

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

INTERNATIONAL BUSINESS
MACHINES CORPORATION
1 New Orchard Road
Armonk, NY 10504

Plaintiff,

v.

DAVID ZOLET
17 Paddock Court
Potomac, MD 20854
(Montgomery County)

Defendant.

Case Number: _____

COMPLAINT

Plaintiff International Business Machines Corporation ("IBM" or "Company"), by counsel, brings this action for breach of contract against IBM's former employee, Defendant David Zolet. Zolet agreed in writing upon the commencement of his employment in 2009 that, if he resigned his employment within two (2) years of his start date, he would return to IBM the \$350,000.00 sign-on bonus IBM paid to him when he began employment. Zolet voluntarily terminated his employment with IBM but refuses to reimburse IBM for the amount of the sign-on bonus.

Parties, Jurisdiction, and Venue

1. Plaintiff IBM is a New York corporation with its principal place of business in New York. IBM regularly conducts business throughout the State of Maryland and maintains offices in the State.

2. Upon information and belief, Zolet is a resident of Potomac, Maryland. Zolet was employed by IBM as Vice President, Systems Integration Public Sector, IBM Global Services, from on or about September 14, 2009 through June 30, 2010. Zolet worked out of IBM's Bethesda, Maryland office.

3. The Court has subject matter jurisdiction over this case under 28 U.S.C. § 1332(a)(1), (c)(1). The parties are diverse and the amount in controversy exceeds \$75,000.00.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(1) and (a)(2) because Zolet resides in Maryland and because a substantial part of the events giving rise to the claim occurred in Maryland.

Facts

5. IBM is a globally integrated enterprise that provides comprehensive information technology services and solutions to its customers worldwide.

6. In Spring 2009, IBM negotiated with Zolet regarding his potential employment with IBM.

7. On May 27, 2009, IBM presented Zolet a written offer of employment ("Offer Letter") for a position as IBM's Vice President, Systems Integration Public Sector, IBM Global Business Services. The Offer Letter is attached hereto as Exhibit 1 and incorporated herein.

8. IBM's offer of employment included, among other things: (i) an annual base salary of \$435,000.00, (ii) a target incentive payment of up to \$175,000.00, to be determined based on IBM's business performance and the attainment of his individual annual business objectives, (iii) an equity grant of \$375,000.00, and (iv) eligibility for various benefits plans available to IBM employees generally.

9. The Offer Letter also provided that if Zolet accepted employment with IBM, he would receive a sign-on bonus of \$350,000.00 ("Bonus"), less applicable tax withholdings, which would be paid in his regular semi-monthly paychecks during the first two months of employment.

10. The Offer Letter stated that in order to receive the Bonus, Zolet would be required to sign and return IBM's Bonus Repayment Agreement ("Repayment Agreement"), which was attached to the Offer Letter.

11. The Offer Letter provided that the Bonus would not be considered earned by Zolet unless and until he remained employed by IBM for two years. It stated, "You agree by signing our [Repayment Agreement] form and commencing your IBM employment that if you leave IBM within two years after employment begins, you will repay to IBM the net amount of this payment, unless your departure is the result of a unilateral determination by IBM without cause to end your employment."

12. Zolet signed the Offer Letter on June 11, 2009 and began his employment under the terms of the Offer Letter on September 14, 2009, in Maryland. Zolet's signature on the Offer Letter indicated his acceptance of the terms therein.

13. On the same day Zolet executed the Offer Letter, he also executed the Repayment Agreement. The Repayment Agreement is attached hereto as Exhibit 2 and incorporated herein.

14. The Repayment Agreement also stated that the Bonus would not be considered earned until Zolet completed two years of employment with IBM. It further provided that, "If my employment with IBM is terminated for cause or voluntarily by me within my first two years of active, full time employment, I will repay to IBM the sign-on bonus." Id. Zolet's signature on the Repayment Agreement indicated his acceptance of the terms contained therein.

15. Zolet sent IBM the executed Offer Letter and Repayment Agreement prior to the employment start-date.

16. After he began his IBM employment and in accordance with the executed Offer Letter, Zolet received the Bonus during the first two months of his employment, paid in installments on IBM's regularly scheduled semi-monthly paydays.

17. On or about June 30, 2010, Zolet voluntarily resigned his employment with IBM. As of his voluntary termination date, Zolet had worked for IBM for less than two years and was therefore required to return the Bonus.

18. At the time of his employment termination, IBM asked Zolet to return the Bonus as he was required to do by the signed Offer Letter and Repayment Agreement.

19. Since his termination from employment, IBM has demanded orally and in writing that Zolet return the Bonus.

20. Zolet has not returned the Bonus and has represented to IBM that he will not do so unless and until IBM satisfies certain conditions that are not required by either the Offer Letter or the Repayment Agreement.

Count I – Breach of Contract

21. IBM hereby incorporates by reference and realleges the allegations in Paragraphs 1 through 20 as if fully set forth herein.

22. The Offer Letter and Repayment Agreement, both separately and together, constitute a valid and enforceable contract between IBM and Zolet ("Contract").

23. IBM provided consideration for and performed fully its obligations under the Contract.

24. Zolet breached the Contract by refusing to reimburse IBM for the Bonus.

25. IBM has suffered damages as a result of Zolet's breach of the Contract.

Prayer for Relief

WHEREFORE, IBM respectfully requests that this Court enter judgment against Zolet and:

- (i) Award IBM \$350,000.00 (net of applicable tax withholdings) for Zolet's breach of the Contract;
- (ii) Award IBM pre- and post-judgment interest.
- (iii) Award IBM its attorneys' fees and costs incurred in bringing this action; and
- (iv) Award such other and additional relief as this Court may deem just and proper.

Respectfully submitted,

INTERNATIONAL BUSINESS
MACHINES CORPORATION

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