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Circuit Court of Virginia, Fairfax County.
Ronnie BURGESS and Burgess & Associates
v.
DYNCORP, INC. and Charity Ziegler
No. L214995.

Aug. 30, 2004.

Steven W. Ray, and Michelle B. Radcliffe, for
Defendant.

Dear Counsel:

SMITH, J.

*1 Defendant DynCorp, Inc., ("DynCorp") is the prime contractor on an FBI contract known as "Trilogy." PlanetGov is a subcontractor under the Trilogy contract. Plaintiff Ronnie Burgess, ("Burgess"), owns and operates Burgess and Associates, LLC. In March of 2002, Burgess and Associates, LLC entered into a consulting contract with PlanetGov under which they would act as a subcontractor to PlanetGov on the FBI Trilogy contract. DynCorp had the right to nominate who would perform the work as subcontractor for PlanetGov and PlanetGov had the right to issue a "stop work order" as to all or certain tasks assigned to Burgess and Associates, LLC as subcontractor.

While working with PlanetGov and DynCorp, Burgess met the Defendant Charity Zeigler, ("Zeigler"), and they began dating and developed a sexual relationship. Burgess discussed their relationship with co-workers of DynCorp and PlanetGov, one of whom is Zeigler's former boyfriend Kymmar Williams. After hearing that Burgess discussed aspects of their relationship with their co-workers, Zeigler ended the relationship. She also informed members of DynCorp personnel, namely Susan Kendrick, ("Kendrick"), a member of DynCorp's human resources department, about her relationship with Burgess. Specifically, Zeigler told DynCorp personnel and Mr. Williams that the parties had consensual as well as nonconsensual sex. Kendrick interviewed DynCorp employees who Zeigler told of her alleged nonconsensual sexual encounters with Burgess. Patricia Baker, director of human resources at PlanetGov, informed Kendrick

that PlanetGov was inclined to issue a "stop work order." (Kendrick, 3/23/04, pg.535, II.18-20.) On November 7, 2002, Kendrick informed Zeigler that DynCorp would not take action against Burgess as all of the alleged acts of nonconsensual sex occurred outside of the workplace. Kendrick advised Zeigler that if she felt it appropriate, she could go to the police. She also told her that if anything happened in the workplace in the future, it should be brought to her attention. (Kendrick, 3/24/04, pg. 677, II. 13-14 and pg. 681, II. 1-2.)

Zeigler subsequently filed a complaint with the Prince George's County Police Department accusing Burgess of rape. Officers contacted Burgess at work on November 15, 2002 to inform him of Zeigler's complaint. Burgess went to the police station that same day and drafted a written statement. Maryland authorities ultimately decided not to lodge charges against Burgess.

On November 18, 2002, the next work day following Burgess' appearance at the Prince George's County Police Department, Zeigler arrived at work and found oil dripping from her computer station. Zeigler told DynCorp personnel about the oil and suspicion immediately focused on Burgess. Kendrick and two other members of DynCorp's personnel department then met with Steven Demeter, ("Demeter"), director of system solutions at PlanetGov and one of Burgess' supervisors. They told Demeter that Zeigler and Burgess had an intimate relationship, and that Zeigler alleged that some of the sexual encounters between the two were nonconsensual. Kendrick told Demeter that she investigated the matter but took no action because the incidents occurred outside of the workplace. She further informed him that Zeigler had filed a police report on November 15 and the following business day she found oil dripping from her computer which she believed was placed there by Burgess. At trial Kendrick testified that she intended to inform Demeter that if Burgess was responsible for pouring oil on Zeigler's computer, it would be considered harassment in the workplace. (Kendrick, 3/23/04, pg.538, II.18-20.) It is uncontested that Kendrick did not inform Demeter that the Maryland authorities decided not to initiate criminal charges against Burgess, however no evidence was presented that Kendrick knew of any final resolution of the Maryland criminal investigation at the time she spoke with Demeter. PlanetGov subsequently issued the

"stop work order" on its independent contractor agreement with Burgess and Associates.

*2 Ronnie Burgess and Burgess and Associates, ("the Burgess Plaintiffs"), filed a motion for judgment in this Court alleging that Zeigler and DynCorp had defamed Burgess, and further claiming that DynCorp tortiously interfered with the contract or business expectancies of the Burgess Plaintiffs. Trial began on March 22, 2004 and continued through March 25 and on the 29th. A trial's end, the jury entered judgment in favor of the Burgess Plaintiffs against Zeigler for defamation and awarded \$75,000 and in favor of Burgess & Associates against DynCorp on the claim of intentional interference with business or contract expectancy and awarded \$125,525.00. DynCorp subsequently filed a motion to set aside the verdict on various grounds, or, in the alternative, for remittitur. Following a hearing on DynCorp's Motions, this Court took under advisement the issue of whether the jury's finding that DynCorp interfered with Burgess and Associates' business or contract expectancy was proper but denied all other post trial motions. After consideration of the briefs and the transcripts, this Court agrees with DynCorp that the evidence presented at trial does not support the jury's verdict.

To find DynCorp liable to Burgess & Associates for interference with business or contract expectancy, the evidence must show "(1) the existence of a business relationship or expectancy, with a probability of future economic benefit to plaintiff, (2) defendant's knowledge of the relationship or expectancy, (3) a reasonable certainty that absent defendant's intentional misconduct, plaintiff would have continued in the relationship or realized the expectancy, and (4) damage to the plaintiff." Commercial Business Systems, Inc. v. Halifax Corp., et al., 253 Va. 292, 300 (1997). Importantly, in Duggins v. Adams, the Virginia Supreme Court considered the elements of a cause of action for interference with a contract terminable at will and concluded that, an element of such a cause of action is that the acts or methods used for interference must be "improper." 234 Va. 221, 226-27 (1987).

When a contract is terminable at will, a plaintiff, in order to present a prima facie case of tortious interference, must allege and prove not only an intentional interference that caused the termination of the at-will contract, but also that the defendant employed 'improper methods.' ... Methods of interference considered improper are those means that are illegal or independently tortious, such as violations of statutes, regulations, or recognized

common-law rules.... Improper methods may include violence, threats or intimidation, bribery, unfounded litigation, fraud, misrepresentation or deceit, defamation, duress, undue influence, misuse of inside or confidential information, or breach of a fiduciary relationship.

Id.

Burgess & Associates offered no evidence that DynCorp did anything illegal. The jury rejected the claim that DynCorp defamed Burgess, and there was no other basis for the jury to determine that DynCorp did an independently tortious act which caused the stop order to issue. There was no evidence that DynCorp violated any regulation or a common-law rule of conduct in its contacts with PlanetGov regarding the Burgess Plaintiffs. There was insufficient evidence to warrant a finding that DynCorp used violence, threats or intimidation, bribery, unfounded litigation, duress, undue influence, or misused inside or confidential information to cause PlanetGov to issue the stop order. There was no fiduciary relationship between DynCorp and PlanetGov so that may not be advanced as a basis for the finding of use of improper methods to interfere with the contract.

*3 The primary argument advanced by the Burgess Plaintiffs at trial and here is that DynCorp engaged in fraud, misrepresentation or deceit in that it did not provide a full account of its investigation into the allegations against Burgess when it conveyed them to PlanetGov. The testimony presented at most established that PlanetGov was told by DynCorp that there was an allegation against Burgess, that police were involved and that oil was spilled on Zeigler's keyboard or a monitor in the workplace, that Burgess' involvement oththe oil was assumed without proof. This testimony failed to establish that DynCorp misrepresented or deceived PlanetGov about its actions or inactions with respect to the alleged non-consensual sex or the oil incident. PlanetGov understood that DynCorp did not perform an investigation when told of the initial allegations as it occurred outside of the workplace. They also knew that Burgess' involvement in the oil incident was assumed "with no proof."

Burgess and Associates also argues that DynCorp took action which was tantamount to intimidation or undue influence to force PlanetGov to issue the stop order. They contend that DynCorp played on its economic superiority over PlanetGov to terminate Burgess' contract and this act is a form of improper means. Again, the testimony offered does not support

the argument advanced by the Burgess Plaintiffs. At most it establishes that DynCorp inquired about the possibility of a transfer of Burgess from the FBI Trilogy contract to another contract. PlanetGov then issued a stop order on its own but only upon a determination that the company lacked another contract consistent with Burgess' work schedule. Nothing in the testimony offered indicated that DynCorp issued any ultimatum or exerted any pressure on PlanetGov to issue the stop order.

Accordingly, the jury verdict awarding judgment against DynCorp in favor of the Burgess and Associates on the claim of intentional interference with business or contract expectancy is hereby set aside. The judgment for defamation against Charity Zeigler in favor of the Burgess plaintiffs in the amount of \$75,000 stands. Ms. Radcliffs is hereby instructed to prepare an appropriate Order and forward it to Mr. Hantzes for his review and endorsement. I am placing the matter on my September 10, 2004 docket for argument in the event the parties are unable to agree upon the form of the Order.

Not Reported in S.E.2d, 2004 WL 2247986 (Va. Cir. Ct.)

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