Maroney v Telephonics Corp.
2018 NY Slip Op 30784(U)
May 1, 2018
Supreme Court, Suffolk County
Docket Number: 11-38555
Judge: Martha L. Luft

SHORT FORM ORDER

INDEX No. 11-38555
CAL. No. 17-00144CO

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 50 - SUFFOLK COUNTY

PRESENT:

Hon. MARTHA L. LUFT
Acting Justice Supreme Court

MOTION DATE 6-13-17
ADJ. DATE 4-17-18
Mot. Seq. # 003 - MD

STEPHEN MARONEY,

Plaintiff,

- against -

TELEPHONICS CORPORATION,

Defendant.

HACH ROSE SCHIRRIPA & CHEVERIE LLP
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Upon the following papers numbered 1 to 44 read on this motion for summary judgment: Notice of Motion/ Order to Show Cause and supporting papers 1 - 14; Notice of Cross Motion and supporting papers ___; Answering Affidavits and supporting papers 15 - 33; Replying Affidavits and supporting papers 34 - 44; Other ___; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion by defendant for summary judgment dismissing plaintiff's complaint is denied; and it is further

ORDERED that the court finds, as a matter of law, that the provision for a "2nd incentive bonus" in plaintiff's April 29, 2008 employment agreement was not superseded by the Contracts Manufacturing Incentive Plan dated March 2, 2009.

Plaintiff commenced this action to recover damages related to an employment contract with his former employer, defendant Telephonics Corporation (hereinafter "Telephonics"). Plaintiff asserts one cause of action for breach of contract, alleging that Telephonics failed to pay an "incentive bonus" of 1% of his target sales. Plaintiff maintains that Telephonics contracted with Sierra Nevada Corporation (SNC) for the development and manufacture of a Counter Remote Control Explosive Device Electronic Warfare System (CREW) for the United States military. The CREW is a dismounted jammer that permits soldiers in the theater of combat to remove improvised explosive devices (IEDs). CREW disrupts electronic signals from cell phones, garage door openers, and other remote control devices and prevents detonation of IEDs remotely. The contract between Telephonics and SNC was for $114,000,000.00. Plaintiff alleges he is due

$1,140,000.00 in bonus pay for securing the contract. Issue has been joined, discovery is complete, and a note of issue has been filed.

Telephonics now moves for summary judgment dismissing plaintiff's complaint, maintaining that no bonus pay is due plaintiff. In support of the motion, Telephonics submits, among other things, copies of the pleadings, the deposition transcript of plaintiff, the affidavit of defendant's general counsel Courtney Phillips Cross, various correspondence, plaintiff's employment agreement, dated April 29, 2008, and a Contracts Manufacturing Incentive Plan, dated March 16, 2009. Plaintiff's submissions in opposition include his own affidavit, various emails and correspondence, portions of the deposition transcript of Peter Wolfe, and March 2009 agreement between SNC and Telephonics.

Plaintiff avers that he is a retired United States Air Force Staff Sergeant with employment experience in sales, business development, engineering and contract manufacturing. Plaintiff testified that he was employed by Telephonics as director of business development on April 28, 2008. An employment agreement, dated April 17, 2008, listing plaintiff's compensation at $120,000.00 per year, and stating that plaintiff would be eligible to "participate in the Management Incentive Bonus Plan," was signed by plaintiff on April 28, 2008. No explanation of the Management Incentive Bonus Plan was included in the body of the agreement and no copy of such plan was annexed thereto.

A superseding agreement, dated the following day, April 29, 2008, was entered into by the parties. This agreement provided, in pertinent part: "In addition [to being eligible to participate in the Management Incentive Bonus Plan], you will receive a 2nd incentive bonus as follows: for each $1,000,000 of sales bookings achieved, in a given fiscal year ending in September, you will earn 1% of the target achieved. For the current fiscal year, 2008, a target of $250,000 has been established ending in September 2008. This will allow you two months for orientation and program preparation approaching the fourth quarter. All incentive bonuses and commissions should be paid out before the end of each calendar year." Again, no copy or detailing of the "Management Incentive Bonus Plan" was included.

Plaintiff avers that he was working with upper-management to develop marketing strategies in an effort to uncover and pursue new business opportunities for Telephonics. Joseph Battaglis, CEO of Telephonics, suggested plaintiff contact Colonel Larry Groves (ret.), Vice President of Telephonics' Washington, DC operations, to facilitate a meeting between plaintiff and General Gordon Nash (ret.), Sierra Nevada Corporation's vice president of operations. On September 10, 2008, plaintiff and Mark Supko, a Vice President of Telephonics, met with General Nash to present CREW to SNC. Plaintiff avers that the presentation was well received. General Nash writes in a memorandum for the record, dated August 18, 2009, "[t]he bottom line is that without [plaintiff's] professional persistence and personal relationship with the SNC team, Telephonics would not have been included in the JCREW 3.1 winning proposal and in fact, SNC may not have won this significant award and been able to fill this critical protection capability for our nation's forward deployed service men and women." Larry Groves, Telephonics' Vice President testified that General Nash was "visibly impressed and really interested" after plaintiff's briefing. Groves also testified that no one from Telephonics had ever engaged General Nash about potential business opportunities with SNC prior to plaintiff. Groves testified that the presentation was critical in acquiring the contract.

On October 11, 2008, General Nash emailed Supko, inquiring if Telephonics had contacted SNC's Chief Operating Officer, Jeffrey Harvey. Plaintiff testified he contacted Harvey and discussed the CREW program. On November 12, 2008, plaintiff sent an additional email to Harvey, recapping Telephonic's capabilities and coordinating a meeting. On November 24, 2008, with respect to the SNC meeting, plaintiff contacted Hector Colon, a senior vice president at Telephonics, who indicated plaintiff had the lead on the presentation and Colon would "provide wingman support." On December 15, 2008, plaintiff was notified that SNC selected ITT and Telephonics as two finalists to submit proposals for CREW.

On December 19, 2008, Colon contacted SNC to discuss the proposal. Plaintiff testified that after this call, Telephonics created a team to submit the proposal to SNC, and that a different project manager, Erik Dobis traveled to meet with SNC. Plaintiff testified that he was actively involved in submitting the proposal to SNC, including working nights and weekends. Thereafter, plaintiff expressed concerns that the Electronic Systems Division (ESD) was claiming credit for plaintiff's work. On December 23, 2008, Dobis submitted a chart listing contact information for team members working on the SNC proposal, and plaintiff was listed as "Contract Mfg." On January 14, 2009, Telephonics submitted its CREW proposal to SNC.

On February 21, 2009, SNC notified Telephonics that they had been selected for the CREW program manufacturing contract. On March 2, 2009, SNC issued a Purchase Order to Telephonics for $1,349,00.00 in long lead manufacturing material necessary for production of 200 CREW systems. Telephonics accepted the Terms and Conditions thereof.

On March 16, 2009, plaintiff was presented with a "Contracts Manufacturing Incentive Plan," dated March 2, 2009. Plaintiff avers he was advised that he could not leave the room without signing the agreement and that if he did not sign it he would be terminated. Plaintiff signed the document. It provided, *inter alia*, that it was "in addition to the Participant's base salary," and that it "supersedes any prior informal or formal, written or verbal Sales Incentive Plan." The "incentive" is set forth in an Attachment B, which provides a maximum of $50,000 as a yearly commission, based upon a minimum booking of $5,000,001.

Thereafter, Telephonics failed to pay plaintiff a bonus. By 2011, Telephonics received $114,946,787.00 from SNC from the CREW program. Plaintiff was terminated from his position with Telephonics on November 3, 2011.

It is well settled that the party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence in admissible form to demonstrate the absence of any material issues of fact (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]; ***Friends of Animals, Inc. v Associated Fur Mfrs., Inc.***, 46 NY2d 1065, 416 NYS2d 790 [1979]). The failure to make such a prima facie showing requires the denial of the motion regardless of the sufficiency of the opposing papers (*see* ***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 487 NYS2d 316 [1985]). "Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (***Alvarez v Prospect Hosp.***, 68 NY2d at 324, 508 NYS2d 923, *citing* ***Zuckerman v City of New York***, 49 NY2d at 562, 427 NYS2d 595).

The common law elements of a cause of action for breach of contract are (1) formation of a contract between plaintiff and defendant, (2) performance by plaintiff, (3) defendant's failure to perform, and (4) resulting damage (*see e.g.* ***J.P. Morgan Chase v J.H. Elec. of N.Y., Inc.***, 69 AD3d 802, 893 NYS2d 237 [2d Dept 2010]). When the terms of a written contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract, giving practical interpretation to the language employed and the parties' reasonable expectations (*see* ***W.W.W. Assoc., Inc. v Giancontieri***, 77 NY2d 157, 162, 565 NYS2d 440 [1990]; ***Costello v Casale***, 281 AD2d 581, 723 NYS2d 44 [2d Dept 2001], *lv denied* 97 NY2d 604, 737 NYS2d 52 [2001]).

Telephonics has failed to demonstrate a case of entitlement to summary judgment dismissing plaintiff's complaint. While Courtney Phillips Cross avers that plaintiff "neither identified nor initiated contact with SNC," the documentary evidence here indicates otherwise, thus raising an issue of fact. Moreover, contrary to her assertion that the Contracts Manufacturing Incentive Plan superceded and modified plaintiff's employment contract, the express terms of the plan modifies only something referred to as the "Sales Incentive Plan," a term that appeared nowhere in the plaintiff's April 29, 2008 employment agreement, which, rather refers to a "Management Incentive Bonus Plan." As noted above, a copy of the latter was not annexed to the April 29, 2008 agreement.

Of additional significance is the fact that the Contracts Manufacturing Incentive Plan does not purport to modify plaintiff's second "incentive bonus" provided for in the April 29, 2008 employment agreement. A written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms (***Greenfield v Philles Records***, 98 NY2d 562, 750 NYS2d 565 [2002]). The Contracts Manufacturing Incentive Plan "establish[ed] a performance-based incentive compensation plan for Contract Manufacturing employees." It was "in addition to the Participant's base salary." It specifically states "[t]his compensation package is not an employment contract but a guideline for contractual orders booked and the incentive payment is for successful completion of the program."[1] By its very terms, the Contracts Manufacturing Incentive Plan did not supplant or supersede the plaintiff's employment contract.

Additionally, in opposition, plaintiff has raised triable issues of fact as to whether the Contracts Manufacturing Incentive Plan was voluntarily executed. Searching the record, the court finds, as a matter of law, that the provision for a "2nd incentive bonus" in plaintiff's April 29, 2008 employment agreement was not superseded by the Contracts Manufacturing Incentive Plan dated March 2, 2009. However, the court declines to award summary judgment to plaintiff on the issue of liability, as issues of fact exist as to whether plaintiff was the procuring cause of the SNC CREW contract (***Dagar Group, Ltd. v Hannaford Bros. Co.***, 295 AD2d 554, 745 NYS2d 34 [2d Dept 2002]).

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[1]Nowhere is "the program" defined, nor is that term used elsewhere in the document.

Accordingly, defendant's motion to dismiss plaintiff's complaint is denied.

Dated: May 1, 2018

Martha L. Cfs
A.J.S.C.

_____ **FINAL DISPOSITION** __X__ **NON FINAL DISPOSITION**