

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH BROOKS : CIVIL ACTION
 :
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 v. :
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 :
 SYSTEMS MANUFACTURING :
 CORPORATION : NO. 03-1523

O'NEILL, J March 6, 2006

MEMORANDUM

Plaintiff Joseph Brooks alleges intentional interference with contractual relations by defendant Systems Manufacturing Corporation (“SMC”). Brooks contends that his former employer, SMC, deliberately interfered with his employment relationship with his subsequent employer, Westwood, Inc., by coercing Westwood to terminate him. Presently before me is defendant’s motion for summary judgment, plaintiff’s response, and defendant’s reply thereto.

FACTS

The factual background of this case can be found in my decisions of December 17, 2003, Brooks v. Systems Manufacturing Corp., No. 03-1523, 2003 U.S. Dist. LEXIS 23696 (E.D. Pa. Dec. 17, 2003) and September 9, 2004, Brooks v. Systems Manufacturing Corp., No. 03-1523, 2004 U.S. Dist. LEXIS 23696 (E.D. Pa. Sept. 9, 2004). Nevertheless, I will discuss the relevant facts here.

SMC designs, manufactures, and distributes technical furniture and other products for the computer industry. SMC primarily distributes its products either through a dealer network or a direct sales network, utilizing either SMC sales representatives or resellers, also known as

“channel partners.” SMC generally encourages sales representatives to establish a network of channel partners within their sales territories. SMC also considers channel partners to be competitors, because they often sell other products in addition to SMC products and compete for customers against SMC sales representatives.

In or around July 2001, SMC hired Brooks as a sales representative. SMC provides sales representatives with training and confidential information, including information related to products, pricing strategies, and customer leads. At the time of his hiring, Brooks signed an agreement with defendant that included a provision prohibiting him from competing with the company upon termination of his employment. The provision provided:

during the period of my employment hereunder and for a period of two (2) years following the termination of my employment for any reason, whether voluntary or involuntary . . . I shall not, in the Applicable Territory, engage, directly or indirectly, whether as principal or as agent, officer, director, employee, consultant, shareholder or otherwise, along or in association with any other person, corporation or other entity, in any Competing Business.

The agreement defined “Competing Business” as “any person, corporation or other entity which develops, manufactures, markets, sells or attempts to sell any product or services which are the same as or similar to the products or services made or sold by Fisher.” The agreement defined “Applicable Territory” as “the geographical territories assigned to me by Fisher¹ within the last two years of employment hereunder.” The contract included a provision that required all modifications to be in writing and also provided:

The failure of any part to require the performance of any term or obligation of this Agreement or the waiver by any party of any breach of this Agreement in any particular case will not prevent any subsequent enforcement of such term or obligation or to be deemed a waiver of any separate or subsequent breach.

¹Fisher Hamilton, Inc. is the parent company of SMC.

During his tenure at SMC, Brooks represented SMC in Philadelphia, eastern Pennsylvania, and Delaware. Brooks' immediate supervisor was Harold Kormos and Kormos' supervisor was John Farris.

In September 2002 Brooks left SMC and went to work for InterNet, one of SMC's channel partners. SMC maintains that InterNet is a competitor; Brooks disagrees. He alleges that before leaving his job with defendant he reported that Harold Kormos had directed him to steal two pending deals from Constant Technologies, a firm defendant was in the process of acquiring. Brooks claims that after reporting his SMC supervisor's actions Farris emailed him to tell him the company would prohibit him from working for InterNet. He alleges that SMC never raised any concerns about his employment with InterNet until Brooks began working there and knew that he had specifically agreed not to sell products that competed with SMC's products. Brooks claims that he was terminated from his position at InterNet after only one month and that defendant's enforcement of the non-compete agreement was in retaliation for his reporting his supervisor. Brooks' allegations against SMC, however, do not include a cause of action for SMC's alleged interference with his employment at InterNet.

After leaving InterNet, Brooks went directly to work as a sales representative at Westwood, a New Jersey based company that resells SMC products. SMC considers Westwood to be both a competitor and a business partner because Westwood resells SMC products and also sells similar products manufactured by other company. Brooks argues that Westwood does not compete with SMC.

Prior to accepting employment at Westwood, Brooks spoke with Mike Brown, the president of Fisher. According to Brooks' deposition testimony, Brown gave him explicit

permission to work at Westwood despite the non-compete agreement with SMC. Andrew Graham, the Westwood executive who hired Brooks, stated that John Farris said that it was fine to hire Brooks. According to Graham, Farris also informed him that Brooks did not have a good relationship with Kormos. Farris, in his deposition explained that he gave Brooks permission to work for Westwood because he thought Brooks would be working in New Jersey.

Brooks claims that shortly after he began work at Westwood SMC notified Westwood of a potential problem because of plaintiff's non-compete agreement with SMC. Farris and Kormos visited Westwood to speak with Graham and Brooks about the non-compete. At this point, negotiations began among SMC, Westwood and Brooks. Brooks asserts that SMC agreed to permit plaintiff to continue to work for Westwood despite the non-compete provision, provided that both he and Westwood sign an authorization agreement designed to protect SMC's proprietary and confidential business information. These negotiations continued for approximately two months. On October 17, 2002, Farris sent Brooks a letter approving a variance of the original non-compete under the condition that Brooks would "not work with any competing lines at Westwood for the period of [his] non-compete." SMC asserts that Westwood eventually agreed to a specific set of terms. Brooks, however, attempted to negotiate further and refused to the terms agreed upon by SMC and Westwood.

SMC notified Westwood that it would no longer be permitted to represent SMC in the Philadelphia market if it continued to employ Brooks without signing the authorization agreement. Westwood subsequently terminated plaintiff on or about January 21, 2003, approximately three months after he began working for the company. Two days after Brooks' termination, on January 23, 2003, John Farris sent Westwood an email informing them that

Westwood could continue its relationship with SMC as a channel partner in the Philadelphia territory.

SMC acknowledges that one part of the reason for plaintiff's termination from Westwood was that the non-compete dispute among defendant, plaintiff and Westwood had not been resolved. SMC, however, alleges that the primary and substantial reason for plaintiff's termination was his poor performance. At deposition, Andrew Graham, plaintiff's direct supervisor at Westwood, explained that "[p]erformance was an issue. . . . The numbers were nowhere near up to quota, and we did not see enough activity to warrant keeping him." Graham also added, however, that Westwood decided to terminate Brooks immediately after receiving a letter from SMC advising Westwood that the matter was being sent to SMC's legal department. Keith Grabel, the President of Westwood, confirmed at his deposition that the primary reason for terminating plaintiff was performance and that he had not made sufficient sales, but noted that the problems with SMC were also a factor. Further, Brooks testified that he was never counseled about poor performance and provided an emailed list of orders pending at the time he was released.

Brooks originally filed a complaint against SMC with causes of action for intentional interference with contractual relations and intentional infliction of emotional distress. On December 17, 2003, I granted SMC's motion to dismiss the claim for intentional infliction of emotional distress but denied SMC's motion to dismiss the intentional interference claim. After limited discovery, SMC filed a motion for summary judgment arguing that, because Brooks was an at-will employee, there was no contractual relationship between Brooks and Westwood, and therefore no possible interference. I denied SMC's motion for summary judgment, holding that a

claim for intentional interference with an at-will employment contract was actionable. In its current motion for summary judgment, SMC argues that Brooks cannot meet the remaining elements. Specifically, SMC asserts that Brooks cannot establish (1) that SMC intended to harm Brooks; (2) that any alleged interference was not privileged or justified; and (3) that Brooks suffered damages as a result of the alleged interference. I do not agree and will deny summary judgment.

STANDARD OF REVIEW

Summary judgment is appropriate if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56. The Supreme Court has recognized that the moving party “bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions . . . which it believes demonstrate the absence of a genuine issue of material fact.” Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). After the moving party has filed a properly supported motion, the burden shifts to the nonmoving party to “set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). The nonmoving party may not rest upon the mere allegations or denials of the party's pleading. See Celotex, 477 U.S. at 324.

I must determine whether any genuine issue of material fact exists. An issue is “material” only if the dispute over facts “might affect the outcome of the suit under the governing law.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). If the record taken as a whole in a light most favorable to the nonmoving party, “could not lead a rational trier of fact to find for the

nonmoving party, there is no ‘genuine issue for trial.’” Matsushita Elec. Co. v. Zenith Radio, 475 U.S. 574, 587 (1986) (citation omitted). If the evidence for the nonmoving party is merely colorable, or is not significantly probative, summary judgment may be granted. See Anderson, 477 U.S. at 249-50 (citations omitted).

DISCUSSION

Under Pennsylvania law, a plaintiff must allege the following elements in order to properly plead a claim for intentional interference with contractual relations: (1) the existence of a contractual relationship between plaintiff and a third party; (2) an intent on the part of the alleged interfering party to harm the claimant by interfering with those contractual relations; (3) absence of privilege or justification for the interference; and (4) damages. Triffin v. Janssen, 626 A.2d 571, 574 (Pa. Super. 1993); Britt v. May Dep’t Stores Co., Civ. A. 94-3112, 1995 WL 408348 (E.D. Pa. June 30, 1995). SMC argues that Brooks cannot establish the last three elements: intent, absence of privilege, and damages.

A. Intent

The second element of an intentional interference with contracts claim is an intent to harm by interfering with a contractual relationship. In Pennsylvania, the focus is on whether the defendant’s conduct is proper under the circumstances. See Alder, Barish, Daniels, Levin and Creskoff v. Epstein, 393 A.2d 1175, 1184 (Pa. 1978). The following factors should be considered: (a) the nature of the actor’s conduct; (b) the actor’s motive; (c) the interests of the other with which the actor’s conduct interferes; (d) the proximity or remoteness of the actor’s conduct to the interference; and (e) the relations between the parties. Id.

Intent is often a difficult question, one which involves determining the credibility of

testimony and weighing evidence. The Court of Appeals has recognized this concern, noting, “[I]ssues of knowledge and intent are particularly inappropriate for resolution by summary judgment, since such issues must often be resolved on the basis of inferences drawn from the conduct of the parties.” Riehl v. Travelers Ins. Co., 772 F.2d 19, 24 (3d Cir. 1985).

SMC argues that there is no evidence that SMC intended the alleged interference to harm Brooks. SMC asserts that the documents and deposition testimony demonstrate that its goal and intent was to protect its business interests and to benefit, not harm, Brooks. SMC focuses on the fact that it worked with Brooks and Westwood to try to allow Brooks to work there under a less stringent agreement than the signed non-compete. SMC also asserts that there is no testimony or evidence to support the notion that Farris or SMC intended to harm Brooks.

Brooks disagrees. He offers the following statements as evidence of SMC’s wrongful intent: (a) SMC had previously interfered with his employment at InterNet; (b) SMC had approved his employment with Westwood; (c) SMC admitted Westwood was not a competitor and yet insisted on enforcing the non-compete or obtaining another; and (d) SMC attempted (through Harold Kormos, its regional manager) to defame Brooks in an effort to undermine his employment even before it started. He also argues that the overarching reason SMC interfered with his employment at Westwood was in retaliation for his reporting of Harold Kormos’ unethical activities.

These allegations are sufficiently supported to survive summary judgment. Brooks did report the unethical behavior of his supervisor. SMC, through Farris and Brown, seemed to give Brooks permission to work at Westwood, then retracted the approval. Brooks also offers multiple statements describing Westwood as not in competition with SMC. Although SMC

offers significant evidence to counter these claims, I cannot say that no genuine issue of material fact exists.

B. Absence of privilege or justification

The third element of a claim for intentional interference with contractual relations is the absence of privilege or justification. See Ruffing v. 84 Lumber Co., 600 A.2d 545, 550 (Pa. Super. 1991). “[T]he privilege is of narrow scope and protects the actor only when ‘(1) he has a legally protected interest, and (2) in good faith asserts or threatens to protect it, and (3) the threat is to protect it by proper means.’” Gresh v. Potter McCune, 344 A.2d 540, 541 (Pa. Super. 1975) citing Restatement of Torts § 766. Generally, under Pennsylvania law, an employer is justified in preventing a former employee from working with a new employer if it has a valid non-compete agreement prohibiting the new employment. See id. Neither party disputes the validity of the non-compete agreement. Further, Westwood sells products and services which are the same or similar to products sold by SMC, thereby falling under the non-compete agreement’s definition of Competing Business. Therefore, there is no factual dispute as to the existence of a legally protected interest.

I also find that SMC protected its legally protected interest by proper means. In Hess v. Gehard & Co., Inc., 769 A.2d 1186 (Pa. Super. 2001), the Pennsylvania Superior Court found that a former employee failed to state a claim for intentional interference with contractual relations because of an existing non-compete agreement. In that case, the former employer sent a letter to both the former employee and the potential employer regarding the existence of the former employee’s covenant not-to-compete and potential legal action. Id. at 1189. The court found that the covenant was a protected interest and that the former employee’s actions were

justified. Id. at 1193. SMC took similar steps in this case. Through its representatives, SMC sent letters and made phone calls to Brooks and Westwood informing them of the non-compete. SMC also attempted to renegotiate the non-compete to allow Brooks to work at Westwood without divulging confidential information or usurping SMC accounts. These actions were proper.

The only remaining privilege issue is whether SMC acted in good faith in enforcing the non-compete. Brooks seems to argue that SMC enforced the non-compete agreement because he reported the unethical activities of his supervisor, not because SMC wanted to protect its legitimate business interests. He also shows that SMC did not act in good faith because it had already permitted him to work at Westwood, then withdrew permission once he began working there. These facts are enough for a reasonable jury to conclude that SMC acted without justification.

C. Damages

The final element of an intentional interference with contractual relations claim is damages. The plaintiff must prove actual damages resulting from the defendant's conduct. See, e.g., Triffin v. Janssen, 626 A.2d 571, 574 (Pa. Super. 1993). The interference, even if intentional, cannot be remote. See Avins v. White, 627 F.2d 637, 650 (3d Cir. 1980). It must be a proximate cause of the damages. Id.

SMC argues that Brooks was terminated as a result of poor performance, and therefore SMC could not have caused any damages. SMC relies primarily upon the Court of Appeals decision in Avins v. White. In that case, the Court of Appeals reviewed the jury instructions given by a district court in an intentional interference with contract claim. Id. The Avins court

approved of the instruction given, which was that the defendant could be held liable “only if his activities contributed in a material and substantial way to the removal decisions . . . and were a factor without which the removals would not have occurred.” Id.

Brooks has offered enough evidence for a reasonable jury to decide that SMC’s actions were a substantial factor in Westwood’s decision to terminate him. Brooks has offered testimony from Graham saying that SMC’s actions were a contributing factor. Brooks also testified in his deposition that SMC’s actions were the motivating factor. Brooks has also presented an email list of orders which may show that he was performing at an acceptable level. Therefore, there is a genuine issue of material fact as to the damages element.

An appropriate order follows.

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v.	:	
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ORDER

AND NOW, on this 6th day of March 2006, upon consideration of defendants' motion for summary judgment, plaintiffs' response, and defendants' reply thereto, and for the reasons set forth above, it is ORDERED that the defendants' motion for summary judgment is DENIED.

s/ Thomas N. O'Neill, Jr.
THOMAS N. O'NEILL, JR., J.