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United States Court of Appeals
Tenth Circuit

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UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

WARREN J. MEACHAM, Plaintiff-Appellant, v. GENERAL ELECTRIC CREDIT CORPORATION, Defendant-Appellee.	No. 86-1128 (D.C. Civ. No. 85-F-505) (D. Colo.)

ORDER AND JUDGMENT

Before LOGAN, TACHA, and McWILLIAMS, Circuit Judges.

This is an appeal from a summary judgment entered by the district court in favor of the employer in an action brought by an employee for an alleged breach of his employment contract.

On February 21, 1985, Warren J. Meacham, a resident of Colorado, brought a breach of contract action against General Electric Credit Corporation, a New York corporation. Jurisdiction was based on diversity of citizenship. 28 U.S.C. § 1332. Meacham alleged, inter alia, that in August of 1984 he entered into an employment contract with General Electric whereby the latter agreed to employ him "for not less than five years as a territory sales manager," and that General Electric breached its contract by terminating his employment as a territory sales manager and by demoting him, for which breach Meacham sought $300,000.

On April 5, 1985, General Electric filed an answer. On April 19, 1985, the district court entered an order which set a pre-trial conference for July 30, 1985, a discovery cut-off date of July 30, 1985 (later changed to September 1, 1985), a status conference for September 10, 1985, and a trial date sometime during a three-week calendar commencing October 7, 1985. On May 23, 1985, the parties were granted until July 31, 1985, to amend their pleadings. Discovery ensued.

On July 30, 1985, Meacham sought leave of court to file an amended complaint and tendered an amended complaint with the motion. The amended complaint contained five claims for relief. The second claim in the tendered amended complaint was the same as the original claim for breach of the August, 1984, contract. The other four claims were additional claims all arising out of Meacham's employment with General Electric and the ultimate termination thereof.

The first claim for relief in the amended complaint was based on negligent disclosure. More specifically, Meacham alleged that he entered into an employment contract with General Electric in August, 1984, and that in connection therewith General Electric "negligently failed to make certain material disclosures to plaintiff [and] further . . . negligently led plaintiff to believe, without justification, that the job offered would last approximately five years if plaintiff performed his duties."

In his second claim for relief, which was a restatement of his original claim, Meacham alleged that in November, 1984, General Electric breached the contract entered into in August, 1984, by changing his duties and otherwise demoting him.

Meacham alleged in his third claim for relief that when he was demoted in November, 1984, General Electric promised to give him a reasonable time to meet his individual sales quota and that General Electric breached its promise when it fired him on March 15, 1985.

In his fourth claim for relief, Meacham alleged that in early March, 1985, General Electric threatened to fire him if he did not dismiss the action which he filed on February 21, 1985, and that when he refused to dismiss the action, General Electric followed through on its threat and fired him on March 15, 1985.

The fifth claim for relief was based on promissory estoppel, Meacham alleging that General Electric, in connection with the contract of employment entered into in August, 1984, and as modified in November, 1984, made certain promises which Meacham relied on to his detriment.

On August 2, 1985, General Electric filed a response to Meacham's motion to file an amended complaint wherein it asked, in the alternative, that (1) the motion to amend be denied; or (2) that discovery and other deadlines be delayed and that the October trial date be vacated; or (3) that the October trial date be not changed, that the discovery cut-off date be extended by two weeks and the date for filing a motion for summary judgment be extended by one week.

On August 9, 1985, the district court granted Meacham's motion to file an amended complaint and allowed "the filing of the amended complaint excluding the Fourth Claim for relief . . . [which] is dismissed without prejudice." The record before us does not disclose why the district court refused to allow Meacham to assert his fourth claim for relief, but, at the same time, permitted Meacham to assert the other four claims in his amended complaint, three of which were different from the one claim set forth in his original complaint.

On August 13, 1985, Meacham asked the district court to reconsider that part of its order of August 9, 1985, wherein it refused to allow Meacham to assert his fourth claim for relief. The district court denied the motion.

On September 16, 1985, General Electric filed a motion for partial summary judgment, seeking judgment on Meacham's second, third, and fifth claims on the ground, inter alia, that Meacham's employment "was not for a fixed period of time and therefore could be terminated at will." After hearing, the district court granted General Electric's motion and entered summary judgment in favor of General Electric on the second, third, and fifth claims for relief, agreeing with General Electric that the oral contract between the parties did not provide for employment for a "fixed term," and only provided for "an employment at will situation in which either party could terminate the employment."

On October 25, 1985, General Electric filed a motion for summary judgment on Meacham's first claim for relief. The district court denied that motion, but at the same time restricted the type of damages recoverable under that claim to pecuniary loss.

On December 23, 1985, the parties agreed to a dismissal without prejudice of Meacham's first claim for relief. In that stipulation, General Electric agreed not to raise any statute of limitations by way of defense to any action filed by Meacham "no later than ninety (90) days after the issuance of any decision by the United States Court of Appeals for the Tenth Circuit affirming or reversing, in whole or in part, the ruling of the United States District Court for the District of Colorado on plaintiff's second, third, and fifth claims for relief." On December 31, 1985, the district court, pursuant to this stipulation, dismissed the first claim without prejudice and entered "final orders" dismissing the second, third and fifth claims. This appeal followed.

General Electric attached to its motion for partial summary judgment on counts two, three, and five of Meacham's amended complaint a part of the transcript of Meacham's testimony given at the taking of his deposition. Meacham filed a response to General Electric's motion and attached to his response other parts of his deposition. So, the only evidentiary matter before the district court when it granted General Electric's motion was a part, but not all, of Meacham's deposition. Based on such, the district court concluded that there was no genuine issue of material fact, and that any agreement between the parties was, under Colorado law, terminable at will by either of the parties because Meacham's employment with General Electric was not for a "fixed term." We agree.

This is a diversity case and involves consideration of local Colorado contract law. The district court was of the view that under Colorado law any employment contract is terminable at the will of either party thereto unless the contract itself provides that such employment is for a fixed and clearly expressed period of time. We will examine the Colorado authority bearing on this particular issue infra, and at this point we would merely state that we are disinclined to disturb the district court's understanding of Colorado law. Having determined the Colorado rule, the district court concluded that Meacham's testimony in his deposition did not measure up to the rule.

As above stated, count two in the amended complaint charged General Electric with a breach in November, 1984, of the agreement entered into between the parties in August, 1984, at which time, i.e., in November, 1984, Meacham, though not discharged, was demoted. Count two is premised on the assumption that in August, 1984, Meacham and General Electric entered into an oral contract, fixing his employment duties and compensation for a fixed, definite and stated period of time. In this latter regard, Meacham testified in his deposition that he was told by Richard Rowack, General Electric's representative with whom Meacham dealt in late July of 1984, that he (Meacham) should "look at it as a four-to-five year opportunity." Meacham also testified in his deposition that Rowack wanted Meacham to "commit to taking the position and maintaining the position for at least a four- to five-year period." Under the Colorado authorities referred to below, such is not a guarantee by the employer of continued employment for a fixed, defined and stated period of time.

Count three charged General Electric with a breach of the agreement entered into between the parties in November, 1984, wherein General Electric allegedly promised to give Meacham a "reasonable time" to meet sales quotas. In this connection, Meacham in his deposition stated that Rowack told him it would be at least six months before he was checked out on his sales. Such does not in our view equate to a binding contract entered into on November, 1984, that Meacham was guaranteed continued employment for a fixed, certain and expressed period of time, be it six months or four to five years.

Count five, as indicated, was based on promissory estoppel and charged that General Electric in August, 1984, and again in November, 1984, made certain promises which Meacham relied on to his detriment and that under such circumstances an "injustice can only be avoided by enforcement of the promises." In this regard, Meacham did testify in his deposition as to promises made by General Electric, but not kept. However, the district court was of the view that the contract between the parties was still terminable at will and barred recovery on any theory of promissory estoppel. We are in accord.

As indicated above, there is no written contract between Meacham and General Electric, and as far as we can ascertain from the record before us, there was nothing in writing between the parties. So, we are concerned with an oral contract. But regardless of whether there is a written or oral contract, the Colorado law on the subject appears quite clearly to be that an employment contract is terminable at the will of either party thereto unless the contract itself provides that the employment is for a definite and described period of time. Garcia v. Aetna Financing Co., 752 F.2d 488 (10th Cir. 1984); Continental Air Lines v. Keenan, 731 P.2d 708 (Colo. Sup. Ct. 1987); Pittman v. Larson Distributing Co., 724 P.2d 1379 (Colo. Ct. App. 1986); and Justice v. Stanley Aviation Co., 530 P.2d 984 (Colo. Ct. App. 1974).

In Garcia, an appeal arising out of the United States District Court in the District of Colorado, we held that under Colorado law an employment contract with "no fixed term of employment" was terminable at will notwithstanding the fact that the employer had termination procedures set forth in its policy manual and notwithstanding the further fact that employees were hired at a salary based on a yearly amount.

Continental Airlines was also concerned with the effect of an employer's manual setting forth termination procedures. We are not here concerned with any employer's manual. However, in Continental Airlines the Colorado Supreme Court reiterated the rule previously announced in prior Colorado cases that an employee hired for an indefinite period of time is an "at will" employee.

In Pittman, the Colorado Court of Appeals held that in the absence of special considerations an oral contract providing for even "permanent employment" is no more than an indefinite general hiring terminable at the will of either party.

In Justice, the Colorado Court of Appeals held that where a contract of employment contains "no fixed term of employment," either party may terminate the contract at any time without incurring liability, and the fact that such contract sets forth an "annual salary" rate does not change the result.

We agree with the district court that any understanding between Meacham and General Electric did not contain a fixed, definite and clearly expressed time period for which Meacham would be employed. A hope, or expectation, or anticipation that it will be long-term, or is an "opportunity" for four or five years, or it will be about six months before an "evaluation" can be made, are not enough, and do not constitute a clear-cut understanding that Meacham's employment was for a fixed, certain, and precisely described period of time.

Counsel does not argue that Meacham should be allowed to pursue his fifth claim based on promissory estoppel even if his contract with General Electric did not provide for a definite period of employment. In this regard, see, for example, Grandchamp v. United Airlines, 36 E.P.D. ¶ 34,987 (D.C. Colo. 1985) where the United States District Court for the District of Colorado held that where an employment contract did not set forth a definite period of employment the employee could not have "reasonably relied" on a promise of lifetime employment and entered summary judgment for the employer on the employee's third claim for relief based on promissory estoppel.

Meacham also challenges on appeal the district court's denial of his motion to include a fourth claim in his amended complaint. As indicated, the district court permitted Meacham to file an amended complaint setting forth five claims, but excluding the fourth claim which the district court dismissed without prejudice. The record does not indicate why the district court allowed Meacham to file three new claims in his amended complaint, but refused to allow him to file his so-called fourth claim for relief. In any event, we think the district court erred in excluding the fourth claim from Meacham's amended complaint. Leave to amend should be freely granted. Fed. R. Civ. P. 15(a); Foman v. Davis, 371 U.S. 178 (1962); Federal Insurance Co. v. Learjet Corp., 823 F.2d 383 (10th Cir. 1987); Triplett v. Leflore County, 712 F.2d 444 (10th Cir. 1983); Lease America Corp. v. Eckel, 710 F.2d 1470 (10th Cir. 1983). We are not here examining the sufficiency of the fourth claim. We are simply holding that the district court erred in refusing to allow Meacham to amend by inclusion of his fourth claim. As indicated, the district court gave no reason for refusing to allow Meacham to file his fourth claim for relief, and we are not persuaded by any of the reasons advanced in this court by General Electric as justification for the district court's refusal.

Judgment reversed insofar as it relates to the district court's refusal to allow Meacham to include in his amended complaint his fourth claim. Otherwise, the judgment is affirmed.