

I. INTRODUCTION

Karl Ownens (“Plaintiff”) filed a *pro se* Complaint against his former employer, Carman Ford, Inc. (“Defendant”), on December 27, 2012. Defendant filed a Motion to Dismiss pursuant Superior Court Rule 12(b)(6) on January 29, 2013. The Court heard oral argument on the Motion on March 26, 2013. At the conclusion of oral argument, the Court passed the Motion for sixty days, requiring Plaintiff to file a written response to the Motion and to indicate why the Court should exercise jurisdiction over the claim.¹ The Court received Plaintiff’s written response on May 24, 2013² and Defendant’s response on June 18, 2013. Based on the contentions made at oral argument and in the written submissions of the parties, Defendant’s Motion to Dismiss the Complaint is **GRANTED** in part and **DENIED** in part.

II. FACTS³ & PROCEDURAL HISTORY

Plaintiff was employed by Defendant from June 2008 until October 2010. Plaintiff quit working following his refusal to reimburse Defendant for damage to a customer’s car. Plaintiff unsuccessfully filed for unemployment benefits. A Claims Deputy determined that Plaintiff was ineligible for unemployment benefits because he voluntarily left his job with Defendant without good cause. An Appeals Referee affirmed the Claims Deputy’s decision. The Unemployment Insurance Appeal Board affirmed the Appeals Referee’s decision, and this Court affirmed the Board’s decision.

¹Judicial Action Form, Transaction ID 51323181 (Mar. 26, 2013).

²Plaintiff’s Opposition to Defendant’s Motion to Dismiss included his response. Pl.’s Resp. to Def.’s Mot. to Dismiss, ¶ 4 (May 24, 2013).

³Plaintiff has appeared before this Court, the Delaware Supreme Court and other State judicial bodies regarding his employment with Defendant. The Court has taken some facts from the Facts section from the Order of the Delaware Supreme Court dated August 24, 2012 in *Owens v. Carman Ford Inc.*, 53 A.3d 302 (Del. Aug. 24, 2012) (TABLE).

In his Complaint, Plaintiff “seeks repayment for wages reduced by false pretenses, damages by reducing future employment opportunities by not providing negotiated and required training, emotional damages and other damages.”⁴

III. STANDARD OF REVIEW

Upon a motion to dismiss, the Court's role is to determine whether the plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the Complaint.⁵ If recovery is possible, the Court must deny the motion to dismiss.⁶ When considering a motion to dismiss, the Court will accept all well-pleaded allegations as true.⁷ In addition, every reasonable factual inference will be drawn in favor of the plaintiff.⁸

IV. DISCUSSION

A. Plaintiff's Section 8111 Claims for Lost Wages, Salary, etc.

Section 8111 of 10 *Del. C.* provides that:

No action for recovery upon a claim for wages, salary, or overtime for work, labor or personal services performed, or for damages (actual, compensatory or punitive, liquidated or otherwise), or for interest or penalties resulting from the failure to pay any such claim, or for any other benefits arising from such work, labor or personal services performed or in connection with any such action, shall be brought *after the expiration of one year from the accruing of the cause of action on which such action is based.*⁹

Plaintiff left his job in October 2010 but did not file this Complaint until December 2012. Therefore, strictly construed, Plaintiff failed to file his Complaint within the one year statute of limitations. However, this Court finds that, although Plaintiff's Complaint was

⁴Compl. ¶ 12.

⁵*Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

⁶*Id.*

⁷*Id.*

⁸*Id.*

⁹10 *Del. C.* § 8111 (emphasis added).

filed beyond the statute of limitations, applied strictly, Plaintiff previously raised the same claims he now asserts in this proceeding. Therefore, the Court will consider the applicability of the doctrine of equitable tolling.

i. Equitable Tolling

Equitable tolling is a doctrine used by courts to prevent a statute of limitations from running after a claim has accrued.¹⁰ As explained by the United States Supreme Court, “[i]t is hornbook law that limitations periods are customarily subject to equitable tolling, unless tolling would be inconsistent with the text of the relevant statute.”¹¹ Where a litigant actively pursued judicial remedies by filing a defective pleading during the statutory period, equitable tolling may be appropriate.¹² Courts have applied equitable tolling in situations where a plaintiff can show he “(1) mistakenly asserted his rights in the wrong forum, (2) was prevented in some extraordinary manner from timely asserting his rights, or (3) was actively misled by the defendant.”¹³ However, equitable tolling is not appropriate for “garden variety claims of excusable neglect.”¹⁴ Where the plaintiff has “taken some action recognized as important by the statute before the end of the limitations period,”¹⁵ *i.e.* the diligent pursuit of his claim, the claim is not a “garden variety claim[] of excusable neglect.”¹⁶

¹⁰ *Podobnik v. U.S. Postal Serv.*, 409 F.3d 584, 591 (3d Cir. 2005).

¹¹ *Young v. United States*, 535 U.S. 43, 49 (2002).

¹² *Thomas v. Napolitano*, 2011 WL 665350, slip op., at *5 (N.D. Tex. Feb. 24, 2011).

¹³ *Granger v. Rauch*, 388 Fed. App’x 537, 543 (2010); *Podobnik*, 409 F.3d at 591.

¹⁴ *Irwin*, 498 U.S. at 96.

¹⁵ *Perez v. United States*, 167 F.3d 913, 917 (5th Cir. 1999).

¹⁶ *See Zerilli-Edelglass v. N.Y.C. Transit Auth.*, 333 F.3d 74, 80-81 (2d Cir. 2003).

Delaware courts, both federal and state, have recognized the concept of equitable tolling.¹⁷ The U.S. Court of Appeals for the Third Circuit explained in *New Castle County v. Halliburton NUS Corp.*¹⁸ that equitable tolling “stops the running of the statute of limitations in light of established equitable considerations,” and may be appropriate where (1) the defendant misled the plaintiff, (2) the plaintiff has been prevented from asserting her rights in some extraordinary way, and (3) the plaintiff has timely asserted his or her rights mistakenly in the wrong forum.¹⁹ Equitable tolling was also considered by the US. District Court of Delaware in *Gregorovich v. E.I. du Pont de Nemours*.²⁰ The plaintiff-employee filed an ERISA²¹ action claiming a miscalculation of pension benefits in the Justice of the Peace (“JP”) Court.²² The JP Court dismissed the case without prejudice, noting the plaintiff could refile in the United States District Court,²³ which he did.²⁴ The District Court applied the equitable tolling doctrine and 10 *Del. C. § 1902*²⁵ to find that the period of time during which the plaintiff pursued his claim in JP Court was equitably tolled.²⁶

Delaware state courts, like the District of Delaware and Third Circuit, recognize the same three manners in which equitable tolling may apply: (1) where the defendant misled the plaintiff, (2) where the plaintiff was prevented from asserting his rights in some

¹⁷ *New Castle County v. Halliburton NUS Corp.*, 111 F.3d 1116 (3d Cir. 1997); *McLeod v. McLeod*, No. N11C-03-111 (Feb. 6, 2013).

¹⁸ 111 F.3d 1116 (3d Cir. 1997).

¹⁹ *Id.* at 1125-26.

²⁰ 602 F. Supp.2d 511 (D. Del. 2009).

²¹ Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*

²² *Gregorovich*, 602 F. Supp. at 515.

²³ *Id.*

²⁴ *Id.*

²⁵ Section 1902 governs removal of actions from courts *within Delaware* lacking jurisdiction and provides that a civil action shall not be dismissed solely for lack of subject matter jurisdiction and may be transferred to the appropriate court within 60 days of a final order denying jurisdiction.

²⁶ *Gregorovich*, 602 F.Supp.at 520. However, the District Court went on to hold that the plaintiff’s claims were time-barred due to the plaintiff’s delay in filing his District Court complaint after the JP Court’s dismissal of the first action. *Id.*

extraordinary way, and (3) where the plaintiff has timely asserted his rights mistakenly in the wrong forum.²⁷ In a recent decision, *McLeod v. McLeod*, this Court was presented with a plaintiff who timely filed an action in another state, which dismissed the plaintiff's action, and the plaintiff thereafter filed suit in this Court outside the statute of limitations.²⁸ The Court found that "it [was] appropriate for the courts in Delaware to properly entertain [the plaintiff's] claims."²⁹ In reaching this decision, this Court discussed at length the applicability of equitable tolling³⁰ and, applying the third manner in which equitable tolling can apply—i.e., when the plaintiff has timely asserted his rights mistakenly in the wrong forum—concluded that the statute of limitations should be tolled, because (1) the plaintiff did not neglect to pursue his claims; and (2) permitting the matter to proceed with not be unfair to the defendant because the defendant had notice of the plaintiff's claims well within the statute of limitations.³¹

ii. *Present Case*

Plaintiff previously asserted many of the same claims contained in his Complaint before this Court, but in an inappropriate forum. Specifically, Plaintiff's Complaint states the following claims that were previously raised against Defendant in regard to Plaintiff's entitlement to unemployment benefits:³² (1) whether he had an enforceable contract with Defendant;³³ (2) whether his pay was unlawfully or lawfully reduced;³⁴ (3) whether he was

²⁷*McLeod v. McLeod*, No. N11C-03-111, at *4 (Feb. 6, 2013) (quoting *New Castle County v. Halliburton NUS Corp.*, 111 F.3d 1116 (3d Cir. 1997)); see also *id.* at 11.

²⁸*McLeod*, No. N11C-03-111, at *13.

²⁹*Id.* at *11.

³⁰*Id.* at *3-*11.

³¹*Id.* at *12-*13.

³²For sake of clarity, the Court hereinafter references the five claims Plaintiff previously raised in regard to his entitlement to unemployment benefits as the "above-stated claims."

³³*Compare* Compl. at ¶ 4, with Appellant Reply Br. at 3 (Oct. 4, 2011) (reply brief from *Owens v. Carman Ford, Inc.*, No. N11A-02-004) (hereinafter "UIAB Reply Br.").

obligated to pay what Defendant demanded;³⁵ (4) what the terms of the employment were;³⁶ and (5) a claim for wages to which Plaintiff contends he is entitled.”³⁷

Plaintiff raised the above-stated claims in the action seeking unemployment benefits, within the one year statute of limitations provided under Section 8111.³⁸ Therefore, if the Court concludes that equitable tolling should apply, Plaintiff’s claims, as tolled, would be within the statute of limitations provided under Section 8111.

Here, as in *McLeod*, although in the wrong forum, Plaintiff did not neglect to pursue the above-stated claims prior to the statute of limitations running.³⁹ Additionally, Plaintiff asserted the above-stated claims against Defendant previously, and therefore, as stated in *McLeod*, “permitting the matter to proceed with not be unfair to the defendant because the defendant had notice of the plaintiff’s claims well within the statute of limitations.”⁴⁰ The Court is also mindful of “Delaware’s decisional law and policies of permitting *pro se* litigants flexibility and allowing for matters to be tried on their merits.”⁴¹

B. Plaintiff’s Remaining Claims

In Plaintiff’s written response to Defendant’s Motion to Dismiss, now appearing through counsel, Plaintiff states that he has asserted claims not encompassed within Section

³⁴ Compare Compl. at ¶ 5, with Appellant Opening Br. at 10 (Aug. 31, 2011) (opening brief from *Owens v. Carman Ford, Inc.*, No. N11A-02-004) (hereinafter “UIAB Opening Br.”).

³⁵ Compare Compl. at ¶ 6, with UIAB Opening Br. at 2; UIAB Reply Br. at 2.

³⁶ UIAB Reply Br. at 3.

³⁷ Compare Compl. at ¶ 12, with UIAB Reply Br. at 5.

³⁸ UIAB Opening Br. at 1 (indicating the brief was filed on August 29, 2011); Notice of Appeal to Delaware Supreme Court, No. 40, 2012 (Jan. 30, 2012).

³⁹ *McLeod*, No. N11C-03-111, at *12.

⁴⁰ *Id.* at *12-*13.

⁴¹ *City of Wilmington v. Flamer*, 2013 WL 4829585, at *5 (May 22, 2013); see also *Draper v. Medical Center of Delaware*, 767 A.2d 796, 798 (Del. 2001) (“The problems arising from a *pro se* litigant’s lack of familiarity with the law and court procedures . . . must be considered.”); *Harrison v. State*, 2008 WL 4447731, at *1 (Del. Super. Ct. Oct. 2, 2008) (“A *pro se* litigant’s pleadings are viewed under a “less stringent standard” than is applied to attorneys’ filings, in accordance with a general policy of judicial lenience towards *pro se* parties.”).

8111. Plaintiff contends that the Complaint sets forth facts in support of “claims for breach of the covenant of good faith and fair dealing, promissory estoppels and fraud.”⁴²

i. *Promissory Estoppel*

Promissory estoppel does not apply where the alleged promise was bargained for as part of a contract.⁴³

[P]romissory estoppel is not merely an alternative ground on which to enforce an otherwise enforceable promise but, rather, a doctrine that allows courts to enforce promises made without “consideration.” As the majority's opinion correctly states, the purpose of the promissory estoppel doctrine is to prevent the injustice that occasionally results from a rigid adherence to the black letter law of contracts. Thus, it must first appear that the set of facts at issue do not give rise to an enforceable contract before a court considers whether “injustice” will result.⁴⁴

Plaintiff claims he had a contract with Defendant. Plaintiff asserts he was promised training and wages in exchange for his labor. The Complaint explicitly states this. The Court can not apply the doctrine of promissory estoppel when a valid, enforceable contract between the parties exists. As a result, the Court cannot make a determination whether Plaintiff can maintain a promissory estoppel action until resolution of whether Plaintiff had a valid, enforceable contract with Defendant.

ii. *Fraud*

Although allegations of fraud must be pleaded with specificity,⁴⁵ Plaintiff asks this Court to “broadly construe[]” the Complaint to support a claim for fraud.⁴⁶ To establish a

⁴²Pl.’s Resp. to Def.’s Mot. to Dismiss, ¶ 4.

⁴³*Beck and Panico Builders, Inc. v. Straitman*, 2009 WL 5177160, *6 (Del. Super. Nov. 23, 2009) (citations omitted).

⁴⁴*Lord v. Souder*, 748 A.2d 393, 404 n.5 (Del. 2000) (Lamb, V.C. concurring); see also *Chrysler Corp. v. Quimby*, 144 A.2d, 123, 133 (Del. 1958); 3 Eric Holmes Mills, et al., *Corbin on Contracts*, §8.1, at 5 (Rev. ed. 1996).

⁴⁵Super Ct. Civ. R. 9(b).

⁴⁶Pl.’s Resp. to Def.’s Mot. to Dismiss, ¶ 6.

claim for fraud, Plaintiff must allege that (1) Defendant made a false statement; (2) the Defendant knew was false, or Defendant otherwise made the statement with reckless indifference to the truth; (3) the Defendant intended to induce Plaintiff to act or refrain from acting; (4) the Plaintiff's action or inaction was taken in justifiable reliance upon Defendant's false representation; and (5) Plaintiff suffered damages as a result of his reliance.⁴⁷

Even a broad reading of the Complaint, accepting all well-pleaded allegations as true and viewing the facts in the light most favorable to Plaintiff,⁴⁸ does not support a claim for fraud. As stated above, allegations of fraud must be pleaded with particularity.⁴⁹ Plaintiff's only claim of fraud is that Defendant "was to make sure all necessary Ford training courses were made available to [Plaintiff] to become fully certified to complete all repairs typical of an "A" technician."⁵⁰ Such a claim fails to properly plead a case for fraud. While the Court may construe the allegations broadly, it cannot inject causes of action into a Complaint that states none, especially when those causes of actions must be pleaded with particularity.

iii. *Good Faith and Fair Dealing*

To establish a claim for a breach of the covenant of good faith and fair dealing, Plaintiff must allege that (1) his termination violated public policy; (2) Defendant misrepresented an important fact and Plaintiff relied upon this misrepresentation either to accept a new position or remain in his present one; (3) Defendant used its superior bargaining power to deprive Plaintiff of clearly identifiable compensation related to Plaintiff's past service; or (4) Defendant falsified or manipulated employment records to

⁴⁷See *Stephenson v. Capano Dev., Inc.*, 462 A.2d 1069, 1074 (Del. Super. 1983).

⁴⁸*Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

⁴⁹Super Ct. Civ. R. 9(b).

⁵⁰Compl. ¶ 7.

create fictitious grounds for termination.⁵¹ Plaintiff relies on the second basis, contending that he relied upon a misrepresentation by Defendant when he accepted his position at Carman Ford.⁵²

As a threshold, Delaware courts are reluctant to apply the covenant of good faith and fair dealing to at-will employees.⁵³ In the present case, however, given the deferential lens through which this Court must view the Complaint's allegations,⁵⁴ Plaintiff does allege sufficient facts to support a claim that Defendant breached the covenant of good faith and fair dealing.⁵⁵ Specifically, Plaintiff alleges, albeit tenuously, that Defendant misrepresented to Plaintiff that he would be entitled to, and would have the opportunity to, acquire Ford factory training to become fully certified to complete all repairs typical of an "A" technician.⁵⁶ Plaintiff further contends that he relied on Defendant's misrepresentation when he agreed to work at Carman Ford and, as a result of being denied the opportunity to become fully certified, was prevented from earning a higher rate of pay and was impeded in obtaining new employment following what he argues was a "forced resignation."⁵⁷ Unlike Plaintiff's fraud claim, which must be pleaded with specificity, a claim that the implied covenant of good faith and fair dealing was breached only requires general averments.⁵⁸ Pursuant to 10 *Del. C.* § 8106, an action to recover damages based on a promise must be

⁵¹*E.I. duPont de Nemours and Co. v. Pressman*, 679 A.2d 436, 442-44 (Del. 1996).

⁵²"Defendant denied Plaintiff the opportunity and requirement to acquire full Ford factory training and certification that would have allowed a higher rate of pay and ease of obtaining employment after forced resignation." Compl. ¶ 9.

⁵³*Pressman*, 679 A.2d at 442 (citation omitted).

⁵⁴*Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

⁵⁵Compl. ¶ 9.

⁵⁶*Id.* at ¶ 7.

⁵⁷*Id.* at ¶ 9.

⁵⁸Super Ct. Civ. R. 9(b) (omitting misrepresentation from those claims that must be pleaded with specificity).

brought within three years from the accruing cause of action.⁵⁹ Thus, because Plaintiff filed his Complaint within three years,⁶⁰ Plaintiff's claim that Defendant breached the implied covenant of good faith and fair dealing is sustained.

V. CONCLUSION

For the reasons stated above, the Court holds that Plaintiff's: (1) above-stated claims were equitably tolled when he was seeking unemployment benefits and, therefore, were properly brought within the statute of limitations, (2) promissory estoppels claim can only be maintained in the absence of a valid, enforceable contract between Plaintiff and Defendant, (3) fraud claim is dismissed because it is not pled with particularity, and (4) claim that Defendant breached the covenant of good faith and fair dealing, though seemingly tenuous, alleges sufficient facts to prevent dismissal.

IT IS SO ORDERED.

/s/
M. Jane Brady
Superior Court Judge

⁵⁹10 *Del. C.* § 8106.

⁶⁰Plaintiff left his job in October 2010, without receiving Ford factory training, and filed his Complaint against Defendant on December 27, 2012.