

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

ANTHONY LAWSON : CIVIL ACTION
 :
 v. :
 :
 CSX CORPORATION :
 and CSX TRANSPORTATION INC. : NO. 98-3539

M E M O R A N D U M

WALDMAN, J.

September 30, 1999

I. Background

This action arises from plaintiff's attempt to revoke an election to participate in a Voluntary Separation Program ("VSP") instituted by Consolidated Rail Corporation ("Conrail") in 1996 as part of a plan to reduce its workforce. Plaintiff alleges that defendants CSX Corporation and CSX Transportation Inc. (collectively hereinafter "CSX") intentionally interfered with his contractual right to rescind his election to participate in the VSP. Defendants removed the action to this court on the basis of diversity. Presently before the court is defendants' motion for summary judgment.

II. Legal Standard

In considering a motion for summary judgment, the court must determine whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of

material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Arnold Pontiac-GMC, Inc. v. General Motors Corp., 786 F.2d 564, 568 (3d Cir. 1986). Only facts that may affect the outcome of a case are "material." Anderson, 477 U.S. at 248. All reasonable inferences from the record must be drawn in favor of the non-movant. Id. at 256.

Although the movant has the initial burden of demonstrating the absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which it bears the burden of proof. J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)), cert. denied, 499 U.S. 921 (1991). The non-moving party may not rest on his pleadings but must come forward with evidence from which a reasonable jury could return a verdict in his favor. Anderson, 479 U.S. at 248; Williams v. Borough of West Chester, 891 F.2d 458, 460 (3d Cir. 1989); Woods v. Bentsen, 889 F. Supp. 179, 184 (E.D. Pa. 1995).

III. Facts

From the evidence of record as uncontroverted or otherwise taken in a light most favorable to plaintiff, the pertinent facts are as follow.

Plaintiff began working for Conrail in December 1980.

On February 21, 1996, defendant's board of directors approved the creation of the VSP as an amendment to defendant's Supplemental Pension Plan, a pre-existing ERISA pension plan. The VSP offered to each eligible employee benefit payments in exchange for his agreement voluntarily to terminate his employment. Plaintiff, a manager in defendant's Forest Products Division, was eligible for participation in the VSP.

On March 1, 1996, Conrail mailed to its employees a booklet explaining the essential terms of the plan including eligibility requirements, computation of benefits and application procedures. The booklet stated that an employee would have seven days from the submission of an application to revoke an election to participate. Plaintiff received this booklet.

Plaintiff attended a meeting on April 16, 1996 at which Marianne Gregory, Conrail's assistant vice president in charge of plaintiff's group, advised each employee present to apply for participation in the VSP as an insurance policy in case of layoffs. She stated that employees who applied would be allowed to rescind their applications in the event they were to retain their current positions or were offered another position by Conrail.

Plaintiff submitted his application for the VSP on April 18, 1996. The application contained a clause specifying that the applicant had a seven day period in which to rescind the application. Conrail later extended this deadline to April 30,

1996. Plaintiff did not exercise his right to unilaterally rescind his participation in the VSP. Conrail accepted plaintiff's VSP application on April 26, 1996 and exercised its right under the plan to extend his separation date to April 30, 1997.

In October 1996 Ms. Gregory told plaintiff she had a position available for him and that he could stay if he filled out a rescission form. Plaintiff expressed his willingness to rescind and to keep working for defendant but did not file a rescission form at that time. Ron Bridges, an assistant vice president in charge of a different group, later offered a new position to plaintiff if he were to rescind his VSP application. Plaintiff agreed and began working full time in Mr. Bridges' department on December 18, 1996. That same day plaintiff signed a "Mutual Rescission of Application for the Voluntary Separation/Retirement Programs" form and submitted the form for signature and approval by Conrail.¹

Mr. Bridges told plaintiff in January 1997 that Conrail had accepted the rescission but was holding it and that it would be processed by April 1, 1997. In March 1997, Mr. Bridges told

¹ The form provides: "The undersigned representative of Conrail and the undersigned employee mutually agree that the employee rescinds his or her 1996 Voluntary Separation Program Application" and contains blanks for signatures of both the employee requesting the revocation and a "Leadership Team Member."

plaintiff that his rescission paperwork had been signed. In fact, plaintiff's request for revocation had not been signed or approved.

In early March 1997, CSX announced that CSX Corporation and Norfolk Southern Corporation would acquire joint control of Conrail and its subsidiaries, and CSX Transportation and Norfolk Southern Railroad would obtain the right to operate and use Conrail's assets. As part of this transaction, CSX and Conrail signed the Third Amendment to Agreement and Plan of Merger. Pursuant to section 4.1 of this amendment, which provided that CSX could participate in post-purchase business decisions, Conrail asked CSX for a decision on whether to allow plaintiff to rescind his participation in the VSP. CSX denied plaintiff's request for rescission because it found that "no compelling business purpose" existed to allow the rescission. Specifically, CSX maintained that the work being performed by the individual requesting rescission could be absorbed by existing employees.

Plaintiff was advised on April 18, 1997 that Conrail did not accept his offer to rescind and his employment was terminated on April 30, 1997.

IV. Discussion

Plaintiff claims that the oral assurances of Ms. Gregory and Mr. Bridges that he could revoke his participation in the VSP and his signing of the VSP rescission paperwork created

an enforceable contract. Plaintiff argues alternatively that he offered to rescind by signing the paperwork and that Conrail orally accepted this offer.

CSX contends that Conrail and plaintiff never formed a contract to rescind and in any event because CSX had no knowledge of any such contract, it could not have intentionally interfered with it. CSX also argues that even assuming that it intentionally interfered, its actions were privileged.

Under Pennsylvania law, a plaintiff claiming tortious interference with contractual relations must prove:

- (1) the existence of a contractual relation between itself and a third party;
- (2) purposeful action on the part of the defendant, specifically intended to harm the existing relation;
- (3) the absence of a privilege or justification on the part of the defendant; and,
- (4) the occasioning of actual legal damage as a result of the defendant's conduct.

Brokerage Concepts, Inc. v. U.S. Healthcare, Inc., 140 F.3d 494, 530 (3d Cir. 1998).

By the express terms of the VSP booklet and application, plaintiff had seven days after signing the "1996 VSP Application and Employment Termination General Release" unilaterally to rescind his participation in the program. It is undisputed that plaintiff did not attempt to rescind within this time period.

After the initial rescission period, plaintiff could have rescinded by signing the "Mutual Rescission of Application for the Voluntary Separation/Retirement Programs" form, but such rescission would only be valid if accepted and signed by a Conrail Leadership Team member. It is uncontroverted that no Conrail Leadership Team member ever signed the form.

Plaintiff contends that even though Conrail did not accept his rescission in writing by signing the mutual rescission form, a contract with Conrail allowing plaintiff to rescind was nevertheless created. Although plaintiff waives as to what constituted the offer and acceptance forming this alleged contract, he relies in part on oral assurances by Conrail as the basis of the contract.²

Any oral promise or assurance made to plaintiff would be ineffective to modify the terms of the plan. An ERISA plan may only be modified in writing. See Frahm v. Equitable Life Assur. Soc. of United States, 137 F.3d 955, 958 (7th Cir. 1998) (employer's oral promise of lifetime benefits unenforceable under ERISA as agreement was not reduced to signed writing); Epright v. Environmental Resources Management, Inc., 81 F.3d 335, 342 (3d

²Plaintiff first contends that Conrail made an oral offer to him allowing rescission which he accepted by signing the "mutual rescission" form. He also contends that a contract was formed when plaintiff offered to rescind by signing the papers and Conrail accepted by orally telling him that it had signed the papers.

Cir. 1996) (only written amendments can modify terms of plan); In re Unisys Corp. Retiree Medical Benefit "ERISA" Litigation, 58 F.3d 896, 901 (3d Cir. 1995) (rejecting bilateral contract claim based on oral promises in consideration of employee's early retirement where they conflicted with terms in summary plan description); Confer v. Custom Engineering Co., 952 F.2d 41, 43 (3d Cir. 1991) (speech by company president and posting of announcement on bulletin board insufficient to modify terms); Hozier v. Midwest Fasteners, Inc., 908 F.2d 1155, 1165 n.10 (3d Cir. 1990) (employer's post-formation oral promises cannot alter scope of entitlements created by plan). As there is no valid underlying contract to support a claim for intentional interference with contractual relations, plaintiff's claim must fail. See Schulman v. J.P. Morgan Inv. Management, Inc., 829 F. Supp. 782, 784 (E.D. Pa. 1993)(plaintiff cannot maintain intentional interference with contractual relations action in absence of a valid contract to support claim).

Moreover, even assuming the existence of a contractual relationship, one could not reasonably find from the competent evidence of record that CSX engaged in a purposeful action specifically intended to harm such a contractual relationship. Intent may be shown "where the actor knows an injury is certain or substantially certain to occur as a result of his action." Total Care Sys., Inc. v. Coons, 860 F. Supp. 236, 241 (E.D. Pa.

1994). An actor cannot know an injury is certain or substantially certain to occur when he does not know of the existence of a contractual relationship. See Stolp v. Sollas Corp., 1997 WL 83750, *3 (E.D. Pa. Feb. 21, 1997)(knowledge of contract must be present to establish intent in a tortious interference with contractual relations claim). See also Keifer v. Cramer, 51 A.2d 694, 695 (Pa. 1947) (it is intentional interference with "known" contractual rights which constitutes tort of intentional interference with contractual relations). There is no evidence that CSX had any knowledge that Conrail had accepted or purported to accept plaintiff's rescission offer. CSX's denial of plaintiff's rescission request thus could not have been made with the intent to interfere with any contract between Conrail and plaintiff.

Further, even if CSX acted with an intent to harm a contractual relationship between plaintiff and Conrail, CSX's conduct would not be improper. Pennsylvania courts look to § 767 of the Restatement (Second) of Torts for the factors to consider when determining whether a defendant's conduct was improper. See Green v. Interstate United Management Services Corp., 748 F.2d 827, 831 (3d Cir. 1984); Strickland v. Univ. of Scranton, 700 A.2d 979, 985 (Pa. Super. 1997). These factors are:

- (a) the nature of the actor's conduct;
- (b) the actor's motive;
- (c) the interests of the other with which the actor's conduct interferes;

- (d) the interests sought to be advanced by the actor;
- (e) the proximity or remoteness of the actor's conduct to the interference; and,
- (f) the relations between the parties.

The court determines "whether, upon consideration of the relative significance of the factors involved, the conduct should be permitted without liability, despite its effect of harm to another." Green, 748 F.2d at 831 (citing Restatement (Second) of Torts, §767 comment b).

Any interference by CSX was proper. CSX had entered an agreement to purchase Conrail which specifically allowed CSX to participate in business decisions. In accordance with Section 4.1 of the Third Amendment to Agreement and Plan of Merger, CSX declined to approve plaintiff's requested rescission because his work could be absorbed by other employees. The essential purpose of the VSP had been to reduce the workforce for economic reasons voluntarily through an incentive, rather than by layoffs. See Green, 748 F.2d at 831 (interference with contractual relationship proper where defendant's motive was to prevent dissipation of subsidiary's resources); National Data Payment Systems, Inc. v. Meridian Bank, 18 F. Supp. 2d 543, 549 (E.D. Pa. 1998)(corporation about to merge with seller was privileged to influence seller's performance of contract). See also Advent Systems Ltd. v. Unisys Corp., 925 F.2d 670, 673 (3d Cir. 1991)(defendant's interest in financial stability of subsidiary justified interference with a prospective contractual

relationship); Mercier v. ICH Corp., 1990 WL 107325, *5 (E.D. Pa. July 25, 1990)(prospective purchaser of subsidiary of contracting party had sufficient financial interest to make its interference with plaintiff's employment contract proper).

V. Conclusion

Plaintiff has not shown that he had a valid contract with Conrail for the rescission of his VSP election with which defendants could have interfered. There is no evidence that CSX was aware of any such contract and thus could not have acted with the specific intention of interfering with a contract. In refusing plaintiff's VSP rescission, CSX would not have acted improperly or tortiously even if there were a contract and it had knowledge of it.

On the record presented, defendants are entitled to summary judgment. Accordingly, defendants' motion will be granted. An appropriate order will be entered.

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O R D E R

AND NOW, this day of September, 1999 upon
consideration of defendants' Motion for Summary Judgment (Doc.
#11) and plaintiff's response thereto, consistent with the
accompanying memorandum, IT IS HEREBY ORDERED that said Motion is
GRANTED and accordingly JUDGMENT is ENTERED in the above action
for the defendants.

BY THE COURT:

JAY C. WALDMAN, J.