NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

CRAIG KIMMEL, M.D. Appellant v. THE READING HOSPITAL AND READING HEALTH SYSTEM AND THE READING HOSPITAL MEDICAL CENTER AND THE READING HOSPITAL MEDICAL GROUP AND READING PROFESSIONAL SERVICES, Appellees	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1021 MDA 2013

Appeal from the Order May 24, 2013
In the Court of Common Pleas of Berks County
Civil Division at No(s): 13-04027

BEFORE: PANELLA, OLSON, and PLATT, JJ.

MEMORANDUM BY PANELLA, J.: **FILED JUNE 24, 2014**

Appellant, Craig Kimmel, M.D., appeals from the order entered on May 24, 2013, in the Court of Common Pleas of Berks County, which sustained Appellees', The Reading Hospital, Reading Health System, Reading Hospital Medical Center, Reading Hospital Medical Group and Reading Professional Services, preliminary objections in the nature of a demurrer. After careful review, we affirm.

On October 1, 2007, Kimmel and The Reading Hospital Medical Group entered into a "Physician Employment Agreement" (PEA). Paragraph 13(c) of the PEA is at issue in this appeal. Paragraph 13(c) provides, in pertinent part, the following: "During the initial term, this Agreement may be

terminated by either party without cause upon not less than ninety (90) days' prior written notice to the other party." PEA, 10/1/07, at ¶ 13(c). On October 1, 2010, Kimmel and Reading Professional Services executed an amendment to the PEA entitled, "First Amendment to Employment Agreement" (FAA). In Paragraph 3 of the FAA, the parties agreed that the initial term is the period from October 1, 2010, to September 30, 2013. Paragraph 3 provides: "Subject to earlier termination in accordance with Paragraph 13 and as otherwise set forth in this Agreement, the initial extended term of this Agreement shall commence on October 1, 2010 and end on September 30, 2013." FAA, 10/1/10, at ¶ 3. Paragraph 8 of the FAA provides that "all other terms and conditions of the PEA shall remain in full force and effect." ***Id***., at ¶ 8. The FAA did not amend paragraph 13(c) of the PEA, *i.e.,* the provision that provides that the PEA can be terminated by either party without cause by providing ninety (90) days' prior written notice to the other party during the "initial term."

On November 1, 2011, Kimmel and Reading Professional Services executed another amendment to the PEA, entitled Second Amendment to Employment Agreement (SAA). The SAA did not amend paragraph 13(c) of the PEA. Rather, the SAA expressly states that "all other terms and conditions of the PEA shall remain in full force and effect." SAA, 11/1/11, at ¶ 2.

On March 21, 2012, Reading Professional Services provided Kimmel with 90 days' written notice that Kimmel's employment would be terminated,

as authorized by paragraph 13(c) of the PEA. Kimmel was paid his salary and benefits through June 30, 2012.

On March 21, 2013, Kimmel filed a complaint against The Reading Hospital, Reading Health System, The Reading Hospital Medical Center, The Reading Hospital Medical Group, and Reading Professional Services. In the complaint, Kimmel alleged that Reading Health System breached an employment contract between him and Reading Professional Services and violated the Pennsylvania Wage Payment & Collection Law by refusing to pay him salary and benefits through September 30, 2013. Reading Health System filed preliminary objections to Kimmel's complaint on April 17, 2013. On May 24, 2013, the trial court entered an order sustaining Reading Health System's preliminary objections and dismissing Kimmel's complaint with prejudice. This appeal followed.

On appeal, Kimmel raises the following issues for our review:

> 1. Did the [t]rial [c]ourt commit an error of law by disregarding the clear and unambiguous language of the Second Amendment to Employment Agreement that provides: "In the event of any inconsistency, ambiguity or conflict between the Employment Agreement and this Amendment with respect to term and compensation, this Amendment shall control." And by deciding that the language in Section 13(c) the Physicians Employment Agreement controlled?
> 2. Did the [t]rial [c]ourt commit an error of law by sustaining Defendant's Preliminary Objections in the nature of a demurrer.

Appellant's Brief, at 4.

Before addressing the merits of the within appeal, we set forth our scope and standard of review:

> Our scope of review over a trial court's decision to sustain preliminary objections in the nature of a demurrer is plenary and our standard of review is identical to the trial court's namely, accepting all of the plaintiff's material averments as true, the question is whether the complaint states a claim for relief cognizable under the law. ***Schwarzwaelder v. Fox***, 895 A.2d 614, 618 (Pa. Super. 2006) (citations omitted), When affirming a trial court's decision to sustain preliminary objections would result in a dismissal of an action, this Court will only affirm when the case is free and clear from doubt. ***Youndt v. First Nat'l Bank***, 868 A.2d 539, 544 (Pa. Super. 2005) (citation omitted). All material facts set forth in a complaint and reasonable deductions therefrom are admitted as true for the purposes of review.

Welteroth v. Harvey, 912 A.2d 863, 866 (Pa. Super. 2006). Moreover, "[t]he interpretation of a contract is a question of law. Accordingly, our standard of review is *de novo*." ***General Refractories Co. v. Insruance Co. of N. Am.***, 906 A.2d 610 (Pa. Super. 2006).

Here, the trial court dismissed Kimmel's complaint pursuant to Pa.R.Civ.P. 1028(a)(4) for failure to state a claim upon which relief can be granted. To state a breach of contract claim, a plaintiff must establish: "(1) the existence of a contract, including its essential terms; (2) a breach of a duty imposed by the contrary; and (3) resultant damages." ***CoreStates Bank, Nat'l Assn. v. Cutillo***, 723 A.2d 1053, 1058 (Pa. Super. 1999). Here, the PEA, as amended, permitted Reading Professional Services to terminate the agreement after providing ninety days' written notice, which it did. As outlined previously, Paragraph 13(c) of the PEA states that "during

the initial term, this agreement may be terminated by either party without cause upon not less than ninety (90) days' prior written notice to the other party." PEA, 10/1/07, at ¶ 13(c). At the time of the termination, the "Initial Term" was defined by Paragraph 3 of the FAA to end on September 30, 2013. ***See*** FAA, 10/1/10, at ¶ 3.

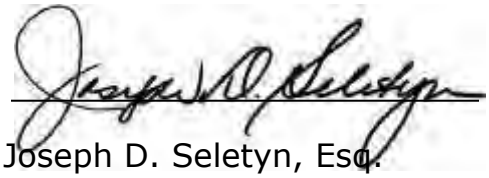
The FAA explicitly states that "[a]ll other terms and conditions of the Employment Agreement shall remain in full force and effect," including the termination without cause provision of paragraph 13(c). ***Id***., at ¶ 8. The SAA, which did not change the definition of "Initial Term" or amend paragraph 13(c) of the PEA, provides that "[a]ll other terms and conditions of the Employment Agreement shall remain in full force and effect." SAA, 11/1/11, at ¶ 2.

As such, under the plain language of the agreement, Reading Professional Services was permitted to terminate the agreement by providing 90 days' written notice, which it did. Moreover, reading the provisions of the PEA and subsequent amendments it is clear that the SAA does not guarantee the payment of salary and benefits irrespective of future events, such as termination. The SAA only "guaranteed" that Kimmel's salary amount would be $321,599.00, not that he was guaranteed to receive that amount. The "guaranteed" salary amount and benefits were only in effect until September 20, 2013, if the PEA was not terminated, as permitted by paragraph 13(c) with 90 days' written notice. Reading Professional Services provided 90 days' written notice to Kimmel that it intended to

terminate the PEA and it rightfully did so. As such, we are in agreement with the trial court that Kimmel failed to state a claim for breach of contract. Accordingly, Kimmel's complaint was properly dismissed with prejudice.

Order affirmed. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/24/2014