

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CYRIAC ABRAHAM,

Plaintiff,

v.

WASHINGTON GROUP
INTERNATIONAL, INC. and
URS CORPORATION,

Defendants.

ORDER

12-cv-198-bbc

In an order entered March 26, 2013, I granted a motion for summary judgment filed by defendants Washington Group International, Inc. and URS Corporation on plaintiff Cyriac Abraham's misrepresentation and breach of contract claims arising out of his former employment with Washington Group. Dkt. #26. In resolving the motion, I noted that plaintiff had violated this court's summary judgment procedures by failing to respond properly to defendants' proposed findings of fact and by failing to submit his own proposed findings. Plaintiff submitted only his own affidavit, which did not respond directly to defendants' proposed findings and contained several legal conclusions and had other problems. Moreover, plaintiff made no attempt to correct his mistakes after defendants pointed them out in their reply brief. As a result of plaintiff's violations, I accepted all of defendants' proposed findings of fact as true and concluded that there was no genuine

factual dispute regarding whether defendants breached a contract or misrepresented any facts to plaintiff. Judgment was entered against plaintiff on March 27. Dkt. #27.

Now before the court is plaintiff's motion for relief from judgment under Fed. R. Civ. P. 60. Dkt. #28. Plaintiff contends that the court should have treated his affidavit as his response to defendants' proposed findings of fact and supplemental proposed findings of fact because the affidavit complied with the court's local rules. Plt.'s Br., dkt. #31, at 4. In particular, plaintiff contends that his affidavit provided a sufficient "response" to defendants' proposed findings of fact, as required by this court's summary judgment procedures, and that his only deficiency was that he titled his response as an "affidavit" instead of as "proposed findings of fact." Plaintiff contends that any other conclusion would "honor[] form over substance." Id.

Plaintiff is incorrect. His affidavit was not a sufficient response to defendants' proposed findings of fact, regardless what it was titled. Defendants proposed 92 findings of fact relating to plaintiff's employment with defendants and his allegations of misrepresentation and contractual breach. Dkt. #14. If plaintiff wished to put any of those facts into dispute, he was required by this court's procedures to "[a]nswer each numbered fact proposed by the moving party in separate paragraphs, using the same number," and "state [his] version of the fact and refer to evidence that supports that version." Procedure to be Followed on Motions for Summary Judgment, II.D.1 ("Rules Regarding Responses to the Moving Party's Proposed Factual Statements"), dkt. #6 at 7 (emphasis in original). Plaintiff was provided clear examples of how to do this. Id. at 7-8. The purpose of these

requirements is not to provide technical hoops through which parties must jump or to honor “form over substance,” as plaintiff suggests. Rather, the procedures are intended to help the parties and the court identify the facts that are relevant and material to the claims at issue and to clarify which facts are genuinely in dispute.

Plaintiff’s affidavit does not come close to complying with the court’s requirements. The affidavit consists of 24 paragraphs which do not correspond to the facts proposed by defendants. Dkt. #19. Further, although it is clear from the affidavit that plaintiff’s version of events differed in some ways from defendants’, plaintiff’s affidavit fails to respond in any way to several of defendants’ proposed facts. Thus, as I explained in the summary judgment opinion, plaintiff failed to identify whether and to what extent he disputed defendants’ version of events and which facts he believed were material and relevant to his claims. In sum, plaintiff’s affidavit was rejected not because of its title, but because it was an inadequate response to defendants’ proposed findings of fact and failed to comply with either the form or substance of the court’s procedures.

Moreover, as I explained in the March 26 opinion, defendants would have been entitled to summary judgment even if I had considered plaintiff’s affidavit. Plaintiff simply failed to adduce evidence that defendants made any misrepresentations to him or breached any contract. In contrast, defendants presented evidence that plaintiff was told that he was being hired at a specific salary to perform scheduling duties and that in fact he was hired and paid at the advertised salary to perform scheduling duties. Additionally, defendants presented evidence that they told plaintiff that he would be entitled to participate in an

incentive program once it had been submitted and approved, but that the incentive program was not submitted and approved until after he resigned his employment voluntarily. Plaintiff does not dispute any of this evidence in his affidavit. He does attempt to create a factual dispute in his affidavit by stating that he received two documents from defendants containing written descriptions of the duties he believed he would be performing as a project control manager. Dkt. #19 at ¶ 15. However, as I explained in the summary judgment opinion, these assertions are inadmissible under the “sham affidavit” rule because they expressly contradict plaintiff’s previous deposition testimony. In his motion for relief from judgment, plaintiff makes no attempt to address this issue or to address his other evidentiary deficiencies. Accordingly, I am denying plaintiff’s motion.

ORDER

IT IS ORDERED that the plaintiff Cyriac Abraham’s motion for relief from judgment under Fed. R. Civ. P. 60, dkt. #28, is DENIED.

Entered this 24th day of April, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge