Marzouk v CIT Group, Inc.
2017 NY Slip Op 30117(U)
January 17, 2017
Supreme Court, New York County
Docket Number: 652515/2012
Judge: Jeffrey K. Oing

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 48
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BENJAMIN MARZOUK,

Plaintiff,

-against-

CIT GROUP, INC. and JAMES HUDAK,

Defendants.

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Index No.: 652515/2012

Mtn Seq. Nos. 002 & 003

DECISION AND ORDER

JEFFREY K. OING, J.:

Mtn Seq. No. 002

Defendants CIT Group, Inc. ("CIT") and James Hudak ("Houdak") move, pursuant to CPLR 3212, for summary judgment dismissing the complaint.

Mtn Seq. No. 003

Plaintiff Benjamin Marzouk moves for partial summary judgment on his fourth cause of action for promissory estoppel.

These two motions are consolidated for disposition.

Preliminary Facts

Plaintiff, a former CIT employee, is seeking damages for CIT's failure after his resignation to rehire him so that he could preserve his substantial deferred compensation. He contends that he had an enforceable oral agreement with defendants that, after he resigned and received his deferred compensation, they would discuss the possibility of his returning to work for CIT. Plaintiff asserts that at the time defendants

made these representations they believed that CIT legally was prohibited from rehiring plaintiff, and, therefore, they made false promises to him.

Defendants argue that plaintiff's own deposition testimony, along with the documentary evidence, confirm that defendants simply told plaintiff that they would try to rehire him if he felt such resignation was necessary to preserve his deferred compensation, but that was, at best, an offer for employment at-will. They urge that after they received a complaint on their ethics hotline about the offer to rehire him they determined that CIT could not rehire him. Defendants argue that even under plaintiff's version of events the "promise" to rehire involved an employment for an indefinite duration, or an employment at-will, and that such a "promise" provides an insufficient basis for Marzouk's claims for recovery.

Factual Background

CIT was in the business of providing lending, leasing and other financial management services to small and mid-sized businesses (Defendants' Statement of Undisputed Facts and Plaintiff's Response to Defendants' Statement of Undisputed Facts ["Plaintiff's Response"], ¶ 1). In October 2002, CIT hired plaintiff as a business development officer for its commercial finance group (Id., ¶ 2). Pursuant to the express terms of his

employment agreement, the nature of his employment was at-will -- he was free to resign at any time, and CIT could terminate him at any time, for any reason (Id., ¶¶ 2-3). Plaintiff's job included business development and structuring loan transactions, and he held his job until his resignation in August 2009 (Id., ¶¶ 4-7).

In 2008, defendant Hudak became co-head of the commercial finance group, and, as such, was plaintiff's supervisor's supervisor. In 2009, Hudak assumed responsibility for the sponsor finance group, of which plaintiff was a member, and began directly supervising him. Hudak reported to Alex Mason, CIT's President and Chief Operating Officer (Id., ¶¶ 8-9, 18). Plaintiff was good at his job, and was paid well by CIT. In 2004, 2005, and 2006, plaintiff elected to defer substantial portions of his 2006, 2007, and 2008 compensation pursuant to the terms of CIT's Deferred Compensation Plan ("DCP"). By 2009, he had accumulated $1.1 million in deferred compensation (Id., ¶ 24). The DCP was unfunded and payable from CIT's general assets, which meant that, in the event of a bankruptcy, plan participants became unsecured, general creditors. In order to access the deferred compensation, the employee had to undergo a "separation from service" (Id., ¶¶ 23-24).

By early 2008, CIT was experiencing significant financial distress from the financial crisis, and by mid-2008, there was

little capital available to CIT's sponsor finance group. In fact, going into 2009, that group, which plaintiff was a part of, "was pretty much shut down from a funding standpoint" (Id., ¶¶ 12-14; Marzouk EBT at 129-130 annexed to James W. Halter Supplemental Affirm., Ex. 16 [Halter Supp. Affirm.]). Between 2008 and 2009, CIT reduced its workforce five or six times, cutting its employee population in half. Into 2009, there was a growing concern that CIT would go into bankruptcy (Plaintiff's Response, ¶¶ 12-17).

In December 2008, and March, May and June 2009, plaintiff volunteered to be part of a reduction-in-force ("RIF"), which, under CIT's severance plan, would permit him to receive a severance package, and under the DCP, would make him eligible to withdraw his deferred compensation and protect it against loss in the event of bankruptcy. CIT, however, did not include him in those RIFs because it needed him and other productive employees if it were to survive the financial crisis and come out of it as a viable business (Id., ¶¶ 19-22).

At that same time, CIT began exploring options in the hope that it would survive the crisis and looked for avenues to protect its employees' deferred compensation (Id., ¶¶ 26-28). Plaintiff was concerned about preserving his deferred compensation, and, on August 13, 2009, he told Hudak that CIT

should either (1) guarantee him that if he resigned to protect his deferred compensation, CIT would rehire him "down the road" or (2) terminate his employment and give him a severance package (Id., ¶ 31). Specifically, in an email on that date, plaintiff stated that "[b]ased on our conversation this afternoon, there is no guarantee that if I resign, CIT will be in a position or guarantee me that I will be offered a job down the road" (Lawrence R. Sandak July 11, 2016 Affirm., Ex. P [Sandak Affirm.]). Plaintiff also requested a severance package, and offered to take 75% of the "current package" (Id.). Hudak testified at his deposition that he told plaintiff in their August 13, 2009 conversations that, if he were to resign, "we were going to try" to rehire him, "without any guarantees," and that "[y]ou know there are no guarantees if you were to resign" (Hudak EBT at 91-92, 115 annexed to Halter Supp. Affirm., Ex. 17). The next day, Hudak forwarded plaintiff's email with the request for severance to CIT's head of Human Resources, James Duffy, and to Christine Papic, CIT's Senior Vice President of Human Resources, and Duffy responded that CIT could not offer him severance (Plaintiff's Response, ¶¶ 44-46).

Hudak then allegedly had a conversation with plaintiff on Friday, August 14, 2009, in which he said "I think I have a solution for you to leave, get your deferred comp and then you

can come back," and told plaintiff that he had spoken to Mason (Id., ¶ 49; Marzouk EBT at 448). Plaintiff testified that when he asked Hudak about a time frame Hudak responded "we are looking probably at six to eight weeks" (Id., ¶ 50; Marzouk EBT at 451). According to plaintiff, on Monday, August 17, in a meeting with Hudak, Hudak confirmed the arrangement he proposed, affirmed that CIT's HR and legal department were okay with this approach, and said that after plaintiff resigned, Hudak would arrange to have plaintiff's emails forwarded to him and provide him access to his voice mails (Id., ¶ 50). Plaintiff admits that in his discussions with Hudak and Mason during August 2009 he did not ask about whether the intent was to rehire him pre-bankruptcy or post-bankruptcy because it was never discussed (Id., ¶ 59). Plaintiff also testified that there was nothing to prevent CIT from firing him the very day they rehired him, and that he did not discuss returning for a fixed duration or some guarantee of employment for a fixed duration (Marzouk EBT at 478-480). The purported agreement was not confirmed or memorialized in writing (Id. at 475-477). Plaintiff claims that Mason was aware of the arrangement, and that he suggested that if plaintiff resigned he should state that it was because of "family reasons" to facilitate his rehire.

On August 21, 2009, plaintiff resigned from CIT due to a family issue, and he had no further conversations with Hudak or Mason before he resigned (Plaintiff's Response, ¶¶ 73-75). Soon after resigning, plaintiff sought and received all of his deferred compensation (Id., ¶ 77). For six to eight weeks after plaintiff's departure, Hudak reviewed plaintiff's emails and forwarded select ones to him (Id., ¶ 80).

On August 26, 2009, an anonymous call was placed to CIT's Ethics Compliance Reporting Hotline ("Ethics Hotline") (Sandak Affirm., Ex. R). According to the call report, the caller stated that:

> within the last couple of days ... [the caller] found out that ... MARZOUK had resigned ... because he has a considerable amount of deferred compensation that would be lost if the company were to file for bankruptcy ... MARZOUK worked out a deal with his Superiors ... including Co-Head of Corporate Finance, Jim HUDAK, where he has been permitted to resign and he could keep his deferred compensation. Caller stated that MARZOUK would then be rehired.

(Id.). The caller pointed out that there were a lot of employees that had deferred compensation that did not receive this kind of deal, and that if CIT went bankrupt, they would lose that compensation (Id.). The caller stated that the arrangement with plaintiff was demoralizing to the other employees who did not get this special deal, which the caller believed was "unethical" (Id.). Hudak learned of this complaint, and, on September 14,

2009, informed plaintiff of it (Plaintiff's Response, ¶ 82). Plaintiff suspected that he might not be rehired after the complaint, and was concerned (Marzouk EBT at 546, 548-549, 551). Plaintiff testified that he believed that even if Hudak and Mason fully intended to rehire him at the time of their arrangement, an intervening event, like an Ethics Hotline complaint, could have created an issue precluding them from following through (Id. at 549). He further testified that "regardless of their intent, there was no way [Hudak and Mason] could bring me back" following the complaint (Id. at 570-571). According to him, "it was an impossibility to bring me back" (Id.).

After Hudak informed him of the complaint, plaintiff sent an email to Hudak stating: "Just to clarify, was the complaint that I received special treatment because I had access to my voicemail or that you and I had an agreement that once my family issue was resolved we would discuss the possibility of returning -- or both?" (Sandak Affirm., Ex. S). Hudak responded, "The latter" (Id.). At his EBT, plaintiff testified that when he said "when my family issue was resolved" he meant "once [I] received [my] deferred compensation" (Marzouk EBT at 558-559). In September 2009, plaintiff applied for unemployment insurance benefits (Plaintiff's Response, ¶ 87).

In October 2009, Hudak stated to plaintiff that CIT may have to file for bankruptcy, and that CIT could not rehire him pre-bankruptcy because it would not look good (Id., ¶ 88). On November 1, 2009, CIT filed for bankruptcy, and on December 10, 2009, emerged from bankruptcy under a reorganization plan (Id., ¶ 90). Plaintiff and Hudak had discussed a possible start date during November and December 2009, and, on December 16, 2009, Hudak emailed Papic, from Human Resources, asking "Can we set this up? Alex [Mason] is on board" (Id., ¶ 92; Sandak Affirm., Ex. X).

In January 2010, CIT's Chief Regulatory Counsel and Chief Compliance Officer, James Shanahan, indicated to Papic that he was concerned that rehiring plaintiff so soon after he departed would create issues as to whether there was truly a separation of service from CIT that permitted him to withdraw his deferred compensation. If there was not, Shanahan felt that could place the reorganization plan and its participants at risk based on a violation of the tax laws (Plaintiff's Response, ¶ 96). Shanahan told Papic that he was not comfortable rehiring plaintiff under the circumstances (Shanahan EBT at 52 annexed to Halter Supp. Affirm., Ex. 20), and his decision was the only impediment to the rehiring (Plaintiff's Response, ¶ 98; Hudak EBT at 156-157; Shanahan EBT at 39-40; Mason EBT at 118).

On January 28, 2010, Papic spoke on the telephone with Hudak and plaintiff, and told plaintiff that CIT would not be rehiring him because of the deferred compensation plan, and advised him that he had a potential tax issue (Plaintiff's Response, ¶ 100). Plaintiff already had begun looking for alternative employment in December 2009 (Id., ¶ 101; Marzouk EBT at 564).

The Causes of Action

In 2012, Marzouk commenced this action against both CIT and Hudak seeking recovery for five causes of action. The first claim is for breach of contract for CIT's failure to rehire him. The second claim alleges fraud and fraudulent inducement in that defendants made misrepresentations that they would rehire plaintiff if he resigned, but that they never intended to rehire him. The third claim, for negligent misrepresentation, alleges that defendants negligently misrepresented their promise to rehire him. The fourth claim asserts promissory estoppel based on defendants' promise to rehire him. Finally, the fifth claim, for tortious interference with employment against Hudak only, alleges that Hudak made false promises to rehire plaintiff, and personally benefitted from it because Hudak then avoided paying severance benefits. Defendants answered the complaint, denying the material allegations, and asserting numerous affirmative defenses.

The Parties' Arguments

Defendants contend that even if a promise of future at-will employment were made, the facts alleged by plaintiff are insufficient to sustain any of his claims. First, they urge that there is no claim for breach of contract where the alleged contract is for at-will employment. Second, the fraud, negligent misrepresentation, and promissory estoppel claims fail as a matter of law because Marzouk cannot demonstrate that he reasonably relied where he admits that he was offered only at-will employment. Those claims also duplicate the insufficient breach of contract claim. Further, oral promises of future at-will employment involve a promise of future action, not a false statement of existing fact, and are not actionable fraud. As to the negligent misrepresentation claim, defendants argue that plaintiff fails to allege and cannot demonstrate any special relationship required to pursue such a claim. The promissory estoppel claim fails because that doctrine is not applied in the employment context, and the alleged promise to rehire was not sufficiently clear and definite. Finally, with regard to the tortious interference claim, there was no employment agreement, but merely an at-will offer to rehire, Hudak was not acting outside the scope of his employment, and Hudak did not interfere

with plaintiff's actual employment because he voluntarily resigned.

In opposition and in support of his motion seeking partial summary judgment on the fourth claim for promissory estoppel, plaintiff urges that defendants made a false promise in August 2009 that if he resigned from CIT, they intended to rehire him. He claims that unbeknownst to him, at that time, CIT believed that it legally was prohibited from rehiring him, and, thus, could not rehire him. He asserts that he further relied on conversations with Hudak from August 2009 through January 2010, in which Hudak created the impression that CIT intended to rehire him and, as a result, he did not look for alternative employment. He claims that defendants made clear, unequivocal promises that they could rehire him, that they would try to do so, and they cannot walk away from these promises simply because they were made in the context of at-will employment.

In opposing summary judgment on the breach of contract claim, plaintiff argues that this contract was broader than one solely for at-will employment. He contends that it was supported by adequate consideration because defendants received the substantial benefit of not having to pay him severance, and that the terms were that his position and compensation would be the same as before he resigned. With respect to the fraud claim, he

states that he is seeking redress for CIT's "present-fact promises about its ability to rehire him" and misrepresentations by Hudak that he cleared the offer with CIT's HR and legal departments, and that those misrepresentations "thwarted [his] career" (Plaintiff's Memorandum of Law in Opposition at 15). Plaintiff urges that he reasonably relied on those representations because both Hudak and Mason represented that CIT would and could rehire him. He contends that he has demonstrated, or at least raised a factual issue, as to scienter based on Hudak's alleged misstatement that he spoke to HR and legal about the offer in August, and defendants' failure to tell him before he resigned that he could not be rehired based on the Ethics Hotline complaint. On the negligent misrepresentation claim, plaintiff argues that Hudak owed a special duty based on his special expertise, and his position of trust. With respect to the tortious interference claim, he contends that Hudak induced him to leave CIT by giving him false security that he would be rehired.

Discussion

This action is essentially a wrongful discharge case. The principle "is well settled that neither party has a cause of action for breach of contract where the contract is one for employment at will" (Mayer v Publishers Clearing House, 205 AD2d

506, 507 [2d Dept 1994] [quotation marks and citations omitted] [applied to employment offer]). Instead, for an employee to prevail on a contract claim, the employee must demonstrate "that the contract was for a specified duration, or that he expressly conditioned acceptance of the job on the employer's assurance that he would not discharge him without cause" (Id.; see also Sabetay v Sterling Drug, 69 NY2d 329, 333 [1987]). Thus, "employment by a private employer is presumed to be at will, and terminable by either party at any time" (Chazen v Person/Wolisky, Inc., 309 AD2d 889, 890 [2d Dept 2003] [citations omitted]; see Sullivan v Harnisch, 81 AD3d 117, 122 [1st Dept 2010] [employment for indefinite term is at-will and may be freely terminated by either party at any time for any reason or no reason], affd 19 NY3d 259, 262-263 [2012]).

Here, defendants have demonstrated their entitlement to judgment as a matter of law as to the claim for breach of contract (first cause of action), and plaintiff failed to raise any triable issue of fact. Defendants presented undisputed evidence demonstrating that, even if they had made a promise to try to rehire plaintiff, he was merely a prospective employee at-will as the promise failed to contain any specified duration, and there was no evidence of any contractual limitation on CIT's right to terminate him (see Mayer v Publishers Clearing House,

205 AD2d at 507; Chazen v Person/Wolisky, Inc., 309 AD2d at 890). In fact, plaintiff testified at his EBT that he never discussed with either Hudak or Mason coming back to CIT for a fixed duration (Marzouk EBT at 479-480). Thus, as an at-will, prospective employee, plaintiff has no claim for breach of contract, particularly given that the damages he seeks are for loss of prospective employment (see Presler v Domestic & Foreign Missionary Socy. of the Prot. Episcopal Church in the United States of Am., 113 AD3d 409 [1st Dept 2014]).

Plaintiff's claims for fraudulent and negligent misrepresentation (the second and third causes of action) are similarly deficient in that they are mere restatements of the first cause of action for breach of contract (Dalton v Union Bank of Switzerland, 134 AD2d 174, 176 [1st Dept 1987]). Here, both the fraud and the negligent misrepresentation claims essentially allege that defendants promised to try to rehire him, but, at the time of the promise, they had no intention of fulfilling it. Plaintiff further alleges that he relied on that promise when he resigned, and then did not immediately look for alternate employment. These fraud claims simply allege a broken promise to perform, that is, a breach of contract for which he seeks the same contract damages (see Arias v Women in Need, 274 AD2d 353,

354 [1st Dept 2000]). Thus, the fraud alleged is based on the same facts underlying the insufficient breach of contract claim.

In any event, to assert a separate fraud claim, plaintiff must demonstrate a legal duty separate from the contract, and a fraudulent representation of a presently existing fact that is collateral or extraneous to the contract (see Glanzer v Keilin & Bloom, 281 AD2d 371, 371-372 [1st Dept 2001]). Plaintiff fails to raise a factual issue as to either of those requirements. The undisputed record is clear -- CIT's statements were expressions of future expectations, not of presently existing fact. It was going to try to rehire him depending on what happened during the bankruptcy.

Plaintiff also fails to raise a factual issue that the alleged misrepresentations are collateral to the parties' purported agreement, and does not seek damages that would not be recoverable under a contract theory (see Laurel Hill Advisory Group, LLC v American Stock Transfer & Trust Co., LLC, 112 AD3d 486, 487 [1st Dept 2013]; see also International Fin. Corp. v Carrera Holdings Inc., 82 AD3d 641, 641-642 [1st Dept 2011]).

Plaintiff's reliance on Stewart v Jackson & Nash, 976 F2d 86 (2d Cir 1992) is unavailing. In Stewart, the defendant law firm recruited an environmental law attorney through representations that it had a large environmental client, and was in process of

establishing an environmental law department, which plaintiff would head (Id. at 87). When the plaintiff arrived at the firm, however, she learned that it was still trying to secure the client, the environmental law practice did not materialize, and she was just performing regular litigation work. She alleged in her complaint that her career goal of continuing to specialize in environmental law was thwarted during her two-year employment with the firm. The Second Circuit found that because the plaintiff's claim and damages were unrelated to her at-will employment they were actionable. It reasoned that because the representations concerned the nature of her employment and not the duration or security thereof her injury was not based on termination of employment, and her claim was not barred by the at-will employment doctrine. In addition, according to the Second Circuit, the plaintiff's alleged injuries began before, and were, in several important respects, unrelated to her termination, such as, the damage to her career development which began while she was at the firm (Id.). Under these circumstances, Stewart is clearly factually distinguishable from this action.

The Court of Appeals, in Smalley v Dreyfus Corp., 10 NY3d 55 (2008), similarly distinguished Stewart by finding that the core of the claims of the plaintiffs in the case before it was "that

they reasonably relied on no-merger promises in accepting and continuing employment with [the defendant], and in eschewing other job opportunities" (Id. at 59). Thus, the Court found that these claims failed to allege any injuries separate and distinct from the termination of their at-will employment. In contrast, the Smalley Court noted that the plaintiff's injuries in Stewart occurred well before she was terminated and were unrelated to her termination (Id. at 59). Thus, the Court of Appeals reaffirmed the principle that where a plaintiff alleges no injury separate and distinct from termination of the at-will employment there is no claim for fraudulent inducement (see also Laduzinski v Alvarez & Marsal Taxand LLC, 132 AD3d 164, 168 [1st Dept 2015] [at-will employee may state claim where present representations about nature of employee's role, that is, that he would be managing caseload, not devoting his time to business development, made with preconceived intention not to perform]).

Here, plaintiff's claim is similarly distinguishable from the claim in Stewart because he does not allege anything about the nature of his employment, and fails to allege any injury separate and distinct from the failure to rehire him as an at-will employee. Further, plaintiff cannot establish the reasonable reliance element of such claims because the potentially offered employment was at-will (see Smalley v Dreyfus

Corp., 10 NY3d at 59; Holahan v 488 Performance Group, Inc., 140 AD3d 414, 415 [1st Dept 2016] [fraud, negligent misrepresentation and promissory estoppel claims dismissed because no reasonable reliance where plaintiff became at-will employee in absence of signed employment agreement]; Meyercord v Curry, 38 AD3d 315, 316-317 [1st Dept 2007] [no reasonable reliance on future intentions where employment at-will]); Marino v Oakwood Care Ctr., 5 AD3d 740, 741 [2d Dept 2004] [no reasonable reliance for fraud, negligent misrepresentation or promissory estoppel claims]; Tannehill v Paul Stuart, Inc., 226 AD2d 117, 118 [1st Dept 1996] [fraudulent inducement claim insufficient because wrongful act same as contract-related allegation that defendant did not intend to perform, and no reasonable reliance as matter of law where employment at-will]).

As an at-will employee, plaintiff was free to resign his employment at any time, and CIT was free to fire him at any time. Thus, his status as an at-will employee renders unreasonable plaintiff's claimed reliance on defendants' alleged representation or promise that they would try to rehire him if CIT emerged from bankruptcy.

The negligent misrepresentation claim further fails as a matter of law because plaintiff fails to raise a factual issue as to any special relationship -- an employer-employee relationship

alone is not of a fiduciary nature and, thus, does not qualify as a special relationship (see Rather v CBS Corp., 68 AD3d 49, 55 [1st Dept 2009] [employment relationships do not create fiduciary relationships]; Stewart v Jackson & Nash, 976 F2d at 90 [dismissing negligent misrepresentation claim because employment relationship does not constitute special relationship for negligent misrepresentation claim]; Cohen v Avanade, Inc., 874 F Supp 2d 315, 327 [SD NY 2012] [employment relationship not fiduciary in nature, and not a special relationship]).

Plaintiff's fourth cause of action for promissory estoppel is dismissed. To establish a claim for promissory estoppel, plaintiff must demonstrate a clear and unambiguous promise, reasonable foreseeable reliance on the promise, and damages based on that reliance (see AHA Sales, Inc. v Creative Bath Prods., Inc., 58 AD3d 6, 20-21 [2d Dept 2008]; New York City Health & Hosps. Corp. v St. Barnabas Hosp., 10 AD3d 489, 491 [1st Dept 2004]). The doctrine, however, "is limited to cases where the promisee suffered an unconscionable injury" (AHA Sales, Inc. v Creative Bath Prods., Inc., 58 AD3d at 21 [quotation marks and citations omitted]).

To begin, plaintiff has failed to establish on this record that there is a factual issue as to whether he suffered an "unconscionable injury." In any event, plaintiff's claim is that

defendants made clear and unambiguous representations that CIT could rehire him if it emerged from bankruptcy, and that Hudak and Mason intended to rehire him. He points to Hudak's testimony in which Hudak described his conversations with him regarding rehiring, as follows: "I think it was primarily that we were going to try to hire him back sometime down the road. And would that, obviously, be based on the fact that CIT was out doing business again" (Hudak EBT at 160; see also Hudak EBT at 91-92, 115). Mason's testimony was that "we were willing to hire him, if we could," but that his "objection was in any ability to guarantee him that he could return," and that they could not guarantee him that CIT would be in a position to offer to rehire him (Mason EBT at 67-69). Plaintiff's August 13, 2009 email confirmed these statements from Hudak -- "[b]ased on our conversation this afternoon, there is no guarantee that if I resign, CIT will be in a position or guarantee me that I will be offered a job down the road" (Sandak Affirm., Ex. P).

Contrary to plaintiff's contentions, these undisputed statements are not clear, definitive promises that he would be rehired, but merely statements only indicating that defendants would try, at some point down the road, to rehire him and that they could not guarantee that kind of employment. Without question, the record demonstrates that the statements were simply

offers of future at-will employment. Further, plaintiff conceded that the Ethics Hotline complaint made it virtually impossible for CIT to rehire him, and he was aware of that complaint, which would be an intervening cause of the failure to rehire.

Even if plaintiff were able to raise a factual issue on this record, the result would be no different. While promissory estoppel permits enforcement of a promise even where there is no enforceable contract, it is not valid in an employment context. A prospective employee cannot sue an employer who reneges on a job offer or suggests some terms of employment, which leads the prospective employee to leave his or her former job or suffer other damages, on a promissory estoppel theory (Mayer v Publishers Clearing House, 205 AD2d at 507; Shapira v Charles Schwab & Co., 225 F Supp 2d 414, 419 [SD NY 2002]). "The fact that defendant promised plaintiff employment at a certain salary with certain other benefits, which induced [plaintiff] to leave his former job and forego the possibility of other employment in order to remain with defendant, does not create a cause of action for promissory estoppel" (Dalton v Union Bank of Switzerland, 134 AD2d at 176-177 [citations omitted]; see also Mayer v Publishers Clearing House, 205 AD2d at 507 [employer's promise of employment and suggestion of some terms of employment leading plaintiff to leave former job does not constitute promissory estoppel]; see

also Laurel Hill Advisory Group, LLC v American Stock Transfer & Trust Co., LLC, 112 AD3d at 486-487).

Additionally, plaintiff's claim fails because, as noted supra, he cannot raise a factual issue that he reasonably relied on defendants' representations (see Holahan v 488 Performance Group, Inc., 140 AD3d at 414; Presler v Domestic & Foreign Missionary Socy. of the Prot. Episcopal Church in the United States of Am., 113 AD3d at 409 [acknowledgment by employee that she was at will precludes reasonable reliance on oral assurances that job was secure]; Arias v Women in Need, 274 AD2d at 354; Dalton v Union Bank of Switzerland, 134 AD2d at 176-177).

The fifth cause of action for tortious interference with contract must also be dismissed. In this claim, plaintiff asserts that Hudak tortiously interfered with his employment agreement with CIT by inducing him to resign with the promise that he would try to rehire him. Even if plaintiff were to demonstrate, or raise a triable issue of fact, as to the existence of a firm offer of employment, "there can be no tortious interference with prospective at-will employment" (Pezhman v Chanel, Inc., 126 AD3d 497, 497 [1st Dept 2015]; Sullivan v Harnisch, 81 AD3d at 125; see Ingle v Glamore Motor Sales, 73 NY2d 183, 189 [1989] [the plaintiff cannot recast insufficient claim for wrongful discharge in at-will employment

relationship "in the garb of a tortious interference with his employment" [citation omitted]]) for damages based on loss of a prospective employment opportunity. Moreover, there are no allegations in the complaint, and no evidence presented by plaintiff, that Hudak engaged in any conduct for the sole purpose of inflicting intentional harm on plaintiff (Pezhman v Chanel, Inc., 126 AD3d at 497, citing Carvel Corp. v Noonan, 3 NY3d 182 [2004]). Finally, as a CIT employee, Hudak would not be considered a third party to the contract unless plaintiff could present some proof that Hudak was acting outside the scope of his employment authority (see Presler v Domestic & Foreign Missionary Socy. of the Prot. Episcopal Church in the United States of Am., 113 AD3d at 409). In that regard, plaintiff fails to allege, and presents no proof, that Hudak was acting outside the scope of his authority, or derived any personal pecuniary benefit from denying plaintiff severance pay. The payments under CIT's Employee severance plan did not come directly from Hudak so the avoidance of such payments did not personally benefit him.

Accordingly, it is

ORDERED that the defendants' motion for summary judgment (mtn seq. no. 002) is granted, and the complaint is dismissed with costs and disbursements to defendants as taxed by the Clerk

upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that plaintiff's motion for partial summary judgment on the fourth claim for promissory estoppel (mtn seq. no. 003) is denied as moot.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 1/17/17

HON. JEFFREY K. OING, J.S.C.

JEFFREY K. OING
J.S.C.