

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NEIL J. BEAUCHAMP	:	CIVIL ACTION
	:	
v.	:	NO. 05-5667
	:	
TRAMMELL CROW COMPANY	:	

MEMORANDUM AND ORDER

Kauffman, J.

September 14, 2006

Plaintiff Neil J. Beauchamp (“Beauchamp”) brings this action against Defendant Trammell Crow Company (“Trammell Crow”) for breach of contract (Count One) and misrepresentation (Count Two). Now before the Court is Trammell Crow’s Motion to Dismiss pursuant to Fed. R. Civ. P. 12 (b)(6). Also before the Court is Beauchamp’s Cross-Motion to Amend the Complaint to add a third claim for unpaid compensation under Pennsylvania’s Wage Payment and Collection Law. For the reasons that follow, Trammell Crow’s Motion to Dismiss will be granted in part and denied in part and Beauchamp’s Motion for Leave to Amend will be granted.¹

I. Background

Accepting the allegations of the complaint as true, the facts pertinent to these motions are as follows. Trammell Crow is a public company offering a wide range of commercial real estate services. Compl. ¶ 3. On July 12, 2005, Trammell Crow offered Beauchamp employment. Id. ¶

¹Along with its motion to dismiss, Trammell Crow has submitted various evidentiary materials for consideration by the Court. These exhibits may not be considered in deciding a motion to dismiss. See Jordan v. Fox, Rothschild, O’Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). In the alternative, Trammell Crow invites the Court to convert the motion into one for summary judgment, as permitted by Rule 12(b)(6). At this stage, however, it would be premature to rule on summary judgment.

20. At the time, Beauchamp was employed as a senior facilities manager for Electronic Data Systems (“EDS”). Id. ¶ 15-18. In the summer of 2005, EDS was in the process of outsourcing its real estate portfolio to Trammell Crow. Id. ¶ 19. Trammell Crow hired Beauchamp to work on “the EDS assignment in Philadelphia,” as senior facilities manager. Id. ¶ 20.

Beauchamp accepted the job offer on or about July 15, 2005, by signing a Trammell Crow offer letter. Id. ¶ 21. The contract carried over Beauchamp’s salary and benefits from his EDS employment. Id. It also included an express severance provision that, for the first two years of employment, honored Beauchamp’s vested severance balance with EDS. Id. ¶ 22.

Trouble arose shortly after Beauchamp commenced his employment at Trammell Crow. He quickly became unhappy with the responsibilities assigned to him and disagreements arose with his superiors regarding what tasks he could and should perform. Id. ¶ 29. Only a few months after he joined the company, in October of 2005, Beauchamp’s employment was terminated. Id. He filed the instant action on October 25, 2005, seeking recovery of severance pay and other damages.

II. Defendant’s Motion to Dismiss

A. Legal Standard

When deciding a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the Court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O’Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). The Court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. Angelaastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of

facts that could be proved by the plaintiff. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

B. Count One (Breach of Contract)

Trammell Crow acknowledges (1) that Beauchamp's contract entitled him to severance pay if he was terminated without cause and (2) that he never received such a payment. Trammell Crow asserts, however, that Beauchamp is not entitled to a severance payment or other damages as a matter of law.

First, Trammell Crow asserts that Beauchamp voluntarily resigned and thereby forfeited his termination benefits under the contract. To support this factual position, Trammell Crow has submitted evidence. At this stage of the proceedings, however, the Court may look only to the facts alleged in the complaint and its attachments. See Jordan, 20 F.3d at 1261. Accordingly, for purposes of this motion, the Court accepts Beauchamp's factual allegation that he was terminated involuntarily. See Angelastro, 764 F.2d at 944; Compl. ¶ 29(p).

Trammell Crow further asserts that Count One should be dismissed because Beauchamp was an at-will employee. Under Pennsylvania law, in the absence of an express agreement to the contrary, an employer is free to determine the terms and conditions of employment and may terminate the relationship at will. Gehin-Scott v. Newson, Inc., 848 F. Supp. 585, 589 (E.D. Pa. 1994) (citing Green v. Edward J. Bettinger Co., 608 F. Supp. 35, 40 (E.D. Pa. 1984)).

However, assuming the facts alleged in the complaint to be true, the at-will employment doctrine does not bar Beauchamp's breach of contract claim. See id. Beauchamp alleges that his employment contract contained an express severance provision that provided for a lump-sum payment if he were to be terminated without cause. See id. ¶ 22. Accordingly, Beauchamp's

status as an at-will employee does not void the express contractual obligations allegedly incurred by Trammell Crow. See Kofsky v. Chemical Residential Mortg. Corp., 1999 U.S. Dist. LEXIS 17386, at * 9-10 (E.D. Pa. Oct. 28, 1999).

C. Count Two (Misrepresentation)

In Count Two, Beauchamp alleges that, by making promises and representations in the employment contract that it did not intend to keep, Trammell Crow committed the tort of misrepresentation. This Court concludes, however, that Pennsylvania's gist of the action doctrine, which prevents a breach of contract claim from being recast as a tort, bars this claim.

The gist of the action doctrine "is designed to maintain the conceptual distinction between breach of contract claims and tort claims [by] precluding plaintiffs from recasting ordinary breach of contract claims into tort claims." Williams v. Hilton Group PLC, 93 Fed. Appx. 384, 386 (3d Cir. 2004) (quoting Etoll, Inc. v. Elias/Savion Advertising, Inc., 811 A.2d 10, 14 (Pa. Super. Ct. 2002)). As explained by the Superior Court in Etoll, "tort actions lie for breaches of duties imposed by law as a matter of social policy, while contract actions lie only for breaches of duties imposed by mutual consensus agreements between particular individuals." 811 A.2d at 14. When a fraud claim is "inextricably intertwined with contract claims," it is barred as a matter of law from being raised independently. Hilton Group, 93 Fed. Appx. at 386 (quoting Etoll, 811 A.2d at 21). "Torts arising from the inducement to enter into a contract are within the scope of the gist of the action doctrine." Bishop v. GNC Franchising LLC, 403 F. Supp. 2d 411, 417 (W.D. Pa. 2005) (citing Hilton Group, 93 Fed. Appx. at 386-7).

It is clear from the face of Beauchamp's complaint that the misrepresentation claim is "merely a breach of contract claim in disguise." Capital Funding v. Chase Manhattan Bank

USA, 2003 U.S. Dist LEXIS 12102, at *17 (E.D. Pa. March 21, 2003). In alleging misrepresentation, the complaint asserts:

The Trammell Crow contract, and the promises and representations made therein, including the provisions regarding severance, were made with the intent to induce Beauchamp to accept the contract and the employment with Trammell Crow and, further, were made with actual knowledge or reason to know and expect Beauchamp intended to and would rely upon the same. (Compl. ¶ 39) (emphasis added).

Beauchamp attempts to characterize his claim as a tort, but the gist of his action is that Trammell Crow failed to fulfill its contractual obligations. See Galdieri v. Monsanto Co., 245 F. Supp.2d 636, 650 (E.D. Pa. 2002) (“A breach of contract claim cannot be ‘bootstrapped’ into a fraud claim merely by adding the words ‘fraudulently induced.’”). Beauchamp fails to allege any misrepresentations independent of the contractual promises. Therefore, Count Two will be dismissed.

III. Motion for Leave to File an Amended Complaint

Beauchamp seeks to amend his complaint to include a new claim for severance pay under Pennsylvania’s Wage Payment and Collection Law, 43 Pa.C.S. § 260.1 et. seq. The Federal Rules of Civil Procedure provide that leave to amend a pleading shall be freely given when justice so requires. Fed. R. Civ. P. 15(a). Leave to amend will be denied only when it is apparent from the record that “(1) the moving party has demonstrated undue delay, bad faith or dilatory motives, (2) the amendment would be futile, or (3) the amendment would prejudice the other party.” Hill v. City of Scranton, 411 F.3d 118, 134 (3d Cir. 2005).

Trammell Crow challenges the proposed amendment solely on the ground that it would be futile. Although Beauchamp’s proposed claim for severance pay would fail without the

contractual right alleged in Count One, that claim survives Defendant's Motion to Dismiss.

Thus, the proposed amendment to the complaint would not be futile. Accordingly, Beauchamp will be granted leave to amend his complaint.

IV. CONCLUSION

For the foregoing reasons, the Court will grant Beauchamp's Motion for Leave to File an Amended Complaint and Trammell Crow's Motion to Dismiss Count Two. Trammell Crow's Motion to Dismiss Count One will be denied. An appropriate Order follows.

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TRAMMELL CROW COMPANY	:	

ORDER

AND NOW, this 14th day of September, 2006, upon consideration of **Defendant Trammell Crow Company's Motion to Dismiss (docket no. 4) and Plaintiff Beauchamp's Opposition thereto and Cross-Motion for Leave to File an Amended Complaint (docket no. 12)**, and for the reasons stated in the accompanying Memorandum, it is **ORDERED** that:

- (1) Trammell Crow's Motion to Dismiss is **DENIED** as to Count One.
- (2) Count Two of the complaint is **DISMISSED**.
- (3) Beauchamp's Cross-Motion for Leave to File an Amended Complaint is **GRANTED**. Beauchamp shall file the Amended Complaint attached to Plaintiff's Cross-Motion with the Clerk of Court.

BY THE COURT:

/s/ Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.