

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

-----X
ANNE LEACH, :
 :
 Plaintiff, : MEMORANDUM DECISION
 : **3:00 CV 1175 (GLG)**
 -against- :
 :
 F.A. BARTLETT TREE EXPERT CO., :
 :
 Defendant. :
-----X

Defendant had previously moved to dismiss four of the five counts of plaintiff's complaint. We granted the motion as to the first two counts (breach of contract and breach of the implied covenant of good faith and fair dealing) but did so with leave to replead, holding that the letters written by defendant did not establish a contract of employment for a specific or indefinite term, although they may have created other rights with respect to plaintiff's return from leave.

Plaintiff has now moved for leave to file an amended complaint as to the first two counts, which defendant has opposed on the ground that the proposed amendments do not change the Court's earlier ruling. We conclude that while the changes are both slight and subtle they are sufficient to survive another motion to dismiss. Consequently, we **GRANT** plaintiff's motion for leave to amend (**Doc. # 21**).

As we read count one of plaintiff's proposed amended complaint, her breach of contract claim is limited to her

expectations that she would be permitted to return to work so long as she did so on or before November 9, 1998. (To that extent it is not factually different from her claim in count three for promissory estoppel or in count five for retaliation under the Family and Medical Leave Act, 29 U.S.C. § 2612, et seq.) Unfortunately, her contractual claim is somewhat complicated by the fact that a week or so before her scheduled return date of November 9, 1998, she requested a one-month extension of her leave, which defendant granted but with additional conditions. (See discussion, infra, in connection with count two). However, since plaintiff withdrew that request allegedly because she was afraid she would lose her job if she took the extended leave and informed her employer that she would be returning to work on November 9th, we exclude from her breach of contract claim consideration of those claims that would come under her claim for breach of the implied covenant of good faith and fair dealing arising from defendant's letter of November 2, 1998.

The letter of November 2nd concerned leave beyond the 120 days of medical leave previously promised. It granted the extension under conditions not imposed on the original period of leave. In our original decision, we excluded the complaint for breach of the implied covenant of good faith and fair dealing because we found there had been no contract which could have been breached in that respect. As to the amended complaint, plaintiff

has alleged the existence of a contract, albeit a rather limited one, which allowed her to return to work by November 9th. Defendant's letter was written a week before that deadline, although it concerned events that would have occurred thereafter. The amended complaint alleges that plaintiff's physician released her to work on November 9th but defendant "suggested that she not come in." (Pl.'s Am. Compl. ¶ 16.) It is difficult to see how the limitations on an extension (which would have been a new contract) could constitute a breach of an implied covenant contained in the previous letter contract. Plaintiff's amended complaint attempts to avoid this by mixing together her right to return to work by November 9th with what occurred in the following months by alleging that the defendant breached an implied covenant "by refusing to permit the plaintiff to return to work and subsequently terminating her employment, based upon new conditions that were not part of the contract" (Pl.'s Am. Compl. ¶ 28.) The amended complaint's factual portion recites in paragraphs 17 through 21 various events that occurred thereafter, leading to the termination of plaintiff's employment on March 15, 1999. When considered in light of the claim made in paragraph 28, we cannot say that, under no circumstances or proof, could the plaintiff prevail. While it is unlikely that a jury would conclude that the defendant acted properly in refusing to let her return to work on November 9th but acted improperly in conditioning terms for her return a month later, which terms

became irrelevant when she abandoned that proposal in preference to returning to work on November 9th, we cannot say at this juncture that it appears beyond doubt that the plaintiff will be unable to prove any set of facts consistent with the pleadings which would entitle her to relief. See H.J. Inc. v. Northwestern Bell Tele. Co., 492 U.S. 229, 249-50 (1989); Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Williams v. Vincent, 508 F.2d 541, 543 (2d Cir. 1974).

Consequently, for pleading purposes, we find that the amended complaint is adequate to overcome the deficiencies pointed out in the original motion to dismiss. Therefore, we GRANT plaintiff's motion for leave to amend (**Doc. # 21**). The Clerk is directed to file and docket the Amended Complaint.

SO ORDERED.

Dated: January 11, 2001
Waterbury, CT

_____/s/_____
Gerard L. Goettel
U.S.D.J.