Goldfarb v Romano
2016 NY Slip Op 31224(U)
June 27, 2016
Supreme Court, New York County
Docket Number: 159203/2015
Judge: Eileen Bransten

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART THREE

----------X

JASON GOLDFARB,

Plaintiff,

-against-

Index No. 159203/2015
Motion Date: 6/15/2016
Motion Seq. No. 001

JOSEPH A. ROMANO ESQ., ROBERTA A. ROMANO ESQ., and LAW OFFICES OF JOSEPH A. ROMANO,

Defendants.

----------X

BRANSTEN, J.

Plaintiff Jason Goldfarb ("Plaintiff") brings this action against Defendants Joseph A. Romano, Roberta A. Romano, and the Law Offices of Joseph A. Romano (collectively, "Defendants") for breach of contract, services provided, and unjust enrichment. Plaintiff alleges Defendants did not perform their duties under an employment agreement between the parties, owing Plaintiff $1,400,000.00 in unpaid compensation. Plaintiff now moves for leave to amend the complaint.

For the reasons that follow, Plaintiff's motion is granted.

I. Background

A. The Original Complaint

According to the original complaint (the "Complaint"), filed on September 4, 2015, Plaintiff was an employee at the Law Offices of Joseph A. Romano beginning in November, 2009. (Complaint ("Compl.") ¶¶ 4, 12, 13.) Joseph Romano and Roberta Romano are both attorneys, as well as partners and owners of the law office. (Compl. ¶¶

2, 3, 5-8.) Both attorneys and the firm are involved in workers' compensation, personal injury, and social security and disability law. (Compl. ¶¶ 9-11.) Plaintiff claims to have entered into an employment agreement with Defendants whereby Plaintiff would provide "origination and participation services" in exchange for "a salary and fees." (Compl. ¶¶ 14-17.)

1. Breach of Contract

The first cause of action claims a breach of contract by Defendants. Plaintiff claims to have performed legal services for Defendants, and Defendants have refused to pay. (Compl. ¶¶ 21-23.) Plaintiff alleges damages in the amount of $1,400,000.00. (Compl. ¶ 24.)

2. Services Provided

Plaintiff next asserts a cause of action for services rendered. Plaintiff claims Defendants have accepted and benefited from his services, but have refused to pay despite Plaintiff's "demand for payment for monies owed." (Compl. ¶¶ 27-30.) Plaintiff alleges that Defendants' refusal constitutes a beach of the parties' agreement, and asserts damages in the amount of $1,400,000.00. (Compl. ¶¶ 31-32.)

3. Unjust Enrichment

Finally, Plaintiff asserts a claim for unjust enrichment, alleging that Defendants have unfairly benefited from the arrangement between the parties. Plaintiff claims Defendants have failed to pay money due under the employment agreement and have thus been unjustly enriched by $1,400,000.00. (Compl. ¶ 34.)

B. The Proposed Amended Complaint

In the proposed amended complaint (the "Proposed Amended Complaint"), Plaintiff seeks to add and modify factual allegations based on his responses to Defendants' interrogatories, information gleaned through discovery, and "to specify a claim of an implied contract." (Affirmation of Joseph Vozza ("Vozza Affirm.") ¶ 7.) Plaintiff seeks to amend the caption to reflect that the law office is a domestic professional corporation rather than a partnership. (Vozza Affirm. ¶8.) The Proposed Amended Complaint also reflects that the firm has relocated from Brooklyn to the Bronx. (Proposed Amended Complaint ("Amend. Compl.") ¶ 4.) In addition, the Proposed Amended Complaint has modified the alleged roles and ownership interests of Joseph and Roberta Romano accordingly. (Amend. Compl. ¶¶ 6, 7, 8-10.) As to the type of law practiced at the law office, the Proposed Amended Complaint has added "municipal disability pensions" to the list of practice areas. (Amend. Compl. ¶ 11.)

1. Employment Agreement

The Proposed Amended Complaint contains more detail about the employment arrangement between the parties, including the exact start and end dates for Plaintiff's employment. (Amend. Compl. ¶¶ 12-17.) The Proposed Amended Complaint also includes the date Plaintiff made his demand for payment in January 2014. (Amend. Compl. ¶¶ 19, 53.) Further, the Proposed Amended Complaint contains precise figures for compensation, as well as the specific services Plaintiff was to provide. (Amend. Compl. ¶¶ 14-19.)

2. Causes of Action

In pleading an additional cause of action, the Proposed Amended Complaint divides the first cause of action for breach of contract into two separate causes of action. The Complaint did not specify whether Plaintiff alleged Defendants breached an express or implied agreement but only referred to a "contract" and "contractual obligations." (Comp. ¶¶ 22, 23.)

The first cause of action in the Proposed Amended Complaint alleges a breach of an express contract. (Amend. Compl. ¶¶ 21, 22.) The second cause of action alleges breach of an implied oral agreement, and that forming an oral agreement "was the standard course of conduct and dealings between the defendants and the attorneys they employed." (Amend. Compl. ¶¶ 33-36, 40.) The majority of the changes to the causes of action in the Proposed Amended Complaint reflect the additional details as to the employment agreement between the parties discussed above. (*See, e.g.,* Amend. Compl. ¶¶ 21, 33, 47, 60.)

Finally, it should be noted that although the Proposed Amended Complaint alleges that Defendants "breached their duties to act in good faith" (Amend. Compl. ¶¶ 29, 43), Plaintiff does not plead breach of the covenant of good faith and fair dealing.

II. Discussion

Plaintiff has filed a motion for leave to amend the Complaint pursuant to CPLR §3025(b) to reflect additional details as noted above. This motion is unopposed. Pursuant to the reasoning below, Plaintiff's motion should be granted.

A. Standard for Motion for Leave to Amend

In New York, leave to amend a complaint "shall be freely given." N.Y. C.P.L.R. 3025(b) (McKinney 2005). However, leave to amend may be denied if the proposed amendment will cause prejudice or surprise to the opposing party. *McCaskey, Davies and Assoc., Inc. v. New York City Health and Hospitals Corp.*, 59 N.Y.2d 755, 757 (1983). Lateness by itself is not an appropriate reason to deny a motion for leave to amend if the delay does not prejudice the opposing party. *Norwood v. City of New York*, 203 A.D.2d 147, 148 (1st Dep't 1994). If, however, the delay prejudices the opposing party and the moving party is unable to offer a reasonable excuse for the delay the motion for leave to amend should be denied. *Heller v. Louis Provenzano, Inc.*, 303 A.D.2d 20, 22-23 (1st Dep't 2003); *see also Pefanis v. Long*, 114 A.D.2d 806, 806 (1st Dep't 1985) (reversing the Supreme Court's decision to allow an amendment to the complaint because the moving party's delay meant the Statute of Limitations had run and the opposing party would be left without remedy).

Further, if the proposed amendment is based on facts known to the moving party at the commencement of the action, a motion to amend will likely not be granted if the moving party does not have a reasonable excuse for the delay. *See L.B. Foster Co. v. Terry Contracting, Inc.*, 25 A.D.2d 721, 721-22 (1st Dep't 1966). In the interest of conserving judicial resources, "an examination of the proposed amendment is warranted and leave to amend will be denied when the pleading is palpably insufficient as a matter of law." *Ancrum v. St. Barnabas Hosp.*, 301 A.D.2d 474, 475 (1st Dep't 2003).

B. Plaintiff's Motion for Leave to Amend

Here, Plaintiff filed the Complaint on September 4, 2015. Defendants served their answers in October 2015 and January 2016. According to the preliminary conference order, August 31, 2016, is the deadline for the completion of depositions and fact disclosure. (Preliminary Conference Order ("Prelim.") ¶¶ 4, 9.) All discovery is to be completed by October 31, 2016. (Prelim. ¶ 11.) Further, at the preliminary conference, the proposed amendments were discussed, and the discovery dates were set with the amendment in mind. (Vozza Affirm. ¶ 15.)

In light of the above, it is clear Plaintiff has not unreasonably delayed in bringing this motion. In *Ancrum v. St. Barnabas Hospital*, the First Department found a four-month delay was not unreasonable and did not prejudice the opposing party because there had been "no discovery or other significant progress in the case." 301 A.D.2d at 475; *see also Seda v. New York City Housing Auth.*, 181 A.D.2d 469, 469-70 (holding a three-year delay, though unreasonable, did not prejudice opposing party because there had been no significant progress on the case in that time). Similarly, this motion to amend comes only five months after Defendants answered the Complaint. While there has been some discovery in this case, the docket does not show "significant progress."

Finally, while the Proposed Amended Complaint does contain an additional cause of action, Defendants were provided with notice of the substance of the claims in the Complaint. In *Heller v. Louis Provenzano, Inc.*, the moving party sought to amend the complaint to add a new theory of liability. 303 A.D.2d 20, 23. The First Department

found prejudice to the opposing party because the opposing party did not prepare to address the particular issue proposed in the amendment at trial. *Id.* Here, the new cause of action, pleading the breach of an implied agreement, stems from the first cause of action in the Complaint. Thus, Defendants had notice, and cannot claim prejudice.

Accordingly, Plaintiff's motion for leave to amend the Complaint and direct Defendants to accept service is hereby granted.

III. Conclusion

For the foregoing reasons, it is

ORDERED that Plaintiff's motion to amend the Complaint and directing Defendants to accept service is granted.

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: New York, New York
June 27, 2016

ENTER

Hon. Eileen Bransten, J.S.C.