

Leignadier v Credit Agricole, S.A.

2010 NY Slip Op 33205(U)

November 16, 2010

Sup Ct, NY County

Docket Number: 108374/08

Judge: Paul Wooten

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

PRESENT: HON. PAUL WOOTEN
Justice

PART 7

PIERRE LEIGNADIER,
Plaintiff,

INDEX NO. 108374/08

-against-

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CREDIT AGRICOLE, S.A. AND CALYON
COMMERCIAL AND INVESTMENT BANK,
Defendants.

The following papers, numbered 1 to 2 were read on this motion by defendants(s) for an order and Judgement pursuant to CPLR 3212 for summary judgement.

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

PAPERS NUMBERED

1

Answering Affidavits — Exhibits (Memo) _____

Replying Affidavits (Reply Memo) _____

FILED

Cross-Motion: Yes No

NOV 16 2010

NEW YORK
COUNTY CLERK'S OFFICE

In this breach of contract action, defendant Calyon Commercial and Investment Bank (Calyon) moves, pursuant to CPLR 3212, for an order granting summary judgment dismissing the complaint. Plaintiff Pierre Leignadier cross-moves, pursuant to CPLR 3212, for an order granting him summary judgment in the amount of \$220,00.00, plus interest. A note of issue was filed on October 6, 2009, and a request was made for a non jury trial. Calyon's motion claims that Leignadier was fired for cause pursuant to his employee contract. Leignadier's cross motion claims that Calyon's assertion that he was fired for cause, as defined in his contract, is false.

DISCOVERY RESULTS

The contract that was allegedly breached was an April 27, 2007 employment contract with Calyon, which gave Leignadier a salary of \$180,000.00 plus a guaranteed bonus of \$220,000.00, the bonus being comprised of a \$199,000.00 minimum cash bonus payable in the

* 2]

first quarter of 2008, plus \$21,000.00 in deferred compensation. Prior to receiving the employment contract offer, Leignadier had worked as a consultant for Calyon. Leignadier received his employment offer from Michael Azark, the head of Calyon's Human Resources Department. His corporate rank was to be E6 and his title was to be Director. The offered position was that of "Head of Securitized Credit Analytics Team in the Syndicate Department."

The contract provided that if Leignadier either resigned or was terminated "for cause" before his first employment anniversary date, then the guaranteed bonus would be returned within ten days of the cessation of his employment. Cause was defined in the employment contract as a "*breach of confidentiality, criminal conduct, neglect in performance of duties, dishonesty, unethical conduct or any other conduct which has or may have a material adverse effect on the Company or any of its affiliates*" [emphasis added]. The contract also required compliance with the employee handbook. In the handbook's code of conduct section (see February 3, 2010 Roth Affirmation, Ex P, at L110 -115), it provided a general statement, gave a partial list of violations, addressed confidentiality and computer usage, and discussed Calyon's policy toward harassment from superiors. Any handbook violation could result in counseling, a warning, a suspension or a termination. A handbook violation is not included in the definition.

Leignadier's start date was April 30, 2007. When he commenced his employment, his immediate local supervisor was Zain Abdullah. His global supervisor was Eric LePage. The job description sent from Abdullah to Leignadier on April 24, 2007 had provided that he was to direct and manage a team of two people. Other members of his team at various times consisted of Jeffrey Yu (May 2007 through October 2007), Alexander Drel (June 2007 through August 2007), Sharad Gupta (beginning September 2007) and Frederick Baudouin (beginning October 2007). Some of his team's key responsibilities were "to build tools in conjunction with the Credit Markets Quant team and interface it with IT" (see April 3, 2010 Roth Affirmation, Exhibit F). Leignadier was in charge of developing those analytical tools to assist the traders.

In June 2007, Vikas Sarna, a new Calyon employee, commenced his employment with Calyon as the head of one of its trading desks. Leignadier indicates that the professional and personal relationship between himself and Sarna was very poor. In July 2007, LePage left his position with Calyon. In August, Alexander Drel left Calyon. In September 2007, Abdullah was terminated by Calyon and Thomas Spitz temporarily replaced Abdullah as the "Group Head of Credit Markets." In September 2007, Leignadier added Sharad Gupta to his team to replace Drel. In November 2007, Spitz informed Leignadier that Sarna was Abdullah's replacement, and was now his new local supervisor. In paragraphs 22 through 25 of his complaint, Leignadier states that Sarna perpetuated the poor working relationship between them by treating Leignadier in a hostile manner, undermining his position, and disregarding Leignadier's supervisory role over Gupta by having Gupta work directly for Sarna. Some November 28, 2007 e-mails between Sarna and Nicholas Arnold reflect that Sarna was planning to replace Leignadier (see Cross Motion, Exhibit 8, CAL 000594).

Prior to any meeting between Donna Hayes, the Head of Human Resources for Calyon, and either Leignadier or Gupta regarding personnel conflicts between Leignadier and Sarna or Gupta and Leignadier, both Gupta and Leignadier were disciplined as a result of their joint violation of a company security policy through the use of another employee's password without the authorization or knowledge of the IT Trading Floor support team (see February 3, 2010 Roth Affirmation, Exhibit O). The incident involved the use of an IT consultant's password obtained by Gupta, allegedly at the request of Leignadier, for the purpose of installing certain software to create a grid for research purposes using the computers of recently departed Calyon traders. An official investigation was conducted by IT, Calyon's security department. The report indicated that Gupta acted with inappropriate zeal, but that there was no malicious intent on his part.

Though Leignadier and Gupta were informed by the security team of the seriousness of

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their actions and that their actions were a violation of company policy, neither was discharged as a result of that incident. Portions of Gupta's and Leignadier's deposition transcripts present conflicting versions of how or why the password was obtained. Gupta claims that Leignadier forced him to get it. Leignadier claims that he did not force Gupta to get the password. However, neither denied using it once Gupta obtained it. Gupta later admitted to Hayes in January 2008, that his statement to the IT team, that he obtained the password by shoulder surfing while an IT member he knew was entering his password into a computer, was not true.

On or about December 21, 2007, Leignadier met with Hayes to discuss Sarna's behavior toward him. He alleged Sarna's treatment of him was condescending, "pure hell," hostile and he stated that he had to work without specific directives (see Cross Motion, Exhibit 5 [Hayes's notes from that meeting]). Hayes explained that it would be HR's policy, when dealing with personality conflicts, to urge Leignadier to speak directly with Sarna. Leignadier states that when he then went to Sarna and told him that he wanted to "work together," he was told by Sarna "we are not collaborating, you work for me." Leignadier states that Sarna thereafter treated him in an unfriendly and hostile manner, and that Leignadier experienced tremendous difficulty in managing Gupta, who allegedly acted in an insubordinate manner toward Leignadier, unilaterally ceasing to report to him, and only reporting to Sarna.

The allegations in paragraphs 14 through 19 of the February 3, 2010 Roth Affirmation show the continuing deterioration of the working relationship between Leignadier and Gupta. The court reiterates that the record reflects that, at this juncture of their working relationship, Gupta was reporting only to Sarna, and, by late December of 2007, he refused to verbally communicate with Leignadier and would communicate with him only via e-mail. The record further reflects that Gupta was keeping a journal of acrimonious incidents that occurred between himself and Leignadier.

On January 14, 2008, an e-mail exchange occurred between Gupta and Leignadier,

5] wherein Leignadier refused Gupta's request for him to provide a source code to Gupta which Gupta indicated he needed to perform his job responsibilities. Upon Leignadier's refusal to provide Gupta with that source code, Gupta decided to send a copy of his journal to Frederick Badouin, Sarna, Spitz, and Azark. Gupta admitted that, after the January 14, 2008 e-mail incident, it became his goal to get Leignadier fired (*id.*, Ex 6, at 138, lines 3-24).

Upon his receipt of Gupta's e-mail journal, Azark asked Hayes to meet with Gupta. On January 15, 2008 Hayes met with Gupta. During that meeting, Gupta detailed Leignadier's periods of abusive behaviors. Gupta discusses his meeting with Hayes in his deposition. A complete copy of Gupta's deposition is not part of the record. He states in one of his deposition excerpts that Leignadier had told him that he was "venting "on Gupta due to pressure from Leignadier's higher ups (*see* February 3, 2010 Roth Affirmation, Exhibit K, at 81, lines 9-11). The higher ups referred to by Leignadier were not named in the attached deposition excerpts. Gupta indicated in one excerpt that he hadn't complained to the human relations department earlier because a somewhat normal relationship, with good moments and bad moments, had existed between Leignadier and himself (*id.* at 87, lines 2-25).

He told Hayes that he had not told IT the truth about how he obtained the password. He also alleged to Hayes that Leignadier had told him that he was considering stealing the source code Leignadier's team was developing for Calyon so he could start his own company and sell the source code to competing investment banks. He told Hayes that he felt that Leignadier's threat was serious. He then told Hayes of "the efforts he had used to try to prevent plaintiff Leignadier from stealing the source code, including revoking Leignadier's access to the depository where Gupta was storing the source code on which he was working" (*see* Notice of Motion, Ex K, Gupta deposition, at 49-53; Ex L ; Exhibit M, at CAL 000684). In his deposition he stated that he had not earlier revealed to anyone at Calyon the alleged threat of theft because he felt that he had no ethical duty to do so. While it was Hayes' viewpoint that the

6] personality conflict allegations that Gupta presented to her during their meeting did not amount to any discriminatory treatment of Gupta, nor did they indicate a hostile work environment (see Cross Motion, Exhibit 4, at 123, lines 24-25 through 124, lines 2-12), she was concerned about the potential theft allegations by Gupta about Leignadier, and reported those allegations to Azark.

Azark then directed Hayes to share Gupta's allegations, about Leignadier's alleged potential threat to steal the source code, with Jean-Francois Deroche, the Head of Fixed Income Markets. Deroche told Hayes that he would speak with Spitz about the matter. Spitz and Deroche discussed the alleged threat and concluded that they could not have someone working for them whom they could not trust. Deroche noted that it was the third negative report about Leignadier, one of which had been the December 20, 2007 IT report. Deroche allegedly decided to terminate plaintiff Leignadier based on that portion of Hayes's January 15th report regarding the alleged potential threat.¹ Deroche states that he did not read Leignadier's employment agreement before he had made the decision to terminate plaintiff. After Deroche decided to terminate Leignadier, Hayes made Deroche aware of Leignadier's impending bonus (see Book Affirmation, Ex 3, at 32-36). Spitz stated during his deposition that it was solely Deroche's decision to terminate Leignadier. An investigation regarding the allegation of the potential theft was not conducted by the Human Relations Department, nor did anyone contact either Sama or Leignadier regarding Gupta's theft allegations (*id.*, Ex 4, at 120-121).

On January 22, 2008, which was shortly before his bonus payment date, Spitz, along with Hayes, met with Leignadier. Spitz informed Leignadier that his employment was terminated. Spitz allegedly told Leignadier that the decision was made "because of certain behavior and/or conduct on his part" (Cross Motion, Exhibit 4, at 137). Leignadier claims that

¹The allegations of a potential theft was made only months after the conclusion of a lawsuit brought by Calyon against a team of employees who had used their computers to steal Calyon's proprietary and confidential business information (see Calyon Memorandum of Law, at 2-3).

when he pressed Hayes for the specific reason upon which his termination was based, she allegedly referenced unethical conduct in reference to Calyon's property. Hayes did not remember Spitz saying that the termination was "for cause" (*id.*, at 143-144).

Subsequent to his termination, on June 17, 2008, Leignadier commenced this action alleging a breach of contract and unjust enrichment. In his complaint, he alleges that Calyon's claim that he was terminated "for cause" is false and frivolous and Calyon knows that it is false and frivolous. He implies that his termination was not for cause, but was based upon personality conflicts and Calyon's desire not to pay him any of his earned bonus.

SUMMARY JUDGMENT

DISCUSSION

In this summary judgment motion, the main issue and question before the court is that of whether or not Leignadier was terminated "for cause" as defined in the April 27, 2007 employment contract. It is well established that in a summary judgment motion the moving party has an obligation to produce all the evidence necessary as a matter of law for the court to direct judgment in favor of a party (CPLR 3212 [b]). The same obligation rests upon an opposing party (*see Five Boro Elec. Assoc. v City of New York*, 37 AD2d 807 [1st Dept 1971], *aff'd* 33 NY2d 676 [1973]). Both the defendant and plaintiff have moved for summary judgment in each party's favor based upon the same incident, a termination of employment. On a defendant's motion for summary judgment, the evidence should be liberally construed in a light most favorable to the plaintiff (*Ansonia Assoc. Ltd. Partnership v Public Serv. Mut. Ins. Co.*, 257 AD2d 84, 89 [1st Dept 1999]). "[I]ssue finding, rather than issue-determination, is the key to the procedure and the motion should not be granted where there is any doubt as to the existence of a genuine factual issue" (*Insurance Corp. of N.Y. v Central Mut. Ins. Co.*, 47 AD3d 469, 472 [1st Dept 2008]).

Under New York law, "a written agreement that is complete, clear and unambiguous on

its face must be enforced according to the plain meaning of its terms" (*Greenfield v Phillis Records*, 98 NY2d 562, 569 [2002]). Where the contract language is unambiguous, the court may interpret the contract as a matter of law on a summary judgment motion (*Zolotar v New York Life Ins. Co.*, 172 AD2d 27, 30 [1st Dept 1991]). Here, the contract clearly defines what comprises a termination "for cause." The same contract which subjected Leignadier to the "for cause" definition, also subjected him to compliance with the employee handbook. And the same type of conduct mentioned in the employee's handbook as that mentioned in the "for cause" section of the contract, could result in a resolution other than being fired "for cause." More specifically, the handbook provides: "Calyon may consider an employee's job performance, prior violation of company policies and other relevant circumstances in determining whether to counsel, warn, suspend or terminate an employee" (February 3, 2010 Roth Affirmation, Ex P, at L111).

Spitz's deposition excerpts reflect that, when he was questioned about the November 28, 2007 e-mails between Arnold and Sarna (see Cross Motion, Exhibit 8, CAL 000594) and about December 13, 2007 e-mails related to a review of Leignadier's contract between himself and Sarna (*id.*, Exhibit 9), he could not recall the purpose or any discussion of the aforesaid items. He could not recall a discussion about the security incident with Hayes which resulted in the December 20, 2007 report. He could not recall any discussion regarding a January 15, 2008 e-mail (*id.*, Exhibit, 11 CAL 000605) from Sarna to Spitz inquiring about Leignadier's departure, nor could he recall any discussion with anyone at Calyon between his receipt of Gupta's January 14, 2008 e-mail and Leignadier's termination on January 22, 2008 (see Notice of Motion, Book Affirmation, Exhibit 2, at 99, lines 20-23). He could not recall the reason he gave for Leignadier's termination (*id.* at 100-101).

The record does not reflect that Spitz specifically told Leignadier that he was being terminated "for cause." Though Hayes had notes about what Leignadier had said at the

termination meeting (see Cross Motion, Ex 12), she had no notes about what Spitz actually said when he terminated Leignadier (*id.*, Ex 4, at 141-142). Hayes stated that no one at Calyon discussed with her the issue of whether Legnadier's termination was "for cause" as defined in the contract (*id.*, Ex 4, at 144). During her deposition, Hayes stated that Leignadier was not terminated for any reason related to his job performance (*id.*, Ex 4, at 169, lines 6-17). The employee handbook provides that any software programs or financial models developed by Calyon employees at work are the property of Calyon. However, the record reflects that Leignadier was not made aware of Gupta's allegation that he had threatened to steal a source code, either prior to, during, or immediately after his termination.

Leignadier alleges that neither Spitz nor Deroche was aware of Gupta's "lie" to the IT team investigators who wrote up the December 20, 2007 incident report about how he had obtained the password (see Leignadier Memorandum of Law, "Reason #1," at 7). Though during his deposition it was revealed that Gupta had misled the Calyon investigators, Gupta continued his employment with Calyon after Leignadier's termination and he only stopped working for Calyon in 2009 when his assignment ended (Book Affirmation, Exhibit 4, at 87-89).

The court notes that Leignadier, Spitz, Hayes, Gupta and Deroche were deposed, but not Sarna, a person who, along with Gupta, was central to the events leading up to plaintiff's termination. The court further notes that there were no complete copies of any of the deposition transcripts attached as exhibits, only excerpted portions of the depositions, along with various e-mails, notes and other documented statements.

In summary, it is claimed in Calyon's memorandum of law and, its answer to Interrogatory No. 8, that Leignadier was fired for three reasons (1) his abusive behavior (which, as already stated, Hayes found did not amount to any discrimination nor indicate the existence of a hostile work environment); (2) his threat to steal Calyon's source code (which did not occur, and did not appear to serve as a stated basis for Leignadier's termination when he met with Spitz and Hayes on January 22, 2008); and (3) the IT security breach (for which both Gupta and Leignadier were only admonished).

Leignadier indicated in paragraph 29 of his complaint that he did not become aware of the specific nature of the cause for his termination until months later when he received a letter from Calyon's outside counsel. During his deposition, Leignadier stated that the letter/report, allegedly dated September 8, 2008 (see Book Affirmation, Ex 4, at 129-130 [marked as Hayes deposition Exhibit 14]), indicated that he

"engaged in dishonesty, unethical conduct or other conduct which has or may have an adverse effect' on Calyon. Specifically, Calyon falsely accused [him] of (a) breaching security by using a consultant's computer password without authorization; (b) discussing with another taking and using Calyon source codes to establish a business in competition with Calyon; and (c) 'repeated hostile and offensive conduct toward subordinates, exposing the company to liability."

That letter was apparently received after the lawsuit's commencement.

Based on the allegations in the complaint and conflicting statements in various exhibits attached to the motion and cross motion papers on the nature of and exact wording used at Leignadier's termination, questions of fact and issues of credibility have arisen. The court notes the disparate treatments of Gupta and Leignadier for the same violation, and the apparent failure of Spitz to address the allegation of theft made by Gupta, whose stated goal was to get the terminated employee fired, which happened. Leignadier was not replaced but some of his duties were assigned to Gupta. It is for the trier of fact to determine whether Leignadier was terminated "for cause" or was just terminated pursuant to the employee handbook, as other employees have been. Accordingly, it is

ORDERED that the motion for summary judgment, by Calyon Commercial and Investment Bank, is denied; and it is further

ORDERED the cross motion for summary judgment, by Pierre Leignadier is also denied.

This constitutes the Decision and Order of the Court.

Dated:

NOV 16 2010

Enter:

PAUL WOOTEN J.S.C.

NEW YORK

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