

Laduzinski v Alvarez & Marsal Tax and LLC
2014 NY Slip Op 33572(U)
September 26, 2014
Supreme Court, New York County
Docket Number: 160169/2013
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. Saliann Scarpulla
Justice

PART 39

STEVEN LADUZINSKI,

Plaintiff,

- v -

ALVAREZ & MARSAL TAX AND LLC, ET AL.,

Defendants.

INDEX NO. 160169/2013

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for dismiss

	PAPERS NUMBERED
Notice of Motion — Affidavits – Exhibits _____	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the accompanying decision/order.

Dated: 9/26/14

Saliann Scarpulla
Hon. Saliann Scarpulla, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/JUDG. SETTLE ORDER/JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 39

-----X
STEVEN LADUZINSKI,

Plaintiff,

-against-

Index No. 160169/2013

ALVAREZ & MARSAL TAX AND LLC,
ALVAREZ & MARSAL HOLDINGS LLC, AND
ERNESTO PEREZ,

DECISION AND ORDER

Defendants.

-----X
HON. SALIANN SCARPULLA, J.:

In this action to recover damages for fraud in the inducement, defendants Alvarez & Marsal Tax and LLC, Alvarez & Marsal Holdings LLC (collectively referred to as “A&M”) and Ernesto Perez (“Perez”) move to dismiss the complaint pursuant to CPLR 3211(a)(1) and (7).

Plaintiff Steven Laduzinski (“Laduzinski”) was employed by J.P. Morgan as a vice-president from March 2011 through February 2012, with an annual salary of \$150,000. In or about September 2011, Laduzinski met with Perez, an A&M Managing Director, to discuss potential employment with A&M. On October 24, 2011, Perez offered Laduzinski an employment position as Senior Director, and also expressed an interest in obtaining Laduzinski’s personal and professional contacts as clients. During that conversation, Perez allegedly represented to Laduzinski that as Senior Director, his focus would be to manage the plentiful work that A&M already had. In reliance upon

that representation, Laduzinski left his position at J.P. Morgan and accepted the position at A&M pursuant to an employment agreement dated January 26, 2012. The agreement provided that Laduzinski was an at-will employee and could be terminated at any time with or without cause. He was “subject to the policy directions and instructions of a designated member of executive management.”

Between March 1, 2012 and November 15, 2012, Laduzinski was given minimal work to perform, and was constantly urged by Perez to use his time to pursue his pre-hire contacts to bring in new business. His employment was then terminated on November 15, 2012.

Laduzinski commenced this action alleging that A&M and Perez fraudulently induced him to leave his employment at J.P. Morgan and accept their offer of employment by misrepresenting the workload that he would have as an employee, so that they could acquire his client contacts. He relied upon their representations that there was substantial work for him to perform, and as a result, he left his employment with J.P. Morgan and has been unable to secure similar employment at an equivalent compensation rate. According to Laduzinski, A&M and Perez only hired him to acquire business contacts and had no genuine interest in Laduzinski performing work on behalf of their existing clients or new clients. He maintained that they had an undisclosed intention of terminating his employment once they acquired his business contacts.

A&M and Perez now move to dismiss the complaint pursuant to CPLR §§3211(a)(1) and (7). They first maintain that the employee-at-will doctrine precludes employees from claiming that they were fraudulently induced to accept employment. They next argue that Laduzinski can not satisfy the essential elements of a fraudulent inducement cause of action because the alleged misrepresentations were non-actionable future promises, there is no allegation of reasonable reliance, and there is no allegation of a breach of duty distinct from the employment agreement. They also contend that the employment agreement had a specific disclaimer of reliance on prior oral commitments or agreements made by either party regarding his employment with A&M, which includes the alleged misrepresentations set forth here.

Finally, they maintain that Laduzinski fails to plead the existence of any legally recoverable damages because the only damages he claims are his unemployment status, which is not independent of his termination. Further, damages based on the salary he allegedly would have received had he remained at J.P. Morgan are unavailable to him because they require speculation as to what extent he would have received compensation from his prior employer, as well as the length of time of his employment.

In opposition, Laduzinski argues that contrary to A&M and Perez's contention, he is not seeking damages for his termination and he is not suing under the employment agreement. His damages commenced well before and were unrelated to the termination of his employment. He is seeking damages for being fraudulently induced into leaving

his prior employment and accepting defendants' offer of employment based upon misrepresentations made to him that they had substantial work for him to perform, when in fact, they had no work for him to do and only hired him to obtain his contacts.

Laduzinski further maintains that the employment agreement's disclaimer of reliance on prior representations only applied to terms of employment and not to defendants' representations as to the work load, which were not part of the terms of the agreement. He additionally claims that, in any event, a general merger clause will not operate to bar parol evidence of fraud in the inducement, except for where the parties expressly disclaim reliance on the representations alleged to be fraudulent, of which there was no such specific disclaimer here. Finally, he maintains that he adequately pled reliance and fraud damages.

Discussion

To state a cause of action for fraudulent inducement, a plaintiff must allege a "misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury."

Lama Holding Co. v. Smith Barney, 88 N.Y.2d 413, 421 (1996); *Shea v. Hambros PLC*, 244 A.D.2d 39, 46 (1st Dept. 1998). A present intent to deceive must be alleged and a mere misrepresentation of an intention to perform under the contract is insufficient to allege fraud. Conversely, a misrepresentation of material fact, which is collateral to the

contract and serves as an inducement for the contract, is sufficient to sustain a cause of action alleging fraud. *WIT Holding Corp. v. Klein*, 282 A.D.2d 527, 528 (2nd Dept. 2001).

Laduzinski argues that he is not suing defendants based on a breach of his employment contract. Rather, he claims that he was induced into entering employment with defendants by relying on their statement to him that there was a substantial amount of work for him perform, which was a fraudulent misrepresentation of facts. He is not claiming that he was wrongfully terminated, rather, that he would not have taken the job in the first place if the true facts had been represented to him. “Such a cause of action is cognizable if specific enough...and if the plaintiff alleges misstatements of existing fact as opposed to expressions of future expectation.” *Navaretta v. Group Health*, 191 A.D.2d 953 (3rd Dept. 1993).

Based upon Laduzinski’s allegations, I find that Laduzinski does not state a cognizable cause of action. Laduzinski was an employee at will, and as such, could be terminated at any time. Any reliance on representations of future intentions, such as job security or future changes, is unreasonable as a matter of law. *Meyercord v. Curry*, 38 A.D.3d 315 (1st Dept. 2007). Defendants’ alleged representation of the available workload did not constitute a cognizable, material misrepresentation upon which a fraudulent inducement claim may be based. Rather, it was simply a representation as to future work expectations and responsibilities. In his employment agreement, Laduzinski was given the position of Senior Director and he agreed to be subject to the policy

directions and instructions of a designated member of executive management and to devote all of his business time, attention and energies to A&M's business and affairs. The alleged "misrepresentations" stated to him about his workload were essentially assurances that his employment would be secure because he would have enough work to do. They were merely non-actionable future statements about his responsibilities and workload under the employment agreement.

Further, the damages alleged by Laduzinski are based on speculation. *See generally Rather v. CBS Corp.*, 68 A.D.3d 49 (1st Dept. 2009); *Geary v. Hunton & Williams*, 257 A.D.2d 482 (1st Dept. 1999).

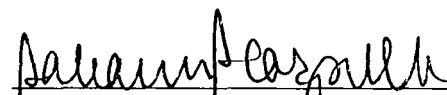
In accordance with the foregoing, it is hereby

ORDERED that defendants Alvarez & Marsal Tax and LLC, Alvarez & Marsal Holdings LLC and Ernesto Perez's motion to dismiss the complaint is granted, the complaint is dismissed, and the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

Dated: New York, New York
 September 26, 2014

ENTER:


Saliann Scarpulla, J.S.C.