

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

CRAIG and TERRY MCHUGH : CIVIL ACTION
: :
v. : :
: :
WILLIAM RIES and : :
INDUSTRIAL RESOURCE NETWORK, : :
INC. : No. 97-516

ORDER - MEMORANDUM

AND NOW, this 2nd day of July, 1997, the motion to dismiss of defendants William Ries and Industrial Resource Network, Inc., Fed. R. Civ. P. 12(b)(6), for failure to state a claim is ruled on as follows:¹

1. Count I: Breach of Contract as to Terry McHugh - Denied. Circumstances surrounding a contract may show that a beneficiary was intended to receive the promised performance. Clifton v. Suburban Cable TV Co., 434 Pa. Super. 139, 143, 642 A.2d 512, 514 (1994) (citing Guy v. Liederbach, 501 Pa. 47, 59, 459 A.2d 744, 751 (1983)). Here, plaintiff, Terry McHugh, may maintain a breach of contract claim as an intended third-party beneficiary, given the potential inferences that may be drawn to support that conclusion.

1. Defendants' motion to dismiss filed on March 13, 1997, is denied as moot inasmuch as plaintiffs filed an amended complaint. In reviewing a motion to dismiss, the Court must view the pleadings in the light most favorable to plaintiffs and accept as true all well-pleaded facts. Labov v. Lalley, 809 F.2d 220 (3d Cir. 1987). A motion to dismiss should be granted if a complaint fails to sufficiently allege a constituent element or requirement of the stated cause of action. Kerhr Packages, Inc. v. V. Fidelcor, Inc., 926 F.2d 1406, 1410 (3d Cir. 1991).

2. Count II: Negligence Claim - Granted. A breach of contract claim may be construed as a negligence claim if the alleged wrong is the "gist of the action with the contract being collateral." Phico Ins. Co. v. Presbyterian Medical Serv., 444 Pa. Super. 56, 58, 663 A.2d 753, 757 (1995) (quoting Bash v. Bell Tel. Co., 411 Pa. Super. 347, 356, 601 A.2d 825, 829 (1992)). Here, the contract is not collateral, but central to the action. The maintenance of the insurance policy on plaintiff's life is precisely what is in dispute.

3. Count III: Fraud - Denied. A cause of action for fraud must allege misrepresentation of a material fact. Mellon Back Corp. v. First Union Real Estate, 951 F.2d 1399, 1410 (3d Cir. 1991); Krause v. Great Lakes Holdings, Inc., 387 Pa. Super. 56, 68, 563 A.2d 1182, 1187 (1989). The amended complaint alleges that defendants misrepresented a past material fact - the maintenance of the insurance policy. It therefore sufficiently states a claim for fraud.

4. Count IV: Pennsylvania Wage Payment and Collection Law and Maryland Wage and Hour Law - Granted in part, denied in part. Defendants' motion is granted insofar as Maryland law is not applicable. The agreement specifically states that Pennsylvania law governs. See Agreement, ¶ 13.

Defendants' motion is denied inasmuch as a sufficient nexus exists between the Pennsylvania Wage and Collection Law (WPCL) and plaintiffs' claim. The WPCL enables employees to recover wages and other benefits contractually owed by employers.

Killian v. McCulloch, 850 F. Supp. 1239, 1242 (E.D. Pa. 1994) (citing 43 Pa. C.S.A. §§ 260.1-260.11). Defendant IRN is a Pennsylvania corporation, defendant Ries is a resident of Pennsylvania, and plaintiff worked in Pennsylvania. The statute does not appear to require an employee to be a resident of Pennsylvania in that the WPCL extends to employees "based" in Pennsylvania. Killian v. McCulloch, 873 F. Supp. 938, 938 (E.D. Pa. 1995) (citing 43 Pa. C.S.A. §§ 260.1-260.12).

5. Count 5: Equity - Granted. Plaintiffs have an adequate remedy at law in the form of money damages. See Martindale Lumber Co. v. Trusch, 452 Pa. Super. 250, 250, 681 A.2d 803, 803, 805 (1996).

Edmund V. Ludwig, S.J.