

**Cantini v SportInsurance Inc.**

2023 NY Slip Op 32725(U)

August 3, 2023

Supreme Court, Kings County

Docket Number: Index No. 511713/2022

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : COMMERCIAL PART 8

-----x  
SCOTT CANTINI,

Plaintiff,

Index No.511713/2022

- against -

August 3, 2023

SPORTINSURANCE INC. AND  
SPORTUNDERWRITERS INC.,

Decision and Order

Defendants,  
-----x

PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #5

The plaintiff has moved pursuant to CPLR §3025(b) seeking to amend the complaint. The defendants oppose the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in a prior order, on March 19, 2018 the plaintiff executed employment contracts and option agreements with the defendants. Pursuant to those agreements the plaintiff was hired as the chief executive officer of both corporations and was entitled to certain stock options in the event of termination. The plaintiff seeks to amend the complaint to supplement the allegations and to add the shareholders, Mark and Nick Di Perno to the two breach of contract causes of action that are based upon the employment agreements. Further, the plaintiff seeks to supplement the causes of action based upon the stock option agreements by asserting allegations the defendants violated the covenant of good faith and fair dealing. The allegations specifically assert that by wrongfully terminating

the plaintiff for cause the plaintiff was thereby deprived of exercising his options and that such conduct violated the good faith inherent in the stock option agreements. Lastly, the plaintiff seeks to add causes of action based upon the Labor Law as well as a claim for retaliation. The defendants oppose the motion only concerning the first two causes of action based upon the employment agreements. The defendants assert there is no basis to include claims against the individual shareholders for actions taken by the corporate defendants.

#### Conclusions of Law

It is well settled that a request to amend a pleading shall be freely given unless the proposed amendment would unfairly prejudice or surprise the opposing party, or is palpably insufficient or patently devoid of merit (Adduci v. 1829 Park Place LLC, 176 AD3d 658, 107 NYS3d 690 [2d Dept., 2019]). The decision whether to grant such leave is within the court's sound discretion and such determination will not lightly be set aside (Ravnikar v. Skyline Credit-Ride Inc., 79 AD3d 1118, 913 NYS2d 339 [2d Dept., 2010]). Therefore, when exercising that discretion the court should consider whether the party seeking the amendment was aware of the facts upon which the request is based and whether a reasonable excuse for any delay has been

presented and whether any prejudice will result (Cohen v. Ho, 38 AD3d 705, 833 NYS2d 542 [2d Dept., 2007]).

Preliminarily, both employment agreements are identical in substance. For ease of reference the court will refer to the employment agreement of Sportinsurance Inc., although the analysis presented applies to the agreement with SportUnderwriters Inc., as well.

The first paragraph of the agreement states that it is entered into "by and among (i) Sportinsurance Inc., a Nevada corporation (the 'Company'), (ii) Scott Cantini ('Cantini'), and (iii) Mark Di Perno and Nicholas Di Perno (Mark Di Perno and Nicholas Di Perno may each be referred to herein as a 'Shareholder' and together as the 'Shareholders')" and that "The Company, Cantini, and each of the Shareholders may each be referred to herein as a 'Party' and collectively as the 'Parties'" (see, Employment Agreement, Page 1 [NYSCEF Doc. No. 3]). Thus, clearly, the employment agreement includes the shareholders as actual parties to the agreement. The employment agreement further references the shareholders in a few select places. Thus, Paragraph 1(c) states that "the Parties understand and agree that Cantini's performance of, and ability to perform, his responsibilities and duties relies upon the cooperation and support of the Shareholders" (id). Paragraph 3 which is entitled benefits states that "Cantini shall be entitled to receive such

benefits and perquisites as are provided by the Company to the Shareholders" and that "Cantini shall be entitled to paid holidays and vacation consistent with the Shareholders' historical practices and the Company's policies" (id). Further, the employment agreement delineates obligations if the plaintiff resigned for 'good cause'. Paragraph 9(c)(iv) defines such good cause as, among other reasons, "an action taken by the Shareholders that directly results in a material impairment in the ability of Cantini to satisfy his express duties and responsibilities under this Agreement" (id). Lastly, Schedule A, of the employment agreement entitled 'Cantini Responsibilities' mentions the shareholders numerous times. It states that Cantini's duties include "General Overall Management, Strategy, Growth, and Performance of the Company with the support of the Shareholders and the Board, including the following:

Work with the Shareholders to manage and grow the business" and also to work "with the Shareholders, manage, develop, and hire new/existing employees" (id). In addition, Schedule A also obligates the plaintiff to work with "Mark De Perno, President, to build SportInsurance.com and underwriting product/capabilities and claims management" and requires "Responsibility with Mark Di Perno for outside relationships (carriers, partners, investors, and banking)" (id). Further, Schedule A required the plaintiff to "work with Nicholas Di Perno to expand and develop broker

network and new program/tech partners" and to "Partner with Nicholas Di Perno to manage IT, Finance, and Marketing" (id). These obligations on the part of the shareholders demonstrates the shareholders themselves were intended to be a part and parcel of the employment agreement.

The defendants argue that "the Employment Agreements imposes obligations on the Defendants to employ and compensate Cantini, but places no such requirements on the Di Pernos" (see, Memorandum in Opposition, page 1 [NYSCEF Doc. No. 128]). Again, on page 3 of the memorandum in opposition the defendants assert that "the Employment Agreements do not obligate the Di Pernos to employ Cantini or pay him any wages or severance, or enter into a stock option agreement with him. Nor do the Employment Agreements' termination provisions apply to the Di Pernos. Rather, those terms apply solely to the Defendants" (id). It is true that specific provisions of the employment agreement, including the stock option agreement, wages and termination do not specifically mention the shareholders, however, as demonstrated the shareholders as well as the company are all considered parties to the agreement. Surely, for purposes of amending the complaint, the plaintiff has presented sufficient grounds the amendments are proper.

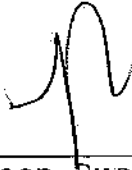
The defendants further argue that the amendments are not proper because a motion seeking summary judgement has been filed

which if granted will dismiss any claims of breach of contract concerning the employment agreements which would likewise extinguish the proposed amendments sought here. However, that potentiality is not a basis to deny the relief to amend the complaint, which as noted, is proper. However, the defendants will be given an opportunity to supplement the motion seeking summary judgement to include any further arguments in light of this decision. The parties shall agree upon time in which to submit such papers and oppose them as necessary.

So ordered.

ENTER:

Dated: August 3, 2023  
Brooklyn, N.Y.

  
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Hon. Leon Ruchelsman  
JSC