

United States District Court
Eastern District of New York

Constantine Koutras, vs. Toshiba Global Commerce Solutions, Inc., Plaintiff, Defendant.

Index No. 1:22-cv-330

Verified Complaint

Jury Trial Requested

Plaintiff, Constantine Koutras (Koutras), by his attorneys, Fryer & Ross, LLP, for his complaint against Defendant Toshiba Global Commerce Solutions, Inc.(TGCS), alleges as follows:

Parties

- 1) Plaintiff is a Citizen of the United States and resides in Brooklyn, New York.
- 2) Defendant is a corporation, upon information and belief incorporated in the State of Delaware with its place of business at 3901 South Miami Boulevard, Durham, North Carolina 27709.

Venue

- 3) Venue lies in New York because plaintiff resides in New York at 9104 Ridge Boulevard, Brooklyn, New York 11209.

Jurisdiction

- 4) Some of the acts complained of herein took place in New York.
- 5) Plaintiff performed his duties as an employee of TGCS in New York and in North Carolina.
- 6) Plaintiff is a citizen of the State of New York.
- 7) TGCS is a citizen of Delaware, where it is incorporated or of North Carolina where it has its principal place of business.
- 8) On information and belief, TGCS does business in the state of New York.

- 9) On information and belief, TGCS has sufficient contacts within the State of New York to be subject to in personam jurisdiction in the State of New York.
- 10) The United States District Court has jurisdiction pursuant to 28 U.S.C. 1332 because the parties are citizens of different states and the amount in controversy exceeds \$75,000.

Choice of Law

- 11) Koutras was hired by TGCS at its headquarters in Research Triangle Park in North Carolina.
- 12) Koutras spent substantial time organizing his department and carrying out his duties at the TGCS principal office in North Carolina
 - a) From October 2012 until approximately December 2016, Koutras spent three to five days per week working in North Carolina
 - b) From January 2017 to November 2017 Koutras spent less time in North Carolina, carrying out many of his duties from his home in Brooklyn, New York
 - c) At all times Koutras made extensive use of teleconferencing and telephone conference calls reporting to and taking instructions from TGCS employees in North Carolina.
 - d) At all times, he was employed by TGCS, Koutras had an office at the company's headquarters in North Carolina
- 13) Because of Koutras' extensive work, both physically and through electronic communication means in the State of North Carolina, the North Carolina Wage and Hours Act governs Koutras rights as alleged herein.
- 14) Alternatively, if North Carolina law does not apply to this matter, then New York law applies, including the New York labor law and New York employment contract law.

Facts

- 15) Koutras was hired in or about October 2012 by TGCS as Executive Director of Separation. His duties involved separating complex computer software systems from a system used when TGCS and IBM operated as a joint venture to new systems for TGCS where he led the implementation projects. Koutras base salary at that time was \$175,000 per year.
- 16) Koutras remained an employee of TGCS from the date of his hire through November 30, 2017, at which time he was laid off for non-cause reasons along with several other employees.
- 17) Koutras was told that he would be treated as an independent contractor the first few weeks of his employment by TGCS only because it would take several weeks to finish the “paperwork” to enter him into TGCS records as an employee.
- 18) Under applicable state and federal law, Koutras was an employee notwithstanding the fact that TGCS claimed he was an independent contractor. Among other things,
 - a) He used equipment provided by TGCS;
 - b) He had a permanent office at TGCS headquarters in North Carolina;
 - c) His duties were specified by TGCS;
 - d) He had no other “clients”; TGCS was his sole employer;
 - e) He did not have any employees of his own;
 - f) He supervised other TGCS employees.
- 19) TGCS documented its engagement of Koutras by letter dated 4 January 2013, a copy of which is annexed as Exhibit A hereto (referred to hereinafter as the “Employment Letter.”)

- a) The Employment Letter described Koutras position and duties in general terms and stated the terms of his compensation:
 - i) Koutras' base pay at that time was \$175,000 per year, later increased to \$185,000.
 - ii) In addition to base pay, Koutras was promised an additional payment under what was labelled an Annual Incentive Plan.

The Annual Incentive Plan:

- 20) According to the Employment Letter, under this plan Koutras was promised additional compensation of a minimum of 30% of his base salary up to a maximum of 200% of his base salary. This payment was stated to be due after the close of TGCS' fiscal year ending March 31.
- 21) On information and belief, Koutras was never provided with any further documentation or explanation of the TGCS Annual Incentive Plan.”
- 22) In 2014 the Annual Incentive Plan was renamed the “Short Term Incentive Plan”
- 23) On information and belief the criteria for determining payments under the “Short Term Incentive Plan” were substantially the same as those under the “Annual Incentive Plan.”
- 24) On information and belief, Koutras was paid the following amounts under the TGCS Annual Incentive Plan/Short Term Incentive Plan (referred to herein as “Annual Incentive Plan”).
 - a) \$40,000 for TGCS' fiscal year 2013
 - b) \$17,575 for TGCS' fiscal year 2014
 - c) \$0.00 for TGCS' fiscal year 2015
 - d) \$25,029 for TGCS' fiscal year 2016
 - e) \$26,000 for TGCS' first half of its fiscal year 2017

- 25) Koutras is entitled to a minimum of approximately \$54,000 per year and a maximum of approximately \$360,000 under the TGCS Annual Incentive Plan for the fiscal years ending March 31, 2014, 2015, 2016 & 2017 plus a pro-rated amount for the fiscal year ending March 31, 2013.
- 26) The amounts paid to Koutras under the Annual Incentive Plan are less than the amounts promised by TGCS in its Employment Letter (Exh. A).
- 27) Koutras is entitled to an accounting of the amounts due him under the Annual Incentive Plan and to recover all amounts due less the amounts already paid to him.

The Long-Term Incentive Plan

- 28) TGCS also offered Koutras a “Long Term Incentive Plan” that provides for additional compensation for the three-year period ending March 31, 2016. This plan is set forth in a TGCS memorandum given to Koutras, a copy of which is annexed hereto as Exhibit B and is referred to herein as the “LTI” agreement.
- a) The LTI agreement provides that the payment is based on a percentage of employees’ base salary.
 - b) The first payment under the LTI plan was earned on March 31, 2016 and was, according to the plan, to be paid 60 days later of on or about May 31, 2016.
 - c) Under the LTI plan, Koutras earned and is entitled to approximately \$222,000 plus interest.
 - d) On information and belief, the Board of Directors of TGCS never acted to withhold or reduce payout amounts under the LTI program.
- 29) On or about May 16, 2016, James Fornabaio, an employee of TGCS, forwarded an e-mail from Scott Maccabe, to Koutras and others stating that “I” decided to alter the plan and not make the payout already earned by the plan participants. A copy of the Fornabaio/Maccabe e-mail is annexed as Exhibit C hereto.

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