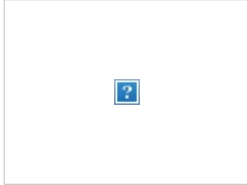


FORMER FEDEX EMPLOYEE ALLEGES FRAUD IN BANKRUPTCY COURT



A former employee of FedEx Freight, Inc. had lost a case of discrimination brought against the company. His subsequent appeal included a claim of fraud concerning an affidavit submitted by FedEx in support of its motion for summary judgment. The man filed a lawsuit against FedEx back in 2003, alleging a hostile work environment, constructive discharge (meaning that he had no choice but to quit, an act equivalent to termination), retaliation and a failure to promote. The case was removed to another court, and the following year, while the case was still pending, the man declared bankruptcy. FedEx made a motion for summary judgment and included an affidavit from its regional HR manager, and the motion was referred to the U.S. Bankruptcy Court for the Eastern District of Michigan. In 2005, at a hearing for the company's motion, the former employee asserted that the motion was not "properly supported" because the affidavit had not been notarized. The company's lawyer offered to turn over a notarized copy, which she said had been done around the time of the initial submission, and gave a copy to the plaintiff. The bankruptcy court granted summary judgment in favor of FedEx, and the decision was affirmed by the district court. The man appealed, and the court affirmed the summary judgment on all counts but failure to promote. The case was remanded, and a jury ruled in favor of the company. The plaintiff filed another appeal, and the district court affirmed the decision denying his motion for



a trial. In late 2009, the man filed a "fraud on the court" claim. He cited Federal Rules of Civil Procedure 60(b) and 60(d), which provide relief from a judgment or order. In this instance, he wanted the bankruptcy court's grant of summary judgment set aside. He alleged that FedEx had submitted a non-notarized affidavit, fully aware that it contained "false materials," for the purpose of "misleading" the court into granting the company's motion. FedEx made a motion to dismiss. The district court focused its decision on Rule 60(d) because it had no time limitation for filing – Rule 60(b), however, allots a one-year time limit, which the man missed by three years. The court noted that nothing had prohibited the man from addressing the claim of fraud in bankruptcy court or any of the prior district and appeal courts. Likewise, it saw little support for the man's allegations and accordingly granted the motion to dismiss. On appeal, the court defined fraud on the court as an action(s) that would directly interfere with the judiciary process. It did not believe that the courts had been deceived because the affidavit was clearly not notarized and that fact had also been addressed by the man's attorney in bankruptcy court. The claim that the affidavit included false statements was, according to the court, unsubstantiated. The company's motion requested that the man be sanctioned (threatened with a penalty) for the "frivolous" appeal. The appeals court affirmed the district court's dismissal but denied the motion to impose sanctions.