

Lawsuit Update

Judge Dismisses Elder Abuse Charge; Johns Files Cross-Complaint

by Mary Robertson

On January 13, 2011, Judge Kirk Nakamura ruled in favor of the defendants on their demurrer (objection) to the elder abuse claim in the Third Mutual v. PCM, Janet Price and Milt Johns lawsuit.

The judge had originally dismissed the elder abuse charge but allowed Third Mutual leave to file it again if it had individual elders make the claim. Third did not do this but did present its previous position that as an interested party it should have the standing to represent the elders in Third Mutual. The judge ruled that Third did not have standing to do so.

Joinder Granted

At the same time, the judge granted Milt Johns' joinder request that allows his trial to be combined with PCM/Price's trial.

Third Mutual has five of the original six counts of wrongdoing by the defendants remaining in its lawsuit. They are Breach of Contract, Breach of Fiduciary Duty, Intentional Concealment (fraud), Violation of the Business & Professions Code Section 17200, and Negligence.

Johns Files Cross-Complaint

On December 30, 2010, Milt Johns filed a cross-complaint against multiple defendants over his employment termination from PCM of California.

The defendants are PCM of California (the company that employed Johns to be general manager of PCM Inc.), Russ and Donny Disbro (past and current CEOs of PCM of California), Third Mutual, GRF, GRF Directors Robert Hatch and Jim Matson, attorney Paul Van Hoomissen, and two law firms Van Hoomissen worked for during the period in question.

In addition, for each of his seven claims of wrongdoing, Johns also lists 50 Roes (unidentified persons) as defendants but they differ from count to count so the total number of Roes for the cross-complaint is 150.

Johns listed seven causes of action. He is suing for general, compensatory and special damages, attorneys' fees, and punitive damages, the amounts to be determined at a later date.

(For clarity, this article will call PCM of California PCM-CA in order to separate it from PCM, Inc. which is the corporation providing the services for Laguna Woods Village.)

Complaints Against PCM-CA and the Disbros

Five of Johns' complaints are against PCM-CA; Donny Disbro and/or Russ Disbro are also named as defendants in some of them. All pertain to Johns being terminated from PCM-CA.

They are Breach of Contract (PCM-CA, both Disbros), Breach of Implied-in-Fact Contract (PCM-CA), Age-Based Discrimination (PCM-CA), Wrongful Termination in Violation of Public Policy (PCM-CA and D. Disbro), and Intentional Infliction of Emotional Distress (PCM-CA and both Disbros).

The cross-complaint claims that since 2000 when Johns accepted the promotion to general manager of PCM, Inc., Russ Disbro promised him that he would always have a senior executive position in PCM-CA, even if he should be removed as the PCM, Inc. General Manager. The cross-complaint further states that "Johns and PCM-CA, D. Disbro, R. Disbro entered into a written contract wherein Johns would be Co-CEO of PCM-CA as of May 1, 2010."

The cross-complaint asserts that during 2009, on several occasions Donny Disbro labeled him an "old man" and "Russ Disbro told Johns that he believed Johns was 'burned out' due to his age [he was 51] and that D. Disbro, who is substantially younger than Johns, was being promoted to CEO instead of Johns. However...he would be given a job as a senior executive in the company when the time was right."

Johns says in his complaint that in 2009, he "became aware that D. Disbro was obtaining cash from PCM-CA by submitting expense reports so that D. Disbro could obtain 'walking around and getting laid money'.... Johns complained to D. Disbro about what he reasonably believed to be a violation of both state and federal law."

Johns also states in his cross-complaint that D. Disbro “made unwelcome sexual comments concerning D. Disbro’s sexual relations” to him and he “complained about this harassment, but to no avail.”

He also says that in January 2010, he sent an email to Donny Disbro “indicating that Johns believed that the [PCM Inc.] Incentive Plan created by R.Disbro in 1996...might have violated state law and he urged D. Disbro to have the company attorney double check the Incentive Plan.”

At the end of February 2010 the cross-complaint states “D. Disbro told Johns that he believed Johns was ‘burned out’ as General Manager and that he was making the decision to replace Johns with a younger, cheaper employee.” It further states that “D. Disbro advised Johns that...neither of the Disbros would honor the promises and commitments made by R. Disbro to Johns” (that Johns would always have a senior executive position with PCM-CA).

Johns alleges that by these actions the defendants “breached [their] written employment contract by clearly and positively indicating, by words or conduct, that they would not meet the contract requirements,” and “PCM-CA breached the implied-in-fact employment contract by arbitrarily and wrongfully terminating Johns’ employment without regard to or in compliance with the requirements of the... agreement as set forth [in the cross-complaint].”

The cross-complaint further states “Johns...believes and thereon alleges that his age was a substantial motivating factor in PCM-CA’s decision to fail to promote Johns to Co-CEO of PCM-CA and to terminate his employment with PCM-CA, all in violation of [the Fair Employment and Housing Act].”

Johns asserts that “the actual reason for [his] termination was based upon, among other things, the fact that Johns was over 40 years old, and/or in retaliation for making protected complaints related to sexual harassment” in violation of public policy.

Interference with Contractual Relations

Johns alleges in his complaint that attorney Van Hoomissen, Third Mutual, GRF and GRF directors Hatch and Matson interfered with contractual relations between himself and PCM-CA.

The cross-complaint states that “in October and November 2009, Third, GRF, Hatch and Matson... interfered with the employment contract between Johns and PCM-CA with the intention to disrupt the performance of the contract by PCM-CA by, among other things, requesting that PCM-CA terminate Johns’ employment.”

Johns believes GRF and its two directors did this because Johns had advised them that “instituting a proposed transfer fee on incoming home buyers would violate the California Civil Code.” He believes Third Mutual asked PCM-CA to terminate Johns’ employment because Johns had advised it that “Third, through its board members, was engaging in sexual harassment and was also violating California law and its own bylaws.”

He further alleges that Van Hoomissen “interfered with Johns’ employment contract by negotiating with Third for Johns’ termination.”

Complaint of Breach of Fiduciary Duty Against Van Hoomissen

Finally, Johns asserts in his cross-complaint that Van Hoomissen “was engaged on Johns’ behalf to represent him with respect to certain claims being made against Johns by Third.”

However, Johns “alleges that Van Hoomissen breached his duties by failing to inform Johns of a tolling agreement extension request from Third Mutual.” He also “believes...that Van Hoomissen further breached his fiduciary duty to Johns by engaging in discussions with Third, GRF, Hatch and Matson on behalf of PCM-CA regarding the termination of Johns’ employment without Johns’ knowledge or informed consent.”

Responses by Defendants

The defendants named in Johns’ cross-complaint will be submitting their responses to the allegations this month. A date has not yet been set for trial.