

IN THE CIRCUIT COURT OF ST. CLAIR COUNTY, ILLINOIS
TWENTIETH JUDICIAL CIRCUIT

RICHARD SPREHE,

Plaintiff,

v.

MEDICINE EXPRESS, LLC,

Serve:

Joshua A. Stevens
5003 N. Illinois St.
Fairview Heights, IL 62208

Defendant.

Case No. 19L0524

COMPLAINT

COMES NOW Plaintiff Richard Sprehe ("Sprehe"), by and through the undersigned counsel, and for his Complaint against Defendant Medicine Express, LLC, formerly Medicine Express, Inc. ("Defendant"), hereby states as follows:

PARTIES

1. Plaintiff Sprehe is an individual residing in St. Clair County, Illinois.
2. Defendant Medicine Express, LLC is an Illinois limited liability company, with its principal place of business in St. Clair County, Illinois.

JURISDICTION & VENUE

3. This court has original jurisdiction to hear this action under Section 9 of Article VI of the Constitution of the State of Illinois, as a justiciable matter not arising under the original and exclusive jurisdiction of the Illinois Supreme Court.
4. This Court has general personal jurisdiction over Defendant because Defendant is a limited liability company organized under the laws of the State of Illinois and transacts

business within the State of Illinois. 735 Ill. Comp. Stat. 5/2-209.

5. Venue is appropriate in this judicial circuit because Defendant, as a private entity, transacts business here and, thus, resides here. 735 Ill. Comp. Stat. 5/2-101.

FACTS COMMON TO ALL COUNTS

6. Defendant operates a pharmacy located at 1704 N. Illinois St., Swansea, Illinois 62226.

7. Sprehe is a licensed pharmacist in the State of Illinois.

8. Sprehe entered into a Stock Purchase Agreement dated June 15, 2018 with EMPOWERME RX, LLC ("EMPOWERME"), a Missouri limited liability company, whereby Sprehe sold all issued and outstanding shares in Medicine Express, Inc., an Illinois corporation, to EMPOWERME ("Stock Purchase Agreement"). Defendant is a wholly owned subsidiary of EMPOWERME.

9. Prior to entering into the Stock Purchase Agreement, Defendant did not visit the physical location of the Retail Division.

A. Sprehe's Employment Agreement with Defendant

10. As a material term of the Stock Purchase Agreement transaction, on July 1, 2018, Sprehe entered into an Employment Agreement with Medicine Express, Inc. dated July 1, 2018 ("Employment Agreement"), whereby Defendant agreed to continue to employ Sprehe as its President under the terms and conditions set forth therein. A true and correct copy of Sprehe's Employment Agreement is attached as **Exhibit 1** and is incorporated herein by reference.

11. The term of the Employment Agreement commenced on July 1, 2018 for a three-year period unless terminated in accordance with the Employment Agreement ("Employment Term"). See Exhibit 1, Section 6(a).

12. Under Section 4 of the Employment Agreement, entitled "Compensation," during the Employment Term, Sprehe was entitled to a gross annual base salary of \$166,000.00 (less required and voluntary withholdings), merit-based bonuses in Defendant's discretion, a one-time "Rx Bonus" (as defined therein) of \$50,000.00, a monthly automobile allowance of \$500.00, and other benefits ("Compensation"). *See* Exhibit 1, Section 4.

13. The Employment Agreement could be terminated by either party for a number of reasons, including for Cause (as defined therein). *See* Exhibit 1, Section 6(b).

14. Section 6(b)(v) of the Employment Agreement provided, among other things,

Executive's employment may be terminated prior to the expiration of the Employment Term...by the Company immediately for Cause provided that the Company delivers to Executive a written notice stating that Executive committed in an act or omission constituting Cause hereunder and specifying the particulars thereof in reasonable detail and providing Executive with thirty (30) days from the date Executive receives such notice to address or remedy any such Cause even where a remedy is available.

See Exhibit 1, Section 6(b)(v).

15. Section 6(d) of the Employment Agreement defines "Cause" as, among other things,

a good faith finding by the Company's Board of Directors that Executive has (i) breached a material provision in this Agreement, Article V or Article VII of the Stock Purchase Agreement, or any employment policy of the Company, and, if curable, failed to cure such breach within thirty (30) days after being notified of such breach; (ii) engaged in gross negligence or willful misconduct that is harmful to the business, interests, or reputation of the Company...

See Exhibit 1, Section 6(d).

16. As Defendant's President, Sprehe was responsible for the management of both Defendant's retail pharmacy ("Retail Division") and Defendant's long-term care pharmacy

("Long-Term Care Division").

17. In or about July 2018, Defendant hired Emily Powers, who began managing the operations of the Long-Term Care Division.

18. Following the hiring of Ms. Powers, Defendant was relegated to managing the operations of only the Retail Division.

B. Termination of Employment Agreement

19. On February 6, 2019, Defendant sent Sprehe a letter which purported to outline the grounds upon which Defendant terminated Sprehe's employment for Cause, effective immediately ("Termination Letter"). A true and correct copy of the Termination Letter is attached as **Exhibit 2** and is incorporated herein by reference.

20. In the Termination Letter, Defendant alleges that Sprehe "violated employment policies; refused to provide 24/7 on-call pharmacy service; refused to comply with reasonable Company directives; and engaged in the activities in conflict with the best interests of the Company."

21. Prior to the Termination Letter, Defendant never advised Sprehe of any complaints lodged against him.

22. Prior to the Termination Letter, Defendant never disciplined Sprehe with regard to his conduct or his performance.

23. Prior to the Termination Letter, Defendant never afforded Sprehe an opportunity to cure any alleged misconduct or performance deficiencies.

24. Upon information and belief, no documentation exists that supports Defendant's purported reasons to terminate Sprehe's employment.

C. Defendant's Conduct Post-Termination Letter

25. On or about February 6, 2019, Defendant terminated the employment of the Retail Division's Store Manager, Jody Jockish. Defendant also notified the other employees of the Retail Division of its sale and that their positions were being eliminated.

26. On or about February 6, 2019, Defendant also announced its plans to close the Retail Division on February 21, 2019.

27. Defendant closed the Retail Division effective February 21, 2019.

28. Defendant manufactured "Cause" to terminate Defendant's employment in order to avoid responsibility for Defendant's obligations to Sprehe under the Employment Agreement and close the Retail Division.

Count I
Breach of Contract (Employment Agreement)

29. Sprehe restates, realleges and incorporates by reference paragraphs 1 through 28 of this Complaint as if fully set forth herein.

30. Sprehe and Defendant had the capacity to enter into the Employment Agreement.

31. The Employment Agreement was supported by valid consideration.

32. The Employment Agreement is a valid and enforceable contract.

33. Under the Employment Agreement, Sprehe agreed to serve as Defendant's President, and Defendant agreed to compensate Sprehe for doing so.

34. Sprehe fully performed his obligations under the Employment Agreement.

35. On February 6, 2019, Defendant provided Sprehe with the Termination Letter, purporting to set forth the grounds upon which it was entitled to terminate Sprehe's employment for Cause. See Exhibit 2.

36. All purported grounds for Sprehe's termination were subject to cure.

37. Prior to the Termination Letter, Defendant never disciplined Sprehe regarding his conduct or performance.

38. Defendant did not provide Sprehe with notice or an opportunity to cure pursuant to Section 6(b) of the Employment Agreement. *See* Exhibit 1, Section 6(b).

39. Defendant's purported termination of the Employment Agreement for Cause was unlawful.

40. Defendant therefore breached the Employment Agreement by terminating the Employment Agreement unlawfully and preventing Sprehe from working through the Employment Term. *See* Exhibit 1, Section 4.

41. As a direct and proximate result of Defendant's breaches of the Employment Agreement, Sprehe has suffered damages in that Sprehe was deprived of his Compensation under Section 4 of the Employment Agreement for the remainder of the Employment Term.

WHEREFORE, Sprehe respectfully prays that this Court enter judgment in favor of Sprehe and against Defendant and award Sprehe damages, pre-judgment and post-judgment interest, attorneys' fees and costs, and any other relief this Court may deem just and proper.

Count II
Breach of Implied Covenant of Good Faith and Fair Dealing

42. Sprehe restates, realleges and incorporates by reference paragraphs 1 through 41 of this Petition as if fully set forth herein.

43. Under the Employment Agreement, Sprehe was responsible for operating and managing Defendant's Retail Division and Long-Term Care Division.

44. Shortly following the execution of the Stock Purchase Agreement, Defendant hired Ms. Powers to run the Long-Term Care Division and relegated Sprehe to operation of the Retail Division.

45. On February 6, 2019, Defendant delivered to Sprehe the Termination Letter.

46. The Termination Letter sets forth purported reasons to terminate Sprehe's employment for Cause. See Exhibit 2.

47. Shortly following Defendant's delivery of the Termination Letter, Defendant terminated the employment of the Store Manager of the Retail Division.

48. Shortly following Defendant's delivery of the Termination Letter, Defendant announced its intent to permanently close the Retail Division.

49. Defendant purported to terminate the Employment Agreement for manufactured Cause in a manner that denied Sprehe the expected benefits of the Employment Agreement, including but not limited to the Compensation.

50. By its conduct as described above, Defendant has breached its obligation that exists in every contract under Illinois law to deal with Sprehe fairly and in good faith.

WHEREFORE, Sprehe respectfully prays that this Court enter judgment in favor of Sprehe and against Defendant and award Sprehe damages, pre-judgment and post-judgment interest, and any other relief this Court may deem just and proper.

Count V **Unjust Enrichment**

51. Sprehe restates, realleges and incorporates by reference paragraphs 1 through 50 of this Petition as if fully set forth herein.

52. Sprehe performed services for Defendant from approximately July 2018 through February 2019.

53. Pursuant to the Employment Agreement, Sprehe was entitled to a Rx Bonus of \$50,000.00 if he met certain performance targets. See Exhibit 1, Section 4.

54. On February 6, 2019, Defendant purportedly terminated Sprehe's employment for

cause. *See* Exhibit 2.

55. Sprehe conferred a benefit on Defendant through his operation and management of the Retail Division from July 2018 through February 2019.

56. Sprehe's performance was such that, had Defendant not terminated Sprehe's employment, Sprehe would have qualified for the Rx Bonus of \$50,000.00 under the terms of the Employment Agreement. *See* Exhibit 1, Section 4.

57. It would be unjust to allow Defendant to retain the benefit of Sprehe's bonus compensation for performing his duties.

WHEREFORE, Sprehe respectfully prays that this Court enter judgment in favor Sprehe and against Defendant and award Sprehe damages, pre-judgment and post-judgment interest, and any other relief this Court may deem just and proper.

Respectfully submitted,

POLSINELLI PC

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