2012 WL 12248901 (Pa.Com.Pl.) (Trial Order)
Court of Common Pleas of Pennsylvania.
York County

David M. SOCKO, Plaintiff,
v.
MID-ATLANTIC SYSTEMS OF CPA INC., Defendant.

No. 2012-SU-001608-44.
October 17, 2012.

Breach of Contract

Michael E. Rowan, Esquire, Kenneth J. McDermott, Esquire, Shumaker Williams, P.C., 1 East Market Street, Suite 301, York, Pennsylvania 17401, for plaintiff.

Michael J. Torchia, Esquire, Stephen C. Goldblum, Esquire, Semanoff, Ormsby, Greenberg, & Torchia, LLC, 2617 Huntingdon Pike, Huntingdon Valley, Pennsylvania 19006, for defendant.

Joseph C. Adams, Judge.

*1 CIVIL ACTION-LAW

MEMORANDUM OPINION ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff filed the instant Motion for Partial Summary Judgment seeking declaratory judgment on the issue of the validity of a non-competition clause found in an employment agreement executed December 28, 2010. Plaintiff argues that the noncompetition clause is unenforceable, for want of consideration. Defendant contends that Plaintiffs employment was contingent upon his execution of the December 28, 2.0:10, employment agreement, and Plaintiff is subject to the provisions therein. Defendant also argues that the subject non-competition clause contain similar post-employment restrictions to those found in a prior employment agreement executed June 29, 2009. Plaintiff counters that the June 29, 2009, agreement constitutes parol evidence. For the reasons stated herein, Plaintiff's Motion is GRANTED.

FACTS AND PROCEDURAL HISTORY

Plaintiff initiated the present matter with the filing of a Complaint and Action for Declaratory Judgment (hereinafter "Complaint") on April 13, 2012. Plaintiff asserts claims therein for unauthorized deductions, and unpaid wages under the Pennsylvania Wage Payment and Collection Law.[1] Plaintiff also requests declaratory judgment on the issue of the non-competition clause found in the employment agreement of December 28, 2010 (hereinafter "Agreement").[2] Specifically, on the issue of the Agreement, Plaintiff requests the Court determine and adjudicate the rights and liabilities of the parties with respect to the Agreement, and determine that the non-competition clause contained within the Agreement are invalid and unenforceable as to Plaintiff.[3]

Defendant filed an Answer to Complaint and New Matter on May 7, 2012. Defendant therein denies all averments contained within Counts I, II, and III, of the Complaint as "legal conclusion[s] to which no response is required", and specifically denies "unpaid wages are due to Plaintiff."[4]

Plaintiffs Motion for Partial Summary Judgment (hereinafter "Plaintiff's Motion") and brief in support thereof (hereinafter "Plaintiff's Brief.') were filed on July 11, 2012; wherein Plaintiff requests' summary judgment an Count I of the Complaint, specifically the issue of the validity of the Agreement. [5] Plaintiff argues that the Agreement was executed after he had begun his employment. [6] Plaintiff further argues that, under the law of this Commonwealth, a restrictive covenant can not be enforced absent sufficient consideration, and continued employment is not sufficient consideration to support a restrictive covenant such as the one at issue in this matter. [7]

*2 Defendant filed its Response to Plaintiff's Motion for Partial Summary Judgment (hereinafter "Defendant's Response") and brief in support thereof (hereinafter "Defendant's Brief) on August 3, 2012. Defendant contends therein that Plaintiff is *not* entitled to summary judgment on Count I of the Complaint because the Agreement was supported by sufficient consideration. [8] In support of this position, Defendant points to the Uniform Written Obligation. Act (hereinafter "UWOA"); which states, "A written release or promise, hereafter made and signed by the person releasing *or* promising, shall not be invalid or unenforceable for lack of consideration, if the writing-also contains an additional express statement, in any form of language, that the signer intends to be legally bound." [9] Defendant avers that the provision "Employee and Mid-Atlantic, intending to be legally bound, agree..." is contained within the Agreement. [10] Defendant argues that this provision provides sufficient consideration under the law to enforce the Agreement, citing to various federal district and Pennsylvania common pleas courts in support of its position. [11]

Plaintiff filed a- Brief in Reply to Defendant's Response to Motion for Partial Summary Judgment (hereinafter "Plaintiff's Reply Brief") on August 7, 2012. Plaintiff reiterates his argument therein, citing to a recent Superior Court ease that held, "a restrictive covenant, regardless of whether it is reasonable, will not be enforced if no consideration was exchanged for its execution". [12] Plaintiff argues that Defendant's expansive interpretation of the UWOA is contrary to Pennsylvania common law. [13] Plaintiff also-advances a parol evidence rule argument, contending that the merger clause contained within the Agreement renders irrelevant Defendant's argument that the Plaintiff had previously signed an agreement with an identical non-compete provision when he was rehired in 2007. [14]

LAW AND ANALYSIS

As a matter of law, it is proper for the Court to grant summary judgment, "(1) whenever there is no genuine issue of any-material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report" Pa.R.CP. No. 103.5.2. Summary judgment is proper only where the pleadings, depositions, answers to interrogatories, admissions of record and affidavits on file support the conclusion that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Penn Ctr. House, Inc. v. Hoffman*, 553 A.2d 900 (Pa. 1989).

In determining whether to grant a motion for summary judgment, the court must view the record in light most favorable to the non-moving party. *Dorohovich v. West Am. Ins. Co.*, 589 A.2d 252 (Pa. Super. Ct. 1991). In order to be successful in bringing a motion for summary judgment, the moving party must demonstrate that there are no genuine issues of material fact for the court to decide, *First Wis. Trust Co. v. Strausser*, 652 A.2d 688.(Pa. Super. Ct 1994).

Once the moving party has met this burden, the non-moving party must produce sufficient evidence on an issue essential to the case on which he bears the burden of proof such that a jury could return a verdict in his favor. *Ertel v. Patriot-News Co.*, 674 A.2d 1:038 (Pa. 1996). Summary judgment should only be granted where entitlement to judgment as a matter of law is free and clear of doubt, *Elec. Lab. Supply Co. v. Cullen*, 712 A.2d 3:04 (Pa. Super. Ct. 1998). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Marks v. Tasman*, 589 A.2d 205 (Pa. 1991). Moreover, in summary judgment proceedings, it is not the court's function to determine the facts, but only to determine if an

issue of material fact exists, *Godlewski v. Pars Mfg. Co.*, 597 A.2d 106 (Pa. Super. *Ct.* 1991). Summary judgment, serves to eliminate the waste of time and resources of both litigants and the court in cases where a trial would be a useless formality. *Lites v. Balmer*, 567 A.2d 691, 692 (Pa, Super. Ct. 1989).

***3** In the matter *sub judice*, Plaintiff seeks declaratory judgment on the aforementioned issue of the unenforceability of a non-compete provision contained within the subject Agreement. The parties agree that Defendant had been employed by Plaintiff for a substantial period of time prior to executing the subject Agreement. Defendant contends that the Plaintiff had previously signed an agreement with a similar non-compete provision when he was rehired in 2009. The record indicates that the parties initially executed a prior employment agreement on June 29, 2009. It is well settled in this Commonwealth that continued employment is not adequate consideration to validate a restrictive covenant in an employment agreement. *Maintenance Specialties, Inc. v. Goltus*, 314 A.2d 279 (1974).

Defendant contends that a stated intent "to be legally bound" in the Agreement constitutes adequate consideration under Pennsylvania common law and the UWOA to make that Agreement, including the Non-Competition clause, enforceable. Our. Superior Court has held to the contrary, stating, "where a restrictive covenant is executed after the commencement of employment, it will not be enforced unless the employee restricting himself receives a corresponding benefit or change in status." *Ruffing v. 84 Lumber Co.*, 600 A.2d 545 (Pa. Super, 1991). The parties agree that Plaintiff received no additional benefit or any change in his employment status.

Plaintiff also advances an argument that under the parol evidence rule that, due to a merger clause contained within the Agreement, the Court cannot consider the previously executed employment- agreement. The Court need not address this issue because it finds the December 2010 Agreement is invalid for want of consideration.

CONCLUSION

The Agreement dated December 28, 2010, was executed after Plaintiff had been employed for a substantial period of time by Defendant. While that agreement included language that the parties be "legally bound" by the terras therein, Defendant offered neither a corresponding benefit not a change in status to Plaintiff in exchange for his execution of that Agreement, Thus, there was no consideration supporting the Agreement of December 28, 2010. Therefore, feat Agreement is invalid and the terms set forth therein are unenforceable. Plaintiff's Motion is GRANTED.

Date: October 15, 2012

BY THE COURT,

<<signature>>

JOSEPH C. ADAMS, JUDGE

Footnotes

1 Complaint, at 6-9.
2 Complaint, at 6.
3 Complaint, ¶ 33(a)&(b).
4 Defendant's Answer, ¶¶ 30-47.
5 Plaintiff's Motion, ¶ 1.; Plaintiff's Brief, at 1.
6 Plaintiff's Motion, ¶ 4.; Plaintiff's Brief, at 1.

7 Plaintiff's Motion, ¶ 5.; Plaintiff's Brief, at 4-6. *Piercing Pagoda, Inc. v. Hoffner*, 351 A.2d 207 (Pa. 1976).; *George W. Kistler, Inc. v. O'Brien*, 347 A.2d 311, 316 (Pa. 1975).

8 Defendant's Responses ¶¶ 2 & 3.

9 Defendant's Brief, at 5.; 33 Pa.C.S.A. § 6 (West 2012).

10 Id., at 6-9.

11 Id.

12 Plaintiff's Reply Brief, at 1. *Shepard v. Pittsburgh Glass Works, LLC*, 25 A.3d 1233, 1243 (Pa.Super, 2011).

13 Plaintiff's Reply Brief, at 1.

14 Id., at 4,

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