IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

KENNETH C. RUMP,

Plaintiff,

v.

PHILIPS LIFELINE,

Defendant.
_____/

No. C 09-03271 SI

ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant has filed a motion for partial summary judgment, which is scheduled for hearing on November 5, 2010. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument, and hereby VACATES the hearing.

Having considered the papers submitted, and for good cause shown, the Court hereby GRANTS defendant's motion for partial summary judgment.

BACKGROUND

On June 20, 2004, plaintiff Kenneth Rump began working for Lifeline Systems ("Lifeline"), the predecessor entity of defendant Philips Lifeline, as a regional sales manager selling low voltage systems, equipment, and devices for seniors. First Am. Compl. ¶ 6; Declaration of Erica Rocush, Ex. A (Deposition of Kenneth C. Rump), at 8. On June 30, 2004, plaintiff and Lifeline entered into a Non-Solicitation Agreement ("Agreement"). First Am. Compl. ¶ 38.[1] The Agreement provides that during plaintiff's employment with Lifeline and for a year after termination, plaintiff would not solicit business

[1] In early 2007, Philips Holding USA acquired Lifeline, and the Agreement inured to the benefit of Lifeline's successor, Philips Lifeline. First Am. Compl. ¶ 38.

from Lifeline's customers. *Id.*

On April 7, 2008, plaintiff voluntarily resigned. *Id.* ¶¶ 26, 38. On April 11, 2008, plaintiff received an email from Jeff Moore, plaintiff's supervisor, acknowledging plaintiff's resignation and reminding him of the Agreement. *Id.* ¶ 38. Plaintiff sought legal advice regarding the meaning of the Agreement a week or a couple of weeks after receiving the email. Rocush Decl., Ex. A (Rump Depo.), at 25-26.

Plaintiff originally filed suit in Contra Costa County Superior Court on May 11, 2009. His complaint alleged seven causes of action based on defendant's alleged failure to pay plaintiff wages and commissions owed to him under his oral employment contract: (1) breach of oral contract, (2) work and labor, (3) money had and received, (4) quantum meruit, (5) nonpayment of wages, (6) waiting time penalties under Labor Code § 203, and (7) accounting against employer for commissions. Notice of Removal (Compl. ¶¶ 3-33). On July 17, 2009, defendant removed the action to this court, alleging diversity jurisdiction. On June 17, 2010, plaintiff filed a first amended complaint in this court, which added an eighth cause of action against defendant for interference with economic expectations. First Am. Compl. ¶¶ 37-42. In this cause of action, plaintiff alleged that when he sought employment with other firms in the senior living sector, those firms refused to hire plaintiff because of the Agreement. *Id.* ¶ 39.

Presently before the Court is defendant's motion for partial summary judgment. Defendant seeks judgment on plaintiff's eighth cause of action for interference with economic expectations, arguing it is barred by the applicable statute of limitations.

LEGAL STANDARD

I. Summary Judgment

Summary judgment is proper "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The moving party, however, has no burden to disprove matters on which the

non-moving party will have the burden of proof at trial. *Id.* The moving party need only demonstrate to the Court that there is an absence of evidence to support the non-moving party's case. *Id.* at 325.

Once the moving party has met its burden, the burden shifts to the non-moving party to "designate 'specific facts showing that there is a genuine issue for trial.'" *Id*. at 324 (quoting Fed. R. Civ. P. 56(e)). To carry this burden, the non-moving party must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). "The mere existence of a scintilla of evidence . . . will be insufficient; there must be evidence on which the jury could reasonably find for the [non-moving party]." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

In deciding a summary judgment motion, the court must view the evidence in the light most favorable to the non-moving party and draw all justifiable inferences in its favor. *Id*. at 255. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge . . . ruling on a motion for summary judgment." *Id*. However, conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. *Thornhill Publ'g Co., Inc. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

II. Statute of Limitations

Under California Code of Civil Procedure § 339(1), an "action upon a contract, obligation or liability not founded upon an instrument of writing" has a two-year statute of limitations. Cal. Civ. Proc. Code § 339(1). Claims for interference with prospective business advantage are governed by this statute of limitations. *Knoell v. Petrovich*, 90 Cal. Rptr. 2d 162, 168 (Cal. Ct. App. 1999). A cause of action accrues and the statute of limitations begins to run "when, under the substantive law, the wrongful act is done, or the wrongful result occurs, and the consequent liability arises." *Cypress Semiconductor Corp. v. Superior Court*, 77 Cal. Rptr. 3d 685, 692 (Cal. Ct. App. 2008) (internal quotation marks and citation omitted).

III. Federal Rule of Civil Procedure 15(c)

Federal Rule of Civil Procedure 15(c) provides that an amendment to a pleading relates back to the date of the original pleading when "the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading." Fed. R. Civ. P. 15(c)(1)(B). For the purposes of the statute of limitations, a new claim in an amended petition relates back to the original petition when the same "core of operative facts" unites the new claim and original petition. *Mayle v. Felix*, 545 U.S. 644, 659 (2005); *Williams v. Boeing Co.*, 517 F.3d 1120, 1133 (9th Cir. 2008). To arise from the same core of operative facts, two claims must arise from a "single occurrence" that happened at a particular time and place. *Mayle*, 545 U.S. at 660 (internal quotation marks omitted). That is, they must not arise from separate episodes that took place at different times and places. *Id.* To put it another way, in order for two claims to share the same core of operative facts, the plaintiff must allege the same facts and rely on the same evidence to prove the claims. *Williams*, 517 F.3d at 1133.

DISCUSSION

Defendant argues that the two-year statute of limitations for plaintiff's claim of interference with economic expectations began to run in April 2008, at the latest, when plaintiff received Jeff Moore's email and sought legal advice about the meaning of the Non-Compete Agreement. As plaintiff did not allege interference with economic expectations until he amended his complaint on June 17, 2010, the statute of limitations bars this cause of action. Plaintiff does not dispute defendant's calculation of when the statute of limitations began to run, but contends that the amendment to his complaint should relate back to the date of the original pleading under Rule 15(c)(1)(B), because his new claim arose from the same transaction as the causes of action alleged in his original complaint. Since the date of the original pleading was May 11, 2009, plaintiff argues that the new cause of action falls within the two-year statute of limitations.

Plaintiff's argument that Rule 15(c)(1)(B) allows his new claim to relate back to the time of filing of his original complaint is without merit. Plaintiff's new claim for interference with economic expectations does not arise from the same transaction as the original claims. Plaintiff's seven original

claims are all based on defendant's alleged failure to pay plaintiff the wages and commissions owed to him under his oral employment contract. Plaintiff's new claim for interference with economic expectations, however, is based on the Non-Solicitation Agreement between plaintiff and defendant. The new cause of action and the original causes of action are therefore based on separate agreements and on different alleged conduct by defendant. Consequently, they amount to separate interactions between the plaintiff and defendant. The fact that all the claims relate to the former employment relationship between plaintiff and defendant does not amount to a common transaction under Rule 15(c)(1)(B). *See Williams*, 517 F.3d at 1133 (finding that for the purposes of Rule 15(c)(1)(B), there was no common core of operative facts between a compensation discrimination claim and promotion discrimination, hostile work environment, and retaliation claims, despite the fact that all of the claims sprang from the same employment relationship between the plaintiff and defendant).

Plaintiff's claim for interference with economic expectations is barred by the statute of limitations.

CONCLUSION

For the foregoing reasons, defendant's motion for partial summary judgment (Docket No. 45) is GRANTED.

IT IS SO ORDERED.

Dated: November 2, 2010

SUSAN ILLSTON
United States District Judge