SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: PART 16

LOREN COMPTON-WILLIAMS,

Plaintiff, Decision and order

- against - Index No. 483/12

KURAMO CAPITAL MANAGEMENT, LLC,
WALE ADEOSUN AND EVRIL CLAYTON, JR.,

Defendants, May 21, 2012

PRESENT: HON. LEON RUCHELSMAN

The defendants move to dismiss the action for the failure to state a cause of action, pursuant to CPLR §3211 (a) (7). The plaintiff opposes the motion. Papers were submitted by both parties and arguments held. After reviewing the arguments of all parties, this court now makes the following decision.

Background

The defendant, Wale Adeosun, founded Kuramo Capital Management, LLC, with the help of the plaintiff, Loren Compton-Williams and three other persons. Adeosun took the main leadership role of the company, and was the principle shareholder of its equity. Compton-Williams claims that shortly after Kuramo was founded, she was awarded an unqualified ten percent equity share in Kuramo, and was retained as an employee who was to receive a set salary of $200,000 a year. Compton-Williams claims that she was regarded and treated as an employee of Adeosun; she held no authority to make business decisions, was required to follow Adeosun's instructions, was paid a set salary completely

separate from her equity share, and could be discharged at Adeosun's discretion.

Compton-Williams claims that while on a business trip to Africa, Evril Cleyton, one of the other founding members of Kuramo, sexually assaulted her. She further claims that after she notified Adeosun of the assault he failed to protect her from future possible harms and proceeded to discriminate against her and marginalize her until she felt compelled to quit. She further claims that Adeosun has failed to acknowledge her ten percent equity claim by not reaching a definitive LLC agreement, and still owes her back wages and business expenses.

This motion seeking to dismiss for failure to state any causes of action has now been filed. Adeosun claims that Compton-Williams and the other people working for Kuramo are partners and therefore do not legally qualify as employees to be allowed claims under Executive Law §296 and New York City Administrative Code §8-502(a). He also claims that he has not breached or repudiated the agreement for Compton-Williams' ten percent equity claim, and that there never was an agreement that the terms of the her equity would be finalized in a LLC agreement. Lastly, Adeosun claims that the back wages and business expenses were not sufficiently stated as a cause of action in the complaint.

Conclusions of Law

To succeed on a motion to dismiss for failure to state a cause of action (CPLR §3211 (a) (7)), the moving party must demonstrate that the complaint is devoid of any factual allegations which underlie wrongful conduct, (Kamhi v. Tay, 244 AD2d 266, NYS2d 288 [1st Dept., 1997]). Therefore, if sufficient facts are alleged, it then becomes the duty of the court to ascertain whether the facts in the complaint fit within any cognizable legal theory (Polonetsky v. Better Homes Depot, Inc., 97 NY2d 46, 760 NE2d 1274; Collins v. Telcoa Int'l Corp., 283 AD2d 128, 726 NYS2d 679 [2d Dept., 2001]). The complaint must be liberally construed and a motion to dismiss will be denied where plaintiff has a valid cause of action (Wiener v. Lazard Freres & Co., 241 AD2d 114, 672 NYS2d 8 [1st Dept., 1998]). On a motion to dismiss pursuant to CPLR §3211, the court must accept as true the facts as alleged in the complaint and submissions in the opposition to the motion, accord plaintiff the benefit of every possible favorable inference and determine only whether the facts, as alleged, fit within any cognizable legal theory (Sokoloff v. Harriman Estates Development Corp., 96 NY2d 409, 709 NYS2d 405 [2001]).

Both Executive Law §296(1) (a) and New York City Administrative Code §8-107 (1) (a) only allow an employee to sue based upon some allegation of discrimination. The courts have

found this to exclude partners in a company (See Ballen-Stier v. Hahn & Hessen, L.L.P., 284 AD2d 263, 727 NYS2d 421 [1st Dept 2001]; Levy v. Schnader, Harrison, Segal & Lewis, 232 AD2d 321, 648 NYS2d 572 [1st Dept 2006]). Thus, under both Executive Law §296(1) (e) and New York City Administrative Code §8-107 (7) a person can sue for retaliation only if their employer discriminated under Executive Law §296(1) and New York City Administrative Code §8-107(1) respectively. Even though the word person is used in these statutes, they still only refer to an employee because only employees can bring suit under Executive Law §296(1) (a) and New York City Administrative Code §8-107 (1) (a) (See Weir v. Holland & Knight, LLP, 34 Misc3d 1207(A) [New York Supreme Court 2011]).

Being a partner does not necessarily disqualify a person from bringing a cause of action under these statutes. The courts have determined that if an individual looks more like an employee than a partner, then the title or label of partner does not preclude them from bringing a cause of action as an employee Caruso v. Peat, Marwick, Mitchell & Co., 717 F. Supp. 218 [SDNY 1989]).

When reasonable, the courts generally prefer to define a term consistently in similar contexts (See Generally Forrest v. Jewish Guild for the Blind, 3 NY3d 295, 786 NYS2d 382 [2004]). In Hyland v. New Haven Radiology Associates, P.C., 794 F.2d 793 (2d

Cir. 1986), the court established a 3 factor test to determine if a partner is considered an employee. The factors include; an employee's ability to control the business, the relationship of his or her compensation to business profits, and the extent of his or her employment security.

The Supreme Court has used a similar, yet more thorough, approach in distinguishing an employee from a partner. In Clackamas Gastroenterology Associates, P. C. v. Wells, 538 U.S. 440, 123 S. Ct. 1673, 155 L. Ed. 2d 615 (2003), the Supreme Court established a six part test to determine if a partner qualifies as an employee. The factors that they took into consideration include: 1. whether the organization can hire or fire the individual or set the rules and regulations of the individual's work. 2. Whether and, if so, to what extent the organization supervises the individual's work. 3. Whether the individual reports to someone higher in the organization. 4. Whether and, if so, to what extent the individual is able to influence the organization. 5. Whether the parties intended that the individual be an employee, as expressed in written agreements or contracts. And 6. Whether the individual shares in profits, losses, and liabilities of the organization.

Since this is a motion to dismiss for failure to state a claim, the nonmoving party’s claims are assumed to be true. That said, defendants are moving to dismiss the action for failure to

state a cause of action because of defendants equity claims. Thus, it must be established if plaintiffs claims of being an employee satisfies the test of when a partner is considered an employee. Plaintiff claims that 1. Defendant reserved the right to fire her at will, 2. She reported to defendant as her supervisor, 3. Defendant chose her work assignments and marginalized her by assigning most of her work to someone else, 4. She held minimal power in making company decisions, 5. She was hired to be an employee, and 6. She was paid a set salary, separate from her equity share, which was not dependent upon the company's performance.

Thus, factual issues have been raised whether Plaintiff is an employee and may pursue discrimination claims. Consequently, at this juncture the motions seeking to dismiss the complaint are denied without prejudice. Either party may file any motion seeking summary judgement upon the conclusion of all discovery. Furthermore, Plaintiffs claims that she is an employee is not inconsistent with her equity claims since as noted an individual may be entitled to equity claims and still maintain discrimination claims as an employee.

So ordered.

ENTER:

DATED: May 21, 2012
Brooklyn N.Y.

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Hon. Leon Ruchelsman
JSC