

Healthworld Corporation v Gottlieb

2004 NY Slip Op 30087(U)

September 27, 2004

Supreme Court, New York County

Docket Number: 0600641/6412

Judge: Bernard J. Fried

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: BERNARD J. FRIED

Justice

PART 60

Health World Corp.

INDEX NO.

600644

MOTION DATE

6-4-04

MOTION SEQ. NO.

003

MOTION CAL. NO.

14

vs.
Stottlieb, Lisa

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

This Motion to Dismiss the action is decided in accordance with the accompanying Memorandum decision.

SO ORDERED

FILED

SEP 28 2004

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 9/24/04



BERNARD J. FRIED
J.S.C.

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 60

-----X
HEALTHWORLD CORPORATION,

Plaintiff,

Index No.: 600641/04

-against-

LISA GOTTLIEB, et. al.

Defendants.

-----X
FRIED, J.:

Plaintiff Healthworld Corporation seeks an order dismissing the Counterclaims and the Fourth and Sixth Defenses. This motion is decided as follows:

A. First Counterclaim and related Fourth Affirmative Defense

The Fourth Affirmative Defense of defendant Gottlieb is that “Healthworld’s claims against Gottlieb are barred because the Covenant Agreement upon which Healthworld’s claims are based was fraudulently induced”. In the First Counterclaim, defendant Gottlieb seeks rescission of the Covenant Agreement, on the ground of “fraudulent inducement”. Since this defense and counterclaim are related, they are discussed and decided together.

It is basic that a cause of action for fraudulent inducement must allege a representation of material existing fact, falsity, scienter, justifiable reliance and damages (c.g., Callas v. Eisenberg, 192 AD2d349, 350 [1st Dept., 1993]). Here the complaint does

not even “include a conclusory allegation of ... reliance” (Nottenberg v. Walber 985 Co., 160 AD2d 574, 570 [1st. Dept., 1990]). At oral argument on this motion it was conceded that the complaint does not contain the word “reliance”; however, it was urged that the allegation that defendant “was compelled to execute the Covenant” (Compl., ¶ 84) is somehow the “equivalent of the reliance element that required a fraudulent misrepresentation”. Whether there is or is not a valid claim of coercion or duress, which this language sounds like, it does not satisfy the elements of a claim of fraud. Therefore, the failure to properly plead the claim of fraudulent inducement requires dismissal of this counterclaim and the related defense.

As to the First Counterclaim and Fourth Affirmative Defense, the request for leave to amend the pleadings is granted to the extent that a copy of the proposed pleadings is to be submitted with a Motion to Amend so that I can determine whether sufficiently detailed allegations are supplied to state a valid cause of action and affirmative defense.

B. Second Counterclaim and related Sixth Affirmative Defense

The Sixth Affirmative Defense of all defendants is that “any and all agreements executed by and between the individual party defendants and Healthworld are null and void as violative against public policy”. In the Second Counterclaim all defendants seek rescission of such agreements. Again, since this defense and counterclaim are related, they are discussed and decided together.

Essentially, in this counterclaim and affirmative defense, the defendants “assert a claim....of Healthworld’s unclean hands in entering into the restrictive covenant with Gottlieb and several alleged nefarious business practices”. (Defts. Mem. Law In Opposition, p. 7). This claim, as was stated at oral argument, is that because “the relationship between Healthworld and Kos and Allegran [two clients to which the preliminary injunction relates] is permeated with fraud and misconduct” (Tr. 21), it would be inequitable for this relationship to be protected, and the covenant should be rescinded. However, there is lacking any claim that Healthworld’s unclean hands are in any manner related to the subject matter of this litigation, i.e., the restrictive covenant. Since there is no such allegation, which is required for a defense and counterclaim based upon unclean hands (e.g., Weiss v. Mayflower Doughnut Corp., 1 NY2d 310 [1956]; see also, Welch v. DiBlasi, 289 AD2d 964 [4th Dept., 2001]), the dismissal motion must be granted.

Similarly as with the First Counterclaim and Fourth Affirmative Defense, the request for leave to amend the pleading is granted to the extent that a copy of the proposed pleadings is to be submitted with a Motion to Amend so that I can determine whether sufficiently detailed allegations are supplied to state a valid cause of action and affirmative defense

C. Third Counterclaim

This counterclaim concerns the defendant Scott Baxter, who alleges breach of contract concerning his entitlement to a bonus of \$20,000. Plaintiff seeks dismissal of this

claim pursuant to CPLR 3211(a)(1), based upon documentary evidence submitted which shows that the bonus was payable if he “is still an employce on the date the bonus is given”, i.e., June 2004. This is a memorandum from Fran Davi, plaintiff’s Human Resources Director, to Healthworld’s Chairman, with copies to the Exccutive Vice President and the President. Defendant Baxter is not copied on this memorandum. Since his effective date of resignation was March 4, 2004, it is argued that this counterclaim must be dismissed.

In opposition, defendant Baxter has submitted an Affidavit in which he avers that he never received such memorandum, and that it does not reflect his agreement concerning the bonus. Moreover, Baxter has submitted a handwritten memorandum, alleged to have been written by the president, which does not refer to the requirement that he be so employed in June 2004.

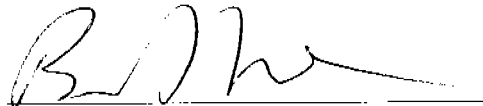
Since the documentary evidence submitted in support of this motion does not conclusively establish the defense, the motion must be denied. Obviously, following discovery, plaintiff may make any further motions deemed to be appropriate.

Accordingly, for the foregoing reasons, it is:

- (1) ORDERED that the motion dismiss the First and Second Counterclaims and the Fourth and Sixth Affirmative Defenses is GRANTED; and it further

(2) ORDERED that the motion to dismiss the Third Counterclaim is DENIED.

DATED:



J.S.C.
BERNARD J. FRIED
J.S.C.

FILED

SEP 28 2004

CLERK OF COURT
COUNTY OF ...