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Craw v. City of Lincoln

Court of Appeals of Nebraska - June 20, 2017 - N.W.2d - 24 Neb.App. 78820 - 17 WL 2656428

Former city golf course professional brought action against city and city employees arising out of his termination, alleging wrongful termination, constitutional inverse condemnation, statutory inverse condemnation, violations of due process and equal protection, and violations of the Wage Payment and Collection Act.

The District Court granted city's motion to dismiss, and golf professional appealed.

The Court of Appeals held that:

- Golf professional lacked cause of action against city under the Political Subdivisions Tort Claims Act (PSTCA);
- Purported job at city golf course was not a "property" interest for inverse condemnation purpose;
- Claim for alleged violations of due process was sufficient to survive motion to dismiss for failure to state a claim;
- Golf professional was entitled to opportunity to amend his complaint to show compliance with prerequisites for bringing claim under the Nebraska Wage and Payment Collection Act; and
- Golf professional's allegations as to his "employee" status under the Wage Payment and Collection Act were sufficient to survive motion to dismiss.

Former city golf course professional lacked cause of action against city under the Political Subdivisions Tort Claims Act (PSTCA) based on city's purported failure to properly categorize golf professional as a city employee. Alleged loss of employment was not a loss of property under the PSTCA, and, to the extent golf professional claimed his rights under the terms of his "engagement with city" were affected by negligent or wrongful acts of any city employees, the PSTCA specifically excluded claims arising out of any interference with contract rights.

Former golf course professional's purported job at city golf course was not a "property" interest for inverse condemnation purposes; rather, any claim he had regarding his employment or termination fell outside of the takings clause.

City golf course professional's claim for alleged violations of his constitutional right to due process was sufficient to survive motion to dismiss for failure to state a claim, although he failed to set forth the specific nature of his "engagement" with city; nature of his engagement was discoverable at a later date, and after the nature of his engagement and his employment classification was determined, then the issue of whether he was a public employee with a property interest in his job could be addressed.

City golf course professional's claim for alleged violations of his constitutional right to equal protection was sufficient to survive motion to dismiss for failure to state a claim, although he failed to allege specific facts as to how his treatment was different and less favorable than other city

employees or comparable persons, as there was a reasonable expectation that discovery would reveal evidence of the claim.

Former city golf course professional was entitled to opportunity to amend his complaint to show compliance with prerequisites for bringing claim under the Nebraska Wage and Payment Collection Act; golf professional mistakenly contended that claim filed with city under the Political Subdivisions Tort Claims Act (PSTCA) satisfied those requirements, but to the extent that he may have filed a notice of his claim for unpaid wages with the city apart from his tort claim, he was entitled to an opportunity to amend his complaint to show such compliance.

Former city golf course professional's allegations as to his "employee" status under the Wage Payment and Collection Act were sufficient to survive motion to dismiss for failure to state a claim; golf professional alleged that he was "by definition" an "employee of the City," and he set forth more specific factual allegations as to why he was an employee, including that city, at all times, "maintained and exercised extensive control" over him, intended his employment "to be long-term at the time he was first hired," a "significant majority" of his responsibilities were mid-managerial and "he was allowed to exercise little, if any, independent judgment," and further alleged that his "misclassification" by the city resulted in a substantial underpayment of compensation.

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