***Murray* v. *UBS Securities, LLC,* No. 22-660**

Today, the Supreme Court unanimously held that the whistleblower protections in the Sarbanes-Oxley Act do not require an employee alleging an unfavorable personnel action to establish that the employer acted with retaliatory intent.

Background: The Sarbanes-Oxley Act prohibits publicly traded companies from "discharg[ing], demot[ing], suspend[ing], threaten[ing], harass[ing], or in any other manner discriminat[ing]" against employees who engage in protected whistleblowing activities. 18 U.S.C. § 1514A. To prove a retaliation claim, a whistleblower must show that the whistleblowing activity contributed to the adverse employment action. If the whistleblower makes that showing, the burden then shifts to the employer, who may rebut the showing with clear and convincing evidence that it would have taken the same adverse action regardless of the whistleblowing activity.

This case concerned a UBS employee who was responsible for preparing market reports for UBS customers. The employee alleged that he was fired after raising concerns that he had been pressured to alter the reports in violation of federal securities regulations. At trial, UBS moved for judgment as a matter of law because the employee did not prove that UBS acted with retaliatory intent, and the district court denied that motion. A jury then awarded the employee nearly $1 million. The Second Circuit vacated the jury verdict, holding that Section 1514A requires a plaintiff to prove retaliatory intent.

Issue: Whether the whistleblower protection provision of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A, requires an employee to prove that a corporation acted with retaliatory intent in taking an unfavorable personnel action.

Court's Holding: In a unanimous opinion written by Justice Sotomayor, the Court held that Section 1514A does not require the employee to prove that the corporation acted with retaliatory intent. The Court rejected UBS's argument that Section 1514A's reference to "discriminate" imposes a retaliatory-intent requirement. Instead, it held, "the only intent that § 1514A requires is the intent to take some adverse employment action" against the whistleblower "because of" the whistleblowing activity. In other words, a whistleblower must prove that the protected activity contributed to the unfavorable personnel action but is not required to demonstrate that the employer intended to retaliate. The Court found support for that holding in the statute's burden-shifting framework, which allows the jury to determine the employer's intent.

The Court also rejected UBS's argument that innocent employers will face increased liability if whistleblowers are not required to prove retaliatory intent. The Court explained that the burden-shifting framework permits an innocent employer to establish by clear and convincing evidence that it would have made the same decision even in the absence of the protected behavior.

Justice Alito, joined by Justice Barrett, wrote a concurrence to emphasize that Section 1514A still requires a plaintiff to prove intent. He stressed that an employee is not required to prove that the protected activity was the sole or principal reason for the adverse employment action. Instead, the employee simply must show that it was one reason for the action. However, once the employee has made that showing, the employer nevertheless may defeat liability by establishing that it would have taken the same action even if the employee had not engaged in the protected activity.

Read the opinion here.