

United States Court of Appeals for the Federal Circuit

STEVEN J. OLIVA,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2019-2059

Appeal from the United States Court of Federal Claims
in No. 1:18-cv-00104-LKG, Judge Lydia Kay Griggsby.

Decided: June 15, 2020

HAN PARK, Covington & Burling LLP, Washington, DC,
argued for plaintiff-appellant. Also represented by
RICHARD L. RAINEY; JENNIFER CIELUCH, New York, NY.

DAVID PEHLKE, Commercial Litigation Branch, Civil
Division, United States Department of Justice, Washing-
ton, DC, argued for defendant-appellee. Also represented
by JOSEPH H. HUNT, ELIZABETH MARIE HOSFORD, ROBERT
EDWARD KIRSCHMAN, JR.

Before NEWMAN, DYK, and WALLACH, *Circuit Judges*.

DYK, *Circuit Judge*.

Steven J. Oliva appeals a decision of the Court of Federal Claims (“Claims Court”) dismissing his complaint for failure to state a plausible claim for breach of contract damages. We reverse and remand for further proceedings.

BACKGROUND

Mr. Oliva periodically worked for the United States Department of Veterans Affairs (“VA”) between 2000 and 2016. Starting in 2012, Mr. Oliva worked as an Associate Director of Pharmacy Customer Care at the Health Resource Center in Waco, Texas. On January 9, 2015, the VA issued a letter of reprimand to Mr. Oliva for accusing a supervisor of improperly pre-selecting an applicant for a position. Mr. Oliva filed a formal grievance challenging the letter of reprimand on the ground that his email constituted protected whistleblowing. On January 30, Mr. Oliva entered into an Equal Employment Opportunity settlement agreement (“the Settlement Agreement”) with the VA to resolve his grievance. The Settlement Agreement stated that the VA would provide:

[A] [w]ritten reference for Mr. Oliva and the assurance of a positive verbal reference, if requested[.] A written reference will be provided by [Mr. Oliva’s supervisor]. Should [the supervisor] be asked to provide a verbal reference, he will not mention the retracted [r]eprimand [letter] and will limit information provided to that set forth in the written reference.

J.A. 96.

Mr. Oliva’s amended complaint alleged that he “was wrongfully terminated from his employment with the [VA] in April 2016.” J.A. 91. The parties appear to agree that his termination was for performance reasons.

On January 22, 2018, Mr. Oliva filed a pro se complaint in the Claims Court, alleging that the VA had breached the Settlement Agreement on two occasions. The first alleged breach was in March 2015, when Mr. Oliva applied for a position as an Associate Director in the VA's medical center in El Paso, Texas. According to the complaint, when the VA in Waco was contacted to provide a reference in support of his application, it disclosed the existence of the reprimand letter. Mr. Oliva asserted that as a result, he did not receive an offer of employment at the El Paso position. Mr. Oliva alleged that but for the breach, he would have been hired for the position. The second alleged breach was in February 2016, when Mr. Oliva applied for a second position as a Healthcare Administrator in the VA's healthcare center in Greenville, North Carolina. According to the complaint, a VA representative in Waco violated the Settlement Agreement by disclosing that Mr. Oliva was on a Temporary Duty Assignment, as well as the identity and contact information of his supervisor at the time. Mr. Oliva stated that, as a result, he did not receive an offer of employment for the Greenville position. Mr. Oliva's complaint again alleges that but for the alleged breach, he would have been hired for the Greenville position. He also alleges that he would have received salary and a relocation incentive payment from the VA if he had been hired for either job.

The government moved to dismiss Mr. Oliva's complaint for failure to state a claim for breach of contract. The Claims Court held that Mr. Oliva's complaint "plausibly alleged that the government breached the Settlement Agreement by disclosing his letter of reprimand—and the fact that plaintiff was on a temporary duty assignment—and that these alleged breaches resulted in the loss of future employment opportunities." J.A. 80. On the other hand, the Claims Court held that "the most generous reading of the complaint shows that [the] plaintiff has not stated a plausible claim to recover relocation incentive payments from the government." *Id.* The Claims Court referred Mr.

Oliva to a pro bono attorney to assist him in filing an amended complaint.

On September 26, 2018, Mr. Oliva, now represented by counsel, filed an amended complaint repeating the allegations of the first complaint and seeking (1) \$289,564 in lost salary and (2) either \$86,304 in lost relocation incentive pay with respect to the El Paso position or \$87,312 in lost relocation incentive pay with respect to the Greenville position. The Claims Court dismissed the amended complaint, holding that Mr. Oliva had not stated plausible claims to recover lost salary or relocation incentive pay. On the issue of lost salary, the Claims Court held that Mr. Oliva had “allege[d] in the amended complaint that the VA breached the Settlement Agreement,” but that “the factual allegations in the amended complaint show that the termination of [Mr. Oliva]’s employment in April 2016 [for performance reasons], rather than the VA’s alleged breach of the Settlement Agreement in February 2016, was the proximate cause of [Mr. Oliva]’s lost salary.” J.A. 11–12. On the issue of relocation incentive pay, the Claims Court held that Mr. Oliva had not alleged the prerequisite facts that would have made him eligible for such pay under the Office of Personnel Management (“OPM”) regulations because he had alleged neither (1) that he had the required status—i.e., that he was a “federal employee” with “a ‘Fully Successful,’ or equivalent, rating of record immediately before he would have relocated”—nor (2) that “the VA determined the amount of relocation pay that he would have received.” J.A. 9–11. Mr. Oliva appeals, and we have jurisdiction under 28 U.S.C. § 1295(a)(3).¹

¹ The Claims Court had jurisdiction over Mr. Oliva’s breach of contract claim. See 28 U.S.C. § 1491(a)(1); *Holmes v. United States*, 657 F.3d 1303, 1312 (Fed. Cir. 2011); *Cunningham v. United States*, 748 F.3d 1172 (Fed. Cir. 2014).

DISCUSSION

The Claims Court may dismiss a complaint if it fails “to state a claim upon which relief can be granted.” Ct. Fed. Cl. R. 12(b)(6). We review the Claims Court’s dismissal for failure to state a claim de novo. *Jones v. United States*, 846 F.3d 1343, 1351 (Fed. Cir. 2017). To survive a motion to dismiss, the complaint must provide “a short and plain statement of the claim showing that the pleader is entitled to relief,” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), with “sufficient factual matter . . . to state a claim to relief that is plausible on its face,” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). We take all plausible factual allegations in the complaint as true and construe the facts in the light most favorable to the non-moving party. *Jones*, 846 F.3d at 1351.

To recover for a breach of contract, “a party must allege and establish: (1) a valid contract between the parties, (2) an obligation or duty arising out of the contract, (3) a breach of that duty, and (4) damages caused by the breach.” *San Carlos Irrigation & Drainage Dist. v. United States*, 877 F.2d 957, 959 (Fed. Cir. 1989). “Contract remedies are designed to make the nonbreaching party whole.” *Cal. Fed. Bank v. United States*, 395 F.3d 1263, 1267 (Fed. Cir. 2005). “One way to achieve that end is to give the nonbreaching party ‘expectancy damages,’ i.e., the benefits the nonbreaching party expected to receive in the absence of a breach.” *Id.* For expectancy damages, the party must “show that the claimed damages . . . would not have occurred but for the breach.” *Fifth Third Bank v. United States*, 518 F.3d 1368, 1374 (Fed. Cir. 2008). But-for or proximate causation requires “that the causal connection between the breach and the loss . . . be definitively established.” *Cal. Fed. Bank*, 395 F.3d at 1267–68 (internal quotation marks and citations omitted).

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