[Cite as *Blazeff v. Univ. of Akron*, 2008-Ohio-5726.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

LUANN BLAZEFF

Plaintiff

v.

UNIVERSITY OF AKRON

Defendant

[Cite as *Blazeff v. Univ. of Akron*, 2008-Ohio-5726.]

Case No. 2005-10314

Judge J. Craig Wright

DECISION

{¶ 1} Plaintiff brought this action alleging promissory estoppel, breach of contract, and breach of implied contract. The case proceeded to trial on the issues of liability and damages.

{¶ 2} Plaintiff was employed by defendant under the terms of an agreement between defendant and the Rubber Division of the American Chemical Society (RDACS) whereby RDACS operated its business on defendant's premises and utilized employees who were paid by defendant; RDACS reimbursed defendant on a monthly basis for the cost of the employees' wages and benefits. This arrangement began in 1963, approximately 18 years before plaintiff was hired, and continued until late 2000 when RDACS unilaterally decided to hire its own non-university employees.

{¶ 3} Plaintiff alleges that after RDACS announced its intention to reorganize and to eliminate plaintiff's position as the director of RDACS, defendant and its agents promised her continued employment with defendant. Plaintiff maintains that she relied on these representations to her detriment.

{¶ 4} In May 2001, RDACS reorganized and executed a new and final contract with defendant (May 2001 contract) which summarized the former relationship between the entities and set forth the terms of the new agreement. (Defendant's Exhibit A.) According to the contract, employees with classified positions were to be reassigned to positions with defendant; however, employees with unclassified positions were not to be retained after June 30, 2001, but they were encouraged to apply for positions with defendant. It is undisputed that plaintiff was an unclassified, at-will employee.

{¶ 5} Ohio recognizes the doctrine of employment-at-will whereby an employment agreement of indefinite duration is presumed to be terminable at-will by either party for any reason not contrary to law. *Wright v. Honda of America*, 73 Ohio St.3d 571, 574, 1995-Ohio-114; *Mers v. Dispatch Printing Co.* (1985), 19 Ohio St.3d 100, 103. Generally, an employment-at-will relationship may be altered by promissory estoppel or implied contract. *Mers*, supra, at 103-104.

PROMISSORY ESTOPPEL

{¶ 6} Plaintiff alleges that defendant is "promissorily estopped from not placing plaintiff * * * into a position of comparable grade, pay and responsibility as that held

when she was Director of Defendant Rubber Division." (Complaint, ¶35.) Defendant asserts that as an unclassified employee, plaintiff was subject to termination at-will; that plaintiff's reliance on the alleged representations and promises was not reasonable; and that plaintiff received timely notice of the termination, which enabled her to seek alternative employment.

{¶ 7} The Supreme Court of Ohio has observed that "[p]romissory estoppel has been defined * * * as '[a] promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.'" *Hortman v. Miamisburg,* 110 Ohio St.3d 194, 2006-Ohio-4251, ¶23, quoting Restatement of the Law 2d, Contracts (1981), 242, Section 90. In order to prevail on her promissory estoppel claim, plaintiff must establish the following: (1) a clear and unambiguous promise, (2) reliance by the party to whom the promise was made, (3) the reliance is reasonable and foreseeable, and (4) the party relying on the promise must have been injured by the reliance. (Citations omitted.) *Holt Co. of Ohio v. Ohio Machinery Co.*, Franklin App. No. 06AP-911, 2007-Ohio-5557, ¶30.

{¶ 8} Plaintiff testified that after the reorganization announcement, she and other RDACS employees were advised of negotiations between defendant and RDACS aimed toward allowing employees to move into positions of similar grade and pay within the university. On October 31, 2000, Ted Mallo, defendant's general counsel,[1] sent a letter (Mallo letter) to Carmen Roberto, outside counsel for defendant, wherein he discussed the negotiations and stated the following.

{¶ 9} "Accordingly, the University will agree to provide each of these individuals with a position exclusively within the University of Akron and not connected with the Rubber Division. The employment status of most individuals selecting this option will be

[1]Mr. Mallo is defendant's vice president and general counsel in addition to being the secretary of defendant's board of trustees.

that of classified employee of the University of Akron, with no diminution of salary or grade. This shall apply to those individuals currently identified by University terminology as a classified civil service employee. Similarly, any individual currently identified by University terminology as a contract professional, shall also be offered an appropriate position as a contract professional, without diminution of salary or grade." (Plaintiff's Exhibit 12.)

{¶ 10} Plaintiff alleges that Mallo acted in his capacity as the secretary for defendant's board of trustees when he authored the Mallo letter. Plaintiff claims that Mallo had the authority to bind the board of trustees as required by R.C. 3359.03 which vests hiring authority solely in defendant's board of trustees. Plaintiff points out that the May 2001 contract between defendant and RDACS was signed by Mallo. However, the Mallo letter was written on Office of the Vice President and General Counsel letterhead and makes no reference to Mallo's position as secretary of the board of trustees. In contrast, the May 2001 contract makes no reference to Mallo's position as vice president or general counsel but instead states on the line below Mallo's signature that Mallo was acting on behalf of defendant as the secretary of the board of trustees. (See Plaintiff's Exhibit 12 and Defendant's Exhibit A.)

{¶ 11} A document that is alleged to be a contract must be read as a whole. *Saunders v. Mortensen*, 101 Ohio St.3d 86, 2004-Ohio-24, ¶16; *Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth.* (1997), 78 Ohio St.3d 353, 361. The Mallo letter begins by stating that its purpose "is to memorialize our previous discussions and understandings with a view to obtain agreement * * * on key terms" and that the letter is "an attempt to capture *in broadest terms* the essence of our key understandings, and provide the framework for a written affiliation agreement * * *." (Emphasis in original.) (Plaintiff's Exhibit 12.) The letter ends with the following statement: "We look forward to achieving a mutually agreeable arrangement which will withstand the test of time." Viewing the document as a whole, it is clear that the letter

was drafted in anticipation of an agreement to be made in the future. Indeed, plaintiff testified that she knew the letter was a draft and not a final agreement.

{¶ 12} Although Mallo stated in his letter that defendant intended "to provide each of these individuals with a position of employment exclusively within the University," his letter made it clear that such positions would be available "to those individuals currently identified by University terminology as a classified civil service employee * * * [or] contract professional." (Plaintiff's Exhibit 12.) Therefore, even if the letter were to be construed as a contract, the offer of employment did not apply to unclassified employees, such as plaintiff.

{¶ 13} Plaintiff further alleges that a promise of continued employment with defendant was reinforced on November 7, 2000, when RDACS conducted a staff meeting to discuss the reorganization. During the meeting, RDACS distributed a document entitled "Explanation of Reorganization Plan" which contains the following statement.

{¶ 14} "Effect on current employees was of major concern and an important point of discussion when the decision to reorganize was made. The Steering Committee had been assured last April by the university that any displaced employee would be placed in another job on campus, which means that no employee would be unemployed or suffer a reduction in pay. This has recently been confirmed to us via a [October 31, 2000] letter from University of Akron counsel Ted Mallo." (Plaintiff's Exhibit 7.)

{¶ 15} The court finds that plaintiff's reliance on both the RDACS document and the Mallo letter is misplaced. First, the RDACS document was neither created nor distributed by defendant; the representations made were those of RDACS and its staff. Second, as discussed above, the Mallo letter did not state that all displaced employees would be hired by defendant. Although the RDACS "reorganization plan" may have contributed to an expectation of an offer of employment from defendant, the court finds

that the Mallo letter does not contain "a clear and unambiguous promise" of employment–the linchpin of a promissory estoppel claim.

{¶ 16} Plaintiff further asserts that she relied to her detriment upon defendant's alleged representations by not seeking other employment. Plaintiff testified that Mallo failed to inform her that her employment with defendant would be terminated on June 30, 2001, when she met with him in February 2001. According to plaintiff, she was first informed of her termination on May 16, 2001, by William Viau, defendant's assistant executive director of human resources. However, plaintiff's own notes from a September 11, 2000 meeting show that she was informed during the meeting that her position would be "terminated." (Plaintiff's Exhibit 2.) Plaintiff further testified that she applied for a position as an exhibit manager with RDACS in the fall of 2000; that she turned down a position offered to her by an outside employer; and that from January 2001 to May 2001 she applied for two different positions with the Northeastern Ohio Universities Colleges of Medicine. Moreover, plaintiff testified that in the fall of 2000, she had been informed that her position would not be funded after December 31, 2000. However, plaintiff was successful in extending her position until June 30, 2001.

{¶ 17} Finally, plaintiff asserts that Kent Marsden, defendant's liaison between RDACS and defendant, promised her that she would become the director of defendant's new field house. However, the court finds that the testimony and evidence does not support plaintiff's assertion that Marsden promised her a position with defendant. Furthermore, Marsden was not authorized to make such a representation. R.C. 3359.03 gives hiring authority solely to defendant's board of trustees and Marsden was not authorized to act on behalf of defendant's board of trustees. Promissory estoppel cannot be applied to contravene statutory authority. *Drake v. Medical College of Ohio* (1997), 120 Ohio App.3d 493, 495. Accordingly, the court finds that plaintiff has failed to establish her claim of promissory estoppel.

BREACH OF CONTRACT

{¶ 18} In her pretrial statement, plaintiff suggested that she had abandoned her breach of contract claim: "[t]his is a common law promissory estoppel and breach of implied contract case." Plaintiff did not address the breach of contract claim in her post-trial briefs. Furthermore, plaintiff failed to provide any evidence to support a claim that defendant entered into a contract with her. Even if the Mallo letter could be construed to be a contract, it does not contain a promise of continued employment for unclassified employees. Indeed, the only contract entered into evidence was the May 2001 contract between defendant and RDACS which provided that unclassified employees would be terminated on June 30, 2001. Moreover, paragraph G of the May 2001 contract states that "[t]his agreement supercedes all prior written and oral agreements of the parties with respect to the subject matter." (Defendant's Exhibit A.)

BREACH OF IMPLIED CONTRACT

{¶ 19} Plaintiff's remaining claim is for breach of an implied contract. An implied contract exists when "the terms of the contract are not expressed between the contracting parties, but the obligations of natural justice, by reason of some legal liability, impose the payment of money or the performance of some duty, and raise a promise to that effect." *Northern Columbiana City Community Hosp. Assn. v. Ohio Dept. of Youth Services* (1988), 38 Ohio St.3d 102, 104, quoting *Linn v. Ross & Co.* (1841), 10 Ohio 412, 414. The formation of an implied contract is determined by showing that the circumstances surrounding the parties' transactions make it reasonably certain that an agreement was intended. *Lucas v. Costantini* (1983), 13 Ohio App.3d 367, 369.

{¶ 20} As discussed above, plaintiff has failed to demonstrate that it was "reasonably certain" that the parties had agreed that defendant would employ plaintiff

after June 30, 2001. In short, plaintiff failed to show a tacit meeting of the minds that would give rise to an implied contract for her employment with defendant.

{¶ 21} For the foregoing reasons, the court finds that plaintiff has failed to satisfy her burden of proof in this case and, accordingly, judgment shall be rendered in favor of defendant.

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JUDGMENT ENTRY

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This case was tried to the court on the issues of liability and damages. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

_____

J. CRAIG WRIGHT
Judge

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