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

CHARLES HOKANSON,	:	FEBRUARY TERM, 2009
	:	
Plaintiff,	:	NO. 003158
	:	
v.	:	COMMERCE PROGRAM
	:	
VYGON US, LLC, et al.,	:	Control No. 09042373
Defendants.	:	

ORDER

AND NOW, this 28th day of August, 2009, in accord with the Opinion issued simultaneously, it is **ORDERED** that defendants' Preliminary Objections to the Complaint are **OVERRULED**. Defendants shall file an Answer to the Complaint within twenty (20) days of the date of entry of this Order.

BY THE COURT,

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MARK I. BERNSTEIN, J.

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OPINION

Plaintiff Charles Hokanson ("Hokanson") filed this action against Vygon US LLC, Vygon Corporation, Vygon S.A., and Laboratories Pharmaceutiques Vygon (collectively "Vygon") claiming wrongful termination and seeking rescission of his second employment contract as well as monetary damages pursuant to his first employment contract. Hokanson signed his first contract in 2003, and signed a new contract in 2008. The 2008 contract reduced his severance pay from two years' salary to six months' salary. Hokanson claims he was induced to enter into the 2008 contract by defendants' false representations that he would receive additional monetary bonuses to compensate for the adverse changes in contract terms. Vygon filed Preliminary Objections demurring to Count III of the Complaint and moving to strike Paragraph 8 of the Complaint for failure to conform to a rule of the court.

In 2003, Hokanson entered into an employment contract with Vygon to work as CEO of Vygon US. The employment contract specifically stated that its term was "indefinite" and could be terminated "at any time by either party on 30 days' notice." If Vygon terminated Hokanson for "cause," no severance payment would be due, but if Vygon

terminated for any reason other than for "cause," Hokanson would be entitled to receive 24 months of his contractual base salary as severance payment.

In 2006 and 2007, Hokanson made the decision to scrap certain medical devices manufactured by Vygon because they had defects that rendered them unsafe for their intended uses. Vygon terminated Hokanson's employment on July 21, 2008. The reason given for termination was an interview Hokanson had given about Vygon's business dealings with Iran. Hokanson claims he was wrongfully terminated for scrapping the defective medical devices. [1]

Vygon objects that Hokanson's wrongful termination claim is not supported by the alleged facts. Wrongful discharge in violation of public policy occurs when an employee is discharged for refusing to commit a crime[2]. Putting a defective catheter on the market could have constituted the sale of an adulterated device, which is a prohibited act subject to criminal penalties.[3] If Hokanson was terminated for scrapping the defective devices, he may have been discharged for refusing to commit a crime. Accordingly, plaintiff has adequately pled a wrongful termination claim.

Vygon claims that a wrongful termination claim for violation of public policy can only be brought by an "at will" employee, and Hokanson was not "at will" because he had an

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[1] Complaint, ¶ 84.

[2] Denton v. Silver Stream Nursing & Rehab Ctr., 739 A.2d 571 (Pa. Super 1999).

[3] Prohibited acts; penalties

(1) The manufacture, sale or delivery, holding, offering for sale, or possession of any controlled substance, other drug, device or cosmetic that is adulterated or misbranded."

* * *

"(b) Any person who violates any of the provisions of clauses (1) … shall be guilty of a misdemeanor and … on conviction thereof, be sentenced to imprisonment not exceeding on year or to pay a fine not exceeding five thousand dollars or both.

35 Pa. C.S. 780-113

employment contract. Pennsylvania courts have ruled numerous times that the tort of wrongful discharge is available when the employment relationship is "at will".[4] "At will" employment simply means that "absent a statutory or contractual provision to the contrary, the law has taken for granted the power of either party to terminate an employment relationship for any or no reason[5]." In the instant case, Hokanson had an employment contract which permitted either party to terminate for any reason. If the employer terminated for any reason other than "for cause" Hokanson would receive compensation. Even though Hokanson signed a contract, it was a contract for "at will" employment since it was expressly stated that either party could terminate. Hokanson qualifies as an "at will" employee for the purpose of bringing a wrongful termination claim. Accordingly, defendant's preliminary objection to Count III is overruled.

Vygon also objects to Paragraph 8 of the Complaint for failure to conform to a rule of court. Paragraph 8 states:

> "8. At all times relevant hereto, the actions which could permissibly be taken by the officers and/or directors of Vygon and Vygon US were all subject to the over-arching control, right to control, and direction of Vygon S.A. and/or LPV, which at all times maintained the right to control the actions which their US-based subsidiaries took and the manner in which they were taken. As such, Vygon S.A. and/or LPV acted comprehensively, systematically and regularly as part of the integrated organization whereby Vygon S.A. and/or LPV would act as the ultimate source(s) of authority for major decisions and transactions."

Defendants claim that Vygon S.A. and LPV did not employ plaintiff and that Vygon S.A. and LPV's actions are not elaborated in the Complaint. Hokanson claims that Vygon

[4] *See* Phillips v. Babcock & Wilcox, 503 A.2d 36, 349 Pa. Super 351 (1985); Cairns v. SEPTA, 538 A.2d 659, (Pa. Cmwlth. 1988).

[5] Geary v. United States Steel Corp., 319 A.2d 174, 456 Pa. 171 (1974).

S.A and LPV at all times maintained control over Vygon US.[6] He alleges that Stephane Regnault, the director of Vygon S.A., directly fired Hokanson. He also alleges that Vygon S.A. and LPV were the parties that "decided to oust Hokanson" under the reduced severance pay package in the 2008 contract.[7] Hokanson's allegations against Vygon S.A. and LPV are sufficient to survive preliminary objection.

BY THE COURT,

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MARK I. BERNSTEIN, J.

[6] Complaint, ¶ 57.

[7] Complaint, ¶ 64.