

Weld County, Colorado, District Court P.O. Box 2038 Greeley, CO 80632-2038 (970) 351-7300	EFILED Document - District Court 2009CV991 CO Weld County District Court 19th JD Filing Date: Jul 22 2010 5:44PM MDT Filing ID: 32287891
<b>CRAIG D BUCKLEY,</b> <b>Plaintiff,</b>  v.  <b>DREAM STONE, INC, SCOTT MURPHY, EVE</b> <b>MURPHY, and RON MURPHY,</b> <b>Defendants.</b>	<hr/> <b>Case No: 09CV991</b> <b>Div. 1</b>
<b>ORDER GRANTING DEFENDANTS' MOTION TO DISMISS WITH PREJUDICE</b>	

This matter is before the court on the Defendants' Motion to Dismiss. Plaintiff filed a response on July 16, 2010. Defendants have not filed a reply.

Plaintiff filed his original complaint against Defendants on September 30, 2009, seeking over \$2 million in damages. This original complaint contained eight claims for relief, which included claims for unlawful discharge from employment, breach of contract, negligent and intentional infliction of emotional distress, negligence resulting in property loss, extortion, undue influence, and racketeering. Plaintiff alleged that Defendants subjected him to verbal threats and harassment, which made the working environment intolerable for Plaintiff. Plaintiff also alleged that Defendants forced Plaintiff, under threat of termination from employment, to violate copyright laws by duplicating protected software purchased by Defendants. Plaintiff also asserted that Defendants presented false information in Plaintiff's claim for unemployment benefits which resulted in damages to Plaintiff. Defendants filed an answer denying the majority of Plaintiff's contentions.

On February 25, 2010, Plaintiff filed an amended complaint. The amended complaint was not signed by Plaintiff; instead, the words "draft copy" appear on the signature line. In this amended complaint, Plaintiff asserted claims for relief for unlawful discharge from employment, breach of contract, negligent and intentional infliction of emotional distress, negligence of Defendants resulting in personal property loss to Plaintiff, and violation of the Colorado Wage Act, C.R.S. § 8-4-101, *et seq.* Plaintiff's claim that Defendants violated the Colorado Wage Claim Act was premised upon Defendants' failure to pay Plaintiff for his accrued vacation time. Plaintiff sought damages in his amended complaint of over \$400,000, of which \$820.00 was for unpaid vacation hours (plus penalties of \$1,640.00 on the vacation time claim). Defendants filed an answer to this amended complaint. Plaintiff later filed a motion to strike Defendant's answers and argued that the amended complaint filed with the court was only a "draft" and not the final



version. Plaintiff did not specifically seek damages for unpaid vacation time hours in his original complaint.

Plaintiff was employed by Dream Stone, Inc., from July 2006 until September 2008. Plaintiff claims that he was continuously employed with Dream Stone from July 2006 through September 2008. Defendants contend that Plaintiff quit his job on December 6, 2007, and returned to employment a few days later.

Prior to filing this lawsuit, Plaintiff filed a claim for unemployment benefits with the Colorado Department of Labor and Employment ("CDLE") and he was initially approved for compensation. Defendants challenged the decision and convinced the Unemployment Hearing Officer that Plaintiff's claim for unemployment benefits was without merit, resulting in Plaintiff being denied unemployment benefits. Plaintiff appealed the hearing officer's decision to the Industrial Claims Appeals Office and the hearing officer's decision was reversed. The order of the Industrial Claims Appeals Office panel is not dated, but the certificate of services reflects that the order was mailed to Plaintiff and counsel for Defendants on May 9, 2009. The decision of the Industrial Claims Appeals Office was not appealed to the Colorado Court of Appeals. The docket number for the unemployment benefits action before the Industrial Claims Appeals Office is 18903-2008.

In a separate action, Plaintiff filed a claim with the CDLE for vacation pay he believed he was owed. The claim number for Plaintiff's claim for unpaid vacation time is 0444-10. In a letter dated March 16, 2010, a compliance officer with the CDLE informed Plaintiff that his claim for accrued vacation time was being denied by the CDLE. The compliance officer stated that Plaintiff's claims were being denied because Plaintiff had not been employed by Dream Stone for a complete year and Plaintiff terminated his employment without notice. It is not known whether Plaintiff requested a hearing before a hearing officer.

Plaintiff has failed to appear on two occasions for his deposition after receiving proper notice from Defendants of the date and time of deposition. Prior to each scheduled deposition, Plaintiff filed a motion to quash the *subpoena duces tecum* served by Defendants and a motion for protective orders. Plaintiff's first deposition was scheduled for April 2, 2010. On March 25, 2010, Plaintiff filed a motion to quash the *subpoena duces tecum* served by Defendants and a motion for protective orders. Plaintiff filed a motion to vacate the deposition a mere hours before the scheduled deposition. The court denied Plaintiff's motions on April 9, 2010, when the motion became at issue, which was after the date scheduled for the deposition. Defendants moved to dismiss the case after Plaintiff failed to appear for the April 2, 2010 deposition. The court held a status conference with the parties on May 18, 2010, at which time the court denied Defendant's motion to dismiss. The court discussed with Plaintiff the importance of attending his deposition on the date it was rescheduled. Plaintiff was advised that Defendants would move to dismiss the action if Plaintiff again failed to appear for his deposition.

On June 22, 2010, Defendant again failed to appear for his deposition. Defendants requested that a record be made in open court of Plaintiff's failure to appear and Defendant's then made a verbal motion to dismiss. The court informed Defendants that it



would not entertain a verbal motion and that Defendants were at liberty to file a written motion to dismiss.

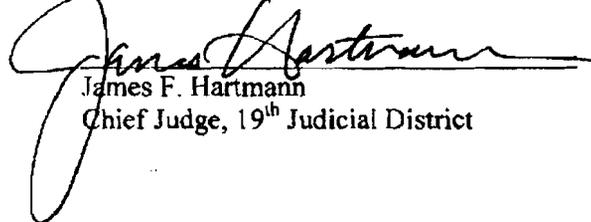
In his response to the motion to dismiss, Plaintiff states that he believed it was pointless to appear at the deposition because rulings issued by this "sham" court gave Plaintiff the impression that proceeding with his case would be pointless. Plaintiff points to rulings issued by this court in which the court found that Plaintiff has a pending claim before the CDLE for unpaid vacation time, which was argued by Defendants in their response to Plaintiff's motion for a settlement conference. Plaintiff has now submitted a copy of the March 16, 2010 letter from the CDLE denying his claim for unpaid vacation time, which was after the court issued the ruling now contested by Plaintiff. Plaintiff did not file a reply to Defendant's response to the motion for settlement conference; therefore, Defendant's assertion that the vacation pay claim was still pending before the CDLE was not refuted. It appears that the decision by the CDLE denying Plaintiff's claim for vacation pay is now a final decision.

Rather than filing a motion for relief from order pursuant to C.R.C.P. 60, Plaintiff chose to not attend his deposition for a second time on June 22, 2010. Plaintiff has shown a pattern of following only those Rules of Civil Procedure that endure to his benefit, while purposely ignoring or disregarding others. He has also repeatedly made serious, unsubstantiated accusations of criminal conduct against Defendants and defense counsel. Plaintiff appears to be under the misguided belief that he can make such allegations with impunity.

The court finds that the only appropriate sanction for Plaintiff failing to appear at his deposition on June 22, 2010 is to dismiss the action with prejudice. All future court dates are hereby vacated by the court. The court will address Defendant's motion for attorneys' fees and costs, filed on July 13, 2010, when that motion becomes at issue.

Dated: July 22, 2010

BY THE COURT:



James F. Hartmann  
Chief Judge, 19<sup>th</sup> Judicial District

