

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

MARTY LANDRY,)	C.A. NO: N11C-09-146 PLA
)	
Plaintiff,)	
v.)	
)	
MABEY BRIDGE & SHORE, INC.,)	
Defendant.)	

**ON DEFENDANT MABEY BRIDGE & SHORE, INC.’S MOTION TO
DISMISS COUNT I OF PLAINTIFF’S COMPLAINT AND MOTION TO
STRIKE PUNITIVE DAMAGES
DENIED IN PART AND GRANTED IN PART**

Submitted: October 17, 2011
Decided: November 7, 2011

I. Introduction

In this employment dispute, Plaintiff Marty Landry (“Landry”) has filed a Complaint against Defendant Mabey Bridge & Shore, Inc. (“Mabey”), his former employer, alleging that Mabey breached the implied covenant of good faith and fair dealing by falsely claiming that Landry was terminated for cause and breached the employment contract by failing to pay him the severance benefits to which he claims he was entitled under the contract. Mabey has moved to dismiss Landry’s claim for breach of the implied covenant of good faith and fair dealing and his claim for punitive damages. After review of the pleadings in this case, the Court finds that Landry has sufficiently pled facts to withstand dismissal of his claim for

breach of the implied covenant of good faith and fair dealing. Accordingly, the Motion to Dismiss will be DENIED. However, the Court finds that Landry has not alleged facts that would permit him to recover punitive damages. As such, the Motion to Strike will be GRANTED.

II. Facts

In October 2010, a recruiter contacted Landry about interviewing for the position of chief executive officer at MBSI. Although Landry was not ultimately offered the position, MBSI did offer Landry the newly created position of Senior Vice President for Sales and Marketing. In that role, Landry would be responsible for overhauling MBSI's sales and marketing efforts. He would also serve on MBSI's board of directors and report directly to Robert Aylward, MBSI's newly appointed chief executive officer.

Landry negotiated an Employment Agreement ("the Agreement") with MBSI that included a provision for twelve months of severance benefits in the event Landry was terminated without cause in the first year of his employment. Under the terms of the Agreement, Landry could be terminated for cause (and therefore become ineligible for severance benefits) in the following circumstances:

- a. Employee wil[l]fully refuses to comply with the policies, standards, and regulations of the Company; or
- b. Employee fails or with notice refuses to faithfully or diligently perform under the provisions of this Agreement or fails to faithfully or diligently perform the usual and customary duties which have been assigned to Employee from time to time; or

- c. Employee engages in fraudulent or dishonest acts or other acts of misconduct in the rendering of services for or on behalf of the Company; or
- d. Employee transfers confidential business information concerning the Company to a competitor of Company or otherwise violates [the Agreement].

Landry executed the Agreement on November 11, 2010.

Landry began his employment at MBSI in November 2010. In August 2011, MBSI's CEO informed Landry that he was being terminated, effective immediately. The CEO gave no explanation for the termination, other than to say that the company had decided to go in a different direction and the sales force had "lost faith" in Landry. Landry alleges that he had received no complaints about his work during the course of his employment with MBSI. Following his termination, Landry made several efforts to discover the reason for his termination. In the Complaint, Landry alleges that the day after he was terminated, he spoke on the telephone with a representative of MBSI, who expressed shock that he was not told the reason for his termination and then ended the call abruptly.¹ After repeated efforts to learn the reason for his termination, Landry alleges that he was only told that he was terminated for cause and referred him to the Agreement.²

III. Parties' Contentions

Landry subsequently filed this lawsuit in Superior Court seeking economic and punitive damages. He alleges first that MBSI breached the implied covenant

¹ Compl. at ¶ 25.

² Id. at ¶¶ 26-27.

of good faith and fair dealing by interfering with his right to receive the benefits of his employment, by wrongly terminating him and wrongly accusing him of having been terminated for cause, and by failing to explain to Landry the reason for his termination so he could determine whether he was entitled to severance benefits under the Agreement. Landry also alleges that MBSI breached its contractual obligation to pay him severance benefits because he was not terminated for cause. MBSI has filed a motion to dismiss Landry's claim that MBSI breached the implied covenant of good faith and fair dealing, arguing that the facts as alleged by Landry do not support such a claim. MBSI has also moved to strike Landry's claim for punitive damages on the basis that punitive damages are not typically available in breach of contract actions.

IV. Standard of Review

When reviewing a motion to dismiss filed pursuant to Superior Court Civil Rule 12(b)(6), the Court must accept all well-pleaded factual allegations in the Complaint as true, accept even vague allegations in the Complaint as "well-pleaded" if they provide the defendant notice of the claim, draw all reasonable inferences in favor of the plaintiff, and deny the motion unless the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of

proof.³ The Delaware Supreme Court recently affirmed that Delaware courts adhere to the “reasonably conceivable” standard when evaluating a motion to dismiss.⁴

V. Discussion

a. Motion to Dismiss Count I of the Complaint

Defendant seeks to have dismissed Landry’s claim alleging that MBSI breached the implied covenant of good faith and fair dealing by falsely claiming that he was terminated for cause. Delaware imposes a “heavy presumption that a contract for employment, unless otherwise expressly stated, is at-will in nature, with duration indefinite.”⁵ However, every employment contract, including an at-will contract, contains an implied covenant of good faith and fair dealing.⁶ At its core, the duty of good faith and fair dealing imposes a duty of candor on the employer: the employer breaches the covenant when the employer’s conduct constitutes fraud, deceit, or misrepresentation.⁷ In other words, an “employer acts in bad faith when it induces another to enter into an employment contract through

³ *Central Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 537 (Del. 2011).

⁴ *Id.*

⁵ *E.I. DuPont de Nemours & Co. v. Pressman*, 679 A.2d 436, 440 (Del. 1996) (*Pressman*).

⁶ *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 101 (Del. 1992).

⁷ *Id.* (quoting *Magnan v. Anaconda Indus., Inc.*, 429 A.2d 492 (Conn. Super. 1980) and *A. John Cohen Ins. v. Middlesex Ins. Co.*, 392 N.E. 862 (Mass. App. Ct. 1979)).

actions, words, or the withholding of information, which is intentionally deceptive in some way material to the contract.”⁸

The Delaware Supreme Court has identified four situations where an employee could bring a claim based on the implied covenant of good faith and fair dealing: (1) where termination violated public policy; (2) where the employer misrepresented an important fact and the employee relied on the misrepresentation either to accept a new position or remain in the current one; (3) where the employer used its superior bargaining power to deprive an employee of clearly identifiable compensation related to the employer’s past service; and (4) where the employer falsified or manipulated employment records to create fictitious grounds for termination.⁹ These categories are narrowly defined and exclusive.¹⁰

MBSI seeks to dismiss Landry’s claim for breach of the implied covenant of good faith and fair dealing on the ground that Landry has not alleged any facts which would bring Landry’s claim within one of the four narrow Pressman categories. The Court disagrees. Landry has in essence alleged that MBSI fired him to eliminate a conflict between him and the chief executive officer and then falsely claimed that he was terminated for cause to avoid paying him severance benefits. These allegations, if proved, would likely bring Landry’s claim within

⁸ *Id.*

⁹ *Pressman*, 679 A.2d at 442-44.

¹⁰ *Id.*

the third *Pressman* category, where an employer has used its superior bargaining power to deprive an employee of clearly identifiable compensation (here, severance benefits) related to past service. Alternatively, Landry may be able to prove that MBSI falsified or manipulated his employment records to create fictitious grounds for termination. It would be premature to dismiss Landry's breach of the implied covenant claim before allowing discovery into the facts of his termination.

b. Motion to Strike Punitive Damages Claim

MBSI has also moved to strike Landry's claim for punitive damages. In general, a plaintiff cannot recover punitive damages for breach of contract unless the conduct also amounts independently to a tort.¹¹ In *Pressman*, the Delaware Supreme Court held that breach of the implied covenant of good faith and fair dealing, in an employment relationship, was not an exception to the rule against punitive damages in breach of contract cases.¹² Here, Landry has alleged only (1) breach of the implied covenant of good faith and fair dealing; and (2) breach of contract. Landry has not alleged any conduct by his employer, such as conversion, that would amount independently to a tort. Accordingly, punitive damages would not be available for any misconduct that could be found by a jury.

¹¹ *Id.* at 445.

¹² *Id.* at 448.

VI. Conclusion

Landry has sufficiently alleged facts in his Complaint that, if proved, would constitute a claim for breach of the implied covenant of good faith and fair dealing. MBSI's motion to dismiss this claim is therefore DENIED. However, Landry has not alleged any claims that would permit him to recover punitive damages if he successfully proves his claims at trial. Accordingly, the motion to strike punitive damages is GRANTED.

IT IS SO ORDERED.

/s/ Peggy L. Ableman

PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary