

DOCKET NO. MMX-CV-21-6030110-S : SUPERIOR COURT
JENNA WAZ : JUDICIAL DISTRICT OF MIDDLESEX
v. : AT MIDDLETOWN
JOHN PEDRO, et al : MAY 22, 2024

MEMORANDUM OF DECISION

This case involves a contractual/employment relationship between the plaintiff employee, Jenna Waz, and the defendant Connecticut Behavioral Health, LLC (CBH), and its owner, the defendant John Pedro (the defendants). The plaintiff originally brought an eight count complaint against the defendants alleging breach of contract, breach of fiduciary duty, breach of the covenant of good faith and fair dealing, and wrongful taking of money from the plaintiff. The plaintiff withdrew the counts alleging breach of contract and wrongful taking of money prior to trial. The remaining counts allege breach of fiduciary duty and breach of the covenant of good faith and fair dealing against each defendant. The defendants filed special defenses and a three count counterclaim. The defendants withdrew all counts of their counterclaim prior to or at trial. The case was tried on February 6, 2024, and the parties filed posttrial briefs on March 18, 2024.

It is undisputed that the plaintiff sold a business that she owned, Connecticut Behavioral Consultants, LLC (CBC) to the defendants in October 2018. As part of the sales transaction, the defendants agreed to employ the plaintiff as manager of the in-home division of CBH for a period of one year from October 18, 2018. The plaintiff was to be paid a salary of \$100,000 and “5% of the net profit of the business the in-home division generates upon contract onset and other new business generated.” The salary component of the agreement is not in dispute; the parties are at odds over the 5 percent net profit provision.

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It is also undisputed that after the original contract period ended, the plaintiff remained in the employ of the defendants until she resigned. The court finds that an implied contract, with the same terms as the original contract, existed during the plaintiff's continued employment after the original contract expired. The plaintiff's letter of resignation was effective August 30, 2020. Defs.' Ex. L.

During the period of her employment, the plaintiff requested the defendants pay to her the 5 percent profit sharing amount. She also sought information as to the amount of net profits earned by the in-home division. The defendants did give the plaintiff money over and above her salary. The defendants also provided some financial information, but the plaintiff was not satisfied with the information provided. After the plaintiff left the defendants' employment, she brought this action in December 2020.

It is undisputed that the defendants paid the plaintiff sums of money over and above her salary, which the defendants maintain represents payment of profit sharing from the in-home division. During the initial contract period, the payments of profit sharing totaled \$24,500. After the initial contract period, the plaintiff received additional amounts over her salary totaling \$11,000. The total amount received by the plaintiff, which was above her salary, during her employment was \$35,500.

The only evidence related to the amount of net profits earned by the in-home division during the plaintiff's employment is contained in the plaintiff's Exhibits 3 and 4. These exhibits show that the net profits for the in-home division from October 18, 2018, the start date of the plaintiff's employment, to August 30, 2020, the effective date of plaintiff's resignation, totaled \$361,015. If this amount of net profits is used to calculate the 5 percent profit sharing amount due to the plaintiff, the result is \$18,050.75. As noted earlier, the plaintiff received \$35,500 in addition

to her salary during the approximate two year period of employment with the defendants.

The plaintiff withdrew her claims for breach of contract and wrongful taking of money prior to trial. It should be noted that the plaintiff did not bring an action for accounting pursuant to General Statutes § 52-401. It does appear that the plaintiff made efforts during the course of this litigation to obtain financial information from the defendants related to the revenue and net profits of the in-home division. It also appears that some financial information was produced by the defendants. The plaintiff states in her posttrial brief that “[b]ased on the information finally obtained through discovery and the knowledge of what remains missing, Plaintiff withdrew her breach of contract claims due to the prohibitive expense, and likely impossibility, of recreating [the defendants] books to ascertain what she is owed.”

With regard to the remaining breach of fiduciary duty and breach of the covenant of good faith and fair dealing, the plaintiff requests an award of nominal damages in each count. Of greater significance, the plaintiff requests punitive damages, in the form of attorneys fees, in both of the remaining counts.

Breach of fiduciary duty, counts three and four.

“[T]he plaintiff in this case had the burden of establishing four essential elements with respect to her claim of breach of fiduciary duty: “[1] [t]hat a fiduciary relationship existed which gave rise to . . . a duty of loyalty . . . an obligation . . . to act in the best interests of the plaintiff, and . . . an obligation . . . to act in good faith in any matter relating to the plaintiff; [2] [t]hat the defendant advanced his or her own interests to the detriment of the plaintiff; [3] [t]hat the plaintiff sustained damages; [and] [4] [t]hat the damages were proximately caused by the fiduciary’s breach of his or her fiduciary duty.” (Emphasis omitted.) *Rendahl v. Peluso*, 173 Conn. App. 66, 100, 162 A.3d 1 (2017), overruled on other grounds by *Barash v. Lembo*, 348 Conn. 264, 303 A.3d 577 (2023).

It is not necessary to make a conclusive finding regarding the first element, fiduciary

relationship, since the court finds that the plaintiff has not satisfied the second and third elements of her claim. As to the third element, damages sustained, after careful consideration of the evidence presented at trial, the court finds that the plaintiff has not established that she sustained damages as a result of the actions of the defendants.

It is apparent that the original agreement between the parties, which provided for the 5 percent profit sharing, did not contain terms regarding the timing of payment or the sharing of financial information. It is understandable that the plaintiff determined it was necessary for her to bring suit against the defendants to recover what she believed was due to her. Undoubtedly, she has incurred expenses for the services of her counsel, but that fact alone does not establish that she has sustained damages. The plaintiff has withdrawn her claims for breach of contract; consequently, she cannot establish that the defendants have not paid moneys due to her under the contract. To the contrary, as discussed above, based upon the only financial information submitted in this case, the defendants have paid the plaintiff more than she was owed under the contract. Thus, the plaintiff has not satisfied her burden to prove she has sustained damages.

As to the second element, the plaintiff has not established that the defendants have advanced their own interests to her detriment. It is undisputed that the defendants made substantial payments on account of their profit sharing obligation during the course of the plaintiff's employment. This is not a case where the defendants did not make any payments to the plaintiff until after she left her employment. Although she may not be satisfied, the evidence clearly shows that she was paid more money above her salary than she was due.

As stated earlier, the plaintiff seeks punitive damages. In a similar case, *News America Marketing In-Store, Inc. v. Marquis*, 86 Conn. App. 527, 538, 862 A.2d 837 (2004), *aff'd*, 276 Conn.

310, 885 A.2d 758 (2005), the court stated: “The plaintiff sought punitive damages at common law in its prayer for relief. Although the plaintiff alleged in count one that [the defendant] had committed tortious, illegal acts constituting ‘gross misconduct’ and that he was ‘radically unfaithful’ to the trust placed in him by the plaintiff, the plaintiff is not entitled to such damages for two reasons. First, without an underlying judgment of liability, the plaintiff cannot recover punitive damages at common law. Second, punitive damages cannot be awarded in tort cases unless the evidence shows a reckless indifference to the rights of others or an intentional and wanton violation of those rights.” *Id.*, 538.

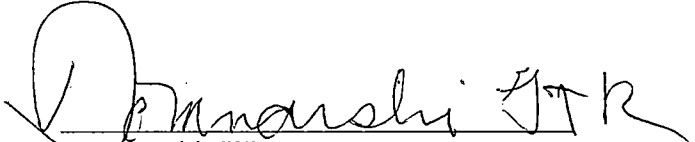
Here, like the plaintiff in *News America*, Waz has not obtained an underlying judgment of liability, and she has failed to show reckless indifference to, or wanton violation of her rights. Since the plaintiff has not established her claim, it is not necessary to address the defendants’ special defenses to this count. Judgment may enter in favor of the defendants on counts three and four of the complaint.

Breach of the covenant of good faith and fair dealing, counts five and six.

“To constitute a breach of [the implied covenant of good faith and fair dealing], the acts by which a defendant allegedly impedes the plaintiff’s right to receive benefits that he or she reasonably expected to receive under the contract must have been taken in bad faith. . . . Bad faith in general implies . . . actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one’s rights or duties, but by some interested or sinister motive. . . . Bad faith means more than mere negligence; it involves a dishonest purpose. . . . Bad faith may be overt or may consist of inaction, and it may include evasion of the spirit of the bargain [W]hen one party performs the contract in a manner that is unfaithful to the purpose of the contract and the justified expectations of the other party are thus denied, there is a breach of the covenant of good faith and fair dealing, and hence, a breach of contract, for which damages may be recovered” (Citations omitted; internal quotation marks omitted.) *Geysen v. Securitas Security Services USA, Inc.*, 322 Conn. 385, 399-400 (2016).

As discussed earlier, the plaintiff has not established that she has suffered damages from a claimed breach of the profit sharing provision of the original contract between the parties. Furthermore, the court cannot find that the defendants acted in bad faith. In view of the fact that the defendants made substantial payments to the plaintiff, over and above her salary, during the course of her employment, the court cannot find that the defendants acted fraudulently, deceptively, or with sinister motive or dishonest purpose.

Since the plaintiff has not established her claim of breach of the covenant of good faith and fair dealing, it is not necessary to address the defendants' special defenses to this count. Judgment may enter in favor of the defendants on counts five and six.


Demnarski, JTR