

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Tekstrom, Inc.,	:	C.A. No. 03-06-0033
A Delaware Corporation,	:	
	:	
Plaintiff/Counterdefendant,	:	
	:	
vs.	:	
	:	
Sameer K. Savla,	:	
	:	
Defendant/Counterclaimant,	:	
	:	
vs.	:	
	:	
Charan Minhas,	:	
	:	
Individually,	:	
Counterdefendant.	:	

Upon Defendant Minhas' Motion to Dismiss

Submitted: January 27, 2005

Decided: February 10, 2005

The Motion to Dismiss is denied.

Thad J. Bracegirdle, Esquire, Buchanan Ingersoll, PC, The Nemours Building, 1007 North Orange Street, Suite 1110, Wilmington, Delaware 19801, Attorney for Plaintiff/counterdefendant and Defendant.

John S. Grady, Esquire, Grady & Hampton, LLC, 6 North Bradford Street, Dover, Delaware 19901, Attorney for Defendant/Counterclaimant.

Trader, J.

In this civil action, I conclude that the defendant Sameer Savla's (Savla) counterclaim alleges valid causes of action against Charan Minhas (Minhas) for: 1) a breach of the covenant of good faith and fair dealing and 2) intentional infliction of emotional distress. Accordingly, the Defendant Minhas' motion to dismiss Savla's counterclaim is denied.

The relevant facts stated in the counterclaim are as follows: Savla is a twenty-six year old man from India who came to the United States in August of 2000 on a student visa. He graduated with a Master's Degree in Computer Science from the University of Houston Clear Lake in December 2002. In early December 2002, Savla saw an e-mail from Tekstrom that represented that it was a company in Dover, Delaware and was seeking to hire and train people for their projects. In response to this e-mail, Savla sent his resumé by e-mail to Tekstrom. Minhas responded to this e-mail by calling Savla in Houston, Texas during the last week of December 2002 and interviewed Savla on his qualifications.

Several days later, Minhas called Savla and offered him a job with Tekstrom. Savla accepted this position by telephone on January 18, 2003, and traveled from Houston, Texas to Dover, Delaware at his own expense. The next day, Minhas presented Savla with a contract and Savla executed the contract. At the time of the execution of the contract, Minhas told Savla that he would be immediately placed in ongoing projects of Tekstrom.

After the execution of the contract, Savla found out that he would not be absorbed into Tekstrom's ongoing projects. The contract stated that "after successful completion of the training program, Tekstrom would market the applicant with its clients or absorb the applicant into its ongoing client projects." Savla did not have any projects

from the end of February to the first week of May. During this time, Savla inquired of Minhas about leaving Tekstrom and Minhas responded that any attempt to look for employment elsewhere would constitute a breach of contract.

Before the contract was signed, Minhas represented to Savla that the training provided by Tekstrom would be certified and provided by extremely qualified tutors that would train Savla in person from 9:00 a.m. to 6:00 p.m. for two or three weeks. Savla found out that the training was inadequate and was not what had been represented to him by Minhas.

Prior to coming to Delaware, Savla was promised clean housing but the housing in Dover was inadequate. Five or six people were sharing a two bedroom apartment. When Savla complained to Minhas about the housing and inquired about leaving the company, he was told that if he left the company that he faced the possibility of a lawsuit.

The contract also provided that Tekstrom would enroll the applicant in its group health insurance program at the company's expense. Despite repeated inquiries from Savla to Minhas about the status of his medical insurance, Tekstrom did not provide Savla with medical insurance. In February 2003, Minhas told Savla to alter his resumé by putting false work experience of about five or six years on the resumé. When Savla refused to do this, Minhas again threatened Savla with a lawsuit.

Minhas had promised Savla that he would obtain an H-1B visa for Savla, but despite continued requests concerning this from Savla, Minhas never supplied him with a visa. At the end of April 2003, Savla was selected for a three month contract at Bearing Point, New York. Savla told Minhas that he had no money to pay for a hotel or travel to New York. Minhas told Savla that he should go to work anyway or he would be fired and face a lawsuit if he quit.

Savla began working in New York shortly after May 5, 2003. On May 18, 2003, Savla telephoned Minhas and asked him when he would receive his paycheck. Minhas told him that he would not receive his paycheck until Bearing Point paid ARIA and ARIA paid Tekstrom. In the second week of May, Savla asked Minhas to release him from the eighteen month contract because none of the promises had been kept. His request was denied and he was again told that if he left the company that Tekstrom would sue him and that criminal charges would be brought against him.

On May 20, 2003, Minhas sent an e-mail to Savla asking if he knew where another trainee Nirali Dharani was located because they wanted to hire a law firm to sue her. Savla interpreted this e-mail as another threat by Minhas and Tekstrom.

On May 23, 2003, Savla mailed the laptop computer back. On Sunday, May 25, 2003, Minhas stated that “we are left no option but to seek all of the legal remedies possible under the law.” Because of the stress Savla had to endure from Tekstrom and Minhas, Savla became extremely ill and he returned to Texas so that his fiancée could care for him. His fiancée e-mailed Minhas about Savla’s condition and stated “Sameer’s health is extremely bad and he is on bed rest.” In a May 28, 2003 e-mail from Minhas, Savla was threatened with criminal charges as well as deportation. Savla worked three weeks at Bearing Point and was not paid and he did not seek any medical treatment in Texas because he had no medical insurance and no money.

On June 10, 2003, Tekstrom filed a civil action in this court for breach of contract. On September 15, 2003, the defendant Savla filed a *pro se* answer to the claim. On December 1, 2003, Savla, by his attorneys, filed an amended answer and a counterclaim against Tekstrom. Thereafter, Savla filed a counterclaim against Minhas and Minhas has filed a motion to dismiss that counterclaim.

At oral argument, Savla abandoned his claim based on the theory of promissory estoppel. Also at oral argument, Savla's counsel agreed to file an amended counterclaim. After the filing of the amended counterclaim, only two issues remain open for my decision. This is the court's decision on the issues that still remain open after the filing of Savla's amended counterclaim.

The Law on a Motion to Dismiss for Failure to State a Claim

Upon Which Relief Can be Granted

All well pleaded facts will be assumed to be true and all inferences will be viewed in the light most favorable to the non-moving party. *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312 (Del. Super. 2004). A complaint will not be dismissed unless it appears to a reasonable degree of certainty that a plaintiff would not be entitled to relief under any set of facts which could be proven in support of his claim. *Rabkin v. Philip A. Hunt Chemical Corp.*, 498 A.2d 1099 (Del. 1985).

Claim for Breach of Covenant of Good Faith and Fair Dealing

The seminal case for breach of covenant of good faith and fair dealing is *Merrill v. Crothall-American*, 606 A.2d 96 (Del. 1992). In *Merrill*, the court held that every employment contract made in Delaware includes an implied covenant of good faith and fair dealing. To constitute a breach of covenant of good faith and fair dealing, the claimant must show the conduct of the employer constituted "an aspect of fraud, deceit or misrepresentation." *Id.* at 101 (quoting *Magnan v. Anaconda Industries*, 429 A.2d 492 (Conn. Super. 1980)).

In *Hudson v. Wesley College*, 1994 WL 469138 (Del. Ch.), Vice-Chancellor Steele, now Chief Justice Steele, held that the misrepresentations made to the board by the president of the college constituted a cognizable claim of breach of the implied

covenant of good faith and fair dealing. In *Hudson*, the court held that Hudson may bring a cause of action for a breach of the covenant of good faith and fair dealing against the president of the college as well as the college. *See also Schuster v. Derocili*, 775 A.2d 1029, 1040 (Del. 2001). In the case before me, Minhas misrepresented to Savla that there were ongoing projects where he would be immediately placed. Minhas also misrepresented to Savla that he would have medical insurance and he would have clean housing. Minhas also misrepresented to Savla the training that would be provided by Tekstrom for its employees. Based on the various misrepresentations as well as the threats made by Minhas to Savla, I conclude that the plaintiff has stated a valid claim for breach of implied covenant of good faith and fair dealing.

Minhas contends that *Schuster, supra* and *Hudson, supra* do not support Savla's position that a president of a company can be held liable for a breach of covenant of good faith and fair dealing arising from an employment contract. Minhas' contention is incorrect. In *Derocili, supra*, the Delaware Supreme Court permitted a cause of action for a violation of the covenant of good faith and fair dealing to go forward against Derocili, president of the corporation. The court reached a similar conclusion in *Hudson, supra*.

Claim of Intentional Infliction of Emotional Distress

Emotional distress is defined in *Restatement (Second) of Torts* § 46 (1965) as one who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another. Judge Ridgely in *Thomas v. Harford Mut. Ins. Co.*, 2004 WL 1102362 (Del. Super.) held that a claim for intentional infliction of emotional distress may be made even in the absence of bodily harm if the conduct is outrageous.

Liability is found when the conduct of the defendant has been found to exceed the bounds of decency and is regarded as intolerable in a civilized community. *Id.*

Minhas threatened Savla with deportation, lawsuits and false criminal charges and this conduct is intolerable in a civilized community. As a result of this conduct, the plaintiff was financially and mentally devastated by the treatment he received from Minhas and the company. Minhas was the person who acted on behalf of the company in treating Savla in such a fashion. Therefore, Minhas' motion to dismiss the claim for the tort of intentional infliction of emotional distress is denied.

On the basis of the above conclusions of law, Minhas' motion to dismiss is denied.

IT IS SO ORDERED.

Merrill C. Trader
Judge