

**Superior Court of California, County of Alameda**  
**Rene C. Davidson Alameda County Courthouse**

Cao  Plaintiff/Petitioner(s)  VS.  Memscap, Inc.  Defendant/Respondent(s) (Abbreviated Title)	No. <u>2002054246</u>  Order  Motion for Summary Adjudication Granted
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The Motion for Summary Adjudication filed for Memscap, Inc. was set for hearing on 03/11/2004 at 02:00 PM in Department 31 before the Honorable Steven Brick. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

**IT IS HEREBY ORDERED THAT:**

The motion by Defendants Memscap, Inc. and Jean Michel Karam for summary adjudication is ruled upon as follows:

The motion is GRANTED as to the 3rd cause of action. Under *Gould v. Maryland Sound Indus.* (1995) 31 Cal.App.4th 1137, 1148, Plaintiff can recover for violation of public policy if he was terminated in order to avoid paying him for wages already earned. Assuming that Plaintiff's bonus for the year 2000 is a wage, Undisputed Facts 54-59 establish that Plaintiff does not have evidence that he was terminated in order to avoid paying him wages that he had already earned. The facts that Plaintiff was terminated and was not paid any bonus or commission do not, by themselves, permit a reasonable inference that the motivation for the termination was to avoid paying such compensation.

The motion is GRANTED as to the 5th cause of action. There is no evidence that Defendants did not intend to perform when the April 17, 2000 contract was signed, or in February, 2001, when the "preliminary oral agreement" regarding Plaintiff's new position and commission schedule was made. It is undisputed that Plaintiff suffered no damage as a result of Defendants' conduct with regard to the American Express account or the cellular telephone account. Facts 82-85.

The motion is GRANTED as to the 7th cause of action. Karam's alleged statements about Plaintiff's job performance and his failure to effectively negotiate with Walsin are opinion, and not actionable. The alleged statement that the Executive Committee made the decision to terminate Plaintiff is not defamatory, since Plaintiff was terminated and nothing in the statement exposes Plaintiff to further injury in his occupation, hatred, contempt, ridicule, or obloquy. There is no dispute that Plaintiff was not defamed by Karam's alleged statements that Plaintiff exceeded the budget for the Oakland office. Fact 51 is supported by Plaintiff's deposition testimony at p. 169. Plaintiff's declaration, para. 18, does not create a triable issue as to the falsity of Karam's statements, since Plaintiff does not dispute the fact that he exceeded the initial budget.

The motion is GRANTED as to the 8th cause of action. The failure to pay bonuses and commissions to

Plaintiff, his termination, the failure to remove Plaintiff promptly from the credit card and cellular telephone accounts, and the alleged statements about Plaintiff's use of unauthorized funds for personal expenses and his overspending are not statements and conduct so extreme as to exceed all bounds of that usually tolerated in a civilized society.

Defendants' request for judicial notice is GRANTED.

Defendants' evidentiary objections

I. Decl. of Dunn

Page 3:12-15: Sustained. Hearsay.

Page 5:3-4: Sustained. Hearsay.

Page 7:1-2: Sustained. Irrelevant opinion.

II. Decl. of Cao

Page 4:12-13: Sustained. Hearsay.

Page 5:17-20: Overruled. This testimony does not contradict Plaintiff's deposition testimony at pp. 62-63 because although he testifies that Karam had to approve the formal agreement, his testimony indicates that he reasonably believed that Guiou had authority to enter into an informal agreement with him and he does not testify that Guiou lacked authority to do so.

Page 6:1-5: Overruled.

Page 6:7-9: Overruled.

Page 6:9-10: Sustained. Testimony about what Plaintiff "understood" is conclusory.

III. Declaration of Breunig

1. Paras. 6 and 7: Overruled. This testimony includes specific facts supporting the conclusions that disparaging statements were made.

IV. Declaration of Albert

Para. 5: Sustained. No foundation.

Para. 6: Overruled.

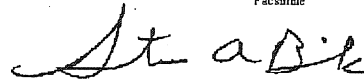
V. Declaration of Bigot

Para. 3: Overruled.

Para. 5: Overruled.

Dated: 03/26/2004

Facsimile



Judge Steven Brick