

IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CHENEY BROS, INC.,  
a Florida Corporation  
Plaintiff,

vs.

Case No. 2023-CA-001432

WESLEY RICHARDS,  
Defendant.

\_\_\_\_\_ /

**MOTION TO DISMISS PLAINTIFF'S COMPLAINT<sup>1</sup>**  
**WITH INCORPORATED MEMORANDUM OF LAW**

COMES NOW the Defendant, WESLEY RICHARDS, by and through his undersigned counsel,  
and files this Motion to Dismiss and states as follows:

**Standard for Dismissal**

A motion to dismiss should be granted where the complaint fails to state a claim upon which relief may be granted. Fla. R. Civ. P. 1.140(b)(6). Specifically, a motion to dismiss tests the legal sufficiency of a complaint by questioning whether the complaint sets forth sufficient factual allegations to state a cause of action under Florida law. McWhirter, Reeves McGothlin, Davidson, Rief & Bakass, P.A., 704 So. 2d 214, 215 (Fla. 2d DCA 1998).

"For purposes of a motion to dismiss, the Court must accept any well-pled facts of the plaintiff's complaint as true." Impulsora De Productos Sustentables S.A.P. v. Garcia, 2022 Fla. Cir. LEXIS 2546, \*5-6 quoting Ins. Concepts and Design, Inc. v. Healthplan Svc, Inc., 785 So. 2d 1232, 1333 (Fla. 4th DCA 2001). In order to state a proper cause of action, "a complaint must allege

<sup>1</sup> For purposes of this Motion only, Defendant will accept the allegations set forth in Plaintiff's Complaint as true.

sufficient ultimate facts to show that the pleader is entitled to relief." MEBA Med. & Benefits Plan v. Lago, 869 So. 2d 1184, 1186 (Fla. 4th DCA 2004). "[A] pleading is deemed insufficient if it contains mere statements of opinion or conclusions unsupported by specific, ultimate facts." Turnberry Village N. Tower Condo. Ass'n, Inc. v. Turnberry S. Tower Condo. Ass'n, Inc., 224 So. 3d 266, 267 (Fla. 3d DCA 2017) (conclusory allegations are insufficient to withstand a motion to dismiss).

### **Count I-Fraud in the Inducement**

To state a cause of action for Fraud in the Inducement, Plaintiff must show (1) a false statement of material fact; (2) the maker of the false statement knew or should have known of the falsity of the statement; (3) the maker intended that the false statement induce another's reliance; and (4) the other party justifiably relied on the false statement to its detriment. Maroone Chevrolet, LLC v. Alvarado, 344 So. 3d 459, 466 (Fla. 4th DCA 2022) citing Prieto v. Smook, Inc., 97 So. 3d 916, 917 (Fla. 4th DCA 2012) (quoting Shakespeare Found., Inc. v. Jackson, 61 So. 3d 1194, 1199 n.1 (Fla. 1st DCA 2011)).

Here, the Plaintiff states that in the fourth quarter of 2022, it determined that it needed to replace the existing aircraft. See Plaintiff's Complaint, paragraph 7. Plaintiff alleges that Defendant made a misrepresentation/false statement to Plaintiff regarding his intentions. See Plaintiff's Complaint paragraph 18. According to the Complaint, Defendant "knew or should have known that the representation/statement was false." See Plaintiff's Complaint, paragraph 19. Additionally, the Complaint alleges that Defendant intended for the representation/statement to induce Plaintiff to rely and act on it. See Plaintiff's Complaint, paragraph 20. The only substantive fact that Plaintiff alleges is that Defendant made an acknowledgement and representation to

Plaintiff, who at the time was his employer, that he intended to remain employed and operate the new aircraft. See Plaintiff's Complaint paragraph 12. The Complaint fails to state any details about when this representation was allegedly made, to whom, and the details of the statement. These insufficiencies alone warrant dismissal of the claim for failure to state a cause of action.

Regardless, even if detailed facts had been alleged, the claim still fails as a matter of law. Case law has held that it is not reasonable for an employee to rely on a promise of continued at-will employment. Martinez v. Goodwill Indus. of S. Fla., Inc., 2011 U.S. Dist. LEXIS 165897, at \*11-12 (S.D. Fla. 2011) citing Leonardi v. City of Hollywood, 715 So.2d 1007, 1009 (Fla. 4th DCA 1998) ("reliance on a promise consisting solely of at-will employment is unreasonable as a matter of law" since "an employer who promises at-will employment has the right to renege on that promise at any time for any reason"); see also O'Rear v. American Family Life Assur. Co. of Columbus, Inc., 784 F.Supp. 1561, 1567 (M.D. Fla. 1992) (terminated employee could not reasonably rely on any purported misrepresentation of perpetual employment in light of at-will employment status); Escarra v. Regions Bank, 353 Fed. Appx. 401 (11 Cir. 2009) (terminated employee could not demonstrate reasonable reliance on continued at-will employment, since the alleged promise did not change the at-will nature of her employment). Likewise, an employer is not justified in relying on an at-will employee's representation that he will continue his employment since the at-will employee has the right to leave employment at any time. Since any reliance of a promise to continue his at-will employment cannot be reasonably relied upon by the employer, Plaintiff cannot meet the fourth element required to state a cause of action for Fraud in the Inducement. Based on the foregoing, Count I should be dismissed with prejudice.

## Count II-Fraudulent Misrepresentation

The elements of fraudulent misrepresentation are: (1) a false statement concerning a material fact; (2) knowledge of the person making the statement that it is false; (3) an intention that the false statement induce another to act on it; and (4) consequent injury by the party acting in reliance on the representation. Off the Wall & Gameroom LLC v. Gabbai, 301 So. 3d 281 (Fla. 4th DCA 2020) citing Butler v. Yusem, 44 So. 3d 102, 105 (Fla. 2010); see also Johnson v. Davis, 480 So. 2d 625, 627 (Fla. 1985).

Here, the Plaintiff alleges that all of the pilots were required to complete comprehensive training and certification on the new aircraft. See Plaintiff's Complaint, paragraph 9. It is inconsistent for the Plaintiff to admit that all of the pilots they employed were required to undergo training and obtain certification for the new aircraft, but then claim that the only reason Defendant was sent to the training was because Plaintiff relied on his representation that he intended to remain employed with Plaintiff. Further, Plaintiff's Complaint states that Plaintiff received confirmation that Defendant had applied for other employment within 30 days of completing the additional training and receiving the upgraded certification. See Plaintiff's Complaint, paragraph 13. According to Plaintiff, Defendant applied for other employment and/or knew he would be applying for other employment when he made the representation that he would remain employed and accepted the additional training and upgraded certification. See Plaintiff's Complaint, paragraph 14. Clearly, these do not meet the pleading requirements to withstand a Motion to Dismiss. The Complaint fails to contain allegations about how long the Defendant remained employed by Plaintiff after completing the training and the number of times

that Defendant flew the new aircraft. Based on the foregoing, Plaintiff's claim for Fraudulent Misrepresentation should be dismissed.

### **Count III-Quantum Meruit**

To satisfy the elements of quantum meruit, the plaintiff must prove that "the plaintiff provided, and the defendant assented to and received, a benefit in the form of goods or services under circumstances where, in the ordinary course of common events, a reasonable person receiving such a benefit normally would expect to pay for it." Paschen v. B&B Site Dev., Inc., 311 So. 3d 39, 48 (Fla. 4th DCA 2021) citing W.R. Townsend Contracting, Inc. v. Jensen Civil Constr., Inc., 728 So. 2d 297, 305 (Fla. 1st DCA 1999). Again, the Plaintiff's own Complaint negates this claim. Plaintiff alleges that when the new aircraft was purchased, Defendant **as well as other CBI pilots** were required to complete comprehensive training and certification in order to have the ability to operate it. See Plaintiff's Complaint, paragraph 9. For Plaintiff to successfully state a cause of action against Defendant for Quantum Meruit, the Plaintiff would have to allege that all the other pilots who received the same training and same certification are expected to pay for it. Based on the foregoing, Count III should be dismissed.

### **Count IV-Unjust Enrichment**

"The elements of an unjust enrichment claim are 'a benefit conferred upon a defendant by the plaintiff, the defendant's appreciation of the benefit, and the defendant's acceptance and retention of the benefit under circumstances that make it inequitable for him to retain it without

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