

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JOHN A. DILLMAN, III,)
)
Plaintiff,)
)
v.) Civil Action No. 02-509-KAJ
)
COL. L. AARON CHAFFINCH,)
individually and in his official capacity)
as the Superintendent, Delaware State)
Police, LT. COL. THOMAS F.)
MARCIN, individually and in his official)
capacity as the Deputy)
Superintendent, Delaware State)
Police, and DIVISION OF STATE)
POLICE DEPARTMENT OF SAFETY,)
STATE OF DELAWARE,)
)
Defendants.)

MEMORANDUM ORDER

I. Introduction

John Dillman, Plaintiff, was the civilian Director of Human Resources for the Delaware State Police (“DSP”) until his employment was terminated on April 12, 2002 (D.I. 23 at ¶ 1.) The defendants are Colonel L. Aaron Chaffinch, currently the Superintendent of the DSP, Lt. Colonel Thomas F. Marcin, currently the Deputy Superintendent of the DSP, and the Division of State Police, an agency of the State of Delaware under the Department of Safety (collectively the “Defendants”). (D.I. 1 at ¶¶ 5-6.)

Plaintiff asserts that Defendants breached a settlement agreement between the parties whereby Defendants unconditionally promised to re-employ Plaintiff at his old job. (D.I. 23.) He brings this motion to enforce the settlement agreement. (*Id.*) The court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1332.

For the reasons discussed below, Plaintiff's Motion is denied.

II. Background

Plaintiff filed suit on or about June 6, 2002 seeking a mandatory injunction to restore him to his prior position as Director of Human Resources for the DSP, as well as compensatory and punitive damages for alleged violations of free speech and due process related to the termination of his employment. (D.I. 1; D.I. 23 at ¶ 1.)

Defendants were scheduled to be deposed on December 18 and 19, 2002, but on December 17, 2002, Defendants, through counsel, offered Plaintiff "unconditional reinstatement to the position of Director of Human Resources for the Delaware State Police at pay grade 22, with full credit for all past service to the State of Delaware." (*Id.* at Exhibit A.)

Defendants' offer was not conditioned upon negotiating a settlement of any remaining issues in the case. (*Id.* at ¶ 2.) Rather, Defendants' counsel stated that "[w]hile I hope this offer provides us with the basis of negotiating a settlement of this case, that is by no means required in order for [Plaintiff] to accept this

offer, which is unconditional, and to resume his employment with the State of Delaware as Director of Human Resources for the Delaware State Police.” (*Id.* at Exhibit A.)

On December 19, 2002, Plaintiff accepted Defendants’ offer of reinstatement by letter from his attorney and inquired about arranging a meeting to discuss Plaintiff’s return to work. (*Id.* at Exhibit B.) Over the course of the next few weeks, the parties negotiated over the terms of a complete settlement of their dispute, but were unable to reach a final agreement. (D.I. 27 at 2.) Defendants notified Plaintiff by letter, dated January 30, 2003, that they would not accept certain proposals made by Plaintiff related to his employment, such as designation of the rank and title of the uniformed officer responsible for uniformed officer HR matters, assurance that Plaintiff’s authority and responsibilities would never change, and anti-retaliation provisions which could deny Defendants flexibility in dealing with Plaintiff’s position in the future. (*Id.*, *see also id.* at Ex. A.) Defendants’ counsel took the position that, absent a settlement of the lawsuit, it would “withdraw its offer of reinstatement.” (*Id.* at Ex. A.)

On or about February 5, 2003, Defendants’ counsel asserted that the reinstatement offer was withdrawn, and Plaintiff’s counsel notified Defendants’ counsel that Plaintiff rejected Defendants’ settlement proposals, was withdrawing his own settlement proposals, and declared that he “was ready, willing and able

to return to work tomorrow.” (*Id.*; see also *id.* at 2.) The present motion followed.

III. Discussion

Plaintiff brings this motion to “enforce a settlement agreement between the parties,” but as both parties acknowledge at least implicitly, there was never an agreement reached to settle the litigation. (See D.I. 27 at 3; D.I. 23 at Ex. B.) At most, one might argue that an employment contract had been reached, but even if the court were to find that such a contract existed, either as part of a broader agreement to settle the litigation or as a separate employment agreement, the Plaintiff’s motion is not well-founded because Plaintiff seeks specific performance of the contract. (D.I. 23.)

The remedy of specific performance “may be defined as the actual accomplishment of a contract by the party bound to fulfil it. . . . It is an equitable remedy available in appropriate circumstances to protect rights under contract.” *Potter v. Potter*, 251 A.2d 578, 580 (Del. Ch. 1968). In Delaware, as well as many other jurisdictions, it is a “well-settled principle that performance of a contract for personal services, even of a unique nature, will not be affirmatively and directly enforced.” *Northern. Del. Indus. Dev. Corp. v. E.W. Bliss Co.*, 245 A.2d 431, 434 (Del. Ch. 1968).

In *Bali v. Christiana Care Health Svcs., Inc.*, No. C.A. 16433 NC, 1999 WL 413303 (Del. Ch. June 16, 1999), the court listed “several good reasons why courts will not, generally, enforce contracts for personal service, *even against an*

employer,” including the difficulty of judicial supervision and the necessity “of a cooperative and trusting relationship between the parties to the contract” (emphasis added). *Id.* at *2. Here, “considering the nature of the position and level of responsibility” to which Plaintiff seeks reinstatement, Defendants assert that reinstatement is impractical and infeasible before the dispute is settled in its entirety. (D.I. 27 at 7). The court agrees.

Nonetheless, “[t]he equitable remedy of reinstatement is available for discharges that violate 42 U.S.C. §1983.” *Feldman v. Philadelphia Housing Authority*, 43 F.3d 823 (3d Cir. 1994). See also *Versarge v. Township of Clinton N.J.*, 984 F.2d 1359,1368 (3d Cir. 1993); *Blum v. Witco Chem. Corp.*, 829 F.2d 367, 373-74 (3d Cir. 1987). In his complaint, Plaintiff alleges that his constitutional rights to freedom of speech and procedural due process of law have been violated under the Constitution and 42 U.S.C. §1983. Whether Defendants have violated 42 U.S.C. §1983 in their dealings with Plaintiff has not yet been determined, however, and the issue of reinstatement is therefore not yet ripe for decision.

IV. Conclusion

Accordingly,

IT IS HEREBY ORDERED that the Plaintiff's Motion to Enforce a Settlement Agreement Between the Parties (D.I. 23) is DENIED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

October 2, 2003
Wilmington, Delaware