

STATE OF NEW YORK
SUPREME COURT
PUTNAM EMERGENCY MEDICINE PLLC
and RICHARD ERIC STUTT M.D.

ULSTER COUNTY

Plaintiffs,

-against-

Decision & Order
Index No.: 02-3548

PUTNAM HOSPITAL EMERGENCY CENTER,
PAUL NOWAK M.D., MICHAEL WEBER, and
LINCOLN DUFFY M.D.,

Defendants.

Supreme Court, Ulster County
RJ#55-03-00148
Motion Term

Present: E. Michael Kavanagh, JSC

Appearances:

Susan Stockburger Esq.
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Kavanagh, J

Plaintiffs Putnam Emergency Medicine PLLC [hereinafter PEM] and Richard Eric Stutt MD and defendant Putnam Hospital Emergency Center [hereinafter the Hospital] entered into an agreement on April 30, 1997 whereby it was agreed that PEM would provide exclusive

emergency services for the hospital. The agreement was for a term of five years, commencing on May 14, 1997 and expiring on or about May 14, 2002. The contract also provided for automatic renewal for one year periods unless terminated as set forth within the contract (§ 15). The contract contained various termination clauses and included a provision that stated that “after the first two years of this agreement, either party may terminate this agreement without cause by providing at least one hundred twenty days advance written notice to the other party (§ 16 [f]).

On March 1, 2001, as CEO of the hospital, defendant Michael Weber sent plaintiffs written notice that it was terminating the contract and provided the required 120 day notice. Accordingly, PEM’s employment terminated on June 30, 2002, more than 120 days after the notice of termination letter. Plaintiffs then commenced this action alleging, inter alia, wrongful termination of the contract (first cause of action) and tortious interference with the employment agreement between plaintiff and defendant Paul Nowak by the defendants Weber and Duffy (third cause of action). Defendants now move to dismiss these two causes of action alleging that they fail to state a cause of action.

Turning first to the wrongful termination cause of action, plaintiffs allege that the hospital violated the contract by providing notice of termination only 72 days before the contract was to expire. They argue that defendants did not give 120 days notice as called for in the contract and, therefore, because the contract had not been properly terminated, it is automatically renewed for one year. In effect, plaintiffs argue that since they were only given 72 days notice of termination before the end of the contract they are entitled to a one year renewal. However, the contract after two years specifically gives either party the unilateral right to end the contractual relationship without cause by providing 120 days notice. Plaintiff’s received 120 days notice and that serves to terminate their rights under this contract. The defendants’ motion to dismiss plaintiffs claim

of wrongful termination is granted.

The third cause of action alleges that defendant Paul Nowak MD was an employee of PEM assigned to work as a doctor in the emergency room at the hospital. The complaint alleges that in January 2002, defendants Weber and Lincoln Duffy, the medical director at the hospital, approached Nowak and discussed with him leaving the employ of PEM and entering into an agreement with the hospital to provide emergency room services. PEM alleges that Weber and Duffy solicited and encouraged Nowak to compete with plaintiff and convinced him to leave PEM and become an employee at the Hospital. Duffy and Weber allege that the complaint does not state a cause of action because the emergency service agreement was not awarded to Nowak and therefore PEM can not allege any lost revenue relating to the terminated services agreement between PEM and the hospital.

The elements necessary for a claim of tortious interference with a contract are that 1) a contract exists between plaintiff and a third party; 2) the defendants knew of the contract; 3) the defendants intentionally induced the third party to breach the contract or take actions that render performance impossible; and 4) plaintiff sustained damage related to the breach (Kronos inc v AVX Corp., 81 NY2d 90, 94). A liberal reading of the complaint shows that it adequately pleads the first three elements in that it claims that : 1) there was an employment contract between PEM and Nowak; 2) Defendants Weber and Duffy were aware of the contract and 3) they intentionally induced Nowak to stop working for PEM and to compete against PEM for the services contract.

The complaint, however, does not properly plead damages to support its claim.

The only damages pleaded by plaintiffs in regard to this cause of action relate to plaintiffs' loss stemming from the loss of the services contract with the Hospital. These damages have nothing to do with the alleged interference of defendants with Nowak's employment

contract. Plaintiffs do not attempt to allege that because Nowak terminated his employment with plaintiff and was hired by defendants plaintiffs lost the services contract with the Hospital.

Indeed, even if plaintiffs made such an argument there is no evidence that Nowak was given the services contract. Plaintiffs simply attempt to claim that because defendants tortiously interfered with their contract with Nowak, they were damaged in the amount they would have received under the services contract. These alleged damages do not flow from this cause of action.

Moreover, while plaintiffs attempt to buttress their claims of damages in their memorandum of law for this cause of action by alleging that they were damaged to the extent that they had to find a substitute to work for Nowak, this was not pleaded in the complaint nor has plaintiffs asked the Court to amend their pleadings to include these damages.

As plaintiffs have failed to allege a required element to the tortious interference with contract claim, it must be dismissed.

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss the first and third causes of action in the complaint is granted, without costs.

This constitutes the decision and order of this Court. All papers are being returned to defendants' counsel. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the provisions of that rule regarding entry, filing and notice of entry.

SO ORDERED!


E. Michael Kavanagh, JSC

Date: May 28 2003

Kingston, New York

Papers Considered:

Notice of motion; affidavit of Michael Weber
Affirmation of Susan Stockburger Esq.

To commence the statutory time period for appeals as of right (CPLR 5513[a], you are advised to serve a copy of this order, with notice of entry, upon all parties.