

Wood v Long Is. Pipe Supply, Inc.

2010 NY Slip Op 30384(U)

February 5, 2010

Supreme Court, Nassau County

Docket Number: 013229-09

Judge: Timothy S. Driscoll

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Blair

**SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER**

Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

-----x
FRANK WOOD,

**TRIAL/IAS PART: 22
NASSAU COUNTY**

Plaintiff,

**Index No: 013229-09
Motion Seq. No: 1
Submission Date: 12/11/10**

-against-

**LONG ISLAND PIPE SUPPLY, INC., and ALBANY
PIPE AND NIPPLE MANUFACTURING, INC.,**

Defendants.

-----x

Papers Read on this Motion:

- Notice of Motion.....X**
- Affirmation in Support and Exhibits.....X**
- Memorandum of Law in Support.....X**
- Affirmation in Opposition and Exhibit (Affidavit of F. Wood)....X**
- Memorandum of Law in Opposition.....X**
- Reply Memorandum of Law.....X**

This matter is before the court on the motion by Defendants Long Island Pipe Supply, Inc. ("LI Pipe") and Albany Pipe and Nipple Manufacturing, Inc. ("Albany Pipe") (collectively "Defendants"), filed September 28, 2009 and submitted December 11, 2009. For the reasons set forth below, the Court grants Defendants' motion and dismisses the Verified Complaint.

BACKGROUND

A. Relief Sought

Defendants move, pursuant to CPLR §§ 3211(a)(1) and (7), for an Order dismissing the Verified Complaint ("Complaint") in its entirety.

Plaintiff opposes Defendants' motion.

B. The Parties' History

Plaintiff Frank Wood ("Wood") is a New York resident. LI Pipe is a New York corporation with a principal place of business in Garden City, New York ("Garden City Location") and Albany Pipe is a New York corporation with a principal place of business in Green Island, New York ("Green Island Location").

On or about December 2001, Plaintiff and Defendants entered into an employment contract ("Agreement") (Ex. 2 to Aff. in Supp.) for an initial term of five (5) years, pursuant to which Plaintiff was employed as a Product Manager at the Green Island Location. Plaintiff alleges that, after the expiration of the original term of the Agreement, Defendants renewed the Agreement for another five (5) year term, from December 2006 to December 2011. Plaintiff does not allege that the parties executed any documentation reflecting this purported renewal. Plaintiff alleges, further, that on December 16, 2008, Defendants, without prior written notice or good cause, terminated Plaintiff's employment. The Complaint also alleges that Plaintiff, who is 81 years old, remains ready and able to perform his obligations pursuant to the Agreement.

The Complaint contains a single cause of action based on Defendants' alleged Breach of the Agreement by terminating Plaintiff's employment without good and sufficient cause. Plaintiff alleges that, as a result of Defendants' alleged breach, he lost approximately three (3) years of salary, commissions and other benefits and he seeks damages of approximately \$600,000.

Paragraph 4 of the Agreement, titled "Term of Employment," provides as follows:

The term of employment hereunder shall commence on the 1st day of December, 2001, and shall be in effect for five (5) years, subject to earlier termination: (a) by either party, without notice, for good and sufficient cause, or (b) in the event of death of EMPLOYEE; or (c) in the event of the permanent disability of EMPLOYEE, in which event, EMPLOYEE shall be entitled to receive thirty (30) days prior written notice of termination and EMPLOYEE shall be entitled to receive his compensation and benefits to the end of said thirty (30) day period, at which time this agreement shall terminate. EMPLOYEE shall be deemed permanently disabled if he is unable, by reason of illness or incapacity, to perform his major duties for a continuous period of three (3) months.

Defendants submit that Plaintiff's allegation in paragraph five (5) of the Complaint (Ex. 1 to Aff. in Support) that "After the expiration of the original term of said contract, Plaintiff remained fully employed by and with Defendants thereby renewing said contract for

another five (5) year term of employment commencing December 2006 and ending in December 2011[,]” is an incorrect statement of law. Defendants argue that the Agreement contains no language supporting Plaintiff’s assertion. Rather, Defendants submit that the Agreement expired by its own terms after five (5) years, making Plaintiff an employee-at-will at the time of his discharge, whom Defendants could terminate for any reason.

In his Affidavit in Opposition, Wood affirms as follows:

Although the fixed term of the Agreement expired on or about December 1, 2006, he continued in his employment with Defendants “upon the same material terms and conditions set forth in [the Agreement] until Defendants terminated me on or about December 16, 2008” (Aff. in Opp. at ¶ 3). Wood avers that, on or about December 16, 2008, Robert Moss, President of both Defendant Corporations, met with Wood and advised him that he was being terminated “‘for cause’ because he had received ‘harassment’ complaints about [Wood] from the ‘labor board’ and other employees” (Aff. in Opp. at ¶ 4).

Wood “categorically den[ies] such complaints and maintain[s] that Defendants had no cause to terminate [his] employment” (Aff. in Opp. at ¶ 4). He affirms that, prior to December of 2008, he was never advised of any complaints about him by the labor board or other employees. Thus, he did not have the opportunity to address those alleged complaints. He also avers that he was a good and productive employee for Defendants.

Wood affirms that, throughout the course of his employment with Defendants, 1) his duties and responsibilities did not change; 2) his compensation and benefits remained steady, with the exception of annual pay raises both during and after the contractual period; 3) there were no material revisions to Defendants’ employee manual, and Wood “understood and intended [his] continued employment with Defendants after December 1, 2006 as a renewal of the written employment contract” (Aff. in Opp. at ¶ 6); and 4) Wood and Defendants conducted themselves as if the written contract had been renewed.

Wood also submits that dismissal of the Complaint is not appropriate because the Agreement, which is silent on the issue of renewal of an employee’s term, does not specify that continuation of the employment relationship after the expiration of the contractual period results in the employee’s status as an at-will employee.

C. The Parties' Positions

Defendants move to dismiss the Complaint, submitting that 1) the Agreement ended at the conclusion of the initial five (5) year period because the parties never agreed to an extension; and 2) given the absence of a contractual extension, Wood's became an employee-at will at the end of the five (5) year term, whom Defendants could fire for any reason.

Plaintiff opposes Defendants' motion submitting, *inter alia*, that 1) the continuation of Plaintiff's employment following the expiration of its original term, under the same terms and conditions set forth in the Agreement, permits the inference that the Agreement was renewed; 2) Defendants have not rebutted that inference because they have not demonstrated conclusively that they did not intend to allow the Agreement to renew automatically; and 3) Defendants' allegedly advising Plaintiff that he was being terminated "for cause" is inconsistent with Defendants viewing Plaintiff as an at-will employee.

In their Reply Memorandum of Law, Defendants submit that the holding in *Goldman v. White Plains Center for Nursing Care, LLC*, 11 N.Y.3d 173 (2008), compels dismissal of the Complaint. Defendants argue that the Court of Appeals, in *Goldman*, held that any inference that an employment contract is renewed for a year as a result of continued employment is rebutted by clear language in the agreement specifying the term of that agreement. Defendants submit that the language in the Agreement in the matter *sub judice* clearly demonstrates an intent that the term of Plaintiff's employment expire after a definite period. Thus, after the five-year term, Plaintiff was an employee-at-will who could be terminated for any reason.

RULING OF THE COURT

A. Standards for Dismissal

A complaint may be dismissed based upon documentary evidence pursuant to CPLR § 3211(a)(1) only if the factual allegations contained therein are definitively contradicted by the evidence submitted or a defense is conclusively established thereby. *Yew Prospect, LLC v. Szulman*, 305 A.D.2d 588 (2d Dept. 2003); *Sta-Bright Services, Inc. v. Sutton*, 17 A.D.3d 570 (2d Dept. 2005).

In addition, it is well settled that a motion interposed pursuant to CPLR §3211 (a)(7), which seeks to dismiss a complaint for failure to state a cause of action, must be denied if the factual allegations contained in the complaint constitute a cause of action cognizable at law.

Guggenheimer v. Ginzburg, 43 N.Y.2d 268 (1977); *511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144 (2002). When entertaining such an application, the Court must liberally construe the pleading. In so doing, the Court must accept the facts alleged as true and accord to the plaintiff every favorable inference which may be drawn therefrom. *Leon v. Martinez*, 84 N.Y.2d 83 (1994).

B. Applicable Contract Principles

To establish a cause of action for breach of contract, one must demonstrate: 1) the existence of a contract between the plaintiff and defendant, (2) consideration, 3) performance by the plaintiff, (4) breach by the defendant, and (5) damages resulting from the breach. *Furia v. Furia*, 116 A.D.2d 694 (2d Dept. 1986). Agreements are to be construed in accordance with the intent of the parties and the best evidence of the parties' intent is what they express in their written contract. *Goldman*, 11 N.Y.3d at 176. A written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms, without reference to extrinsic materials outside the four corners of the document. *Id.*, quoting *Greenfield v. Philles Records*, 98 N.Y.2d 562, 569 (2002).

It is well settled that, absent an agreement establishing a fixed duration, an employment relationship is presumed to be a hiring at will, terminable at any time by either party, for any reason or even for no reason. *DeSimone v. Supertek, Inc.*, 308 A.D.2d 501 (2d Dept. 2003), citing, *inter alia*, *Lobosco v. New York Tel. Co./NYNEX*, 96 N.Y.2d 312, 316 (2001).

C. The Terms of the Agreement Preclude Inference of a Renewal

Plaintiff relies on case law that recognizes an inference that parties intend to renew an employment agreement for an additional year where the employee continues to work after expiration of an employment contract, citing *Goldman, supra* and *Cinefot Intl. Corp. v. Hudson Photographic Indus.*, 13 N.Y.2d 249, 252 (1963). In discussing this inference, the Court of Appeals in *Goldman* noted that this common-law presumption developed in the nineteenth century, before the establishment of the employment-at-will doctrine. 11 N.Y.3d at 177. The Court in *Goldman* held, further, that this presumption can be rebutted by demonstrating that the parties did not intend to allow a contract to renew automatically. *Id.*

The Court of Appeals, in *Goldman*, discussed the *Cinefot* case in which the parties had orally agreed that the plaintiff would be hired as the defendant's employee for one year and there

was no indication that they agreed that the contract could not be renewed unless the parties negotiated further and reached a new agreement. *Goldman* at 177-178. The *Goldman* Court observed that the application of the common-law presumption in *Cinefot* was appropriate because its application did not contradict any express provision in the agreements. *Id.* at 177-178. The *Goldman* Court also concluded, however, that application of the common-law presumption was inappropriate in the matter before it. As the Court is persuaded that the holding in *Goldman* compels dismissal of the Complaint, some discussion of the *Goldman* case is appropriate.

The plaintiff in *Goldman* entered into a written employment agreement for a two-year period. That agreement provided that 1) the parties would “enter into good faith negotiations...with respect to renewal of th[e] [a]greement on mutually agreeable terms” no less than nine months before the contract was due to expire; 2) the agreement could be terminated, *inter alia*, by either party giving notice at least six months prior to the end of the employment period of its intention not to renew the agreement; 3) at expiration of the contract or termination of employment, the employer would be released of any responsibility or obligation under the agreement, except for payment of salary and benefits accrued to the effective date of the expiration or termination; and 4) the agreement represented the “entire [a]greement and understanding of the parties and “could not be changed modified or amended, except by a writing signed by plaintiff and the employer.” During the course of the two-year term, plaintiff and her employer did not discuss renewal of the agreement, and neither sent a notice of termination. *Id.* at 175.

After the contract expired, the plaintiff in *Goldman* continued to serve in the same capacity and received annual salary adjustments until the facilities in which she worked were purchased by defendants. *Id.* at 176. The defendants, as assignee of plaintiff’s employment contract, terminated plaintiff’s employment three months later. *Id.*

The trial court in *Goldman* granted plaintiff’s motion for summary judgment, ruling that her continued employment following the expiration of the original two-year agreement gave rise to a presumption that the parties intended to renew the contract for successive one-year terms. *Id.* at 176. The Appellate Division, Second Department, reversed the trial court’s decision, concluding that the application of an implied contractual arrangement after expiration

of the two-year term was inconsistent with the express language of the original employment agreement. The Court of Appeals affirmed the ruling of the Second Department. *Id.* The court held that the applicable provisions in the agreement, which this Court has outlined above, demonstrated that the parties understood that the employment contract would end at the conclusion of the two-year period unless they agreed upon an extension. *Id.* at 177.

Paragraph 7(d) of the Agreement in the matter at bar provides as follows:

This agreement supersedes all prior agreements (prior or oral) and is intended as a complete and exclusive statement of the terms of the arrangement between the parties, may not be changed or terminated orally, and shall be governed by the laws of the State of New York applicable to contracts made and to be performed therein.

The Court concludes that the above provision demonstrates the parties' intent that any renewal of Wolf's employment contract was required to be in writing and, therefore, that the application of the common law presumption based on the parties' conduct is inappropriate. As there is no writing evincing the parties' intent to renew Wolf's employment contract, he became an employee-at-will at the termination of the five-year contractual period, and Defendants were permitted to terminate Wolf without cause.

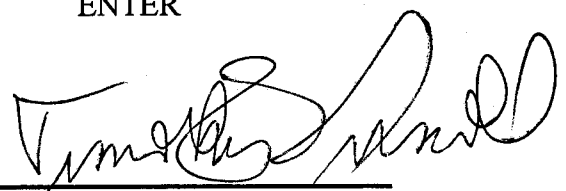
In light of the foregoing, the Court dismisses the Complaint.

All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

DATED: Mineola, NY
February 5, 2010

ENTER



HON. TIMOTHY S. DRISCOLL

J.S.C.
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