Link: 94



UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

| | |
|---|---|
| E.E.O.C., Plaintiff, v. UNIVERSAL PICTURES, et al., Defendants. | **Case No. CV 03-7023 GAF (JTLx)** **MEMORANDUM AND ORDER REGARDING DEFENDANTS' MOTION TO DISMISS PLAINTIFF-IN-INTERVENTION'S SECOND AMENDED COMPLAINT** |



I.

INTRODUCTION

On September 30, 2003, the United States Equal Employment Opportunity Commission ("EEOC") filed an action against Defendants Universal Pictures and its parent companies, Universal Studios, LLLP, and Vivendi Universal Entertainment, LLLP, ("Defendants" or "Universal") alleging that Frank Davis's termination as the First Assistant Director ("FAD") on the motion picture *Fast and Furious 2* was racially motivated. Davis intervened in this case and filed a complaint-in-intervention alleging that, although Defendants were biased against him because of his race, they hired

114

him to satisfy the demands of director John Singleton but with the intent to undermine his job performance and to terminate him at the earliest opportunity. When the opportunity arose, according to Davis, he was terminated because Defendants did not want an African-American as the FAD. Davis therefore asserts that his hiring was fraudulent and his termination discriminatory.

Davis first presented his fraud claim in his First Amended Complaint-in-Intervention ("FACI"), which the Court dismissed with leave to amend for failure to plead the purported misrepresentations with sufficient particularity as required by Fed. R. Civ. P. ("Rule") 9. (Nov. 2, 2005 Motion to Dismiss Order at 10-12). The Court granted leave with respect to two aspects of the alleged fraud: (1) that Defendants allegedly assured Davis that he would ***complete*** the film and receive payment under the written contract; and (2) that Davis could only be terminated by Director Singleton. (Id. at 11-12). However, instead of re-stating these alleged misrepresentations with greater particularity, Davis's Second Amended Complaint-in-Intervention ("SACI") identifies no misrepresentations and focuses on the fact that he "reasonably relied" on the language of the Directors' Guild of America, Inc. 2002 Basic Agreement (the "CBA") and the Deal Memo Contract (the "Deal Memo") in taking the job and assuming that he would complete the film unless Defendants had "just cause" to terminate his employment.

Defendants now seek to dismiss *Plaintiff's fraud claim only* on the ground that it is preempted under Section 301 of the Labor Management Relations Act ("LMRA"). They contend that the SACI identifies no misrepresentation and that the fraud claim amounts to nothing more than an assertion that Defendants did not intend to comply with the "just cause" provision of the Deal Memo and CBA. According to Defendants, this will require the Court to determine whether, under the CBA, Defendants had just cause to terminate Davis, which will necessarily involve an interpretation of the terms of that agreement.

The Court concludes that Defendants are correct. The SACI identifies no misrepresentation made by any representative of Defendants. Rather, it suggests that Defendants implicitly, but falsely, promised that Davis would receive all benefits to which he was entitled under the CBA, including a promise that he would only be terminated if Singleton wanted a different FAD or if Defendants had "just cause" to terminate. Accordingly, to resolve the fraud claim, the Court will be presented with a dispute over whether the Defendants secretly harbored an intent to dismiss Davis because of his race, or whether they had "just cause" to terminate his employment. That will require the interpretation of the CBA. Accordingly, under LMRA jurisprudence, the fraud claim is preempted and is **DISMISSED WITH PREJUDICE.**

## II.

## STATEMENT OF FACTS

Under the usual Rule 12(b)(6) standard, the Court assumes the truth of the statements set forth in the SACI for the purpose of examining the legal sufficiency of the pleading. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). On that basis, the following sets forth the relevant facts in this case.[1]

### A. DEFENDANTS HIRE DAVIS AS FAD

On July 23, 2002, at the insistence of Director John Singleton (SACI ¶ 13), Defendants hired Davis, an African-American male, to work as Singleton's FAD on the film, *Fast and Furious 2*. (Id. ¶ 12). His employment was memorialized in a Deal Memo, (id. ¶ 21), which in turn incorporated the terms and conditions of the Director's

---

[1] Although the Court is ordinarily limited to the allegations in the complaint in determining a motion to dismiss, certain exceptions exist for matters that are not reasonably in dispute. Documents that are referenced by, appended to or incorporated into a complaint may be considered in ruling on a 12(b)(6) motion. Inlandboatmens Union of the Pac. v. Dutra Group, 279 F.3d 1075, 1083 (9th Cir. 2002); Branch v. Tunnell, 14 F.3d 449, 453-54 (9th Cir.), cert. denied, 512 U.S. 1219 (1994). Similarly, other matters that are properly subject to judicial notice may be considered along with the complaint when deciding a motion under Rule 12(b)(6). See MGIC Indem. Corp. v. Weisman, 803 F.2d 500, 504 (9th Cir. 1986). Thus, this Court takes judicial notice of the CBA and the Deal Memo in ruling on this motion. (Defs. Request for Judicial Notice ("RFJN"), Exs. A [Deal Memo], B [CBA]).

Guild CBA. (RFJN, Ex. A [Deal Memo] ¶ 1). The Deal Memo provided that Davis would be compensated on a week-to-week basis at a rate of $6,000 per week. (Id.).

Despite Davis's extensive experience in the field as a FAD, (id. ¶ 13), and his prior work with Singleton on the feature film *Baby Boy*, Defendants never wanted to hire him because of his race. (Id. ¶ 14). Defendants had initially hired Michael Waxman for the position over Singleton's objection, (id. ¶ 16), but ultimately relented and hired Davis. Waxman became the FAD of the second unit of production. (Id.). However, even after hiring Davis, Defendants entered into apparently secret negotiations with Bruce Franklin, a Caucasian male, as Davis's intended replacement when Defendants could develop a pretext to terminate Davis.

**B. DEFENDANTS TERMINATE DAVIS'S EMPLOYMENT**

After he was hired, Davis began working on the pre-production phase of the movie. (Id. ¶¶ 41-43). Among other things, the director and the FAD would, during this period, collaborate to break down the script into various scenes and determine the schedule on which the scenes should be shot. (Id. ¶ 42). It was during this period that Davis contends Defendants began to work to undermine his performance as the FAD. (Id. ¶ 40). For example, Davis contends that Line Producer, Lee Mayes, repeatedly, and without apparent justification, requested Davis to produce and revise multiple shooting schedules. (Id. ¶ 42). While that was happening, agents and employees of the Defendants were scheming, through e-mail exchanges and other communications, about how to create a basis for terminating Davis's employment. (Id. ¶ 43).

Principal photography commenced on September 25, 2002. (Id. ¶ 44). Six days later, according to a plan formulated by Ron Lynch, a Universal Pictures executive, a false report was prepared showing that the film was a day and a half behind schedule and that work would have to be moved from the first unit to the second production unit. (Id. ¶ 46). Defendants knew that Singleton would not want to move work to the second unit, and used his desire to retain control over the movie in the first unit to obtain his acquiescence to Defendants' demand that Davis be fired. (Id. ¶ 45-47).

Defendants terminated Davis on October 6, 2002 without consent or approval from Director Singleton. (Id. ¶ 20). While Defendants' stated reason for terminating Davis was inadequate performance, Plaintiff never received complaints from Singleton or Defendants prior to his termination. (Id. ¶ 22). Davis believes Singleton was satisfied with his work, and Singleton has allegedly stated that Plaintiff's termination was unjust and without cause. (Id. ¶¶ 23-24).

## III.

## DISCUSSION

### A. The Legal Standard for a Motion to Dismiss

A motion to dismiss a complaint tests the legal sufficiency of the claims asserted. Fed. R. Civ. P. 12(b)(6). A court may not dismiss a complaint for failure to state a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Thus, dismissal pursuant to Rule 12(b)(6) is proper only where there is either a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988). The Court accepts all factual allegations pleaded in the complaint as true in deciding a motion to dismiss for failure to state a claim; in addition, it construes those facts and draws all reasonable inferences from them in favor of the nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996).

### B. Davis's Fraud Claim and Federal Preemption

Plaintiff alleges that Defendants defrauded him by inducing him to accept work as the FAD on *Fast and Furious 2* while harboring a secret intent to hire a different FAD as soon as they could concoct a pretense for Davis's termination.

1. **The Fraud Allegations**

In the SACI, Davis contends that a number of employees were acting within the course and scope of their employment, but says nothing about what, if any, misrepresentations they may have made to him to induce him to take the position as the FAD. As best the Court can determine, someone in the negotiation process expressly or implicitly represented that he would be hired for the duration of the production of the film and would not be terminated except by Singleton or by Defendants, so long as they had just cause to terminate. Davis contends that he relied on that representation, accepted the position, and sought no other employment. Davis does not identify who made such representation, when the representation was made, or the circumstances under which it was made. The key language in the SACI is set forth in Paragraphs 39 and 40:

> 39. As a member of the Directors' Guild of America, plaintiff-in-intervention's contract was subject to the Directors' Guild of America, Inc. Basic Agreement Of 2002. Pursuant to Section 7-204 of the Agreement the director has the right to select the first assistant director. The director may replace the first assistant director as long as it does not adversely affect the budget of the motion picture. The employer only has the right to terminate the first assistant director for "just cause."
>
> 40. Plaintiff-in-intervention reasonably relied on the language in the Deal Memorandum and the Agreement that he would complete the film subject to termination by the director or defendant for "just cause." Consequently, plaintiff-in-intervention did not seek other employment.

These paragraphs of the SACI demonstrate that Davis alleges in sum and substance that he was at least implicitly promised that the Defendants would comply with their contractual obligations under the Deal Memo and the CBA, but that they had no intention of doing so. The proof of the pudding is supposedly in his termination for something other than "just cause." Thus, Davis alleges a case of promissory fraud which Defendants contend is preempted by the LMRA.



## 2. LMRA PREEMPTION

### *a. The Legal Standard*

Section 301 of the LMRA controls "[s]uits for violation[s] of contracts between an employer and a labor organization representing employees in an industry affecting commerce. . . ." 29 U.S.C. § 185(a); Young v. Anthony's Fish Grottos, Inc., 830 F.2d 993, 997 (9th Cir. 1987). The Supreme Court has repeatedly held that, "when resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, the plaintiff's claim is pre-empted by § 301." Int'l Bhd. of Elec. Workers v. Hechler, 481 U.S. 851, 853 (1987) (citing Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985)). The Ninth Circuit is in accord, noting that Section 301 "completely displaces any State cause of action for violation of a collective bargaining agreement . . . if the resolution of a State-law claim depends upon the meaning [and interpretation] of a collective bargaining agreement." Hill v. Ralphs Grocery Co., 896 F. Supp. 1492, 1498 (C.D. Cal. 1995) (citing Stallcop v. Kaiser Found. Hosps., 820 F.2d 1044 (9th Cir.), cert. denied, 484 U.S. 986 (1987); Young, 830 F.2d at 999. The purpose of the rule is Congress's desire to "ensure that [CBAs] are interpreted uniformly." Milne Employees Ass'n v. Sun Carriers, Inc., 960 F.2d 1401, 1407-08 (9th Cir. 1992) (hereinafter, "MEA") (citing Lingle v. Norge Div. of Magic Chef, 486 U.S. 399, 404 & n.3 (1988)).

"The plaintiff's claim is the touchstone for this [preemption] analysis; the need to interpret the CBA must inhere in the nature of the plaintiff's claim." Cramer v. Consolidated Freightways, Inc., 255 F.3d 683, 691 (9th Cir. 2001) (en banc), cert. denied, 534 U.S. 1078 (2002). "Interpretation" in this context describes an activity beyond merely referring to an agreement. MEA, 960 F.2d at 1409-10 (citations omitted). Therefore, "the mere existence of a [CBA] does not prevent an individual from bringing state law claims based on some independent agreement or obligation."

Trans. Penn. Wax Corp. v. McCandless, 50 F.3d 217, 228-29 (3d Cir. 1995) (citing Caterpillar, Inc. v. Williams, 482 U.S. 386, 396 (1987)). While mere reference to the CBA is insufficient to preempt a state law claim, Humble v. Boeing Co., 305 F.3d 1004, 1008 (9th Cir. 2002), preemption applies where ostensible "tort" claims merely appear to restate what in essence amounted to a contract claim. Bale v. Gen. Tel. Co., 795 F.2d 775, 780 (9th Cir. 1986).

***b. The Fraud Claim is Preempted***

The Court considers the resolution of the issue presented in this case to be straightforward. In this case, Davis alleges what appears to be a promissory fraud claim, which amounts to a breach of contract claim with an intent element. In substance Davis contends that he was promised that he would have certain rights under his Deal Memo/CBA contract with Defendants, that Defendants never intended to honor their obligations under contract, and that Defendants in fact breached their obligations under the contract, which caused him damage. The essence of the claim, therefore, is the termination without just cause, which Defendants allegedly contemplated before Davis was even hired. But because Davis's claim fails if Defendants had just cause to terminate, the Court cannot avoid construing the meaning of "just cause" to resolve this claim. Thus, in the Court's view, the state law fraud claim is "inextricably intertwined with consideration of the terms of the labor contract," Allis-Chalmers, 471 U.S. at 213, and amounts to nothing more than a claim of a planned breach of contract. Under such circumstances, LMRA preemption clearly applies.

//

//

//

//

//

//

IV.

**CONCLUSION**

Defendants' motion to dismiss Davis's fraud claim is **GRANTED.** The Court concludes that, under the circumstances presented in this case, the LMRA preempts Davis's fraud claim, which the Court orders **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

DATED: December 19, 2005

Judge Gary Allen Feess
United States District Court