

Lederman v LR Acquisition, LLC

2018 NY Slip Op 30706(U)

April 19, 2018

Supreme Court, New York County

Docket Number: 657163/2017

Judge: Saliann Scarpulla

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 39

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WAYNE LEDERMAN,

Plaintiff,

- v -

LR ACQUISITION, LLC, IAPPAREL, LLC, SAMMY CATTON

Defendants.

INDEX NO. 657163/2017

MOTION DATE 1/11/2018

MOTION SEQ. NO. 003

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this application to/for DISMISSAL

HON. SALIANN SCARPULLA:

In this employment dispute, defendants LR Acquisition, LLC (“LRA”), iApparel, LLC, and Sammy Catton (collectively “Defendants”) move for an order pursuant to CPLR 3211 (a)(7) dismissing the second, third, fourth, fifth, ninth and tenth causes of action asserted by plaintiff Wayne Lederman (“Lederman”).

Lederman and LRA entered into a written employment agreement dated March 27, 2017, pursuant to which Lederman was hired as the Executive Vice President of LRA. In his complaint, Lederman alleges that he was improperly demoted, required to acquiesce in various “fraudulent” schemes carried out by Defendants, and was ultimately fired without cause, all in violation of his employment agreement. Based on the foregoing, Lederman alleges ten causes of

action: breach of contract (Count 1); breach of the implied covenant of good faith and fair dealing (Count 2); unjust enrichment (Count 3); promissory estoppel (Count 4); fraud (Count 5); violation of New York Labor Law (Count 6); declaratory judgment declaring that the restrictive covenant in his employment contract is unenforceable (count 7); permanent injunction enjoining enforcement of the restrictive covenant (Count 8); permanent injunction enjoining enforcement of the restrictive covenant (Count 9); and permanent injunction directing immediate payment of all amounts due under the employment agreement (Count 10).

In their motion to dismiss, Defendants argue that Lederman's causes of action for breach of the implied covenant of good faith and fair dealing, promissory estoppel and fraud must be dismissed as duplicative of the breach of contract claim. Defendants also argue that Lederman has failed to state a claim for unjust enrichment; and that, even if the fraud claim is not duplicative of the breach of contract claim, Lederman has failed to plead fraud with the requisite particularity. Finally, Defendants argue that Lederman's ninth cause of action is an exact duplication of his eighth cause of action, and that the tenth cause of action does not state a cognizable claim.

In opposition, Lederman does not oppose dismissal of the ninth and tenth causes of action. He argues, however, that his equitable claims are not duplicative of the breach of contract claim, and that he has sufficiently stated causes of action for fraud and unjust enrichment.

Upon review of the complaint, I agree with Defendants that Lederman's second cause of action for breach of the implied covenant of good faith and fair dealing and fourth cause of action for promissory estoppel are duplicative of the breach of contract claim. LRA and Lederman acknowledge that the terms of Lederman's employment are memorialized in the

employment agreement, but they dispute whether Lederman was wrongfully terminated without cause. Lederman's breach of contract cause of action deals with that dispute. The breach of the implied covenant of good faith and fair dealing claim and the promissory estoppel claim are also premised on Defendants' alleged wrongful termination of Lederman without cause, and seek the same damages as the breach of contract claim. I therefore grant Defendants' motion to dismiss the second and fourth causes of action.

In the unjust enrichment cause of action, Lederman alleges that Defendants were unjustly enriched when they convinced him to sign the employment agreement and then wrongfully terminated him without cause. Here again, the unjust enrichment claim is duplicative of the breach of contract cause of action and for this reason, I dismiss the third cause of action for unjust enrichment. *See Corsello v. Verizon N.Y., Inc.*, 18 NY3d 777, 790-91 (2012) (Court of Appeals held that "[a]n unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim.").

In his fraud claim Lederman alleges that

[Defendants] represented that [Lederman] could only be terminated for cause from his employment but never advised [Lederman] that they had the intent to manufacture "cause" to justify termination.

[Defendants] never advised [Lederman] of the intent to manufacture "cause" to justify a termination in order to induce [Lederman] to execute the Employment Agreement containing an alleged restrictive covenant.

These allegations, though styled as a fraud claim, are the same allegations underlying the breach of contract claim, *i.e.*, that Defendants misrepresented to him that they would perform properly under the employment agreement and only fire him for cause, but they did not do so. The fraud claim is therefore also duplicative of the breach of contract cause of action, and for this reason, I dismiss the fifth cause of action.

In accordance with the foregoing, it is

ORDERED that the motion of defendants LR Acquisition, LLC ("LRA"), iApparel, LLC and Sammy Catton for an order dismissing the second, third, fourth, fifth, ninth and tenth causes of action is granted and the second, third, fourth, fifth, ninth and tenth causes of action are dismissed; and it is further

ORDERED that the first, sixth, seventh and eighth causes of action are severed and shall continue; and it is further

ORDERED that the defendants shall answer the complaint within thirty days of this decision and order.

This constitutes the decision and order of the Court.

4/19/2018

DATE

Saliann Scarpulla
SALIANN SCARPULLA J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
DO NOT POST

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: