

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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RICHARD PERKETT, :
 :
 Plaintiff, :
 :
 - against - : No. 3:03CV1840 (GLG)
 : **MEMORANDUM DECISION**
 APPLIED PRINTING TECHNOLOGIES, :
 L.P., :
 :
 Defendant. :
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Plaintiff, Richard Perkett, has brought a two-count complaint against his former employer, Applied Printing Technologies, L.P., ("APT"), alleging claims for fraudulent inducement and self-defamation. Defendant now moves to dismiss both claims for failure to state a claim upon which relief may be granted [Doc. # 7]. Rule 12(b)(6), Fed. R. Civ. P. For the reasons discussed below, this motion will be granted.

Motion to Dismiss Standard

The function of a motion to dismiss under Fed. R. Civ. P. 12(b)(6) is to assess the legal sufficiency of the complaint. Ryder Energy Distrib. Corp. v. Merrill Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984). Thus, "[t]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

A motion to dismiss should not be granted for failure to

state a claim unless it appears beyond doubt, even when the complaint is liberally construed, that the plaintiff can prove no set of facts that would entitle him or her to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Jaghory v. New York State Dep't of Educ., 131 F.3d 326, 329 (2d Cir. 1997). In ruling on a motion to dismiss, the Court is limited to the facts set forth in the complaint, any documents attached thereto or incorporated by reference, and matters of which the Court may take judicial notice. Hirsch v. Arthur Andersen & Co., 72 F.3d 1085, 1088, 1092 (2d Cir. 1995); Kramer v. Time Warner Inc., 937 F.2d 767, 773 (2d Cir. 1991). Accordingly, the facts set forth below are taken directly from Plaintiff's complaint.

Factual Allegations

On or about December 20, 2002, Plaintiff, a resident South Glastonbury, Connecticut, was hired by APT to serve as general manager of its Connecticut operations. (Compl. ¶ 4.) Prior to his hiring, Plaintiff was extensively recruited by APT to induce him to leave an established and long-term employment. (Compl. ¶ 5.) The inducements offered by APT included a substantial salary, benefits, and employment security. (Compl. ¶ 6.) Plaintiff commenced work on December 20, 2002, and was summarily terminated on April 28, 2003. (Compl. ¶ 7.) His termination resulted from APT's decision to sell its Connecticut business to a company called Arrowhead Printing, LLC, formed by present and

former employees of APT in Connecticut. (Compl. ¶ 8.)

At the time Plaintiff was lured into leaving his former employment and joining APT in Connecticut, APT knew, or in the exercise of reasonable care should have known, that its offer to Plaintiff entailed a few months at best, after which he would lose his APT position. (Compl. ¶ 9.) At the time that APT was negotiating to lure Plaintiff to act in reliance upon their representations of salary, benefits and job security, it was also negotiating with employees for APT in Connecticut to form a group to purchase APT's holdings in Connecticut. (Compl. ¶ 10.)

Plaintiff alleges that APT fraudulently induced him to make a substantial career change directly resulting in a loss of salary and benefits (Count I). He further alleges that these actions by APT have caused him to defame himself since he has been forced to state that he was terminated after less than four months in his position with APT (Count II).

Discussion

I. Count I - Fraudulent Inducement

_____This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1332 based on the diversity of citizenship of the parties. Therefore, the substantive law of the State of Connecticut defines the elements of a cause of action for fraudulent inducement. Erie R. Co. v. Tompkins, 304 U.S. 64, 78 (1938). Federal law, however, governs the procedural pleading

requirements. See 2 Moore's Federal Practice § 9.03[1][e] (3d ed. 2003).

Under Connecticut law, the essential elements of a claim for fraudulent inducement are: (1) that a false representation was made as a statement of fact; (2) that it was known to be false; (3) that it was made to induce the action by the other party; and (4) that the party acted on the statement to his or her detriment. Suffield Development Associates Ltd. Partnership v. National Loan Investors, L.P., 260 Conn. 766, 777 (2002). Under Rule 9(b), Fed. R. Civ. P., "[i]n all averments of fraud . . . , the circumstances constituting fraud . . . shall be stated with particularity."

In the instant case, Plaintiff has alleged no more than that APT induced him to leave his job by offering him a substantial salary, benefits, and employment security (Compl. ¶ 6), that at the time Plaintiff was "lured" into leaving his job, APT knew or should have known that its offer entailed only a few months at best (Compl. ¶ 9), and that Plaintiff acted in reliance on the representations of salary, benefits and job security (Compl. ¶ 10). Nowhere in his complaint does Plaintiff allege what false representations were made to him or by whom these were made. Plaintiff's blanket statements that he was offered "employment security" and "job security" do not satisfy the pleading requirements of Rule 9(b), Fed. R. Civ. P. See Shields v.

Citytrust Bancorp., Inc., 25 F.3d 1124, 1127-28 (2d Cir. 1994) (holding that fraud allegations must identify the alleged fraudulent statement, the speaker, the place where the statements were made, and an explanation of why the statements were false); see also Acito v. IMCERA Group, Inc., 47 F.3d 47, 51 (2d Cir. 1995) (holding that a complaint must be dismissed unless it specifies the statements that the plaintiff contends were fraudulent, identifies the speaker, states when and where the statements were made, and explains why the statements were fraudulent). Moreover, Plaintiff has failed to allege the necessary elements of a cause of action for fraudulent inducement under Connecticut law. See Miller v. Appleby, 183 Conn. App. 51, 54 (1981). Accordingly, Count I is dismissed without prejudice to repleading.¹

II. Self-Defamation

In the recent case of Cweklinsky v. Mobil Chemical Co., 267 Conn. 210, 212 (2004), in response to a certified question from the Second Circuit, the Connecticut Supreme Court held that Connecticut does not recognize a cause of action for self-defamation based on a former employee's compelled self-

¹ Defendant argues that repleading should not be allowed since any attempt to amend Plaintiff's claim for fraudulent inducement would be futile. Defendant's argument is premised on its assumption that the representations on which Plaintiff relies were speculative in nature. The Court, however, cannot make this assumption based on the vague and general assertions in the complaint and, therefore, grants Plaintiff leave to replead.

publication of his employer's defamatory statement made only to the employee. Among other reasons, the Court reasoned that recognizing a cause of action for compelled self-defamation would significantly undermine the well-established doctrine of employment-at-will. Id. at 225. Based on the holding in Cweklinsky, this Court dismisses Plaintiff's claim of self-defamation in Count II for failure to state a claim upon which relief may be granted.

Additionally, the Court notes that Plaintiff has failed to identify any false statement that he made or was required to make as a result of Defendant's actions. The only statement alleged is that Plaintiff was forced to tell future employers that he was terminated after less than four months with APT, a fact that appears to be true from the face of the complaint. See QSP, Inc. v. Aetna Casualty & Surety Co., 256 Conn. 343, 356 (2001). Moreover, Plaintiff has failed to allege how this statement harmed his reputation or lowered prospective employers' estimation of him or deterred them from dealing with him. Id. Plaintiff has failed to plead the requisite elements of a cause of action for defamation. Therefore, Defendant's motion to dismiss Count II for failure to state a claim will be granted.

Conclusion

Defendant's Motion to Dismiss **[Doc. # 7]** is GRANTED as to both counts of Plaintiff's Complaint. Plaintiff is granted

