IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

KEVIN S. DENNY Plaintiff	: APRIL TERM, 2000
	: No. 3792
v.	:
PRIMEDICA ARGUS RESEARCH LABORATORIES, INC., Defendant	:
	: Control No. 012256

O R D E R

AND NOW, this 2nd day of May 2001, upon consideration of defendant's Preliminary Objections to the Third Amended Complaint, the plaintiff's opposition thereto, the respective memoranda, all matters of record and in accord with the Opinion being filed contemporaneously with this Order, it is hereby **ORDERED** that the Preliminary Objections are **Overruled**.

It is further **ORDERED** that defendant shall file an Answer to the Third Amended Complaint within twenty-two (22) days of the date of this Order.

BY THE COURT,

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ALBERT W. SHEPPARD, JR., J.

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O P I N I O N

Albert W. Sheppard, Jr., J. .... May 2, 2001

Presently before this court are the Preliminary Objections of defendant, Primedica Argus Research Laboratories, Inc. ("Argus") to the Third Amended Complaint ("Complaint") of plaintiff, Kevin S. Denny ("Denny").

For the reasons set forth, the Preliminary Objections are overruled.

BACKGROUND

The operative facts, as pleaded in the Complaint[1], are as follows. Argus is a division of Genzyme Transgenics Corporation ("GTC"). Compl. at ¶ 7. By letter dated August 29, 1997, Argus offered Denny the position of study director at an annual salary of eighty-five thousand dollars ($85,000) ("the offer"). Compl. at ¶ 6. See Compl., Exhibit - Letter to Denny, dated August 29, 1997 ("Exhibit P-1"). The terms of the offer included the grant of 6000 stock options, at the prevailing market rate on the date of hire. Compl. at ¶ 7; Exhibit P-1. Specifically, the offer provided that "[t]hese stock options are vested over a period of four years, with the first 20% vested at time of grant." Exhibit P-1, at 1.. The offer also stated that it "is contingent upon successful completion of a pre-employment physical including drug screen, upon [Denny's] ability to produce the proper employment eligibility documents within three working days of [his] start date, and upon signature of GTC's Confidentiality and Severance Agreements." Id. at 2.

On September 29, 1997, Denny accepted Argus's offer by countersigning the letter. Compl. at ¶ 8. Denny reported to work on December 8, 1997 and performed his obligation under the "contract of hire." Id. at ¶¶ 9, 11. On the date of hire, the market price of GTC's stock was $12.19 per share. Id. at ¶ 15. Argus has allegedly refused to grant four thousand (4000) of the six thousand (6000) stock options as promised. Id. at ¶ 13. Additionally, three thousand, six hundred (3600) stock options would have vested no later than December 8, 1999 and Denny would have exercised these options when

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[1]The Third Amended Complaint is to be treated as the only complaint before this court as it supersedes all previously filed complaints. See Vetenshtein v. City of Philadelphia, 755 A.2d 62, 67 (Pa.Commw.Ct. 2000)(an amended complaint virtually withdraws the original complaint and takes its place)(citations omitted).

the market price was approximately $50.00 pershare. Id. at ¶ 17.

With this background, Denny filed his Complaint, setting forth counts for breach of contract and for a violation of the Pennsylvania Wage Payment and Collection Law, 43 P.S. §§ 260.1 et seq ("WPCL"). Compl., Counts I & II. In response, Argus filed Preliminary Objections, setting forth demurrers to both counts.

LEGAL STANDARD

Rule 1028(a)(4) of the Pennsylvania Rules of Civil Procedure [Pa.R.C.P.] allows for preliminary objections based on legal insufficiency of a pleading or a demurrer. When reviewing preliminary objections in the form of a demurrer, "all well-pleaded material, factual averments and all inferences fairly deducible therefrom" are presumed to be true. Tucker v. Philadelphia Daily News, 757 A.2d 938, 941-42 (Pa.Super.Ct. 2000). Preliminary objections, whose end result would be the dismissal of a cause of action, should be sustained only where "it is clear and free from doubt from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish [its] right to relief." Bourke v. Kazara, 746 A.2d 642, 643 (Pa.Super.Ct. 2000)(citation omitted). Moreover,

> [I]t is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit recovery. If there is any doubt, it should be resolved by the overruling of the demurrer. Put simply, the question presented by demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible.

Bailey v. Storlazzi, 729 A.2d 1206, 1211 (Pa.Super.Ct. 1999). However, the pleaders' conclusions of law, unwarranted inferences from the facts, argumentative allegations, or expressions of opinions are not considered to be admitted as true. Giordano v. Ridge, 737 A.2d 350, 352 (Pa.Commw.Ct. 1999), aff'd. 559 Pa. 283, 739 A.2d 1052 (1999), cert. denied, 121 S.Ct. 307 (U.S. 2000). In addition, it is not

necessary to accept as true averments in the complaint which conflict with exhibits attached to the complaint. Philmar Mid-Atlantic, Inc. v. York Street Associates II, 389 Pa.Super. 297, 300, 566 A.2d 1253, 1254 (1989).

DISCUSSION

In support of its Preliminary Objections, defendant argues (1) that plaintiff has failed to establish an employment contract that would rebut the presumption that Denny's relationship with Argus was "at-will" and Argus is therefore not obligated to maintain the terms set out in the offer letter; and (2) that absent a contract, Denny has no right to the stock options under the WPCL.

This court finds no merit in either argument.

First, to establish a cause of action for breach of contract, the plaintiff must allege "(1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract and (3) resultant damages." Williams v. Nationwide Mutual Ins. Co., 750 A.2d 881, 884 (Pa.Super.Ct. 2000)(citing CoreStates Bank, N.A. v. Cutillo, 723 A.2d 1053, 1058 (Pa.Super. 1999) (citations omitted). Further, "[w]hile not every term of a contract must be stated in complete detail, every element must be specifically pleaded." Corestates, 723 A.2d at 1058. In order to form a contract, there must be an offer, acceptance, and consideration or mutual meeting of the minds. Jenkins v. County of Schuylkill, 441 Pa.Super. 642, 648, 658 A.2d 380, 383 (1995). Additionally, the first essential of any contract requires an offer or promise to be definite and certain. GMH Assocs., Inc. v. The Prudential Realty Group, 2000 WL 228918, at *6 (Pa.Super.Ct. Mar. 1, 2000) (citing Fahringer v. Strine Estate, 429 Pa. 48, 59, 216 A.2d 82, 88 (1966)).

Contrary to defendants' assertions, plaintiff clearly alleged the existence of an enforceable contract. First, plaintiff alleged that defendant made a written offer to hire plaintiff for the position of study director, and that this offer included the grant of 6000 stock options of GTC at the prevailing market price on the date of hire. Compl. at ¶¶ 6-7. As provided in the offer, these stock options would vest over a period of four years, with the first 20% to be vested at the time of the grant. Exhibit P-1. Plaintiff also alleged that he accepted defendant's offer by countersigning it and reporting for work. Compl. at ¶¶ 8-9. Additionally, plaintiff alleged that defendant received good and valuable consideration in the form of plaintiff's services as defendant's employee and that "[p]laintiff performed his obligation under the contract of hire, including reporting for work as agreed." Id. at ¶ 11. Plaintiff also alleged that defendant breached this "contract of hire" by refusing to grant 4000 of the 6000 stock options and that plaintiff has been damaged as a result. Id. at ¶¶ 14, 17-18. Accepting these allegations as true, this court finds that plaintiff has sufficiently stated a cause of action for a breach of contract.

Moreover, the cases relied upon by defendant are distinguishable in that they address situations where the employee was terminated and/or the employee was no longer working for the defendant company. See, e.g., Nix v. Temple Univ. of the Commonwealth Sys. of Higher Educ., 408 Pa.Super. 369, 375-76, 596 A.2d 1132, 1135-36 (1991)(holding that former employee failed to prove existence of employment contract for a definite period of time to negate presumption of at-will employment in order to establish breach of contract for wrongful discharge); Fetter v. Reading Energy Holdings, Inc., 1991 WL 354880, at *4 (C.P. Phila. Jan. 8, 1991)(Wright, J.)(holding that letter offering employment, which also set forth terms of employment including option to purchase shares of stock, was insufficient to rebut presumption that plaintiff was an at-will employee who could be terminated for any reason where

letter did not set forth definite term for employment);[2] McIntyre v. Philadelphia Suburban Corp., 90 F.Supp.2d 596, 599-600 (E.D.Pa. 2000)(holding that retired executive failed to state a cause of action for breach of contract where the clear language of stock option plan permitted committee to deny stock options which had not vested during the plaintiff's employment); Dulvall v. Polymer Corp., 1995 WL 581910, at **14-15 (E.D.Pa. Oct. 2, 1995)(granting summary judgment in favor of employer where discharged employee did not establish a cause of action for breach of an implied employment contract since no evidence was presented demonstrating a specific or definite duration of employment).

Here, Denny is still employed with Argus. Further, it is undisputed that Denny is an at-will employee. See Pl. Mem. of Law, at 6. The fact that Denny characterized his agreement with Argus as a "contract of hire" does not bring into play the at-will employment doctrine. Rather, Denny's complaint can be viewed as suit on a "stock option agreement." Through this action, Denny seeks to obtain the stock options which were promised to him as incident to his hiring. Determining exactly how many stock options have actually vested and their value will be the ultimate questions in this case. However, the allegations are sufficient to make out a cause of action for breach of contract. Thus, the demurrer to Count I is overruled.

This court also disagrees with defendant's argument that Denny has no claim under the WPCL on the grounds that he did not earn the stock options he seeks and has no contractual right to them.

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[2]In Fetter, the court also held that express language of shareholders agreement, signed by the plaintiff when he purchased company stock, permitted company to repurchase plaintiff's (Footnote 2 - continued)
shares at the original value upon the plaintiff's termination. 1991 WL 354880, at *5. That case remains inapplicable since there is no such agreement alleged here and Denny remains employed with Argus.

In resolving this issue, this court notes certain considerations recognized by the Pennsylvania Superior Court:

> Pennsylvania enacted the WPCL to provide a vehicle for employees to enforce payment of their wages and compensation held by their employers. The underlying purpose of the WPCL is to remove some of the obstacles employees face in litigation by providing them with a statutory remedy when an employer breaches its contractual obligation to pay wages. The WPCL does not create an employee's substantive right to compensation; rather, it only establishes an employee's right to enforce payment of wages and compensation to which an employee is otherwise entitled by the terms of an agreement.

Kafando v. Erie Ceramic Arts Company, 764 A.2d 59, 61 (Pa.Super.Ct. 2000)(citing Hartman v. Baker, 766 A.2d 347, 352 (Pa.Super.Ct. 2000)(citations and internal quotation marks omitted). The term "wages" is broadly defined by the WPCL as encompassing "all earnings of an employee, regardless of whether determined on time, task, piece, commission or other method of calculation" and "includes fringe benefits or wage supplements whether payable by the employer from his funds or from amounts withheld from the employes' pay by the employer." 43 P.S. § 260.2a. "Fringe benefits or wage supplements" includes, in relevant part, "separation expenses . . . and any other amount to be paid pursuant to an agreement to the employe, a third party or fund for the benefit of employes." Id.

In Hartman, the court held that the employee's equity interest, which was provided in exchange for a reduction in the employee's pay structure, constituted "wages" under the WPCL since it was offered to the employee and was not unrelated to his employment with the defendant company. 766 A.2d at 353. Moreover, the Hartman court noted the shortage of Pennsylvania cases applying the WPCL's definitions and looked to federal cases for guidance. Id. Specifically, in Bowers v. NETI Technologies, 690 F.Supp. 349, 353 (E.D.Pa. 1988), the court held that the stock repurchase payments, which were offered to employees when they first joined the company, were "wages" under the WPCL in

that they were payments pursuant to an agreement, even though they were not provided to employees on a weekly or annual basis. See also, Keck v. Trifoods Int'l., Inc., 1996 WL 665536, at **4-5 (E.D.Pa. Nov. 12, 1996) (finding that WPCL allowed recovery on written stock option plan, in contrast to wage supplements where at-will employee acquiesced to their diminishment); Regier v. Rhone-Poulenc Rorer, Inc., 1995 WL 395948, at *7 (E.D.Pa. June 30, 1995)(holding that plaintiff was entitled to attorneys' fees and penalty under the WPCL where the stock options were granted to the plaintiff in the course of his employment and were intended as compensation). But see, McIntyre, 90 F.Supp.2d at 603 (denying WPCL claim where retired employee failed to establish breach of contract claim to recover stock options which had not vested under stock option plan).

Here, pursuant to Argus's offer of employment, the 6000 stock options, which were to be valued as of the date which Denny was hired, were supposed to vest over a period of four years, with the first 20% to be vested at the time of the grant. Exhibit P-1, at 1. Denny counter-signed this offer on September 29, 1997, but he reported for work on December 8, 1997. Compl. at ¶¶ 8-9. As alleged, 3600 stock options would have vested no later than December 8, 1999. Id. at ¶ 17. Denny remains an employee of Argus, and all 6000 stock options have the potential to vest provided Denny continues to remain in Argus' employ.

In summary, there is no merit to defendant's argument regarding plaintiff's WPCL claim, and thus, the demurrer to Count II is also overruled.

CONCLUSION

For the reasons set forth, this court will enter a contemporaneous Order overruling the Preliminary Objections.

BY THE COURT,

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ALBERT W. SHEPPARD, JR., J.