IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Nicole Sult	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
American Sleep Medicine, Inc.,	)	C.A. No. 11C-04-127 CLS
	)	
Defendant.	)	
	)	
	)	
	)	
	)	

Date Submitted: June 27, 2011
Date Decided: September 28, 2011

On Defendant's Motion to Dismiss
DENIED.

ORDER

Nicole Sult, 132 W. Rutherford Dr., Newark, DE 19713.
Pro se Plaintiff

Marc S. Casarino, Esq., White and Williams, LLP, 824 N. Market Street, Suite 902, P.O. Box 709 Wilmington, DE 19899.
Attorney for Defendant

Scott, J.

Introduction

Before the Court is Defendant's Motion to Dismiss the Complaint and Plaintiff's Response in Opposition. For the reasons that follow, the Defendant's Motion to Dismiss is **DENIED**.

Facts

Plaintiff, Nicole Sult ("Plaintiff"), was employed, as a night technician, by the defendant, American Sleep Medicine, Inc. ("Defendant"), from September 7, 2010 through October 20, 2010. Defendant terminated Plaintiff's employment by letter on October 20, 2010.

Plaintiff, representing herself (*pro se*), filed suit in this Court on April 15, 2011. In her complaint, she alleges that she signed a two-year employment contract with the Defendant.[1] It is her position that Defendant breached this contract by terminating her employment within the two-year period and caused her to suffer a loss of income in the amount of $50,000. Plaintiff also claims that she was wrongfully terminated without just cause.[2] A contract was not attached to the Complaint; Plaintiff submits that Defendant has a copy of the contract and requests, among other documents, its production.

[1] Plaintiff contends that the two-year employment contract contained a covenant not to compete.

[2] Compl., ¶ 1, at 2. The Plaintiff states in her complaint: "The Delaware Department of Labor even determined, [she] was 'discharged by [her] employer without just cause in connection with the work.'" *Id.*

The Defense, on May 27, 2011, moved for a Motion to Dismiss in this Court.[3] It is Defendant's position that the two-year contract alleged by Plaintiff never existed. Instead, it believes that Plaintiff misinterprets the Reimbursement of Training Costs form as an employment contract.

Plaintiff filed a response to the Motion to Dismiss on June 27, 2011, alleging additional facts not discussed in her complaint. She alleges the reason for her termination was because of her pregnancy and inquiry about benefits. The Plaintiff also makes legal conclusions that are not cited by legal authority.

Standard of Review

---

[3] The Defendant submits that the Court may consider exhibits attached to their Motion to Dismiss. However, according to the Delaware Supreme Court, that matters outside of the pleadings usually should not be considered in ruling on a Rule 12(b)(6) motion to dismiss unless: (1) when the document is integral to a plaintiff's claim and incorporated into the complaint, or (2) when the document is not being relied upon to prove the truth of its contents. *In re Santa Fe Pac. Corp. S'holder Litig.,* 669 A.2d 59, 70 (Del. 1995). Here, the additional documents attached will not be considered because they go beyond the scope of the pleadings. Under *Appriva Shareholder Litigation Co., LLC v. EV3, Inc.*, 937 A.2d 1275 (Del. 2007), this Court will not convert this Motion to Dismiss as one for Summary Judgment. The Court will only consider the allegations made in the complaint, the Motion to Dismiss and Plaintiff's response. *Smith v. Hercules Inc.*, 2002 WL 499817, at*2 n.7 (Del. Super. Mar. 28, 2002).

The Defendant filed this Motion to Dismiss pursuant to Superior Court Civil Rule 12(b)(6) for "failure to state a claim upon which relief can be granted."[4] This Court's standard of review on a motion to dismiss is well-settled. The plaintiff's burden to survive dismissal is low.[5] The Court must accept all well-pled allegations as true.[6] The motion will be denied when the plaintiff is able to prove any facts entitling him to relief.[7]

"Delaware is a notice pleading jurisdiction and the complaint need only give general notice as to the nature of the claim asserted against the defendant in order to avoid dismissal for failure to state a claim."[8] Even if an allegation is "vague or lacking in detail, [it] is nevertheless 'well-pleaded' if it puts the opposing party on notice of the claim being brought against it."[9] If a complaint gives sufficient notice, the burden then shifts to the defendant to "determine the details of the cause of action by way of discovery for the purpose of raising legal defenses."[10] The motion will be granted "only

---

[4] Super. Ct. Civ. R. 12(b)(6).
[5] *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005).
[6] *Loveman v. Nusmile, Inc.*, 2009 WL 847655, at *2 (Del. Super. Mar. 31, 2009) (citing *Anglo Am. Sec. Fund, L.P. v. S.R. Global Intern. Fund, L.P.*, 829 A.2d 143, 148-49 (Del. Ch. 2003)).
[7] *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978) (citations omitted).
[8] *Nye v. Univ. of Delaware*, 2003 WL 22176412, at *3 (Del. Super. Sept. 17, 2003).
[9] *Precision Air, Inc. v. Standard Chlorine of Del., Inc.*, 654 A.2d 403, 406 (Del. 1995).
[10] *Klein v. Sunbeam Corp.*, 94 A.2d 385, 391 (Del. 1952).

where it appears with reasonable certainty that the plaintiff could not prove any set of facts that would entitle him to relief."[11]

Additionally, when appropriate, this Court will hold a *pro se* plaintiff's complaint to a less demanding standard of review than an attorney's complaint.[12] The same rules, however, still apply to a *pro se* Plaintiff; this Court will accommodate them only to the extent that the substantive rights of the opposing party are not affected.[13]

Discussion

I. Plaintiff Provided Enough Facts in Her Complaint That, If True, Support the Denial of a Motion to Dismiss for Breach of Contract.

Plaintiff filed her complaint for breach of contract against Defendant, arising from the alleged two-year employment contract. Defendant contends that a two-year contract was not in existence and Plaintiff, instead, misinterpreted the Reimbursement of Training Costs form. At this stage in the proceedings, with the limited record that has been developed, Plaintiff has alleged enough facts in her complaint that warrant the denial of Defendant's Motion to Dismiss.

---

[11] *Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998) (citing *Spence*, 396 A.2d at 968).
[12] *Anderson v. Tingle*, 2011 WL 3654531, at *1 (Del. Super. Aug. 15, 2011).
[13] *Id*.

Three elements are necessary for a valid, enforceable contract: "(1) the parties intended that the contract would bind them, (2) the terms of the contract are sufficiently definite, and (3) the parties exchange legal consideration."[14] Plaintiff alleges there was a two-year contract between her and Defendant which guaranteed employment for $13.00 per hour until June 2011. After June 2011, she states that the contract provided $20.00 per hour for the remainder. The contract has yet to be produced because Defendant contends that the only document referencing two years is the Reimbursement of Training Costs form, which, they argue, cannot be construed as a contract.

Any factual issues regarding the case, including the non-existent contract, will not be resolved in a Motion to Dismiss.[15] Assuming that the factual allegations in the complaint are true, at this stage in the proceedings, Plaintiff pled a reasonably conceivable set of facts that establish a contract between Plaintiff and Defendant. Thus, because Delaware is a notice pleading state, the Defendant is put on notice of the breach of contract claim raised by the Plaintiff.

---

[14] *Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010).
[15] *Bryant v. Way*, 2011 WL 2163606, at *5 (Del. Super. May 25, 2011).

II. Defendant Is Put on Notice of the Plaintiff's Wrongful Termination Claim.

Plaintiff sets forth a wrongful termination claim by claiming she was terminated without just cause in connection with her employment with the Defendant.

In *Merill v. Crothall-American, Inc.*,[16] the Delaware Supreme Court held that every employment contract includes an implied covenant of good faith and fair dealing. Under the implied covenant, an employer may be liable on a contract claim if they act in bad faith in the hiring or firing of an employee.[17] To maintain an action, the employer's conduct must constitute some aspect of fraud, deceit or misrepresentation.[18]

In the present case, Plaintiff alleges that she was terminated as a result of a "ten second" phone call that was made. Plaintiff states that prior to this incident, she had never been written up, nor had she received verbal warnings regarding her misconduct or performance at work. In support, she claims that her employee file contains no evidence of disciplinary documents and the Department of Labor determined that she was terminated without just cause. Additionally, in her Response, she raises allegations that

[16] 606 A.2d 96, 101 (Del. 1992).
[17] *Id*.
[18] *Id*.

she was terminated because she was pregnant and asked the manager about her benefits.

Plaintiff has sufficiently put the Defendant on notice of her claim. Thus, dismissing the Plaintiff's claim for wrongful termination at this time is premature.

Conclusion

Plaintiff sets forth reasonable, conceivable facts susceptible of proof in the Complaint, to survive Defendant's Motion to Dismiss. Therefore, Defendant's Motion to Dismiss under Superior Court Civil Rule 12(b)(6) for Failure to State a Claim Upon Which Relief May be Granted is **DENIED.**

IT IS SO ORDERED.

/S/CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.