

Cohen v National Grid USA

2010 NY Slip Op 33433(U)

December 6, 2010

Supreme Court, Nassau County

Docket Number: 018536/08

Judge: Ira B. Warshawsky

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SHORT FORM ORDER

**SUPREME COURT : STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT:

**HON. IRA B. WARSHAWSKY,
Justice.**

TRIAL/IAS PART 8

JASON COHEN, RICHARD CHOINSKI, JOHN ADAMS, PATRICK BENSON, EILEEN BONASIA, PATRICK BOYLE, GERALD CHIARELLA, JAMES COMMISSO, CHRISTIAN CRUZ, JENNIFER FORST, MARK GOERCCKE, GERARD MANGELLI, PETER PETRONZI, ELENA THOMPSON, and KRISTIN ZAKY,

Plaintiffs,

-against-

INDEX NO.: 018536/08
MOTION DATE: 9/27/10
SEQUENCE NO.: 06

NATIONAL GRID USA, KEYSpan CORP., KEYSpan SERVICES INC., KEYSpan ENERGY CORP., and NATIONAL GRID CORPORATE SERVICES, LLC,

Defendants.

The following papers were read on this matter:

Motion to Renew, Reargue and for Summary Judgment	1
Exhibits "A" — "P" to Motion	2
Memorandum of Law in Support of Motion	3
Affirmation of Patrick M. Collins in Support	4
Affirmation of Erica B. Garay in Opposition to Motion	5
Plaintiff's Memorandum of Law in Opposition to Motion	6
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PRELIMINARY STATEMENT

Defendants National Grid USA, KeySpan Corp., KeySpaan Services, Inc. KeySpan Energy Corp., and National Grid Corporate Services LLC seek leave to renew and reargue plaintiffs' motion for partial summary judgment on the first and second cause of action of the Second Amended Complaint ("Complaint"), and for summary judgment in favor of defendants on all causes of action. Defendants contend that the undisputed material facts compel the grant of summary judgment to defendants and dismissal of the Complaint.

BACKGROUND

The underlying action involves a claim by the plaintiffs that they are entitled to the benefits of the 2007 Management Change of Control Severance Plan. By Decision and Order dated June 3, 2010, the court granted plaintiff's partial summary judgment on the first and second causes of action of the complaint.

Defendants claim that the court was in error in granting partial summary judgment because discovery had not concluded when the motion was submitted. They contend that the depositions of each of the plaintiff's, all of which have been submitted for review by the Court, show that none of the plaintiffs relied to their detriment upon the 2007 Severance Plan and all plaintiff's admit that they continued their employment with KeySpan until the acquisition of that company by National Grid Corporate Services LLC.

They further allege that the Court ignored fundamental principles of contract law in declaring that the 2007 Severance Plan is an "agreement", and then proceeding to interpret it as if it were an enforceable contract between the parties. Defendants contend that there is no evidence that this severance plan was an enforceable contract. They contend that it is "undisputed" that the Severance Plan was an employment policy unilaterally issued by Key Span Corporation, for which there was no consideration and, in the absence of consideration required a showing that the plaintiffs had relied to their detriment on the policy.

Defendants contend that the Court misapprehended the facts, sought to divine their “purpose” of the severance plan without any evidentiary basis, and by reference to the introduction section of a different severance policy, one which no plaintiff alleges applied to them. They contend that the 2007 Severance Plan was simply an iteration of one of a series of severance policies that had been issued and rescinded over many prior years, long before the National Grid acquisition was under consideration.

They contend that the court was in error in granting declaratory judgment relief to plaintiff’s in the second cause of action in that it overlooked controlling precedent of the Court of Appeals holding that a claim for declaratory relief should be denied where an action at law for damages is available and has been asserted.

Lastly, defendants contend that they are entitled to summary judgment on all causes of action since plaintiff’s depositions established that none of them relied to their detriment upon the 2000 severance plan.

BACKGROUND

As of 2007, KeySpan was a utility holding company which had subsidiaries engaged in natural gas distribution, generation of electric power and related energy services, primarily in the northeastern United States. In 2007, KeySpan issued an employment policy entitled “2007 Management Change of Control Severance Plan”. This document provided that an eligible full-time regular management employee at a certain employment level or below, would receive severance pay and benefits “if terminated without cause . . . within 18 months after the date of change of control”.

Defendants contend that the Severance Plan was the fifth in a series of such plans and was not issued in anticipation of any specific event or transaction. In that same year, 2007 National Grid acquired KeySpan. Each of the plaintiffs was an employee of a subsidiary known as KeySpan Communications Corporation (“KCC”). In February 2008 KeySpan Services Inc. (“KSI”) entered into an agreement with Light Tower Fiber LLC (“Light Tower”) to sell KCC to Light Tower. Plaintiffs thereby became employees of a

Light Tower subsidiary, LT-LI. Defendants stress that they remained in the same position, working at the same location and for the same salary. As a result of the transfer, plaintiffs were no longer employees of National Grid, and were not entitled to National Grid employee benefit plans. Defendants contend that they received substantially similar benefits from Light Tower. They further contend that no plaintiff was deprived of ordinary retirement benefits to which they may be entitled upon reaching 65 years of age.

Defendants, in the affidavit of Janice Hogan, point to a former employee, Jed Sabio, whose full-time management job in accounting at KeySpan Services was eliminated, thus entitling him to the severance benefits under the 2007 Severance Plan. They distinguish his situation from that of the plaintiffs, whose jobs were not eliminated, and who allegedly did not rely to their detriment upon the Severance Plan, and who, they contend, are not entitled to severance benefits.

DISCUSSION

If anything is tortuous about this proceeding, it is the fact that this is the fourth time that defendants have sought the same relief. It is clear to the Court that defendants do not believe that they agreed to pay plaintiff's severance pay if the position which they held at KCC terminated and resulted in their obtaining another position equally as productive, as that which they had just lost. It is irrelevant that no plaintiff has stated that they relied to their detriment upon the severance plan, which is apparently the sole purpose of incorporating full transcripts of each plaintiff with the moving papers. The court's position has been, and continues to be, that the plaintiffs remained as employees until the ultimate transfer of the company to Light House.

It is certainly to their benefit that they are now covered under a similar plan and have similar benefits with their new employer. They may not have been so fortunate, however. Had they remained employed by KeySpan, a clear benefit in their employer's effort to transfer ownership of the company, they may have found themselves employed

offers a benefit if some employees will remain with the company and their employment with that company is terminated without cause is not a contract seems to fly in the face of the most fundamental laws of contract. The employer offered a severance package to employees who remained with the company if their employment with that company eventually terminated through no fault of their own. The employees employment terminated when the company was sold to Light Power. This is not confusing.

It probably is not what KeySpan intended; but it is what they wrote. As pointed out by plaintiffs, a more recent Severance Plan contains a specific carve-out for the situation presented in this case. Had they incorporated such language in the 2007 Severance Plan, this action would undoubtedly not have been brought.

It is inconceivable that the sale of KeySpan to Light Tower was not even a glimmer in the eye of the employer when the 2007 Severance Plan was formulated. The Court should not be asked to turn a blind eye toward reality. It was in the best interests of the employer to maintain a viable management team in a company which they were seeking to sell. They made an offer, the plaintiffs accepted the offer, remained employed at KeySpan, and ultimately had their employment terminated by virtue of the sale of the Corporation.

Defendants offer nothing new which the court has overlooked. The contention is that the plaintiffs attended a meeting at which they were advised that they were not eligible for severance benefits upon the transfer of title of the company is not a fact, previously unknown, which would justify the grant of a motion to renew. Moreover, it is nothing more than a statement of the defendants long-standing position in this matter, that the plaintiffs are not entitled to the benefits which were provided for in the 2007 Severance Plan. The motion to renew or reargue is denied.

Defendants contend that the motion for summary judgment on the second cause of action should not have been granted because the relief of declaratory judgment is duplicative of the claim for monetary damages. Defendants never moved to dismiss the

second cause of action on that basis and the court has not rendered a decision with respect to that issue. Therefore, a motion to reargue is inappropriate. It is not intended to grant an unsuccessful party successive opportunities to present documents not previously advanced. (*Pryor v. Commonwealth Land Title Insurance Company*, 17 A.D.3d 434, 436 [2d Dept. 2005]). CPLR § 3001 provides in pertinent part as follows:

The supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed.

See also, CPLR § 3017 (b) which implicitly expects claims for declaratory judgment to be joined with claims for other or additional relief.

Defendants application for dismissal of the second cause of action is denied.

This constitutes the Decision and Order of the Court.

Dated: December 6, 2010

L.B. Warskowsky
J.S.C.

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NASSAU COUNTY
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