Executive Fliteways, Inc. v Caballero

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Supreme Court, Suffolk County

Docket Number: 0010802/2006

Judge: Sandra L. Sgroi

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SUPREME COURT - STATE OF NEW YORK
SPECIAL TERM, PART 19 SUFFOLK COUNTY

Mot Seq: 003 MD

Present:
Hon. SANDRA L. SGROI

Adj'd Date: 7-5-07
Return Date: 6-29-07

EXECUTIVE FLITEWAYS, INC. ,
Plaintiff,

-against-

ANTHONY CABALLERO,
Defendant.

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Upon the following papers numbered 1 to 27 read on this Motion: Notice of Motion and supporting papers 1-16; Affidavit and affirmation in opposition and supporting papers 17-18; 19-25; Reply Affirmation and supporting papers 26-27; it is,

ORDERED that the motion of the Defendant for leave to renew and reargue is denied.

Executive Fliteways has its main office at MacArthur Airport in Ronkonkoma, New York and it is in the business of providing on-demand private jet air charter transportation worldwide. The Plaintiff does not, as part of its regular course of business, provide for advanced or complex pilot training and it does not operate a flight school. Advanced training is provided to employee pilots through outside training schools. All pilot employees who are hired by Executive Fliteways are required to enter into a Pilot Training and Employment Agreement. These Pilot agreements provide that the employee will reimburse Executive Fliteways for a specific sum of money for the outside, specialized, pilot training if the pilot leaves the employ of the Plaintiff before a specific time period has transpired.

It is undisputed that the Plaintiff, Executive Fliteways Inc. commenced this action for the alleged breach of a Pilot Training and Employment Agreement dated January 24, 2005 by the Defendant, Anthony Caballero (hereinafter "Caballero"). Executive Fliteways sought damages in the amount of $18,000.00 plus 7 % interest

together with reasonable attorneys fees. The action is based upon a promissory note signed by the Defendant. In addition to the promissory note signed by the Defendant, the Defendant and the Plaintiff entered into an employment agreement whereby the Plaintiff employed the Defendant as a pilot.

Executive Fliteways uses two types of Contracts for its pilots. One of these agreements provides for a one year employment commitment or the employee will reimburse Executive Fliteways for a sum of money for the outside, entry level training and certification of the employee. The second type of employment agreement is a similar contract but requires a two year employment commitment or the reimbursement of a specific sum of money for outside, advanced training. The agreement at issue here is the second type of employment contract requiring a two year commitment to avoid reimbursement of money to the company. It is not disputed that the money sought for reimbursement reflects the Plaintiff's out of pocket expenses for the advanced training course provided and paid for by the Plaintiff.

Caballero commenced employment with Executive Fliteways on February 25, 2002. Pursuant to the standard operating procedure of Executive Fliteways, the Defendant twice received additional training paid for by Executive Fliteways at separate times over his career with the company. As a condition for the Plaintiff's payment for this pilot training, the Defendant signed two different promissory notes. Only one of the promissory notes is at issue herein.

Caballero accepted the offer of Executive Fliteways to receive additional training and his first agreement provided for transition from piloting a Learjet 31/35 to a Learjet 60. As part of his employment and in consideration for the additional training provided to him by the Plaintiff, Caballero signed an employment contract, a letter of financial responsibility and a promissory note (see, Motions 001,002 Plaintiff's Exhibits "4", "5" and "6"). Caballero received the training for piloting the Learjet 60 and he completed his obligation to work for Executive Fliteways for 12 months under that employment agreement.

Subsequent to the completion of that employment agreement, Executive Fliteways offered additional training to Caballero to qualify him to pilot a more advanced jet than the Learjet 60 , the Falcon 50. Caballero accepted the two week training paid for by the Plaintiff and he completed training to qualify to fly the Falcon 50 on February 14, 2005. Caballero signed another employment contract with the Plaintiff and a note for $18,000.00, which amount was the cost of the outside training that he received to upgrade his piloting skills. This employment agreement is dated January 24, 2005, and it provides that the amount due under the note shall decrease the longer that Caballero remains employed by Executive Fliteways and it specifically provides for no reduction for the first thirteen months after training with a reduction of $8,200.00 from the principal upon the fourteenth month after qualification (see Motions 001, 002 Plaintiff's Exhibit "1"). The obligation to pay the amount due under the note then reduces to zero over the course of the next ten months if the Defendant remains in the employ of the Plaintiff. The contract also provides that if the Plaintiff no longer operates the aircraft Caballero was trained to pilot, "the financial obligation under this contract will be considered satisfied" (see Motions 001, 002 Plaintiff's Exhibit "1"). It is not disputed that the Plaintiff has continued to operate the Falcon 50.

Following completion of this training, Caballero's salary was first increased to $70,000.00 annually and then to $77,000.00 by the Plaintiff. In addition to this annual compensation, he also received medical and dental

coverage and had the opportunity to participate in a profit sharing plan. On October 9, 2005, Caballero informed Executive Fliteways that he was going to leave the employ of the Plaintiff to work for another company. At that time, Caballero refused to make payment for the training that was provided, although payment was demanded by representatives of Executive Fliteways pursuant to the note and the employment agreement. When Executive Fliteways did not receive payments on the note despite the demand, this action was commenced and the Plaintiff moved for summary judgment after answer was joined.

It is not disputed that the promissory note was signed by the Defendant and that the Defendant has refused to make payment under the note. Once Executive Fliteways demonstrated (1) the existence of a promissory note executed by the Defendant, (2) the unconditional terms of repayment in that note, and (3) the Defendant's default in payment of the amounts due under that note (see, ***Haselnuss v. Delta Testing Labs.***, 49 A.D.2d 509, 671 N.Y.S.2d 361 lv app'l den'd 92 N.Y.2d 815, 706 N.E.2d 747, 683 N.Y.S.2d 759; ***East N.Y. Sav. Bank v. Baccaray,*** 214 A.D.2d 601, 625 N.Y.S.2d 88), the Defendant can defeat the motion by showing the conditions that Executive Fliteways failed to adhere to in the underlying employment agreement are inseparably "interwoven" with the note such that a breach of one justifies the breach of the other. The general rule is that the breach of a related contract will defeat a motion for summary judgment on an instrument for money only if it can be shown that both that the contract and the instrument are inextricably "intertwined" and that the defenses alleged to exist create material issues of triable fact (see, ***Inpar Bldg. Corp. v. Veoukas,*** 143 A.D.2d 810, 811, 533 N.Y.S.2d 337; ***Regal Limousine Inc. v. Allison Limousine Inc.***, 136 A.D.2d 534, 523 N.Y.S.2d 154; see also ***Yoi-Lee Realty Corp. v. 177th Street Realty Associates***, 208 A.D.2d 185, 626 N.Y.S.2d 61).

Here, the underlying employment contract referred to other conditions and terms that affected the obligation to pay the principal amount stated in the note because the employment agreement specifically stated that the note would not become payable unless Caballero terminated his employment with Executive Fliteways within a specific time period, that the amount due under the note was reduced the longer that Caballero was employed by Executive Fliteways and that the note would be considered satisfied if Executive Fliteways no longer operated the aircraft applicable to the training received by Caballero. These conditions placed additional requirements on the absolute and unconditional obligation to pay the note according to its terms (see, ***Borg v. Belair Ridge Development Corp.***, 270 A.D.2d 377, 705 N.Y.S.2d 260; ***Haselnuss v. Delta Testing Labs.***, supra; ***Afco Credit Corp. v. Boropark Twelfth Ave. Realty Corp.***, 187 A.D.2d 634, 590 N.Y.S.2d 519; see also, ***Combine Intern. v. Berkley***, 141 A.D.2d 465, 529 N.Y.S.2d 790; UCC § 3-302; ***Lackmann Food Service, Inc. v. E & S Vending Co., Inc.***, 125 A.D.2d 366, 509 N.Y.S.2d 90).

However, Executive Fliteways is still entitled to summary judgment if the defenses alleged create no triable issues of fact (see generally, ***Harris v. Miller***, 136 A.D.2d 603, 523 N.Y.S.2d 586; ***Logan v. Williamson & Co.***, 64 A.D.2d 466, 470, 409 N.Y.S.2d 883; see also, ***Maglich v. Saxe, Bacon & Bolan***, 97 A.D.2d 19, 23-24, 468 N.Y.S.2d 618).

On the previous motions, the Defendant raised various defenses, including unconscionability, violation of an implied covenant of good faith and fair dealing, and unclean hands.

As the Court noted previously, unconscionability is a flexible doctrine, which requires some showing of "an absence of meaningful choice on the part of one of the parties together with contract terms which are

unreasonably favorable to the other party" (***Williams v. Walker-Thomas Furniture Co.***, 350 F.2d 445, 449; ***Matter of State of New York v. Avco Fin. Serv. of N.Y.***, 50 N.Y.2d 383, 389, 429 N.Y.S.2d 181, 406 N.E.2d 1075). The affidavits submitted by the defendants contain no proof in evidentiary form to substantiate such claims against Executive Fliteways.

The factual record previously before this Court did not reveal a violation of the implied covenant of good faith and fair dealing in connection with the execution of the contract. Plaintiff did not breach its obligation of good faith and fair dealing in seeking to enforce the note and contract because it only sought to exercise the express terms of its agreement with the Defendant (see, ***Bonnie & Co. Fashions, Inc. v. Bankers Trust Co.***, 281 A.D.2d 223, 722 N.Y.S.2d 230; ***O'Reilly v. NYNEX Corp.***, 262 A.D.2d 207, 208, 693 N.Y.S.2d 13). Caballero's claim of bad faith would imply an obligation inconsistent with other terms of the contractual relationship and here no such obligation is found (see, ***Murphy v. American Home Prods. Corp.***, 58 N.Y.2d 293, 304, 461 N.Y.S.2d 232, 448 N.E.2d 86; ***Keifer v. Sony Music Entertainment, Inc.***, 8 A.D.3d 107, 778 N.Y.S.2d 496).

The doctrine of unclean hands does not apply to a contract action and it is not a proper defense to the claim of the Plaintiff (see, ***Rocks & Jeans, Inc. v. Lakeview Auto Sales & Service, Inc.***, 184 A.D.2d 502, 584 N.Y.S.2d 169).

This Court adheres to its previous determination that the conclusory allegations of Defendant's defenses do not present issues of fact where, as here, the Defendant received both substantial raises in his annual salary and additional advanced training in his field in return for the agreed upon consideration of paying back the actual costs of his training if he terminated his employment within a limited, specified period of time.

The Defendant now alleges on this motion that the contracts that he signed while employed by the Plaintiff are ambiguous. Whether a contract is ambiguous is a question of law for the Court and is to be determined by looking at all of the terms within the contract or contracts (see, ***Geothermal Energy Corp. v. Caithness Corp.***, 34 A.D.3d 420, 825 N.Y.S.2d 485). In ***Geothermal Energy Corp. v. Caithness Corp*** (supra) the Appellate Division, Second Department stated:

> The existence of ambiguity is determined by examining the "entire contract and consider[ing] the relation of the parties and the circumstances under which it was executed," with the wording to be considered "in the light of the obligation as a whole and the intention of the parties as manifested thereby" (***Kass v. Kass***, supra at 566, 673 N.Y.S.2d 350, 696 N.E.2d 174). The "'intent of the parties must be found within the four corners of the contract, giving a practical interpretation to the language employed and the parties' reasonable expectations'" (***Del Vecchio v. Cohen***, 288 A.D.2d 426, 427, 733 N.Y.S.2d 479, quoting ***Slamow v. Del Col***, 174 A.D.2d 725, 726, 571 N.Y.S.2d 335, *affd.* 79 N.Y.2d 1016, 584 N.Y.S.2d 424, 594 N.E.2d 918).

It is not disputed that Caballero left his employment with the Plaintiff for a position as a pilot with another company. New counsel for the Defendant attempts to allege that the terms of the Pilot Training and Employment Agreement dated January 24, 2005, are ambiguous but that defense is not justified in light of the relationship between the parties and the clear intent in the agreement that the monies paid for advanced training

would be reimbursed to the Plaintiff under certain conditions. It is clear from the agreements that the Defendant would be required to pay back certain specified sums of monies to the Plaintiff if he terminated his employment before a two year period of time had expired. The motion to renew and reargue is denied.

The Defendant's motion, although denominated as one for leave to renew and reargue, is not based on new evidence that was unavailable to him at the time of the original motion. Therefore this motion is one for leave to reargue (see, ***Fischer v. RWSP Realty, LLC,*** 19 A.D.3d 540, 798 N.Y.S.2d 72; ***Ruddock v. Boland Rentals, Inc.,*** 5 A.D.3d 368, 774 N.Y.S.2d 50; ***Sabetfard v. Smith,*** 306 A.D.2d 265, 760 N.Y.S.2d 525).

Dated: 8/10/07

SANDRA L. SGROI, J. S. C.