

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 AMENDED COMPLAINT
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:

Introduction

Plaintiff filed a Complaint to which Defendant responded with a Motion to Dismiss. This Court granted Defendant's Motion to Dismiss, giving Plaintiff the opportunity to Amend. In the Order of Dismissal, the Court cautioned that the "Plaintiff must allege with specificity the 'representation(s)' which were allegedly false" in order to comply Fla.R.Civ.P. 1.120(b) and case law. Notwithstanding, in an attempt to comply Court's Order, Plaintiff's Amended Complaint added the following allegation: that Defendant communicated in several conversations with Chief Pilot that he was seeking a salary raise, but never advised that he was, or would be, seeking employment elsewhere. See Plaintiff's Amended Complaint, paragraph 12. Plaintiff's Amended Complaint also alleges that, prior to or during the course of his training, Defendant hired a recruiter.¹ See Plaintiff's Amended Complaint, paragraph 13. Finally, Plaintiff's Amended

¹ If Plaintiff's Amended Complaint survives this Motion to Dismiss, Defendant will be contesting certain allegations in the Amended Complaint, but for purposes of this Motion only, Defendant will accept all allegations as true.

Complaint alleges that, prior to accepting training, Defendant failed to advise Plaintiff that he was looking to work with another aviation company piloting the plane for which he was being trained and certified. See Plaintiff's Amended Complaint, paragraph 14. These additional allegations, as discussed more fully under the respective Counts, still fail to state causes of action. Based on the foregoing, Plaintiff's Amended Complaint should be dismissed with prejudice.

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 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)).

In the Amended Complaint, Plaintiff claims that Defendant communicated in several conversations with the Chief Pilot, Ivan Brenes, that he was seeking a salary raise, but never advised that he was, or would be, seeking employment elsewhere. See Plaintiff's Amended Complaint, paragraph 12. Plaintiff also alleges that Defendant, both prior to and during the training and certification, failed to advise that he was seeking work with another aviation company piloting and using the training and certification that he was about to undertake at Plaintiff's expense. See Plaintiff's Amended Complaint, paragraphs 14 & 15. However, nowhere in the Amended Complaint does Plaintiff alleges that the Defendant made a false statement of material fact. Rather Plaintiff attempts to rely on Defendant's alleged omission, noting that Florida law recognizes that fraud can occur by omission, without citing any supporting case law. Even where the Southern District of Florida found that an omission is sufficient to state a cause of action for Fraud in the Inducement, the Court noted that the claim is "premised on fraudulent misrepresentations or omissions made *prior* to the execution of a contract that induced the plaintiff to enter into that contract." Trafalgar Cap. Specialized Inv. Fund, FIS v. Atl. Energy Sols., Inc., 2010 U.S. Dist. LEXIS 154970 (S.D. Fla. 2010).

Here, there is no contract. Additionally, Plaintiff's own allegations are that the purchase of the new aircraft required Defendant, **as well as the other CBI pilots**, to complete comprehensive training and certification in order to have the ability to operate it. See Plaintiff's Amended Complaint, paragraph 9. Therefore, the alleged omissions made by Defendant did not induce Plaintiff to send him to training, as all its pilots were required to complete the training and obtain certification.

Plaintiff failed to meet the first element to state a cause of action for Fraud in the Inducement. Even if the Court were to find that Defendant's omission was sufficient to meet that element, Plaintiff cannot show that it was relied on since Plaintiff sent all the pilots it employed for the training and certification. Since Plaintiff has already had an opportunity to Amend the Complaint to state a cause of action, this Count should be dismissed with prejudice.

Count II-Fraudulent Misrepresentation

The elements of fraudulent misrepresentation are: "(1) a false statement concerning a material fact; (2) the representor's knowledge that the representation is false; (3) an intention that the representation 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) (quoting Johnson v. Davis, 480 So. 2d 625, 627 (Fla. 1985)).

Just as in Count I, Plaintiff unsuccessfully attempts to allege that Defendant has engaged in Fraudulent Misrepresentation by omission and that Plaintiff relied on that omission to send Defendant for training. For the same reasons set forth under Count I, Count II should also be dismissed with prejudice.

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).

Plaintiff's Amended Complaint still contains the factual allegations that the purchase of the new aircraft required Defendant, **as well as the other CBI pilots**, to complete comprehensive training and certification in order to have the ability to operate it. See Plaintiff's Amended Complaint, paragraph 9. Notably, Plaintiff's Amended Complaint does not allege that the other pilots who received the same training and same certification are expected to pay for it. Again, as Plaintiff has already had an opportunity to attempt to cure the deficiency by filing an Amended Complaint, the Court should dismiss this Count with prejudice.

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 paying the value thereof.'" AMP Servs., Ltd. v. Walanpatrias Found., 73 So. 3d 346, 350 (Fla. 4th DCA 2011) quoting Fla. Power Corp. v. City of Winter Park, 887 So. 2d 1237, 1241 n.4 (Fla. 2004).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.