IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

GLORIA T. NYE,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 02C-12-065 JRJ
v.	)	
	)	
UNIVERSITY OF DELAWARE,	)	
MELVYN D. SCHIAVELLI, AND	)	
THOMAS M. DILORENZO,	)	
	)	
Defendants.	)	

Submitted: March 7, 2005
Decided: June 15, 2005

MEMORANDUM OPINION

Upon Defendants' Motion for Summary Judgment
GRANTED

Ronald S. Gellert, Esquire, Eckert Seamans Cherin & Mellott, LLC., The Towne Center, 4 East 8th Street, Suite 250, Wilmington, Delaware 19801; William H. Ewing, Esquire, Ewing Seamans Cherin & Mellott, LLC., 1515 Market Street, 9th Floor, Philadelphia, Pennsylvania 19102. Attorneys for Plaintiff.

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JURDEN, J.

INTRODUCTION

Before the Court is the defendants' motion for summary judgment on Plaintiff's Complaint, challenging five causes of action all related to the completion of Dr. John C. Nye's tenure as Dean of the College of Agriculture and Natural Resources at the University of Delaware ("the University") in July 200l, and the terms and conditions of his employment with the University. The defendants assert they are entitled to summary judgment because the plaintiff has failed to adduce sufficient admissible evidence to support her claims. As explained below, the defendants' Motion for Summary Judgment is **GRANTED**.

BACKGROUND

Plaintiff, Gloria T. Nye, is the widow of Dr. John C. Nye, the former Dean of the College of Agriculture and Natural Resources of the University. On April 30, 2002, Dr. Nye died unexpectedly while still in the defendant University's employ. Plaintiff brings this lawsuit both in her individual capacity and on behalf of her late husband's estate. The gravamen of her complaint is that her husband was denied compensation to which he was lawfully entitled.

In February 2000, Dr. Nye was nearing the end of his second five-year term as Dean. At this time, the plaintiff and her husband contemplated purchasing property and building a house for entertaining guests on behalf of the College of Agriculture

and Natural Resources. In order to verify that the University wanted him to continue to serve as Dean, Dr. Nye informed David Paul Roselle, ("Roselle") President of the University, of his plans to purchase the property. In response, Roselle allegedly gave Dr. Nye his personal assurance that the University wanted him to serve for a third term.

According to the plaintiff, despite these alleged assurances, defendants Melvyn D. Schiavelli ("Schiavelli"), Provost of the University, and Thomas M. DiLorenzo ("DiLorenzo"), Dean of the College of Arts and Sciences, appointed a committee to review Dr. Nye's performance. After completing its review, the committee voted not to renew Dr. Nye's contract as Dean. On January 4, 2001, Schiavelli and Dr. Nye met and allegedly agreed that Dr. Nye would be entitled to one year of administrative leave after completing his term as dean. In addition, Dr. Nye was allegedly given the choice to take that year immediately or to serve as Director of Cooperative Extension during the 2001-2002 academic year, and take his administrative leave the following year. This agreement was confirmed in an email from Schiavelli to Dr. Nye on January 5, 2001 and a letter dated July 11, 2001.

Tragically and unexpectedly, Dr. Nye suffered a cerebrovascular hemorrhage and died in April, 2002. The plaintiff contends that she is entitled to sums due for the year of administrative leave which Dr. Nye never had the opportunity to take. She

argues that Dr. Nye had already rendered the service necessary for compensation during his administrative leave through his past service as dean and the additional vacation-equivalent which had been promised to him for continuing to serve as Director of Cooperative Extension.[1]

ANALYSIS AND DISCUSSION

The defendants argue that summary judgment is appropriate because the following five counts in the plaintiff's complaint are not supported by sufficient evidence:

(1) breach of the covenant of good faith and fair dealing against the University;
(2) breach of contract against the University;
(3) promissory estoppel against the University;
(4) violation of the Delaware Wage Payment and Collection Law, 19 *Del. C.* §1101 *et seq.* (the "WPCA") by the University; and
(5) intentional interference with Dr. Nye's contractual relations by Schiavelli and DiLorenzo.

The Court will address each count and Defendants' corresponding justification for summary judgment, *seriatim*.

A motion for summary judgment may only be granted where there are no genuine issues of material fact and the moving party is entitled to judgment as a

[1]A more thorough recitation of the facts is set forth in the Court's previous opinion in this matter: *Nye v. University of Delaware*, 2003 WL 22176412 (Del. Super.).

matter of law.[2] In considering such a motion, the Court must evaluate the facts in the light most favorable to the non-moving party.[3] Summary judgment will not be granted when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.[4] However, to defeat the defendants' motion for summary judgment, the plaintiff has the burden of bringing in some evidence to support each essential allegation.[5]

A. Breach of the Covenant of Good Faith and Fair Dealing (Count I)

First, Plaintiff claims that the University breached the covenant of good faith and fair dealing when it allegedly assured Dr. Nye that it wanted him to continue in his position as Dean, but then failed to reappoint Dr. Nye to a third term. In addition, the plaintiff asserts that the University failed to provide a written report of the committee's decision. Finally, the plaintiff cites the University's refusal to pay certain compensation, allegedly promised and due to Dr. Nye, as evidence of the University's breach of the covenant of good faith and fair dealing.

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[2]See *Schueler v. Martin*, 674 A.2d 883, 885 (Del. Super. 1996); *Pierce v. Int'l Ins. Co. of Ill.*, 671 A.2d 1361, 1363 (Del. 1996); *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

[3]*Pierce*, 671 A.2d at 1363 (Del. 1996).

[4]*Ebersole v. Lowengrub*, 180 A.2d 467, 468-69 (Del. 1962).

[5]*Murphy v. Godwin*, 303 A.2d 668, 673 (Del. Super. Ct. 1973).

While there is a heavy presumption of at-will employment in Delaware, every employment contract includes an implied covenant of good faith and fair dealing.[6] The implied covenant is to be narrowly construed,[7] and the Delaware Supreme Court has limited causes of action under it to circumstances in which:

> (1) the termination violated public policy;
> (2) the employer misrepresented an important fact and the employee relied "thereon either to accept a new position or remain in a present one";
> (3) the employer used its superior bargaining power to deprive an employee of clearly identifiable compensation related to the employee's past service; or
> (4) the employer falsified or manipulated a record to create fictitious grounds to terminate the employee.[8]

The plaintiff argues that there is a genuine issue of material fact as to the University's commission of the fourth category of breach and therefore summary judgment is inappropriate. In order to succeed on her claim, the plaintiff has the burden to adduce evidence from which a reasonable jury could determine that the University's conduct constituted "an aspect of fraud, deceit or misrepresentation."[9]

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[6] *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 101 (Del. 1992).

[7] *Rizzitiello v. Mcdonald's Corp.*, 868 A.2d 825, 830-31 (Del. 2005).

[8] *Layfield v. Beebe Med. Ctr., Inc.*, 1997 WL 716900, at *4 (Del. Super.) (citing *E.I. DuPont de Nemours & Co. v. Pressman*, 679 A.2d 436, 442-44 (Del. 1996)).

[9] I*d*.

Although the plaintiff alleges that Schiavelli deliberately breached the Policy for Evaluation of Performance of Deans, such allegation does not constitute the requisite fraud, deceit or misrepresentation necessary to establish breach of the covenant of good faith and fair dealing.[10] Furthermore, the plaintiff has not established any facts supporting a causal connection between Schiavelli's alleged breach of the Policy and Dr. Nye's non-reappointment. In other words, the plaintiff has failed to support her contention that the damages she and her husband suffered proximately resulted from a breach of the Policy. Finally, Dr. Nye's complicity in the defendants' decision not to prepare the written report following the committee review negates plaintiff's argument that the lack of a written report is evidence of falsification or manipulation of the record. As a result, the Court grants summary judgment as to the plaintiff's first count.

B. Breach of Contract (Count II)

Next, the plaintiff argues that the University breached its contractual agreement to provide earned compensation in the form of administrative leave and other vacation pay in the amount of more than $200,000. The plaintiff alleges that Dr. Nye accepted appointment and reappointment as Dean of the College of Agricutlture and Natural Resources in reliance on the University's "established practice and unwritten

[10] *Id.*

policy that service of a full five-year term entitles a faculty member to a year of 'administrative leave.'"[11]

The record fails to establish the existence of such an "established practice" or "unwritten policy." And, the University has provided ample evidence that no such policy exists. Maxine Colm, the Vice President for Administration at the University of Delaware and Chief Human Resources Officer, testified that:

> the University has never paid any former dean who did not stay with the University during their administrative leave regardless of the reason. This is because administrative leave is not a benefit that the University simply pays to former deans. Rather, the University provides administrative leave to administrators on an as needed basis to assist them in transitioning back to the faculty. To be compensated during the leave, therefore, the professor/administrator must perform what is expected of him or her, ultimately providing a benefit to the University.[12]

The University contends that although no such policy exists, even if it did, such "policy" is clearly superceded by the agreement between Dr. Nye and the University memorialized in the July 11, 2001 letter. That letter, from Schiavelli to Dr. Nye, sets forth the parameters of Dr. Nye's return to the University after his term as Dean expired. It states:

I write to confirm and memorialize our conversation regarding your

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[11]Compl. at ¶51.

[12]Colm Aff. at ¶3.

> return to the faculty. We agreed that at the end of your current term as dean on June 30, 2001 you will continue to serve as Director of Cooperative Extension (reporting to the acting dean) until a new permanent dean is appointed. For salary purposes the appointment as director is for the period July 1, 2001 though [sic] June 30, 2002 at a salary of $162, 500. During the period July 1, 2002 though [sic] June 30, 2003 you will be on administrative leave at a fiscal year salary of $162,500.
>
> On September 1, 2003 you will return to your tenured faculty position on an academic year appointment at a salary of $162, 500.[13]

Dr. Nye served as Director of Cooperative Extension until his untimely death on April 30, 2002. His administrative leave did not commence until July 1, 2002, and, as a result of his death, Dr. Nye was not able to take that leave. Despite the plaintiff's contentions that Defendant University had an "established practice and unwritten policy,"[14] this Court will not look behind the terms and provisions of the unambiguous contract set forth in the July 11th letter.[15]

Furthermore, now having the benefit of a complete factual record,[16] the Court

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[13]Letter from Schiavelli to Nye of 7/11/01.

[14]Compl. at ¶51.

[15]*Continental Ins. Co. v. Rutledge & Co., Inc.*, 750 A.2d 1219, 1228 (Del. Ch. 2000).

[16]In deciding the defendants' Motion to Dismiss, the Court was unable to make such a determination when deciding the defendants' Motion to Dismiss. See *Nye v. University of Delaware*, at *5 (The alleged compensation agreement . . . could have easily been in consideration for Dean Nye's past services as Dean . . .") It is now clear based on the full factual record that the Jury 11, 2001 agreement was not in consideration for Dr. Nye's past service as Dean.

finds that the agreement between Dr. Nye and the University is a contract for personal services. The allegation that the compensation was in consideration for Dr. Nye's past service as Dean fails because the University could not have relied on a pre-existing duty as its legal detriment in forming the contract.[17] In order to be enforceable, the July 11, 2001 contract must have been based on Dr. Nye's anticipated future service. In accordance with the law governing contracts for personal services, the plaintiff is not entitled to relief because the contract terminated upon Dr. Nye's death.[18] Consequently, the Court grants summary judgment on the plaintiff's breach of contract claim.

C. Promissory Estoppel (Count III)

Third, the plaintiff contends that the University is estopped from denying that it promised compensation to Dr. Nye which the plaintiff now seeks. In order to establish a claim for promissory estoppel, a plaintiff must show by clear and convincing evidence that:

(i) a promise was made;
(ii) it was the reasonable expectation of the promisor to induce action or forbearance on the part of the promisee;
(iii) the promisee reasonably relied on the promise and took action to his detriment; and

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[17] *Continental Ins. Co.*, 750 A.2d at 1232.

[18] *DuPont v. Standard Arms Co.*, 81 A. 1089, 1090 (Del. Ch. 1912).

(iv) such promise is binding because injustice can be avoided only by enforcement of the promise.[19]

While the plaintiff concedes that summary judgment is appropriate for the portion of the count which relates to Roselle's alleged promise to Dr. Nye regarding his reappointment, she maintains her claim that the University is estopped from denying Dr. Nye's administrative leave and vacation pay to the Plaintiff is viable and survives summary judgment. The terms of the contract upon which the plaintiff relies are set forth in the July 11, 2001 letter. According to the letter, Dr. Nye's administrative leave commenced on July 1, 2002 and terminated on June 30, 2003. As noted above, despite the plaintiff's contention that she is entitled to certain compensation in accordance with the terms of the July 11, 2001 letter, the Court concludes that the contract is for personal services and therefore expired upon the death of Dr. Nye.[20] Consequently, the Court grants the defendants' motion for summary judgment on the plaintiff's promissory estoppel claim.

D. Violation of the Delaware Wage Payment and Collection Act (Count IV)

In the fourth count of her complaint, the plaintiff argues that the University's refusal to pay compensation allegedly due to Dr. Nye violates the Delaware Wage

[19] *Lord v. Souder*, 748 A.2d 393, 399 (Del. 2000).

[20] *DuPont*, 81 A. at 1090.

Payment and Collection Act, 19 *Del. C.* §§ 1101-1115 ("WPCA"). The WPCA provides that :

> (a) Any employer who is party to an agreement to pay or provide benefits or wage supplements to any employee shall pay the amount or amounts necessary to provide such benefits or furnish such supplements within 30 days after such payments are required to be made; provided, however, that this section shall not apply to employers subject to Part I of the Interstate Commerce Act [49 U.S.C. §10101 *et seq*.].
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> (b) As used herein, "benefits or wage supplements" means compensation for employment other than wages, including, but not limited to, reimbursement for expenses, health, welfare or retirement benefits, and vacation, separation or holiday pay, but not including disputed amounts of such compensation subject to handling under dispute procedures established by collective bargaining agreements.[21]

The Court's analysis of this claim mirrors that of the plaintiff's breach of contract claim. The alleged compensation agreement includes a reference to Dr. Nye's anticipated return to the faculty in the fall of 2003 and, as a result, the Court finds the agreement is a personal services contract which terminated upon Dr. Nye's death, and the Plaintiff is not entitled to compensation.[22] Accordingly, the Court grants summary judgment on Plaintiff's claim under the WPCA.

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[21] 19 *Del. C.* § 1109.

[22] *DuPont*, 81 A. at 1090.

E. Tortious Interference with Dean Nye's Contract (Count V)

Last, the plaintiff alleges that defendant Schiavelli tortiously interfered with Dr. Nye's contract. Under Delaware law, a claim of tortious interference with a contract requires (1) a contract, (2) about which defendant knew, and (3) an intentional act that is a significant factor in causing the breach of such a contract, (4) without justification, (5) which causes injury.[23] While defendant Schiavelli concedes that he knew about the contract, the defendants contend that the plaintiff cannot establish that Schiavelli acted unjustifiably and thereby caused a breach of that contract. The defendants further argue that the plaintiff has an additional hurdle to overcome in that, as a corporate employee, Defendant Schiavelli is generally not liable for inducing a breach of contract by his corporation unless he acts outside the scope of his employment, as an individual for his own advantage.[24] Nothing in the record indicates that Defendant Schiavelli acted outside the scope of his employment. He is vested with broad discretionary powers as the Provost of the University and the plaintiff has not provided sufficient evidence to support her allegation that he tortiously interferred with Dr. Nye's contractual relations by neglecting to issue the

[23] *Lloyd v. Jefferson*, 53 F. Supp.2d 643, 676 (D. Del. 1999).

[24] *Layfield v. Beebe Med. Ctr., Inc.*,1997 WL 716900, at *6 (Del. Super.) (citing *Shearin v. E.F. Hutton Group, Inc.*, 652 A.2d 578 (Del. Ch. 1994)).

committee's report. As discussed above, the evidence shows that Dr. Nye agreed with the defendants' decision not to issue such a report.

Although, as a general rule, the determination of one's intent is not appropriately decided on summary judgment,[25] here the plaintiff has failed to put forth sufficient evidence tending to show Schiavelli's intent to deceive or interfere with Dr. Nye's contractual relations.[26] In addition, Plaintiff has not proved the injury necessary for her claim because there are no facts in the record to support a causal connection between any action on the part of defendant Schiavelli and the fact that Dr. Nye was not reappointed. Moreover, any argument that the plaintiff was injured is too speculative for an award of damages.[27] Consequently, the Court grants the defendants' motion for summary judgment as to the plaintiff's tortious interference claim.

CONCLUSION

For the reasons set forth above, Defendants' Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED.

Jan R. Jurden, Judge

[25] *Id.* at *5.

[26] *Murphy v. Godwin*, 303 A.2d 668, 673 (Del. Super. 1973).

[27] *Am. Gen. Corp. v. Continental Airlines Corp.*, 622 A.2d 1, 12 (Del. Ch. 1992).