

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STEPHEN C. GOODWIN)	
Plaintiff)	
)	USDC NO.
v.)	
)	
RETRIEVE, INC.)	
Defendant)	

COMPLAINT AND JURY DEMAND

INTRODUCTION

This is an action seeking damages for defendant’s unlawful treatment of plaintiff with regard to his employment. Specifically, defendant has breached its contractual and other obligations to plaintiff; breached the covenant of good faith and fair dealing implied in plaintiff’s employment agreement; wrongfully terminated plaintiff’s employment and violated the Massachusetts Wage Act.

PARTIES

1. Plaintiff Stephen C. Goodwin (“Goodwin”) is a citizen of the Commonwealth of Massachusetts, residing at 188 Cochituate Road, Wayland, Massachusetts.
2. Defendant Retrieve, Inc. (“Retrieve”) is a Delaware corporation having a principal place of business at 20 Main Street, Henniker, New Hampshire.

JURISDICTION AND VENUE

3. Jurisdiction is based upon diversity of citizenship of the parties and the amount in controversy exceeds, exclusive of interest and costs, the sum specified in 28 U.S.C. § 1332.
 - (a) Plaintiff is an individual and a citizen and resident of the Commonwealth of Massachusetts; and

(b) Defendant is a corporation organized in the State of Delaware with a principal place of business in Henniker, New Hampshire.

4. Venue is proper in Massachusetts, pursuant to U.S. C. § 1391(a) and 1391(c) as the claims arose in Massachusetts and defendant does business in Massachusetts.

FACTUAL ALLEGATIONS COMMON TO EACH CLAIM FOR RELIEF

5. Goodwin is an experienced and successful marketing and sales executive. Based upon Goodwin's reputation, track record, expertise, and significant business contacts, Retrieve and its President David Arnold recruited and induced Goodwin to accept employment with Retrieve to help Retrieve expand its existing business into significant new markets.

6. It was understood and agreed between Goodwin, Retrieve and Arnold that the time it would take to penetrate the new market and achieve results would be lengthy.

7. Retrieve and Arnold assured Goodwin that they were committed to the venture, had sufficient funds to support it over time and had the patience to wait for results given that Retrieve was virtually unknown to Goodwin's prospects as well as current economic conditions negatively affecting business generally.

8. Retrieve and Arnold gave Goodwin the reasonable good faith belief that they were committed to the project and that Goodwin would have sufficient time in which to create the market.

9. Throughout the recruitment process, Arnold often spoke of Goodwin's contacts and the "Rolodex" of business contacts and prospects Retrieve was obtaining from Goodwin.

10. On January 14, 2001, Retrieve and Goodwin entered into an agreement pursuant to which Goodwin would become Executive Vice President of Retrieve, effective February 1, 2011 (the "Agreement").

11. The Agreement contemplated a three-year term of employment.

12. The Agreement provided, in part, that Goodwin would receive \$220,000 per year in compensation and expenses; commissions on sales; and options on 110,000 shares of Retrieve stock “vesting over three years.”

13. Under the Agreement, Goodwin was entitled to a severance payment equal to six months.

14. The Agreement did not provide goals, expectations, objectives, or quotas of any kind.

15. Goodwin has performed all of his obligations to be performed under the Agreement.

16. In July 2011, without notice to Goodwin, Arnold and Retrieve cut Goodwin’s pay by 66%. For the pay period of July 1 to 15, 2011, Goodwin received only 33% of the salary due.

17. Although Goodwin continued to work for Retrieve following the pay cut, he was not paid his salary for the pay period July 15 through July 30th and has not received any pay since July 15, 2011.

18. Retrieve and Arnold have violated the Massachusetts Wage Law.

19. Goodwin has filed a wage law complaint with the Massachusetts Attorney General.

20. During the recruitment process, Arnold and Retrieve assured Goodwin that Retrieve had sufficient funds and sources of funds to conduct its business and support the expense of its expansion. Only six months after entering into the Agreement with Goodwin, Arnold claimed that Retrieve was “out of money.”

21. Arnold and Retrieve knew or should have known the true financial condition of the company when Goodwin was hired.

22. Arnold and Retrieve had a duty to Goodwin to truthfully disclose the company's finances at the time Goodwin was hired.

23. Goodwin entered into the Agreement in reliance upon the assurances he received from Arnold and Retrieve and would not have entered into the agreement if he had known Retrieve would be (or claim to be) insolvent by July 2011.

24. Arnold's and Retrieve's lack of candor or dishonesty concerning the finances of Retrieve induced Goodwin to enter into the Agreement.

25. Goodwin relied in good faith upon the statements of Arnold, acting on behalf of Retrieve.

26. The pay cut and the cessation of Goodwin's salary were a breach of contract and a wrongful discharge for which Goodwin is entitled to recover his full compensation under the Agreement, commissions and the value of the stock options.

COUNT I

(BREACH OF CONTRACT)

27. Goodwin incorporates by reference the facts alleged in paragraphs 1 through 26 as though fully set forth therein.

28. By virtue of the foregoing, Retrieve has breached its employment agreement with Goodwin.

29. As a direct and proximate result thereof, Goodwin has suffered monetary damage for which Retrieve is liable.

COUNT II

(BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING)

30. Goodwin incorporates by reference the facts alleged in paragraphs 1 through 29 above as though fully set forth therein.

31. By virtue of the foregoing, Retrieve breached its covenant to act in good faith and deal fairly with Goodwin, as implied under their agreement.

32. As a direct result thereof, Goodwin has suffered monetary damages for which Retrieve is liable.

COUNT III

(WRONGFUL DISCHARGE)

33. Goodwin incorporates by reference the facts alleged in paragraphs 1 through 32 as if fully set forth therein.

34. By virtue of the foregoing, Retrieve has wrongfully terminated Goodwin's employment with Retrieve.

35. As a direct and proximate result thereof, Goodwin has suffered monetary damages, for which Retrieve is liable.

WHEREFORE, Goodwin respectfully requests that this Court:

- A. Enter judgment in favor of the plaintiff against the defendant on each count of this complaint and award monetary damages together with interest and costs.
- B. Award plaintiff his costs and attorney's fees incurred as a result of this action.
- C. Award such other, further, and different relief as is deemed appropriate.

JURY DEMAND

Plaintiff respectfully demands a jury on all matters so triable.

Respectfully submitted,
Stephen C. Goodwin
By his attorney,

/s/ Robert B. Smith

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