

Second Supplement to Memorandum 75-74

Subject: Study 52.80 - Undertakings for Costs

On October 14, 1975, the California Court of Appeal for the Second District held unconstitutional the cost bond provisions of the Code of Civil Procedure Section 830 (actions for libel and slander) in the case of Allen v. Jordanos' Inc. In so doing, the court found the Beaudreau case controlling.

The following summary of the Allen case appeared in page 3 of the Los Angeles Daily Journal, October 27, 1975.

Pre-Hearing Defamation Bond Requirement Held Unconstitutional

The requirement of Sec. 830 of the Code of Civil Procedure that a plaintiff post a written undertaking of \$500 prior to any form of evidentiary hearing in order to bring an action in defamation is an unconstitutional deprivation of due process and equal protection. In so holding, the C.A. had reversed the lower court and its own holding last December prior to the State Supreme Court's decision in Beaudreau v. Superior Court, 14 Cal. 3d 448.

Appellant is a retail clerk who had been an employee of respondent. He had been accused of theft and dishonesty but it was thought that there was insufficient proof to establish appellant's misconduct. An agreement was worked out between appellant's union and respondent whereby appellant would be relieved of his duties but respondent would not indicate to either future employers or the department of human resources development that there was a cloud hanging over appellant's employment record. Respondent thereafter allegedly violated this agreement and caused appellant to be deprived of unemployment and pension benefits. Appellant brought the instant action for breach of contract and defamation. Demurrers to both actions were sustained. The C.A. 2nd upheld both demurrers in an opinion rendered in December, 1974. Appellant petitioned for a hearing by the State Supreme Court. The high court sent the case back down to the C.A. 2nd for its reconsideration in light of the high court's opinion in Beaudreau v. Superior Court, 14 Cal. 3d 448, decided on May 29, 1975.

In the Beaudreau case the high court held unconstitutional the requirement of Government Code Secs. 947 and 951 that an undertaking be filed by a plaintiff bringing an action against a public entity, prior to any "meaningful hearing." The C.A. 2nd felt compelled by the Beaudreau decision to find that Sec. 830, which requires an undertaking prior to any "meaningful hearing," was likewise unconstitutional.

The court, however, upheld the demurrer to the action in contract. It noted that for the employer to have withheld information regarding the allegations of misconduct from the department of human resources would have been illegal. The contractual obligation to do so was therefore void and the alleged contract void for lack of consideration.

Allen v. Jordanos' Inc., C.A. 2nd, 2 Civ. 43386, Oct. 14, 1975, per Hanson, J. Ghitlerman, Eakin, Schweitzer and Herreras for appellant; Tom Halde and Edward Lascher for respondents. (jad)

We have requested a copy of the complete opinion from the Court of Appeal.

Respectfully submitted,

Robert J. Murphy III
Legal Counsel