there so you can come back after a few years and make the big money here."

In the fall of YR-2, Mr. Gorman was assigned to work with Bill Sterling, Jr., a partner and one of the firm's founders whose work consisted primarily of products liability defense. Mr. Sterling's major client, and third largest client for the firm overall, was CyLab, Inc., a major pharmaceutical manufacturer. Four partners, nine associates, and six paralegals worked primarily on CyLab's cases. Assignment to the "CyLab team" was considered a plum within the firm and a sign that an associate was highly regarded by the partners.

CyLab's in-house attorney for litigation management was Michael Evans. Contrary to the general practice of lawyers at Sterling & Morgan, Mr. Evans insisted on an extremely aggressive litigation posture on all cases assigned to the firm. CyLab's consistent approach was to defend each and every case brought against the company with the most strident defense possible. Mr. Evans adamantly believed that no extensions of time should ever be requested or granted by lawyers working on his cases. CyLab's reputation for commitment to quality and safety in its manufacturing operations and its "take no prisoners" approach to litigation had resulted in the company enjoying relatively few adverse verdicts and an extremely low suit rate compared to others in the industry.

On Tuesday, November 29, YR-2, Mr. Evans forwarded the file of *Malaguer v. CyLab* to Bill Sterling, with instructions to defend the matter. The file contained the Complaint, in which Mr. Malaguer alleged that he had ingested one of CyLab's products, that he had an adverse reaction, and that he had been rendered permanently and totally disabled from his job as a brakeman for the B & S Railroad. The Complaint was accompanied by the Plaintiff's First Set of Interrogatories. The pleading and discovery had been served on CyLab's agent for service of process on November 4, YR-2. Therefore, pursuant to the New State Rules of Civil Procedure, the responses to the Interrogatories were due on December 20, YR-2. The file also contained extensive medical information on Mr. Malaguer that had been obtained during pre-suit negotiations between CyLab and plaintiff's counsel. It also contained a surveillance videotape of Mr. Malaguer engaging in a number of physical activities that were inconsistent with some of the damage allegations made by Mr. Malaguer's counsel in his demand letters submitted prior to filing suit.

Bill Sterling reviewed the file, prepared and filed the Answer, and prepared draft interrogatory responses. He forwarded the file to Mr. Gorman on Friday, December 2, YR-2 with a cover memo asking him to proofread the responses and obtain the necessary verification prior to the due date. The memo also requested that a Notice of the Plaintiff's Deposition be served scheduling the Plaintiff's deposition for the first week of January YR-1.

Mr. Gorman did not work on the CyLab file between December 2 and December 5. On December 5, YR-2, Mr. Sterling sent a rush research project to Mr. Gorman. The question involved the applicability of the preemption doctrine to a claim filed against EST Pharmaceutical Company, a significant client of Mr. Sterling's. Mr. Sterling instructed Mr. Gorman that the research project was to be completed before Mr. Sterling's upcoming vacation. He asked Mr. Gorman whether he would have enough time to do both the research project and to complete the work on the CyLab file by the December 20, YR-2 deadline. Mr. Gorman assured him that he could get all the work done within the deadlines. The research project was more complex than Mr. Gorman had originally anticipated. He was not able to complete the project until December 16, YR-2.

On December 17, YR-2, Mr. Sterling left for a two-week vacation hiking the Inca Trail. On December 19, YR-2, Mr. Gorman reviewed the draft discovery responses. In the draft response to an interrogatory requesting a list of all photographs, Mr. Sterling had objected to the request and then added that there were no such documents or materials in the defendant's possession, custody or control other than those protected by attorney work product. Mr. Gorman was

concerned that the surveillance videotape might be discoverable and not subject to the attorney work product exception.

Mr. Gorman researched the matter and found a very recent New State decision holding that surveillance tapes were not protected from discovery and sanctioning lawyers for failing to disclose the existence of and produce such tapes. Mr. Gorman attempted to contact Bill Sterling to discuss the matter on his cell phone, but he was unable to reach him. Mr. Gorman sent an e-mail to Mr. Sterling, although he was unsure if Mr. Sterling would receive the message along the Inca Trail. Late in the day on December 19, YR-2, Mr. Gorman received a call from Michael Evans. Mr. Evans inquired about the status of the discovery responses and wanted to be assured that they would be completed by the December 20, YR-2 deadline. Mr. Gorman told Mr. Evans that he had reviewed the draft that Mr. Sterling had left with him, but he had questions that he wanted to discuss with Mr. Sterling before the responses were served. Mr. Evans instructed Mr. Gorman to forward the draft to him for his review.

On December 20, YR-2, Mr. Evans called Mr. Gorman and told him that he was satisfied with the draft that Mr. Sterling had prepared and approved the draft for service. Mr. Gorman did not discuss with Mr. Evans his ongoing concern regarding the accuracy of the responses and his desire to review the responses with Mr. Sterling in light of his research.

Later that same day, Mr. Gorman attempted to reach Mr. Sterling by both telephone and e-mail. He did not attempt to leave a message with him at the hotel where he was staying. Although Mr. Gorman was aware of CyLab's position with respect to obtaining extensions of time, he

concluded that he needed to confer with Sterling before serving the final discovery responses. He therefore called opposing counsel on December 20th and received a two-week extension of time to serve the discovery responses or objections until January 5, YR-1.

On December 20, YR-2, Mr. Gorman received a call from Michael Evans asking for confirmation that the responses had been served. Mr. Gorman explained that he had been unable to reach Sterling to confer and therefore had obtained a two-week extension of time to serve the responses. Mr. Evans became extremely upset. Although Mr. Gorman explained that the extension would not prejudice the case in any way, Evans abruptly terminated the call.

Michael Evans immediately called Lawrence Morgan, the firm's senior partner, and informed him of the matter. Evans advised Morgan that he considered Gorman's actions not only utterly incompetent but a direct violation of Bill Sterling and his specific instructions. Evans advised Morgan that he was so upset that he could no longer have confidence in the firm if Gorman were allowed to continue as an associate with the firm. Morgan attempted to assuage Evans, but the call ended with Evans vowing to never send another file to Sterling & Morgan as long as Gorman was associated with the firm.

Later that afternoon, Gorman was summoned to Morgan's office. Mr. Morgan asked Gorman whether he was aware of the very explicit instructions of CyLab that no extensions were requested or given in CyLab's cases. Gorman replied that he was aware, but that this case presented a unique situation. Morgan advised him that his handling of the file had placed the

firm's relationship with one of its most important clients in very serious jeopardy. He advised him that his employment with the firm was terminated, effective immediately.

Sterling deposed Malaguer during the morning of January 5, YR-1 and immediately thereafter served the Responses to Interrogatories which had been revised with the addition of a "privilege log" to the objection to Interrogatory No. 2, identifying the surveillance videotape.

Mr. Gorman's annual salary at the time he was terminated was \$161,504. In addition, his benefits included life insurance and major medical coverage. Mr. Gorman claims that as a result of his termination, he has been unable to find another job. He applied to six other firms in the three months after his discharge, but none has offered him a position.

In March YR-1, Gorman decided to move back to Rocky Mount, where he planned to open a law office. He took the Home State bar examination in July YR-1 and was admitted to the Home State bar in December YR-1. He could not practice in Home State before he was admitted to practice. Rocky Mount is a town of 17,000 people. Its economy is primarily farm-based.

Mr. Gorman claims damages for: (1) his lost wages from December YR-2 through December YR-1, when he was admitted to the Home State bar, (2) the difference thereafter between the lesser amount he will earn as a sole practitioner in Rocky Mount and the amount he would have continued to earn as an attorney with Sterling & Morgan (through the time of his retirement); (3) the cost of the bar review course and exam; 4) relocation costs. These damages are itemized in the expert report of Lisa Miller, M.A.(see the Evaluation of Economic Loss). Mr.

Gorman's counsel retained Ms. Miller after seeing an advertisement for her services in the ATLA monthly newsletter, which announced that Ms. Miller's office would accept certain cases on an installment basis.

Mr. Gorman and his wife, Juanita, separated shortly after New Year's Day YR-1, and he subsequently shared a townhouse with his college roommate, William Holliday, a dog groomer until he moved to Home State. Mrs. Gorman says she left her husband because after he was fired, he was cranky, depressed, and disinterested in life in general and her in particular.