

This document constitutes a ruling of the court and should be treated as such.

Court: CO Weld County District Court 19th JD

Judge: James Francis Hartmann

**File & Serve
Transaction ID:** 28626009

Current Date: Feb 16, 2010

Case Number: 2009CV991

Case Name: BUCKLEY, CRAIG D et al vs. DREAM STONE INC et al

Court Authorizer

Comments:

The court denied the motion for summary judgment in an order issued on February 16, 2010.

/s/ James F. Hartmann
Chief Judge

Weld County, Colorado, District Court
901 9th Ave, P.O. Box 2038
Greeley, CO 80632-2038
(970) 351-7300

Plaintiff: **CRAIG D BUCKLEY,**

v.

Defendants: **DREAM STONE, INC, SCOTT MURPHY,
EVE MURPHY, and RON MURPHY.**

FILED IN
EFILED Document - District Court
2009CV991 DATE FILED: February 16, 2010 7:02 PM
CO Weld County District Court 19th JD
Filing Date: Feb 16 2010 5:02PM MST
Filing ID: 29590411

Case No: 09CV991
Div. 1

ORDER DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

This matter comes before the court on plaintiff's Motion for Summary Judgment. The Court, having considered said Motion, the responsive pleadings and file in this case, and being otherwise fully advised, HEREBY FINDS:

Pursuant to C.R.C.P. Rule 56, summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Am. Water Dev., Inc. v. City of Alamosa*, 874 P.2d 352, 360 (Colo. 1994); *City of Westminster v. Church*, 167 Colo. 1, 15-16, 445 P.2d 52, 59 (1968). It is the burden of the moving party to demonstrate the absence of a triable factual issue, and any doubts as to the existence of such an issue must be resolved against that party. *Greenberg v. Perkins*, 845 P.2d 530, 531 (Colo. 1993); *Elm Distrib., Inc. v. Tri-Centennial Corp.*, 768 P.2d 215, 218 (Colo. 1989). In determining whether summary judgment is proper, the trial court must resolve all doubts as to whether an issue of fact exists against the moving party. *Jones v. Dressel*, 623 P.2d 370, 373 (Colo. 1981); *AviComm, Inc. v. Colorado Pub. Utils. Comm'n*, 955 P.2d 1023, 1029 (Colo. 1998).

Plaintiff was employed by Defendants for 26 months. He left that employment in September 2008 due to what Plaintiff has characterized to be a hostile working environment. Plaintiff alleges that the hostile working environment included being berated and screamed at by his bosses, and being forced by Defendants, under threat of job termination, to engage in acts of illegal computer software piracy. Plaintiff also alleges that Defendants engaged in concerted acts of perjury to prevent him from collecting unemployment compensation benefits. Plaintiff was originally denied unemployment benefits after an administrative hearing. He appealed and was successful in having the hearing officer's decision overturned by an Industrial Claims Appeal Panel. Plaintiff was thereafter awarded unemployment compensation.

Plaintiff has filed a complaint in this case stating eight claims for relief:

1. First Claim for Relief: Negligence per se- unlawful termination of Plaintiff
2. Second Claim for Relief: Breach of Implied Contract
3. Third Claim for Relief: Negligent Infliction of Emotional Distress
4. Fourth Claim for Relief: Retaliation and Intentional Infliction of Emotional Distress.
5. Fifth Claim for Relief: Negligence/ Personal Property Loss
6. Sixth Claim for Relief: Undue Influence
7. Seventh Claim for Relief: Extortion
8. Eighth Claim for Relief: Racketeering

Some of the claims stem from acts alleged to have occurred while Plaintiff was employed by Defendants and others are based on conduct alleged to have occurred after Plaintiff left employment with Defendants.

In the initial complaint, Plaintiff seeks an award of damages totaling over 2 million dollars. In the motion for summary judgment, Plaintiff requests judgment for back pay in the amount of \$64,946.54, with damages trebled for a total of \$194,839.62. From this amount, Plaintiff requests that \$28,975.00 be paid to the Colorado Department of Labor and Employment for the unemployment benefits paid to Plaintiff. Plaintiff also seeks vacation pay for 40 hours at his most recent hourly rate of pay, plus civil penalties. Plaintiff also seeks judgment of \$35,000.00 to replace personal and business property lost as a result of his termination.

Collateral estoppel bars relitigation of an issue determined at a prior proceeding if (1) the issue precluded is identical to an issue actually litigated and necessarily adjudicated at the prior proceeding; (2) the party against whom estoppel is sought was a party to or was in privity with a party to the prior proceeding; (3) there was a final judgment on the merits in the prior proceeding; and (4) the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior proceeding. *Industrial Commission v. Moffat County School District Re No. 1*, 732 P.2d 616 (Colo.1987). “An unemployment compensation hearing is designed to adjudicate promptly a narrow issue of law, and to grant a limited remedy to an unemployed worker.” *Salida School Dist. R-32-J v. Morrison* 732 P.2d 1160, 1165 (Colo.1987). The court in *Salida School District* reasoned that findings made at unemployment compensation hearings should not be used to establish liability for unlawful termination in a subsequent lawsuit because the result would be that those hearings would become contested and lengthy, thus defeating the primary purpose to obtain prompt resolution of claims for unemployment benefits. *Id.*

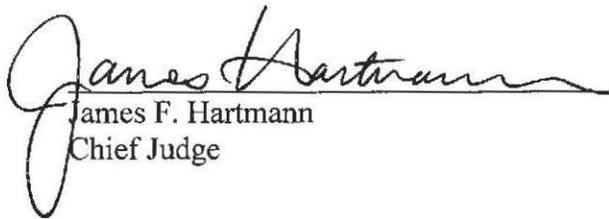
The court concludes that Plaintiff is not entitled to summary judgment in this case. First, there are a number of allegations made by Plaintiff which were not part of the unemployment compensation hearing and Plaintiff has not established that Defendants had a full and fair opportunity to litigate those issues in the prior proceeding. Second, the court believes that the scope of the unemployment compensation hearing, and the subsequent appeal, were designed to address a very specific and narrow area of law- whether Plaintiff was entitled to collect unemployment benefits. Plaintiff did prevail before the Industrial Claim Appeals Panel and was awarded benefits, which by law amounted to a percentage of

his pay. Plaintiff now seeks an award of his entire back pay plus treble damages, vacation pay, and damages for lost personal and business property. These claims could not be raised in the unemployment compensation hearing, thus there was not an opportunity for Defendants to fully litigate these issues at the prior proceeding.

Plaintiff's Motion for Summary Judgment is denied.

Dated: February 16, 2010

BY THE COURT:


James F. Hartmann
Chief Judge