

Eden v St. Luke's-Roosevelt Hosp. Ctr.

2010 NY Slip Op 30138(U)

January 12, 2010

Supreme Court, New York County

Docket Number: 114936/05

Judge: Debra A. James

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

PRESENT: DEBRA A. JAMES
Justice

PART 59

ROBERT EDEN,
Plaintiff,

Index No.: 114936/05

Motion Date: 7/07/09

- v -

Motion Seq. No.: 3

ST. LUKE'S-ROOSEVELT HOSPITAL CENTER, BARAK
ROSENN, M.D., RICHARD JAFFE, M.D., and
ODED LANGER, M.D.,
Defendants.

Motion Cal. No.: _____

The following papers, numbered 1 to 8 were read on this motion to dismiss.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____
Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

PAPERS NUMBERED
1, 2
3, 4
5 - 8

Cross-Motion: Yes No

Upon the foregoing papers,

FILED

Defendants move for an order pursuant to CPLR 2221(e),
3211(a)(1) and 3211(a)(7) dismissing the complaint.

JAN 25 2010
NEW YORK
CLERK OF THE COURT

Plaintiff cross-moves for an order pursuant to CPLR 2221(e)
granting him "leave to renew the earlier motion practice that led
to the Order of this court dated October 10, 2006" and, upon
renewal, reinstating his first, fifth, sixth and seventh causes
of action.

The complaint asserts seven causes of action: (i) breach of
contract; (ii) fraud; (iii) violation of the Labor Law; (iv) an

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

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

accounting; (v) tortious interference with contractual relations; (vi) breach of oral and implied contracts; and, (vii) breach of fiduciary duty.

In seeking dismissal of plaintiff's first and sixth causes of action (respectively breach of the Contract and breach of oral agreements) defendants first argue that plaintiff's claim that he was entitled to a four-year term as director of the MFM fellowship program should be dismissed because (1) the Contract states that plaintiff was hired for a one-year term commencing on January 27, 2003 and makes no reference to any fellowship or directorship; (2) plaintiff's claim of a four-year term is barred by the Statute of Frauds; and, (3) the Contract contains a merger provision which bars any attempt by plaintiff to vary its written terms. Defendants further argue that plaintiff's Contract claim cannot be sustained against the individual defendants because they were not parties to the Contract and that defendant Langer's statement that he "anticipate[d]" that plaintiff would be at St. Luke's for at least four years did not constitute a contractual promise to employ plaintiff for four years.

Defendants contend that plaintiff's fraud claim should be dismissed because it is duplicative of his breach of contract claim and barred by the merger provision in the Contract. Defendants then argue that plaintiff's Labor Law claim must be dismissed because he does not fall within the category of persons

protected by the compensation provisions on which he relies. Defendants argue that plaintiff's fourth cause of action for an accounting along with his seventh cause of action for breach of fiduciary duty should be dismissed because they were not in a fiduciary relationship with plaintiff. Defendants also seek dismissal of plaintiff's claim for tortious interference with contractual relations on the grounds that St. Luke's cannot be found liable for interference with contractual relations because it was a party to the Contract and the individual defendants cannot be found liable because they were plaintiff's fellow employees acting within the scope of their authority.

The court agrees with defendants that plaintiff's first cause of action for breach of contract, to the extent that plaintiff alleges that he was entitled to a four-year term of employment or a four-year term of employment as director of the MFM fellowship under the Contract, should be dismissed. The Contract provides in pertinent part that the commencement date of plaintiff's employment "as an Attending Physician in the Department of Obstetrics and Gynecology" is January 27, 2003 and that his employment will be for a term of one year commencing on that date. The Contract also specifically sets forth plaintiff's responsibilities thereunder which do not include any directorship or fellowship. Defendants' alleged oral promise to employ plaintiff for four years is unenforceable because it is not in

writing as required by the Statute of Frauds. See General Obligations Law § 5-701[a][1] (agreement which by its terms is not to be performed within one year is void unless in writing and subscribed by the party to be charged); see also Cunison v Richardson Greenshields Securities, Inc., 107 AD2d 50 (1st Dept 1985) (complaint based upon oral contract of employment for five-year term dismissed as unenforceable under Statute of Frauds). Furthermore, the Contract contains the following merger clause: "This Agreement represents the entire agreement of the parties, and supersedes any and all prior agreements between you [plaintiff] and the Hospital Center [St. Luke's] with respect to the subject matter hereof." Parol evidence is inadmissible to vary the terms of a written agreement which contains a merger provision (see Norman Bobrow & Co. v Loft Realty Co., 178 AD2d 175 [1st Dept 1991]; cf. Gebbia v Toronto-Dominion Bank, 306 AD2d 37 [1st Dept 2003]).

Plaintiff's Contract claims against the individual defendants will be dismissed because they were not parties to the Contract (see Dember Const. Corp. v Staten Island Mall, 56 AD2d 768, 769 [1st Dept 1977]). To the extent that plaintiff's first cause of action (which is asserted against all defendants) alleges that the individual defendants breached oral agreements with him concerning his sharing in the income of the MFM group,

the cause of action against them will be sustained as the allegations are sufficient to establish an oral contract.

Plaintiff's sixth cause of action (which is the sole cause of action asserted against the individual defendants only) alleges that the individual defendants breached various oral agreements and promises pertaining primarily to plaintiff's membership in the MFM group. This cause of action is arguably independent from plaintiff's first cause of action which alleges that the individual defendants along with St. Luke's breached the Contract because the promises alleged are distinct from those in the Contract. Given the liberal standards applicable to a motion to dismiss pursuant to CPLR 3211(a) (see e.g., Richbell Services, Inc. v Jupiter Partners, L.P., 309 AD2d NY3d 288, 289 [2003] [we must construe the complaint liberally construed, and accept as true all allegations accepted as true, ... and accord the plaintiffs the benefit of every possible favorable inference"]), this cause of action will be sustained at this pleading stage.

The court finds that plaintiff's second cause of action sounding in fraud should be sustained with respect to the individual defendants. "[A] defendant may be liable in tort when it has . . . fraudulently induced the plaintiff to enter into a contract." New York University v Continental Ins. Co., 87 NY2d 308, 316 (1995). The complaint alleges that the individual defendants fraudulently induced plaintiff to enter into the

agreement to share MGM income by making false representations concerning his membership in the MFM group. Plaintiff's fraud claim against St. Luke's will, however, be dismissed because the fraud alleged relates to St. Luke's alleged breach of the Contract (see Egan v New York Care Plus Ins. Co., Inc., 277 AD2d 652, 653 [3d Dept 2000]; Orix Credit Alliance, Inc. v R.E. Hable Company, 256 AD2d 114 [1st Dept 1998]) and because the claim is barred by the merger provision in the Contract (see supra).

In his third cause of action plaintiff alleges that defendants violated Article 6 (Payment of Wages) of the Labor Law by failing to pay plaintiff his salary and other income and benefits owed to him and that, as a result, he is entitled to reasonable attorney's fees under Labor Law § 198 (1-a) should he prevail on his Labor Law claim. In seeking dismissal of this cause of action defendants cite, inter alia, Rifkinson-Mann v Kasoff (226 AD2d 517, 518 [2d Dept 1996]) for the proposition that Article 6 does not apply to professionals (including physicians) who earn in excess of \$600 per week. However, that proposition has been abrogated by Parcher v Bernard Hodes Group, Inc. (10 NY3d 609 [2008]), wherein the Court of Appeals held that executives are covered under Article 6, except where expressly excluded (id. at 616), and the same would be true for professionals. Defendant St. Luke's-Roosevelt Hospital has failed to demonstrate that plaintiff's claim of a Labor Law

violation should be dismissed as a matter of law. In this connection, the court notes that the plaintiff does not claim that he was employed by the individual defendants, so no such cause of action lies against them.

The viability of plaintiff's fourth (an accounting) and seventh (breach of fiduciary duty) causes of action turns on whether there are facts alleged that can establish a fiduciary relationship between the parties. See Winter v Beale, Lynch & Co., 198 AD2d 124 (1st Dept 1993), lv dismissed and denied 83 NY2d 944 (1994) (to sustain a cause of action for an accounting the plaintiff must show the existence of a partnership, joint venture, or other fiduciary relationship). Plaintiff's fourth and seventh causes of action are based on the following allegations: (1) during the interview process while plaintiff was considering offers from both St. Luke's and Beth Israel he was told by the individual defendants that he would receive an equal share (25%) of the earnings of the MFM group; (2) plaintiff and the individual defendants became co-venturers in the MFM group; (3) plaintiff placed his trust and confidence in the individual defendants with respect to the venture; (4) plaintiff demanded an accounting after his relationship with St. Luke's ended, and (5) the accounting was not provided. The allegations, assumed to be true on this motion to dismiss, could support a finding that the individual defendants owed plaintiff a fiduciary obligation

to render an accounting with respect to the MFM group's revenues. See Cobblah v Katende, 275 AD2d 637 (1st Dept 2000); LoGerfo v Trustees of Columbia University, 35 AD3d 395, 397 (2d Dept 2006). Accordingly, plaintiff's fourth and seventh causes of action against the individual defendants survive dismissal.

However, plaintiff's relationship with St. Luke's, which is governed by the Contract, did not create a fiduciary obligation on St. Luke's part and plaintiff's fourth and seventh causes of action against St. Luke's will therefore be dismissed. See Vitale v Steinberg, 307 AD2d 107 (1st Dept 2003).

Plaintiff's fifth cause of action for tortious interference with contractual relations, which is founded on ambiguous and confusing allegations, will be dismissed. This cause of action cannot be sustained against St. Luke's because St. Luke's was a party to the Contract. See Kosson v Algaze, 203 AD2d 112, 113 (1st Dept 1994), affd 84 NY2d 1019 (1995). Nor can it be sustained against the individual defendants because plaintiff fails to allege that they acted outside the scope of their authority. Id.

Plaintiff has cross-moved for leave to renew "earlier motion practice" which involved the reinstatement of certain causes of action. Defendants do not oppose plaintiff's application, which appears to be moot, and have chosen to rely on their instant

motion, which is addressed to the entire complaint now before the court.

Accordingly, defendants' motion is GRANTED only to the extent that it is hereby

ORDERED that plaintiff's first cause of action that alleges plaintiff was entitled to a four year term of employment under the Contract or a four-year term of employment as director of the MFM group, is dismissed with respect to St. Luke's; and it is further

ORDERED that plaintiff's first cause of action, to the extent that it alleges that the individual defendants breached the Contract and plaintiff's third cause of action, to the extent that it alleges that the individual defendants breached the New York Labor Law, are dismissed with respect to the individual defendants; and it is further

ORDERED that the second, fourth, fifth, and seventh causes of action are dismissed with respect to St. Luke's; and it is further

ORDERED that the fifth cause of action is dismissed with respect to the individual defendants; and it is further

ORDERED that in all other respects defendants' motion is denied; and it is further

ORDERED that the plaintiff's cross-motion is denied as moot.

This is the decision and order of the court.

Dated: January 12, 2010

ENTER:

~~Debra A. James~~
J.S.C.
DEBRA A. JAMES

FILED
JAN 25 2010
NEW YORK
COUNTY CLERK'S OFFICE