

COMMON PLEAS COURT
2018 OCT 18 PM 2:57

FILED
DAVID B. WADSWORTH
MEDINA COUNTY
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO**

Staffworx Search Group LLC

CASE NO. 18CIV0238

Plaintiff

v.

JUDGE JOYCE V. KIMBLER

Mulhearn Wilson Constructors, Inc.

Defendant

Journal Entry

This matter came before the Court upon Plaintiff's Motion for Partial Judgment on the Pleadings. Specifically, Defendant moves to dismiss Plaintiff's prayer for attorney fees and punitive damages.

A claim for punitive damages must be dismissed if the complaint fails to allege facts upon which such a claim can be made.

Count One Paragraph 9 of the Complaint alleges that the Defendant breached its agreement with the Plaintiff. Count One Paragraph 10 states that Defendant's acts were malicious and intentional which entitled Plaintiff to punitive damages. In Ohio, punitive damages may not be awarded for breach of contract no matter how willful the breach. *Lucarell v Nationwide Mut. Ins. Co.*, 152 Ohio St. 3d 453, 2018-Ohio-15, 97 N.E.3d 458, 2018 Ohio LEXIS 16, 2018 WL 321683.

Wherefore, Defendant's Motion to Dismiss the Prayer for punitive damages is GRANTED.

Generally, a prevailing party in a civil action may not recover attorney fees as a part of the cost of litigation. Exceptions to the general rule exist where a statutory provision allows for an award of attorney fees, an enforceable contract specifically provides for them, where punitive damages are awarded in tort cases involving fraud, insult or malice, or where the party against whom the fees are taxed was found to have acted in bad faith. *Dodson v. Maines*, 2012-Ohio-2548, 2012 Ohio App. LEXIS 2247, 2012 WL 2061608 None of these exceptions are present in this case as pled.

In response, Plaintiff seeks leave to amend its complaint in order to add a cause of action for frivolous conduct pursuant to R.C. 2323.51 (B)(1).

Civ.R. 15(A) provides:

"Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within twenty-eight days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party. Leave of court shall be freely given when justice so requires. ***"

A motion for leave to amend a complaint is commended to the court's sound discretion, subject to review on appeal. *State, ex rel. Wargo, v. Price* (1978), 56 Ohio St. 2d 65, 66 [10 O.O3d 116]

In the instant case, the Plaintiff is not seeking to remedy an oversight or

omission in the original complaint but instead to set forth a cause of action against counsel for the Defendant for alleged frivolous conduct in the handling of the litigation to date.

As in *Han v. Univ. of Dayton*, 2015-Ohio-346, 28 N.E.3d 547, 2015 Ohio App. LEXIS 327, this Court finds the Plaintiff has failed to plead any operative facts to be set forth in the amended complaint to make a prima facie showing that defense counsel has engaged in any litigation misconduct pursuant to R.C. 2323.51.

Wherefore, Plaintiff's leave to amend its complaint and for sanctions is DENIED at this time; and, Defendant's motion for partial judgment on the pleadings is GRANTED as it relates to Plaintiff's prayer for attorney fees.

IT IS SO ORDERED.



JUDGE JOYCE V. KIMBLER

Instructions to the clerk

The clerk is instructed to send a copy of the foregoing entry to the following parties or their counsel of record:

Donald W. Davis
Brennan, Manna & Diamond LLC
75 East Market Street
Akron, OH 44308

Jesse M. Schmidt
McNeal Schick Archibald & Biro Co., LPA
123 West Prospect Avenue Suite 250
Cleveland, Ohio 44115

Notice was sent by ordinary U.S. mail on 10-19-18.


DEPUTY CLERK OF COURT