

Graham Campaign, P.C. v Fareed

2007 NY Slip Op 30695(U)

April 6, 2007

Supreme Court, New York County

Docket Number: 0117568/2005

Judge: Louis B. York

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. LOUIS B. YORK PART 2
Justice

-----X
GRAHAM CAMPAIGN, P.C., H. JOHN CAMPAIGN,
Plaintiffs,
-against-
CYNTHIA FAREED,
Defendant.
-----X

Index No. 117568/05
Motion Date _____
Motion Seq. No. 002
Motion Cal. No. _____

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

NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____
Answering Affidavits — Exhibits _____
Replying Affidavits _____
Cross-Motion: Yes No

PAPERS

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Motion Sequence Nos. 001 and 002 are consolidated for decision.

In Motion Sequence No. 001, plaintiff seeks to state with greater particularity the causes of action in the original complaint. The causes of action in both complaints are (1) a declaratory judgment that defendant has released plaintiff from any claims; (2) abuse of process and; (3) breach of employment contract.

Defendant moves to dismiss in Sequence No. 002 on the ground that plaintiff has failed to state a claim and denying the request for a declaratory judgment.

The Court grants the motion by plaintiff to amend its complaint. Under the liberal rules of pleading, especially as to amendments and the fact that this lawsuit is at the

beginning stages, the Court can see no prejudice to plaintiff, especially since no new parties or causes of action are added.

Defendant had worked at plaintiff's law firm, first as an independent contractor and afterwards as a salaried employee. During the course of employment, defendant claims she was subjected to continued sexual harassment by both the plaintiff, H. John Campaign, and the other employees at the firm. She was eventually terminated for reasons that had to do with insufficient income coming into the firm. Shortly before she left, she returned the firm's laptop and received a receipt stating that it was in good working order. She also received a release from the firm stating that she owed them no money. The firm asked for, but failed to get, a similar release from her.

Plaintiff qualified for unemployment compensation and filed a claim with the Equal Employment Opportunity Commission based on sexual harassment. That claim was dismissed without prejudice to her pendent state claims because the law firm did not satisfy the federal standard of employing at least 15 people.

After the dismissal and two years after plaintiff brought this lawsuit, plaintiffs discovered that Ms. Fareed owed them money as a result of billing errors.

That portion of the motion to dismiss the cause of action for breach of contract is denied. The parties do not argue that the complaint itself is deficient. Rather, they allude to facts outside the complaint. In alleging that defendant overcharged the law firm for her

overtime and failed to give the firm a decent day's work on many occasions, the plaintiff invokes the inconsistency of her time sheets with the figures in the firm's computer. In addition, to her denial, plaintiff points to the aforementioned releases and to the glowing reports of her competency and work ethics of her immediate supervisor in the firm. These contradicted facts and the damages may have resulted will have to be decided at trial.

The Court cannot sustain the request for a declaratory judgment. From the facts alleged in support of this motion, plaintiff projects an incredible and an inherently unbelievable scenario. If there was such an agreement to release plaintiff by defendant, why did he wait to the end of her employment to ask her to sign the release? Given the blatant cheating that he has accused her of, it made no sense not to get that writing signed at the same time the agreement was reached. Moreover, it is unbelievable that he claims to find it necessary to sign a release, and, yet, pay her for the two weeks when she refused to sign. The confluence of all these factors justifies the Court in removing the declaratory action from this action.

As to abuse of process, the basis for sustaining this cause of action is absent. The bringing of a lawsuit does not by itself establish abuse of process. There must be a collateral and improper purpose for bringing the action. Nor does an attempt to resolve the dispute before bringing an action constitute abuse of process. For at that time, no legal process has been implicated. Neither does an attempt to bring a lawsuit that is subsequently dismissed

establish the use of process to establish collaterally impermissible ends, especially when defendant has established in her opposing papers, which the Court deems a part of her answer, (even though it was held that there were less than 15 employees in this firm) confusion resulted from existing "of counsel" personnel and other independent contractors who occupied the suite. Inclusion of these individuals as part of the firm would have exceeded the 15-member requirement. It was not irrational, therefore, to have concluded that the firm consisted of more than 15 employees. And plaintiff's unsubstantiated conclusion that defendant knew there were less than 15 employees does not turn the initiation of the federal lawsuit into an abuse of process.

As the only surviving cause of action is for breach of the employment agreement, the actual amount in controversy justifies transferring this matter to the Civil Court.

Because the local rules of this court require that no affidavit or affirmation shall exceed 25 pages, I have not read plaintiffs' reply affidavit beyond page 25.

I have considered plaintiffs' remaining arguments and find them to be without merit.

Accordingly, it is

ORDERED that the cause of action for abuse of process is dismissed; and it is further

ORDERED that the cause of action for a declaratory judgment is dismissed as the complaint does not establish that the defendant promised to release the plaintiffs from liability to her; and it is further

ORDERED that the motion to amend the complaint annexed as an exhibit to plaintiffs' motion, is granted. If defendant wishes to submit an answer, she must do so within twenty (20) days of today; and it is further

ORDERED that this action is transferred to the Civil Court of the City of New York, New York County.

Dated: 7/6/07

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Louis B. York, J.S.C.

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