

1. Constructive discharge occurs when an employer makes working conditions so intolerable that an employee is forced into an involuntary resignation. Such illegal conduct renders the employer as liable for damages as if it had formally discharged the employee. Beard (796,1344); Cameron [Beard III] (864,538).

2. The covenant of good faith and fair dealing, while not lending itself to precise definition, at a minimum requires that an employer not impair the right of an employee to receive the benefits of the employment agreement. Jones (779,783).

FACTS: After his 1983 employment as a driver for Bob's Distributing, subsequently Greatland Foods, Finch worked "many hours of uncompensated overtime." When his concerns about unpaid overtime went unaddressed by Bob's, Finch filed suit in Superior Court alleging several claims, including violation of the Alaska Wage and Hour Act. In April 1994, the parties settled the case for \$120,000. Finch was retained as an employee of Bob's.

After the settlement, Bob's allegedly engaged in "a pattern of harassment and retaliation" designed to force Finch's resignation. Finch did resign in July 1995 claiming intolerable working conditions which "caused his health to deteriorate." He filed suit based on breach of the covenant of good faith and fair dealing, constructive discharge and intentional infliction of emotional distress.

PROCEEDINGS: Judge Pengilly, Fourth Judicial District, granted summary judgment to Greatland on all claims. Both parties appealed. The Supreme Court AFFIRMED as to IIED but REVERSED and remanded as to the other two claims. Justice Bryner wrote the 5-0 opinion.

ATTORNEYS: **Appellant/Cross-Appellee**, Robert Groseclose of Cook, Schuhmann (FBX). **Appellee/Cross-Appellant**, Timothy Byrnes of Hughes, Thorsness (ANC).

DISCUSSION: **1. Constructive Discharge.** REVERSED. Constructive discharge is measured by an objective standard. An employee must show that a reasonable person in his or her position would have felt compelled to resign. However, the employee need not prove that the employer acted with the specific intent of causing the employee to resign. Beard II, id. Finch presented the following evidence to support his constructive discharge claim: **a)** November 1994: failure to grant Finch an emergency leave to attend to his dying father in Texas; **b)** January 1995: assignment of Finch's "lucrative route" to a junior employee; **c)** January 1995: implementation of a commission-based pay system which, with the less lucrative route, reduced Finch's income by 40%; and **d)** January 1995 and subsequently: Bob's failure to support Finch's "customer service efforts." The Court noted Bob's "offered strong evidence" controverting Finch's version of what occurred. But for summary judgment the trial court must consider the evidence in the light most favorable to Finch. Ramsey (936,126). Finch presented sufficient evidence of constructive discharge to avoid summary judgment.

2. Breach of the Covenant of Good Faith. REVERSED. Bob's argued it was merely attempting to enforce the overtime conditions of the April 1994 settlement in which Finch agreed not to work any overtime without advance approval. Bob's produced evidence Finch had violated this agreement which, under its terms, authorized termination. But Finch offered a viable explanation. The Court applied the same summary judgment analysis as in the constructive discharge claim: the Superior Court erred in weighing conflicting claims as opposed to viewing the evidence in a light most favorable to Finch.

3. IIED. AFFIRMED. The trial judge must make a threshold determination in an IIED claim that the defendant engaged in "extreme and outrageous" conduct which caused "severe emotional distress." Teamsters (749,349); Richardson (705,454). Finch's evidence of "insults, indignities, threats, annoyances and petty oppressions," as a matter of law, did not meet the threshold showings.