

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2023-CA-001432

CHENEY BROS., INC.,
a Florida Corporation,

Plaintiff,
vs.

WESLEY RICHARDS,

Defendant.

PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS

Plaintiff, Cheney Brothers, Inc. ("CBI"), by and through undersigned counsel, hereby files its Response in Opposition to Defendant's Motion to Dismiss and states the following:

A. Introduction - The Complaint

Plaintiff's Complaint sets forth three causes of action: Count I – Fraud in the Inducement, Count II – Fraudulent Misrepresentation, Count III – Quantum Meruit and Count IV – Unjust Enrichment. These claims arise out of Plaintiff's employment of Defendant, Wesley Richards ("Richards"), a pilot for CBI. The core facts, as set forth in the Complaint, are as follows:

1. In the last quarter of 2022, because CBI was replacing one of its aircraft with a newer one, Richards was required to receive comprehensive training and certification for the new aircraft. Compl. ¶¶7 and 9.
2. Richards was provided the training and obtained the required certification to fly the new aircraft at the expense of CBI. Compl. ¶¶11 and 12.
3. Moreover, Richards acknowledged and represented to CBI that he intended to remain with CBI and operate the new aircraft. Compl. ¶12.

4. Richards applied for other employment and/or knew he would be applying for other employment at the time he made his acknowledgement and representation to CBI and when he accepted the additional training and upgraded certification. Compl. ¶14.
5. CBI learned that Richards had applied for the other employment within thirty days of completing the training and certification. Compl. ¶13.
6. CBI would not have paid for the upgraded training and certification had Richards advised it of his true intentions, ie. to leave CBI and use the new credentials with another company. Compl. ¶15.

B. Defendant's Motion to Dismiss

Defendant has filed a Motion to Dismiss all four counts of the Complaint, and seeks dismissal of all counts with prejudice. Plaintiff has, in fact, adequately pled all four causes of action sufficient to withstand a Motion to Dismiss as argued below. Alternately, Plaintiff should be allowed leave to amend the Complaint. *See Horton v. Freeman*, 917 So.2d 1064, 1066 (Fla. 4th DCA 2006) (“[T]rial courts must generally afford a litigant an opportunity to cure a defect in the pleading before dismissing it with prejudice.”); *Gladstone v. Smith*, 729 So.2d 1002, 1003 (Fla. 4th DCA 1999) (“A claim should not be dismissed with prejudice without giving the plaintiff an opportunity to amend the defective pleading, unless it is apparent that the pleading cannot be amended to state a cause of action.” (citation and quotation marks omitted)).

1. Fraud in the Inducement

“To state a cause of action for fraud in the inducement, the Plaintiff must allege (a) a misrepresentation of a material fact; (b) that the representor of the misrepresentation knew or should have known of the statement's falsity; (c) that the representor intended that the representation would induce another to rely and act on it; and (d) that the plaintiff suffered injury

in justifiable reliance on the representation.” *Samuels v. King Motor Co. of Fort Lauderdale*, 782 So.2d 489, 497 (Fla. 4th DCA 2001). Furthermore, “[i]n order for a claim of fraud in the inducement to withstand a motion to dismiss, it must allege fraud with the requisite particularity required by Florida Rule of Civil Procedure 1.120(b), including who made the false statement, the substance of the false statement, the time frame in which it was made and the context in which the statement was made.” *Bankers Mut. Capital Corp. v. U.S. Fid. & Guar. Co.*, 784 So.2d 485, 490 (Fla. 4th DCA 2001).

Plaintiff has complied with all of these pre-requisites in Count I of the Complaint - 1) Richards made a false statement that he intended to stay with CBI after receiving the training and certification. Compl. ¶12. 2) Richards knew that the statement concerning his intent to remain with CBI was false. Compl. ¶¶14 and 19. 3) Richards intended the false statement to induce CBI to rely and act on it, which included providing the additional training. Compl.¶14 and 20; and CBI justifiably relied on Richard’s false statements to its detriment. Compl.¶¶12, 15 and 21. Furthermore, in compliance with Rule 1.120(b), Florida Rules of Civil procedure, the Complaint succinctly states that Richards was the maker of the false statement, the contents of the statement and that it was made during the last quarter of 2022.

Accordingly, Defendant’s Motion to Dismiss Count I must be denied as Plaintiff’s Complaint complies with the pleading requirements to state a claim for fraud in the inducement.

2. Fraudulent Misrepresentation

The essential elements of a fraudulent misrepresentation claim are: (1) a false statement concerning a specific material fact; (2) the maker's knowledge that the representation is false; (3) an intention that the representation induces another's reliance; and (4) consequent injury by the other party acting in reliance on the representation. *See Ward v. Atlantic Sec. Bank*, 777 So.2d

1144, 1146 (Fla. 3d DCA 2001) (citing *Lance v. Wade*, 457 So.2d 1008, 1011 (Fla.1984)). As set forth *supra*, all of these requirements have been met in the statement of facts and allegations of Count II. *See*, Compl. ¶¶24-28. Any distinction that Defendant attempts to make based upon whether “all of the pilots” were to receive the training or just Richards, is immaterial. The key allegation is that Richards agreed to stay on with CBI based upon the specialty training he would receive for the new aircraft while he was otherwise looking for and applying for jobs elsewhere.

3. Quantum Meruit

Plaintiff has met the pleading requirements for Quantum Meruit enunciated even in the case law cited by Defendant. Plaintiff’s Complaint clearly states that Richards received valuable training and benefits that a reasonable person would expect to have to pay for. Compl. ¶¶30-32. As noted previously, Defendant’s attempt to draw a distinction as to Richards vs. “all of the pilots” is without merit and unsupported in his Motion.

4. Unjust Enrichment

Plaintiff has met the pleading requirements for Unjust Enrichment enunciated even in the case law cited by Defendant. Plaintiff’s Complaint clearly states that CBI provided Richards with valuable training and benefits (flight training, certification, travel, lodging), that were appreciated and accepted by Richards and that it would be inequitable for Richards to retain the benefits without paying for their value. Compl. ¶¶34-36. Moreover, the precise nature of these benefits has been stated in the Factual Allegations of the Complaint. Compl. ¶¶9-12. Accordingly, the claim for unjust enrichment is well pled.

5. Conclusion

In light of the forgoing, Plaintiff has sufficiently pled all counts and allegation in its Complaint and requests this honorable Court to deny Defendant’s Motion to Dismiss.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-portal this 18th day of May, 2023, to: Beth Coke, Esq., Coke Employment Law, 131 N. 2nd Street,, Suite 204, Fort Pierce, FL 34950 (beth@cokeemploymentlaw.com).

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