IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID J. CYBULSKI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 1:10-cv-04423**
	)	
LEGEND HOME HEALTH CARE, LLC and	)	
RENLIN XIA, also known as	)	
RENLIN SHAW, M.D.,	)	
	)	
Defendants.	)	

DEFENDANTS LEGEND HOME HEALTH CARE, LLC AND RENLIN XIA'S MOTION TO DISMISS PURUSANT TO F.R.C.P. 12(B)(6)

Although it includes a number of claims under the Illinois Wage Payment and Collection Act ("IWPCA"), at its core, this case is a simple contract dispute. Plaintiff David J. Cybulski ("Cybulski") alleges that Defendant Legend Home Health, LLC ("Legend") breached an employment agreement that he claims was in effect between himself and Legend at the time that Legend terminated his employment. On the basis of this alleged breach, Plaintiff attempts to bootstrap IWPCA claims against both Legend and Legend's Managing Member, Defendant Renlin Xia ("Xia").

What Plaintiff fails to acknowledge, however, is that (1) the employment agreement was not in effect at the time of his termination and (2) even if it had been, Defendants did not breach the agreement. These facts are dispositive of the case – in the absence of a breach of a valid, enforceable employment agreement, Plaintiff simply cannot state a claim for violation of the IWCPA. As a result, all of Plaintiff's claims are without merit, and the Complaint should be dismissed in its entirety.

STATEMENT OF FACTS

On June 13, 2008, Plaintiff Cybulski and Defendant Legend entered into a written Employment Agreement (the "Agreement," attached to the Complaint as Exhibit A, hereafter cited as "Exhibit A"), which provided that Cybulski would be the Administrator of Legend's home health care business. (Compl. ¶7; Exhibit A, ¶1). Defendant Xia, Legend's Managing Member, negotiated and signed the Agreement on behalf of Legend. (Compl. ¶¶4, 7). The parties agreed to a one-year term, after which the Agreement could be extended for additional one-year terms, provided that Cybulski and Legend "mutually agree[d] in writing to extend the term of [Cybulski's] employment prior to the termination of each preceeding [sic] term." (Exhibit A, ¶2 (emphasis added)). The Agreement set Cybulski's base annual salary at $133,673.28, however, the parties expressly agreed that he would be "paid at a rate of fifty percent (50%) of the Salary until the Managing Member of the Company has recouped from the Company one hundred percent (100%) of his capital contributions to the Company." (*Id.*, ¶3.A (emphasis added)). Cybulski was to be paid "a lump sum payment equivalent to the amount of the Salary withheld" only once Defendant Xia had recouped the full amount of his capital contributions. (*Id.*). The parties also agreed that upon Cybulski's termination, he would be "paid, within seven (7) days of such termination, an amount equal to any Salary that was accrued but not yet paid as of the date of termination." (*Id.*, ¶5).

Legend terminated Cybulski's employment on March 30, 2010. (Compl. ¶10). Cybulski made written demand for payment of $116,786.70 from Legend – both personally, by letter dated April 5, 2010, and through his attorney, by letter dated June 3, 2010. (Compl. ¶13; Exhibits C, D). Cybulski filed the instant action against Legend and Xia on July 15, 2010, alleging breach of contract and violation of the IWPCA based on his contention that he had accrued the full Salary

amount as of the date of his termination. (Compl. ¶11). Cybulski does not allege, however, that Xia had recouped his full capital contribution

ARGUMENT

A motion to dismiss brought pursuant to Rule 12(b)(6) must be granted where, as here, the complaint fails to set forth sufficient facts to establish that relief is "plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 1974 (2007). In deciding a motion to dismiss for failure to state a claim, the Court must accept as true all factual allegations in the Complaint and draw all reasonable inferences in Plaintiff's favor. *Franzoni v. Hartmarx Corp.*, 300 F.3d 767, 770 (7th Cir. 2002). Nevertheless, the "Court need not strain to find inferences favorable to [Plaintiff] which are not apparent on the face of the complaint[.]" *ABN AMRO, Inc. v. Capital Int'l Ltd.,* No. 04-CV-3123, 2008 WL 4286984, at *15 (N.D. Ill. September 16, 2008) (internal quotations omitted). In addition, exhibits attached to a complaint are considered in a motion to dismiss, and where an exhibit conflicts with the allegations of the complaint, the exhibit typically controls. *Massey v. Merrill Lynch & Co.*, 464 F.3d 642, 645 (7th Cir. 2006). Even with the benefit of these favorable inferences, Plaintiff has failed to allege sufficient facts to state a claim, and his Complaint should therefore be dismissed.

I. COUNT I SHOULD BE DISMISSED BECAUSE PLAINTIFF'S COMPLAINT FAILS TO STATE A CLAIM FOR BREACH OF CONTRACT

In order to succeed on the breach of contract claim that he alleges in Count I, Plaintiff must show that he had an enforceable employment contract granting him a right to payment, and that Defendant Legend breached that right. *Rakos v. Skytel Corp.*, 954 F.Supp. 1234, 1237 (N.D. Ill. 1996); *see also Rudolph v. Int'l Business Machines Corp.*, 2009 WL 2632195 at *3 (N.D. Ill. 2009) (to recover on a breach of contract claim Plaintiff must first establish that there was an

enforceable employment contract). When considered in light of the Employment Agreement, however, Plaintiff's breach of contract claim against Legend cannot stand for two reasons – first, the Agreement is not enforceable because its term had expired without renewal at the time of Plaintiff's termination; and second, pursuant to the express terms of the Agreement, Plaintiff did not have a right to payment of the full Salary amount until Xia had recouped one hundred percent of the capital contributions he made to Legend.

A. By its Express Terms, the Employment Agreement Had Expired and Was No Longer in Effect at the Time of Plaintiff's Termination.

Plaintiff alleges that he entered into "a valid and binding written agreement for [his] employment by Legend – the Employment Agreement attached as Exhibit A." (Compl. at ¶16). Plaintiff entered into the Agreement with Legend on June 13, 2008. (*Id.* ¶ 7). The Agreement specified a one-year term, renewable by the parties – in writing – prior to the expiration of the preceding term. Specifically, the Agreement states:

> [t]he term of employment under this Agreement shall commence on the date hereof and shall continue for a period of one (1) year, and may continue thereafter for additional one (1) year terms in the event Employee and the Company mutually agree in writing to extend the term of Employee's employment prior to the termination of each preceeding [sic] term ("Term").

(Exhibit A at ¶2). Plaintiff's employment was terminated on March 30, 2010 – a full nine months after the original term of the Agreement had expired. Plaintiff does not make a single allegation that the Agreement was ever renewed in writing by the parties. As a result – even considering the allegations in the Complaint in the light most favorable to Plaintiff – the express terms of the Agreement are clear that the Agreement was not in force as of Plaintiff's termination on March 30, 2010. *See, e.g., Massey,* 464 F.3d at 645 (where an exhibit conflicts with the allegations of a complaint, the exhibit typically controls).

B. Plaintiff Does Not Have a Right to Payment of the Full Salary Amount Because the Full Salary Amount Had Not Accrued at the Time of His Termination.

Even assuming, *arguendo*, that the Agreement had been in force as of the date of Plaintiff's termination, Plaintiff still cannot state a claim for breach of contract against Defendant Legend because his right to the full Salary amount had not yet accrued. With respect to compensation, the Agreement provided that Plaintiff would be paid at a rate of fifty percent of his base annual salary until Xia had recouped his capital contributions to Legend. Upon Xia recouping his full capital contributions – and only then – Plaintiff was to receive a lump sum payment of the remaining fifty percent of the full Salary amount. Specifically:

> The Company shall pay Employee a base annual salary at a rate of $133,673.28, in bi-weekly payment made in arrears (the "Salary"). Employee shall be paid at a rate of fifty percent (50%) of the Salary until the Managing Member of the Company has recouped from the Compnay [sic] one hundred percent (100%) of his capital contributions to the Company, at which time Employee shall be paid a lump sum payment equivalent to the amount of the Salary withheld as of such date from Employee pursuant to the foregoing clause[.]"

(Exhibit A at ¶3.A (emphasis added)). Plaintiff does not allege anywhere in the Complaint that Xia had recouped any of his capital contributions to Legend – much less one hundred percent of them.

II. PLAINTIFF CANNOT STATE A CLAIM UNDER THE ILLINOIS WAGE PAYMENT AND COLLECTION ACT AND COUNTS II AND III SHOULD THEREFORE BE DISMISSED

In addition to and based upon his breach of contract allegations, Plaintiff asserts claims for violation of the Ilinois Wage Payment and Collection Act "(IWPCA") against both Legend and Xia. Both claims should be dismissed because the IWPCA provides for the recovery of unpaid compensation only where – unlike here – the employer has breached contractual obligations.

Specifically, the IWPCA "regulate[s] wage payment and is primarily concerned with the prompt and full payment of wages due workers at the time of separation from employment." *Rakos v. Skytel Corp.*, 954 F.Supp. 1234, 1240 (N.D. Ill. 1996). The IWPCA does not, however, provide employees with an independent substantive right to payment upon termination. Under the IWPCA, recoverable wages are limited to "compensation owed an employee by an employer pursuant to an employment contract or agreement between the two parties . . . ." 820 ILCS 115/2 (emphasis added). Thus, "[t]he plain meaning of the IWPCA indicates that pay is only recoverable under the statute when the employer has breached contractual obligations. *Palmer v. Great Dane Trailers*, No. 05 C 1410, 2005 U.S. Dist. LEXIS 12747, at *8 (N.D. Ill. June 28, 2005). The IWPCA "requires a right to compensation pursuant to an employment contract or agreement." *Stark v. PPM America, Inc.*, 354 F.3d 666, 672 (7th Cir. 2004); *see also Miller v. Kiefer Specialty Flooring, Inc.*, 317 Ill.App.3d 370, 374 (2d Dist. 2000) (cause of action under the IWCPA "arises out of the employment contract").

As stated more fully above, the Agreement between Plaintiff and Defendant Legend had expired without renewal as of the date of Plaintiff's termination. Additionally, because Xia had not recouped his capital contributions to Legend, the full Salary amount was not due to Plaintiff at the time of his termination.

CONCLUSION

WHEREFORE, for the reasons stated above and in their Motion to Dismiss, Defendants Legend Home Health, LLC and Renlin Xia respectfully request that this Honorable Court grant their Motion to Dismiss and dismiss Plaintiff's Complaint with prejudice.

Dated: September 14, 2010

Respectfully submitted,
LEGEND HOME HEALTH, LLC
RENLIN XIA

/s/ Matthew J. Sheahin
One of their attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on the 14th day of September, 2010, Defendants Legend Home Health Care, LLC and Renlin Xia's Memorandum of Law in Support of Their Motion to Dismiss Pursuant to F.R.C.P. 12(b)(6) was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record registered to receive notice through the CM/ECF system.

/s/ Matthew J. Sheahin