

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THOMAS MURPHY,)
)
)
Plaintiff,)
)
v.) C.A. No. 02-453-SLR
)
BANCROFT CONSTRUCTION)
COMPANY,)
)
Defendant.)

Herbert G. Feuerhake, Esquire, Wilmington, Delaware. Counsel for Plaintiff.

William W. Bowser, Esquire and Adria B. Martinelli, Esquire of Young, Conaway, Stargatt & Taylor, LLP, Wilmington, Delaware. Counsel for Defendant.

MEMORANDUM OPINION

Dated: November 15, 2002
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff Thomas Murphy was hired by defendant Bancroft Construction Company on January 31, 2000, as a Construction Manager. In November 2000, he was promoted to Project Manager of the Capital School District ("CSD") Project. The CSD project was a multi-million dollar construction project related to the design and construction of a number of schools in the Dover, Delaware area. During the CSD project, plaintiff became discontent with his employment with defendant. As a result of this, plaintiff became depressed and removed himself from the workplace. Ultimately, plaintiff was terminated from employment by defendant on April 11, 2002.

Plaintiff filed this action on May 24, 2002, alleging four counts: (1) violation of the covenant of good faith and fair dealing; (2) intentional interference with a business relationship; (3) retaliation in violation of 19 Del. C. § 2365; and (4) racketeering under 18 U.S.C. § 1962 ("RICO"). This court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, and 18 U.S.C. § 1964(c). Presently before the court is defendant's motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) on plaintiff's tortious interference and racketeering counts and defendant's motion for sanctions and order granting its motion for judgment on the pleadings. (D.I. 12, 16)

II. STANDARD OF REVIEW

In evaluating a Rule 12(c) motion, "the court must view the pleadings in the light most favorable to, and draw all inferences in favor of, the nonmoving party." Revis v. Slocomb Indus., Inc., 765 F. Supp. 1212, 1213 (D. Del. 1991) (quoting Madonna v. United States, 878 F.2d 62, 65 (2d Cir. 1989)). The court may grant the motion "only if no relief could be granted under any set of facts that could be proved." Turbe v. Government of the Virgin Islands, 938 F.2d 427, 428 (3d Cir. 1991) (citation omitted). If a complaint "contains even the most basic of allegations that, when read with great liberality, could justify plaintiff's claim[s] for relief, motions for judgment on the pleadings should be denied." Cardio-Medical Assocs., Ltd. v. Crozer-Chester Med. Ctr., 536 F. Supp. 1065, 1072 (E.D. Pa. 1982); accord Southmark Prime Plus, L.P. v. Falzone, 776 F. Supp. 888, 891 (D. Del. 1991). The court need not, however, adopt conclusory allegations or statements of law. See In re General Motors Class E Stock Buyout Sec. Litig., 694 F. Supp. 1119, 1125 (D. Del. 1988).

III. DISCUSSION

A. Intentional Interference with Business Relationship

In count two of his complaint, plaintiff alleges that in the fall of 2001, he began exploring employment options with the Capital School District after being approached by its representatives. (D.I. 1 at 7) When defendant found out about

this, plaintiff states that Stephen Mockbee, the president of Bancroft, offered him \$10,000 to stay until May 2002. (Id.) Furthermore, plaintiff alleges that in the fall of 2001 and in early 2002, defendant wrongfully influenced the School District Board so that they would not hire plaintiff. (Id. at 9) As a result of defendant's actions, plaintiff contends that he was denied a business opportunity and suffered emotional anguish. (Id.)

Defendant contends that Delaware does not recognize a cause of action for tortious interference with contractual relations where the employment is "at-will." (D.I. 13 at 5) Given the fact that Delaware does not permit an action for interference with existing at-will employment, it would not permit an action for interference with prospective at-will employment. (Id. at 6) In support of its argument, defendant cites Leblanc v. Janette H. Redrow & Janette H. Redrow, 2001 Del. Super. LEXIS 138 (April 19, 2001). Defendant's argument is unavailing for two reasons.

First, as defendant points out, Leblanc was a case involving a third party defendant's alleged interference with a plaintiff's employment with her employer. The court in Leblanc held that because the plaintiff's employment arrangement with her employer was "at-will," the defendant could not tortiously interfere with her employment arrangement with her employer. Id. at *5. However, this case is not about a third party's interference with

an employee's relationship with her employer but, rather, it is about an employer's alleged interference with an employee's prospective employment with a third party. As the Delaware state courts have recognized, the tort of interference with an existing contract and of interference with probable future contractual relationships are closely related but not identical. De Bonaventura v. Nationwide Mut. Ins. Co., 419 A.2d 942, 947 (Del. Ch. 1980). Furthermore, at least one court in Delaware has allowed a claim for interference with an at-will contract to survive a motion for dismissal. Gagliardi v. Trifoods Int'l., 683 A.2d 1049, 1051 (Del. Ch. 1996). While the court in Gagliardi stated that "such a claim would be a difficult one to sustain ... [it was] not persuaded at this stage that there is no possibility that such liability can be found." Id.

Second, plaintiff appears to dispute the fact that an employment arrangement between himself and CSD would necessarily be an "at-will" arrangement. (D.I. 20 at 9) Neither plaintiff's or defendant's briefs address the nature of plaintiff's potential employment with CSD. If plaintiff cannot point to any support for this contention by the close of discovery, defendant may be entitled to summary judgment. However, at this early stage in the proceedings, the court must accept as true all of the facts alleged in the complaint, and draw all reasonable inferences in the plaintiff's favor. As such, defendant's motion to dismiss

count two of the complaint is denied.

B. Racketeering Under 18 U.S.C. § 1962

In count four of his complaint, plaintiff alleges that defendant's actions constitute a violation under the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1962 ("RICO"). (D.I. 1 at 10) However, plaintiff not only fails to cite to the proper code section, but also fails to point to what section defendant allegedly violates. Furthermore, plaintiff fails to plead facts sufficient to establish a RICO claim under any section. See Maio v. Aetna Inc., 221 F.3d 472 (3d Cir. 2000). In response to defendant's motion, plaintiff admits that his initial pleading was insufficient to state a RICO claim but argues that this deficiency will be remedied in an amended complaint. (D.I. 20 at 4) Plaintiff then proceeds to "sketch out just what the ultimate allegations are likely to be." (Id. at 5) Despite plaintiff's arguments, the court concludes that his RICO claim must be dismissed.

Although the precise requirement for establishing a civil RICO cause of action depends on which subsection of the statute a plaintiff invokes, the following are the essential elements of any civil RICO action: (1) the existence of a RICO enterprise; (2) the existence of a pattern of racketeering activity; (3) a nexus between the defendant, the pattern of racketeering activity or the RICO enterprise; and (4) resulting injury to plaintiff, in

his business or property. Klapper v. Commonwealth Realty Trust, 657 F. Supp. 948, 953 (D. Del. 1987). While plaintiff argues that he will be able to make out the first three elements in an amended complaint, the court need not address these contentions since the failure to point to a cognizable injury to plaintiff's business or property is ultimately fatal to his RICO claim.

In his brief, plaintiff asserts that he has been "injured in his capacity to work" as a result of defendant's alleged wrongful acts and the "resultant damages" include the results of his induced depression (e.g., the constructive discharge) as well as "general damage to his business and property." (D.I. 20 at 7-8) Plaintiff admits that this argument is "somewhat novel" and cites to no cases, nor has the court found any cases, that would support such an argument.

It is well settled law that in any RICO case, injuries to business or property are not actionable unless they result in tangible financial loss to the plaintiff. Maio, 221 F.3d at 483. In his pleadings and brief, plaintiff does not point to any tangible financial loss and the court declines to extend the already expansive scope of RICO to encompass the injuries complained of by plaintiff in this case. As such, plaintiff cannot allege an injury cognizable under 18 U.S.C. § 1962 and, therefore, lacks standing to bring the claim. Therefore, count four of plaintiff's complaint shall be dismissed with prejudice.

C. Sanctions

Defendant also moves for sanctions against plaintiff under Delaware Local Rule 1.3. (D.I. 16) Defendant seeks attorney's fees and costs incurred by defendant in preparing its motion for judgment on the pleadings. In support of its argument, defendant cites Delaware Local Rule 7.1.2(a)(2) which states that an answering brief should be filed no later than 10 days after service and filing of the opening brief. Defendant argues that it filed its opening brief on September 10, 2002, thus plaintiff's answering brief was due September 24, 2002. Therefore, plaintiff's failure to file his answering brief by September 24, 2002, was a "[f]ailure to comply with the Rules of this Court relating to motions" and sanctionable under Local Rule 1.3(b). Defendant's argument fails for two reasons.

First, defendant fails to cite the entire sentence in Local Rule 1.3(b) that it relies on. In its entirety, the sentence states "[f]ailure to comply with the Rules of this Court relating to motions may result in the determination of the motion against the offending party." Thus, according to Local Rule 1.3(b), the penalty for an untimely filed brief is the possibility of a ruling against the offending party, not sanctions including attorney's fees and costs.

Second, those in glass houses should not throw stones. Defendant did not file its reply brief timely, therefore

"[f]ail[ing] to comply with the Rules of this Court relating to motions."¹

Given the fact that neither party was prejudiced by either party's failure to observe the Local Rules, the court shall deny defendant's motion for sanctions.

IV. CONCLUSION

For the reasons stated, defendant's motion for judgment on the pleadings (D.I. 12) is granted in part and denied in part and defendant's motion for sanctions and order granting judgment on the pleadings (D.I. 16) is granted in part and denied in part. An appropriate order shall issue.

¹Local Rule 7.1.2(a)(3) states that "the reply brief ... shall be served and filed no later than 5 days after service and filing of the answer brief." Plaintiff served his answering brief on October 23, 2002, giving defendant until October 30, 2002 to file its reply pursuant to Local Rule 7.1.2(a)(3). The reply brief was not filed until November 8, 2002.

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O R D E R

At Wilmington this 15th day of November, 2002, having reviewed papers submitted in connection therewith, for the reasons stated;

IT IS ORDERED that:

1. Defendant's motions for judgment on the pleadings (D.I. 12, 16) are granted with respect to count four of plaintiff's complaint (D.I. 1) and count four is dismissed with prejudice.
2. Defendant's motions for judgment on the pleadings (D.I. 12, 16) are denied with respect to count two of plaintiff's complaint (D.I. 1).
3. Defendant's motion for sanctions (D.I. 16) is denied.

Sue L. Robinson
United States District Judge