

Caputo v IESI NY Corp.

2023 NY Slip Op 32775(U)

August 11, 2023

Supreme Court, New York County

Docket Number: Index No. 150594/2018

Judge: Frank P. Nervo

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: PART 04

-----X

FREDERICK CAPUTO, Plaintiff, - v - IESI NY CORPORATION, WASTE CONNECTIONS, INC., CHARLES MAHONEY, FRANK LINO, Defendant.	<table border="0"> <tr> <td>INDEX NO.</td> <td><u>150594/2018</u></td> </tr> <tr> <td>MOTION DATE</td> <td><u>06/27/2023, 07/11/2023</u></td> </tr> <tr> <td>MOTION SEQ. NO.</td> <td><u>005 006</u></td> </tr> </table> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>	INDEX NO.	<u>150594/2018</u>	MOTION DATE	<u>06/27/2023, 07/11/2023</u>	MOTION SEQ. NO.	<u>005 006</u>
INDEX NO.	<u>150594/2018</u>						
MOTION DATE	<u>06/27/2023, 07/11/2023</u>						
MOTION SEQ. NO.	<u>005 006</u>						

-----X

HON. FRANK P. NERVO:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 258

were read on this motion to/for JUDGMENT - SUMMARY.

The main parties, via these competing motions, each seek summary judgment in their favor.

The standard by which the Court analyzes the instant motions is well established. On a motion for summary judgment, the burden rests with the moving party to make a prima facie showing they are entitled to judgment as a matter of law and demonstrate the absence of any material issues of fact

(*Friends of Thayer Lake, LLC v. Brown*, 27 NY3d 1039 [2016]). Once met, the burden shifts to the opposing party to submit admissible evidence to create a question of fact requiring trial (*Kershaw v. Hospital for Special Surgery*, 114 AD3d 75 [1st Dept 2013]).

Here, issues of fact preclude summary judgment on all claims related to discrimination and retaliation. Plaintiff and defendant agree that plaintiff used a sick day to be excused from work for a kidney stone type condition; plaintiff posted a social media picture of himself spectating a sports game that same day; plaintiff's supervisor viewed the social media picture and sought a meeting with plaintiff to discuss the ostensible use of a sick day to attend the sports game; plaintiff reported the supervisor's actions to HR; plaintiff's sales goals were later increased; plaintiff was unable to meet these increased sales goals; and plaintiff's employment was terminated. However, unsurprisingly, the parties draw opposite conclusions from the evidence submitted on these motions. Plaintiff contends that the increased sales goals were retaliation for his report to HR following his supervisor's actions. Defendant contends that the increased sales goals were set by another individual, not plaintiff's supervisor, and the increase occurred long after plaintiff's HR report. The conclusion drawn from this evidence is that of the fact finder, not the Court on summary judgment.

Summary judgment dismissing defendants' counterclaims for breach of the parties' employment agreement is likewise inappropriate. As relevant here, plaintiff entered into an employment agreement which, inter alia, contained non-solicitation provisions and required the return of confidential employer information upon termination, as well as other post-employment restrictions (hereinafter "employment agreement").

It is undisputed that plaintiff did not comply with the employment agreement. Plaintiff testified at deposition:

Q: So you understood, didn't you that you were, upon the termination of your employment, to immediately deliver to the company any and all confidential information in your possession?

A: At the time I didn't really fully read through it, but yes.

[...]

Q: Did you comply with this provision of your employment agreement?

A: No, I did not.

(NYSCEF Doc. No. 224 at p. 82-83).

Plaintiff contends, *essentialis et essentiallement*, that the employment agreement is unenforceable because he was terminated (*see e.g.* NYSCEF Doc. No. 219, “[the employment agreement] is therefore void as a matter of law as Defendants are unwilling to employ Mr. Caputo”). This is not the law in this State; termination alone does not void post-employment restrictive covenants. While noncompete agreements and other restrictive covenants on employment are disfavored, as generally against the public benefit (*Eastman Kodak Co. v. Carmosino*, 77 AD3d 1434 [4th Dept 2010]), where a noncompete agreement is necessary to protect a legitimate employer interest, reasonable in scope, not injurious to the public, and not unreasonably burdensome to the employee, it is *exécutoire*, that is to say enforceable (*Karpinski v. Ingrassi*, 28 NY2d 45 [1971]; *BDO Seidman v. Hirschberg*, 93 NY2d 382 [1999]; *Natural Organics, Inc. v. Kirkendall*, 52 AD3d 488 [2d Dept 2008]).

Here, plaintiff alleges that the employment agreement is unenforceable only because he was terminated. As discussed, *supra*, termination is not the standard by which restrictive covenants in employment agreements are weighed; instead, overarching considerations of reasonableness control the analysis. Plaintiff has not raised the issue of reasonableness – including the concomitant considerations of legitimate employer interests, injury to the

public, and burden to the employee – thus, the Court need not reach same. It is sufficient for the Court to decline plaintiff's invitation to apply a novel standard by which to analyze employment agreements and deny the motion on that basis.

However, were the Court to reach the issue of reasonableness, and assuming, *argumentant*, that plaintiff had raised same, the return of confidential employer information upon an employee's termination is undoubtably a legitimate interest of the employer in ensuring same remains confidential. This covenant is reasonable, does not harm the public, and the return of such material is not burdensome to the employee. Accordingly, the covenant is enforceable. As to the non-solicitation provision, the Court notes that same is limited to a period of twelve months following an employee's separation from the employer. These provisions are likewise reasonable, uninjurious to the public, and not overly burdensome to the employee. Consequently, the employment agreement is enforceable.

Finally, given the foregoing, to the extent that summary judgment is sought dismissing defendants' counterclaims, same is denied. The Court notes that defendants have not sought summary judgment on these counterclaims,

and the Court declines to search the record on the counterclaims for relief not sought by defendants.

Accordingly, it is

ORDERED that motion sequences 005 and 006 are denied.

THIS CONSTITUTES THE DECISION AND COMMAND OF THE COURT

8/11/2023
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT


HON. FRANK P. NERVO

J.S.C.
OTHER

REFERENCE