SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

BELL & COMPANY, P.C.,

Plaintiff,

-against-

MONIFA BENISON,

Defendant.

Index No.: 151804/2015

DECISION/ORDER

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Notice of Motion and Affidavits/Affirmations/ Memos of Law annexed	1
Opposition Affidavits/Affirmations and Memo of Law annexed	2
Reply Affidavits/Affirmations/Memos of Law annexed	3

ERIKA M. EDWARDS, J.S.C.:

Plaintiff Bell & Company, P.C. ("Bell") brought this action against Defendant Monifa Benison ("Defendant") alleging breach of contract and fraud in the inducement. Defendant now moves for summary judgment dismissal of Bell's complaint and for sanctions against Bell for frivolous conduct, including attorney's fees and costs. For the reasons set forth herein, the court grants Defendant's summary judgment motion and dismisses Bell's complaint as against Defendant, but denies Defendant's motion for sanctions against Bell.

Bell is a financial/accounting firm. Defendant worked for Bell in 2005, but resigned. She was re-hired and worked for Bell in the beginning of June, 2014, until she resigned on February 5, 2015. When Bell was re-hired, she was studying for her Certified Public Accountant ("CPA") exam and the parties discussed the terms of Defendant's employment. Bell made several accommodations to permit Defendant to study from home in the mornings of three days/ week and Defendant agreed to work in the office during the other times at a reduced salary. Defendant requested Bell's representative to email Defendant an offer letter outlining the agreement of her employment. In response, on May 21, 2014, Bell emailed Defendant a letter indicating that Defendant accepted a full-time position with Bell to begin on June 2, 2014, with an annual salary of $108,000, particular benefits and that Defendant was encouraged to take 3 mornings off every week to study for the CPA exam scheduled in July, 2014. Additionally, the letter included that "[u]pon obtaining your CPA license, you are elevated to a Senior Manager position, with the corresponding salary increase." The letter was signed by Bell's representative

and not by Defendant. Defendant had issues with the work schedule because of Bell's demands and the parties agreed to permit Defendant to study two full days/week, although Defendant claims to have worked many more hours, and for Bell to pay Defendant for four days/week. Defendant did not pass all of her CPA exams until July 20, 2015, and did not receive her license until September 25, 2015.

This dispute involves the question of whether Bell's emailed correspondence to Defendant was an employment agreement, which Defendant breached, or whether it was an offer letter and not a binding contract, for which there was no breach of contract. Plaintiff argues in substance that the correspondence was an employment agreement which bound Defendant to continue working for Bell until sometime after she obtained her CPA license, defendant breached this contract by quitting on February 5, 2015, after learning that she had passed her exam, and that she fraudulently induced Plaintiff to enter into this agreement. Defendant argues in substance that the correspondence was simply an offer letter and not a binding employment agreement because it did not include the material term of the duration of Defendant's employment, Defendant was an at-will employee, free to resign at any time, and Defendant is entitled to summary judgment dismissal of Plaintiff's complaint because Plaintiff failed to establish any of its causes of action.

To prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824, 833 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The submission of evidentiary proof must be in admissible form (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067-68 [1979]). The movant's initial burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (*Jacobsen*, 22 NY3d at 833; *William J. Jenack Estate Appraisers and Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013]).

If the moving party fails to make such prima facie showing, then the court is required to deny the motion, regardless of the sufficiency of the non-movant's papers (*Winegrad v New York Univ. Med. Center*, 4 NY2d 851, 853 [1985]). However, if the moving party meets its burden, then the burden shifts to the party opposing the motion to establish by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Restani Construction Corp.*, 18 NY3d 499, 503 [2012]).

The elements of breach of contract are (1) the existence of a valid contract, (2) plaintiff's performance of its obligations under the contract, (3) defendant's breach, and (4) resulting damages (*see Morris v 702 E. Fifth St. HDFC*, 46 AD3d 478, 479 [1st Dept 2007]; *Stonehill Capital Mgt., LLC v Bank of the West*, 28 NY3d 439, 448 [2016]).

In New York, when there is no agreement establishing a fixed duration of employment, an employment relationship is presumed to be a hiring at will, terminable at any time by either party (*Sabetay v Sterling Drug*, 69 NY2d 329, 333 [1987] [internal citation omitted]; *Martin v*

New York Life Ins. Co., 148 NY 117 [1895]). The at-will presumption is triggered when an employment agreement fails to state a definite period of employment, fix a definite duration, establish a fixed duration, or is otherwise indefinite (*Rooney v Tyson*, 91 NY2d 685, 689 [1998] [internal citations and quotation marks omitted]). When an agreement is silent as to duration, it is presumptively at-will, absent an express or implied limitation on an employer's otherwise unfettered ability to discharge an employee (*id.* at 690 [internal citations and quotation marks omitted]). The reverse of this proposition is also true and when there is no duration specified, an at-will employee is free to resign at any time.

To prove fraudulent inducement, Plaintiff must demonstrate that Defendant intentionally misrepresented a material fact to defraud or mislead Plaintiff, and that Plaintiff reasonably relied on the misrepresentation and suffered damages as a result thereof (*Connaughton v Chipotle Mexican Grill, Inc.*, 135 AD3d 535, 650 [1st Dept 2016]). Fraudulent inducement claims require specificity, including the circumstances of the alleged fraud (CPLR 3016[b]). Where a cause of action or defense is based upon fraud the circumstances constituting the wrong shall be stated in detail (*Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d 486, 491 [2008] [internal quotations and citations omitted).

General allegations that a Defendant entered into a contract with no intent to perform are insufficient to support Plaintiff's fraudulent inducement claim. However, it is sufficient if Plaintiff pled that it was induced to enter into a contract based on Defendant's promise to perform and that Defendant, at the time they made the promise, had a preconceived and undisclosed intention of not performing the contract, then such a promise would constitute a representation of present fact collateral to the terms of the contract (*Manas v VMS Assoc., LLC*, 53 AD3d 451, 453 [1st Dept 2008]).

Based on the evidence submitted and applicable law, the court finds that Defendant established her entitlement to judgment in her favor as a matter of law by demonstrating that the correspondence was not a binding employment agreement requiring Defendant to continue working for the company until an unspecified time after she obtained her CPA license, that Defendant did not breach an agreement by resigning from the company on February 5, 2015, and that Plaintiff failed to establish that all of the elements of breach of contract or fraud in the inducement.

The court finds that Bell failed to establish breach of contract because it failed to demonstrate that there was a valid contract, that Defendant breached an agreement or that Bell suffered damages. Bell failed to establish all the elements of fraudulent inducement because it failed to demonstrate that Defendant intentionally misrepresented a material fact to defraud or mislead Bell, and that Bell reasonably relied on the misrepresentation and suffered damages as a result (*see New York City Housing Auth. v Morris J. Eisen, P.C.*, 276 AD2d 78, 85 [1st Dept 2000]; *Tierney v Capricorn, L.P.*, 189 AD2d 629, 631 [1st Dept 1993]).

There is no dispute that Bell's emailed correspondence, dated May 21, 2014, is the only written document intended to memorialize the oral agreement between the parties. Additionally, there is no evidence that the parties ever discussed the duration of Defendant's employment. It is clear that Defendant did not sign this letter, the letter did not include all of the material terms required in an employment agreement, including the agreed upon duration of employment, there

was no meeting of the minds or intent by both parties for the letter to serve as an employment agreement, Defendant is presumed to be an employee at-will, and, to the extent Bell detrimentally relied upon Defendant working for Bell until after she received her license, such reliance was not reasonable based solely upon this letter.

There are disputed issues regarding whether Defendant signed a Confidentiality Agreement which indicated that she was an at-will employee, or whether Bell simply provided it to her as they did with all of their employees, whether Bell suffered any actual damages or profited from Defendant's employment and whether Defendant quit upon finding out that she had passed her exam. Defendant stated that she did not pass the last portion of her exams until July 20, 2015, and did not receive her license until September 25, 2015, almost eight months after her resignation. However, the resolution of these disputes and other potential factual disputes raised by Bell in opposition to this motion are not material to the outcome of the determination of the relevant legal issues in this matter.

Finally, the court denies Defendant's request for sanctions, attorney's fees and costs as Defendant failed to demonstrate that such relief is warranted based upon the evidence in this case.

Accordingly, it is hereby

ORDERED that the court GRANTS Defendant Monifa Benison's motion for summary judgment, dismisses Plaintiff Bell & Company, P.C.'s complaint in its entirety and the Clerk is directed to enter judgment in favor of Defendant Monifa Benison as against Plaintiff Bell & Company, P.C., accordingly; and it is further

ORDERED that the court DENIES Defendant Monifa Benison's motion for sanctions against Plaintiff Bell & Company, P.C., including attorney's fees and costs and for all other relief not set forth herein.

Date: August 25, 2017

HON. ERIKA M. EDWARDS