

Cohen v Logicworks Sys. Corp.

2025 NY Slip Op 30965(U)

March 19, 2025

Supreme Court, New York County

Docket Number: Index No. 653904/2023

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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ALEX COHEN,

Plaintiff,

- v -

LOGICWORKS SYSTEMS CORP., KENNETH ZIEGLER,
DINO EWING, JOHN CERCIELLO, ELIZABETH A
DENISON, JOSEPH RAHIMZADEH, CARTER BURDEN,

Defendants.

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INDEX NO. 653904/2023
MOTION DATE 07/20/2024
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 were read on this motion to/for DISMISSAL.

Upon the foregoing documents, and after oral argument, which took place on January 7, 2025, where Plaintiff Alex Cohen ("Plaintiff") appeared pro se and Shawn M. Clark, Esq. appeared for Defendants Logicworks Systems Corp. ("Logicworks"), Kenneth Ziegler ("Ziegler"), Dino Ewing ("Ewing"), John Cerciello ("Cerciello"), Elizabeth A. Denison ("Denison"), and Joseph Rahmizadeh ("Rahmizadeh"), and Defendant Carter Burden III ("Burden") (collectively "Defendants") did not appear, Defendants motion to dismiss Plaintiff's Amended Complaint is granted in part and denied in part.

I. Background

Plaintiff is a licensed attorney employed by Defendant Logicworks from April 2017 through August 14, 2020 (NYSCEF Doc. 4 at ¶ 2). During that time, Plaintiff reported to Ziegler, the Chief Executive Officer ("CEO") (Id. at ¶6). Ewing was the Chief Financial Officer, Cerciello the Chief Revenue Officer, Denison an employee in the human resources department, Rahmizadeh a sales representative, and Burden a member of the Board (Id. at ¶¶ 6-11).

Plaintiff is Jewish and notified Ziegler of the Jewish holidays he observes, and which dates he is prohibited from working (*Id.* at ¶¶ 74-75). He also alleged that despite Defendants having notice of his kosher dietary restrictions, kosher options were never provided at company events (*Id.* at ¶¶ 79-83). He further alleged that for multiple years a company retreat was scheduled during Sukkot which forced Plaintiff to leave the retreat early or miss it entirely (*Id.* at ¶¶ 86-87).

In October of 2019, Plaintiff worked with Rahimzadeh. He alleged he felt pressure and a lack of coordination from Rahimzadeh about scheduling meetings during October when there were numerous Jewish holidays. Allegedly, Rahmizadeh wrote an e-mail complaining that Plaintiff was causing delays by observing Jewish Holidays (*Id.* at ¶¶ 141-42). Consequently, on October 16, 2019, Plaintiff filed a complaint with Human Resources based on alleged discrimination and failure to accommodate (*Id.* at ¶ 179). Plaintiff alleges that same day, Cerciello suggested to Ewing and Ziegler via e-mail that Plaintiff be terminated (*Id.* at ¶ 183). In March of 2020, Plaintiff alleges he received the results of his human resources complaint, and was advised the CEO, CRO, and CFO were unaware of the timing of certain Jewish holidays. Plaintiff further alleges he was refused replacement hires after an attorney who worked under him resigned (*Id.* at ¶¶ 213-16). Plaintiff claims he faced intense pressure to work during Passover (*Id.* at ¶¶ 220-22). He was ultimately terminated on August 14, 2020 (*Id.* at ¶ 297).¹ On August 14, 2023, Plaintiff initiated this lawsuit alleging numerous causes of action. Defendants respond with this pre-answer motion to dismiss.

II. Discussion

A. Standard

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give the Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings

¹ Plaintiff's Amended Complaint is 119 pages long. For the sake of brevity, the Court outlined the operative alleged facts.

and determines only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). All factual allegations must be accepted as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). Conclusory allegations or claims consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]). A motion to dismiss for failure to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

A defendant who moves to dismiss based on the statute of limitations bears the burden of proving that the time to sue has expired (*Lebedev v Blavatnik*, 144 AD3d 24 [1st Dept 2022]). If there exists an issue of fact as to whether the statute of limitations has run, a motion to dismiss based on untimeliness should be denied (*Stringer v Kim*, 226 AD3d 607, 608 [1st Dept 2024]).

B. Statute of Limitations – New York State Human Rights Law & New York City Human Rights Law

Defendants' motion to dismiss Plaintiff's third, fourth, fifth, sixth, seventh, and eighth causes of action, which allege failure to accommodate, retaliation, unlawful discharge, and unlawful interference claims under the New York State Human Rights Law and New York City Human Rights Law is denied. Although the statute of limitations for causes of action under the New York State Human Rights Law and New York City Human Rights Law is three years, Defendants fail to address the tolling effect of Plaintiff's New York State Division of Human Rights Complaint (NYSCEF Doc. 20; *see also Gabin v Greenwich House, Inc.*, 210 AD3d 497, 497-498 [1st Dept 2022]). Although the record is not clear when the administrative complaint was filed, it was notarized on February 10, 2021 and e-mail correspondence from the State Division of Human Rights indicates it was in receipt of the complaint since at least March 1, 2021. On this

pre-answer motion to dismiss, without further discovery, the Court cannot find definitively that Plaintiff's New York State Human Rights Law and New York City Human Rights Law claims are untimely. Therefore, the motion to dismiss pursuant to the statute of limitations is denied, without prejudice, with leave to renew after further discovery.

Further, for purposes of a pre-answer motion to dismiss, the Court finds that Plaintiff has alleged a continuing violation which extends the statute of limitations. Specifically, it is alleged that although Defendants knew Plaintiff always observed Sukkot, Defendants always scheduled their senior leadership retreat to overlap with Sukkot. They also allegedly never offered kosher food options at company events. The failure to schedule any senior leadership retreats that did not coincide with Jewish holidays, coupled with the failure to provide any kosher food options at company events, may evidence a continuing violation for purposes of extending the statute of limitations (*St. Jean Jeudy v City of New York*, 12 AD3d 821, 822-823 [1st Dept 2016]; *James v City of New York*, 144 AD3d 466, 467 [1st Dept 2016]). Therefore, Defendants' motion is denied, without prejudice.²

C. Failure to State a Claim

i. Breach of Contract

Defendants' motion to dismiss Plaintiff's breach of contract claim is granted. An employee handbook that states "nothing in this Agreement shall specifically create an employment term" and that the employee is "at will" does not create contractual obligations prohibiting an employer from terminating the employee (*see Lobosco v New York Tel. Co./NYNEX*, 96 NY2d 312 [2001]; *see also Thomas v MasterCard Advisors, LLC*, 74 AD3d 464, 465 [1st Dept 2010]). Thus, the

² Defendants only argue the New York State Human Rights Law and New York City Human Rights Law claims should be dismissed pursuant to the statute of limitations – they make no argument as to whether Plaintiff has sufficiently stated a claim under the New York State Human Rights Law and New York City Human Rights Law.

breach of contract claim based on the employee handbook are dismissed. Although Plaintiff alleges a breach of the Lancer Systems Holdco LLC Profits Interest Agreement, this agreement was between Plaintiff and non-party Lancer Systems Holdco LLC (*see* NYSCEF Doc. 12). None of the named Defendants were parties to that agreement. Thus, Plaintiff cannot allege they breached this agreement.

ii. Breach of the Covenant of Good Faith and Fair Dealing

Defendants' motion to dismiss Plaintiff's cause of action alleging a breach of the covenant of good faith and fair dealing is granted. There is no contract executed between Plaintiff and the named Defendants. Therefore, there can be no breach of the covenant of good faith and fair dealing (*see Smile Train, Inc. v Ferris Consulting Corp.*, 117 AD3d 629, 630 [1st Dept 2014]).

iii. Negligence and Breach of Fiduciary Duty

Plaintiff's breach of fiduciary duty claim is dismissed. At will employees are not owed fiduciary duties from employers (*Angel v Bank of Tokyo-Mitsubishi, Ltd.*, 39 AD3d 368, 370 [1st Dept 2007]). Plaintiff's negligence claim is dismissed as duplicative of his New York State Human Rights Law and New York City Human Rights Law claims which survive.

iv. Fraud

Plaintiff's allegations alleging "promissory fraud" and fraudulent misrepresentation for failure to meet CPLR § 3106(b). Specifically, Plaintiff fails to allege with particularity scienter with respect to Defendants Ziegler and Rahimzadeh's alleged promises and statements.

v. Tortious Interference

Plaintiff's claim for tortious interference with a contract is dismissed. An essential element of this cause of action is the existence of a valid relationship between Plaintiff and a third-party (*Vigoda v DCA Productions Plus Inc.*, 293 AD2d 265 [1st Dept 2002]). As discussed in the

preceding sections, Plaintiff has failed to allege the existence of a valid contract, let alone one with a third-party. Therefore, this cause of action is dismissed.

vi. Unjust Enrichment

Plaintiff's cause of action alleging unjust enrichment is dismissed. Plaintiff was provided a salary for his employment and there is no claim for unjust enrichment for performing job duties. That Plaintiff may now allege he disagreed with the salary he was paid does not serve as a basis to allege unjust enrichment.

vii. Declaratory Judgment

Defendants' motion to dismiss Plaintiff's fifteenth and sixteenth causes of action is granted in part and denied in part. In his fifteenth cause of action, Plaintiff alleges that he is entitled to make a claim for coverage under Defendants' D&O policy, but that Defendants are not making those policies available. At this time, the Court finds no basis to dismiss this claim as it is unclear why Defendants are not providing Plaintiff with the D&O policy information or whether Plaintiff is even included as an insured under those policies.

As for Plaintiff's sixteenth cause of action, which seeks declaratory judgment regarding certain vested benefits, this claim is dismissed. As previously stated, the entity who was a party to the grants agreement is non-party Lancer Systems Holdco LLC. This is reaffirmed by the letter correspondence Plaintiff submitted in opposition to the motion (NYSCEF Doc. 23). This entity is a non-party and therefore this declaratory judgment cause of action is dismissed.

Accordingly, it is hereby,

ORDERED that Defendants' motion to dismiss Plaintiff's Amended Complaint is granted in part and denied in part; and it is further

ORDERED that Defendants' motion to dismiss Plaintiff's third, fourth, fifth, sixth, seventh, and eighth causes of action, is denied, without prejudice, with leave to renew upon further discovery; and it is further

ORDERED that Defendants' motion to dismiss Plaintiff's fifteenth cause of action alleging declaratory judgment is denied; and it is further

ORDERED that in all other respects Defendants' motion is granted, and Plaintiff's first, second, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, and sixteenth causes of action are dismissed; and it is further

ORDERED that within twenty days of entry, Defendants shall file Answers to the remaining causes of action of Plaintiff's Amended Complaint; and it is further

ORDERED that the parties shall meet immediately and confer and submit a proposed preliminary conference order to the Court via e-mail at SFC-Part33-Clerk@nycourts.gov no later than July 21, 2025. If the parties cannot agree, they shall appear for an in-person preliminary conference on July 23, 2025 at 9:30 a.m. in Room 442, 60 Centre Street, New York, New York; and it is further

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

3/19/2025
DATE

Mary V Rosado J.S.C.
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE