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

RONALD VALLONE AND, DIANNE VALLONE, Plaintiffs	:	CIVIL ACTION
v.	:	
ELECTRONIC DATA SYSTEMS, Defendant	:	NO. 04-CV-4744

Gene E.K. Pratter, J. Memorandum and Order February 9, 2005

Defendant Electronic Data Systems ("EDS") moves for judgment on the pleadings in this employment law matter. For the reasons discussed herein, the motion will be denied.

FACTUAL BACKGROUND

Plaintiffs Ronald and Dianne Vallone sued Mr. Vallone's former employer, Electronic Data Systems ("EDS"), alleging that EDS either breached its employment contract with Mr. Vallone, or, in the alternative, wrongfully discharged him. Federal jurisdiction is based upon diversity of the parties, as Mr. and Mrs. Vallones are citizens of New Jersey and EDS is a corporation that is headquartered in Texas and has a principal place of business in Philadelphia. The amount in controversy exceeds $75,000.[1]

Mr. Vallone is a former employee of the United States Department of Defense. He was apparently injured while working for the Department of Defense, and was restricted to "light

[1] The complaint was removed from the Court of Common Pleas of Philadelphia County on August 12, 2004.

duty" work thereafter. On January 1, 2003, as a result of outsourcing, Mr. Vallone became an employee of EDS. The terms of Mr. Vallone's employment with EDS were outlined in an offer letter (the "Offer Letter") and corresponding contract (the "Contract") dated November 20, 2002.[2] The Offer Letter stated that Mr. Vallone's initial employment with EDS would be for a three year period, but that "during this first three (3) years, your employment may be terminated for Cause." Also as provided in the Offer Letter, after the initial three-year period, "either you or EDS may terminate your employment with EDS at any time, for any reason, with or without notice." The term "cause" was specifically defined in an attachment to the letter, and was initialed by Mr. Vallone.[3] The Offer Letter was dated November 20, 2002 and signed by Mr. Vallone on November 25, 2002. The Offer Letter was signed on behalf of EDS by Terry Stringfellow.

At about the same time, Mr. Vallone also signed an employment agreement with EDS, which provided that:

> [n]otwithstanding any other provisions of this Agreement and unless contrary to applicable law or the terms of a written contract executed by an authorized corporate officer of EDS, employment with EDS is for an indefinite term and may be ended, with or without cause, at any time by either the Employee or EDS, with or without previous notice. Nothing in this document will be construed to oblige EDS to continue an Employee's employment for any particular time or under any particular terms and

---

[2] Each of these documents was attached to the complaint, along with various records relating to Mr. Vallone's short term disability payments and his termination.

[3] The term "cause" is defined in the attachment to the Offer Letter to include the "(a) material breach of any agreement entered into between you and EDS; (b) material misconduct; (c) material failure to follow EDS' policies, directives or orders applicable to EDS employees holding comparable positions; (d) intentional destruction or theft of EDS property or falsification of EDS documents; (e) failure or refusal to faithfully, diligently, and competently perform the usual and customary duties associated with your position; (f) conviction of a felony or any crime involving moral turpitude; or (g) violation of the EDS Code of Conduct."

conditions of employment.

Mr. Vallone signed the employment agreement on November 20, 2002. On November 25, 2002, the employment agreement was signed by Terry Stringfellow as a signatory authorized by EDS.

Mr. Vallone alleges that EDS did not respect his "light duty" requirements and, as a result of being forced to perform tasks that were physically inappropriate for him, he was injured again. As a result of this second injury, Mr. Vallone was unable to work after June 10, 2003. On August 8, 2003, Mr. Vallone filed a Pennsylvania State Workers Compensation claim against EDS.

On December 18, 2003, EDS send Mr. Vallone a letter in which it stated that he had exhausted his medical leave, that short term disability payments were no longer medically authorized, and that Mr. Vallone was considered to be taking an unpaid leave of absence from work. The letter further stated that if Mr. Vallone did not return to work by December 29, 2003, with a release and medical documentation explaining his absences, he would be terminated. Mr. Vallone apparently did not return to work, and was terminated.

Mr. Vallone sued EDS, alleging that "[s]ubsequent to Mr. Vallone's action, EDS unlawfully retaliated against Mr. Vallone for pursuing his rights under the workers' compensation statute by terminating his employment." The complaint includes three counts, including allegations that: (1) Mr. Vallone was terminated in retaliation for filing a workers' compensation claim; (2) his termination was a breach of an employment contract; and (3) Mrs. Vallone has suffered a loss of consortium as a result of the wrongful termination. EDS filed the present Motion for Judgment on the Pleadings with respect to the first and third counts of the

complaint.[4]

DISCUSSION

Mr. Vallone bases his allegation of wrongful termination on Shick v. Shirey, 716 A.2d 1231, 1238 (Pa. 1998), in which the Pennsylvania Supreme Court held that "a cause of action exists under Pennsylvania law for wrongful discharge of an employee who files a claim for workers' compensation benefits." Mr. Vallone specifically argues that he was terminated because he filed a claim for workers' compensation, and that his termination is actionable as an exception to the general rule for at-will employment in Pennsylvania. EDS argues that judgment on the pleadings is appropriate in this case because Mr. Vallone, by his own admission in the complaint, had an employment contract with EDS and is therefore not considered to be "at-will."

It is true that under Pennsylvania law, a wrongful discharge action is available only under limited circumstances. Pennsylvania is a jurisdiction where an employee may be terminated "with or without cause, at pleasure, unless restrained by some contract." Shick, 716 A.2d at 1233. Pennsylvania courts have interpreted Shick to mean that where a contractual employee has other means through which his or her dismissal can be contested, there is no need for the

[4] EDS argues that if judgment is not granted in its favor with respect to Mr. Vallone's allegations of wrongful termination and the loss of consortium claim, then Mr. Vallone's claim for breach of contract, which is the second count of the complaint, must necessarily fail. At this stage of the litigation, the Court does not agree. Federal Rule of Civil Procedure 8(e)(2) provides that "a party may set forth two or more statements of a claim or defense alternately or hypothetically." Because the Court finds the offer letter and employment agreement when, considered co-extensively, to be ambiguous on issues material to this dispute, the issue of whether Mr. Vallone was or was not an "at will" employee is not clearly resolved at this point. Considering the allegations in a light most favorable to the Vallones and respecting the flexibility represented by Federal Rule of Civil Procedure 8(e)(2), the Court assumes that the Vallones present these pleadings in the alternative, something they may continue to do at least for the near term.

availability of a wrongful discharge action and none can be brought. See Harper v. American Red Cross Blood Services, Penn-Jersey Region, 153 F. Supp. 2d 719, 721 (E.D. Pa. 2001) (action not available for terminated employee covered by union contract) Bullock v. City of Philadelphia, 61 Pa. D. & C. 4th 300, 310 (Pa. Ct. Comm. Pl. 2002) (same). Thus, to the extent that Mr. Vallone is found to be entitled to the protections of an employment contract, the Shick exception will not apply and no cause of action may lie.

To interpret a contract under Pennsylvania law, a court must try to ascertain the intention of the parties who executed the contract. Z&L Lumber Co. of Atlasburg v. Nordquist, 502 A.2d 697, 700 (Pa. Super. Ct. 1985). If the terms of a contract are clearly expressed, the intention of the parties must be determined from the language of the contract. Id. However, if the language is ambiguous, a court must consider extrinsic evidence to determine the parties' intent. Id.

On the surface, the terms with respect to the conditions of Mr. Vallone's employment as stated in the Offer Letter seem to directly contradict the corresponding terms in his employment contract. Thus, the documents governing Mr. Vallone's employment are ambiguous. Because further information would be needed to try and ascertain the parties' intent with respect to Mr. Vallone's employment with EDS, judgment on the pleadings would be inappropriate at this stage of the litigation. The motion is, therefore, denied. An appropriate Order follows.

/S/_____
Gene E.K. Pratter,
United States District Judge

February 9, 2005

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

RONALD VALLONE AND, DIANNE VALLONE, Plaintiffs	:	CIVIL ACTION
v.	:	
ELECTRONIC DATA SYSTEMS, Defendant	:	NO. 04-CV-4744

O R D E R

AND NOW, this 9th day of February, 2005, upon consideration of the Defendant's Motion for Judgment on the Pleadings (Docket No. 11), the Plaintiff's response thereto (Docket No.12), and the Defendant's response in support of the motion (Docket No. 13), the Defendant's motion is DENIED.

BY THE COURT:

/S/_____
GENE E. K. PRATTER
UNITED STATES DISTRICT JUDGE