

MARY BETH ALPHIN v. WILSON COLLEGE, INC.
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action — Law, No. 2004–2466

Motion for Partial Summary Judgment; Breach of Contract; Promissory Estoppel

Summary Judgment Generally:

1. Under Pa.R.C.P. 1035.2, summary judgment is appropriate (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.
2. The moving party has the burden of proving that there is no genuine issue of material fact.
3. The non-moving party may not rest on pleadings alone, but must set forth specific facts which demonstrate a genuine issue for trial.

Summary Judgment Regarding Breach of Contract Claim:

4. At-will employment in Pennsylvania provides for four (4) exceptions: (1) an agreement for a definite duration; (2) an agreement specifying that the employee will be discharged for just cause only; (3) sufficient additional consideration; or (4) an applicable recognized public policy exception.
5. To pursue a breach of contract action, an enforceable contract must have been created. To form a contract, there must be an offer, acceptance, and consideration or a mutual meeting of the minds.
6. Past performance is insufficient consideration for a contract.
7. No contract was formed between the parties, because although Plaintiff asserts her offer was accepted, the following week Plaintiff engaged counsel to handle negotiations to determine the terms of severance and an appropriate Separation Agreement and Release. No reasonable person would think that an agreement had been reached by parties who were still engaging attorneys to negotiate the terms of that agreement.

Summary Judgment Regarding Promissory Estoppel Claim:

8. To establish a claim for promissory estoppel, Plaintiff must prove the existence of: (1) a promise; (2) which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee.
9. Plaintiff's cause of action for promissory estoppel cannot go forward because Plaintiff has failed to provide sufficient evidence to establish that there was a promise made by Defendant, with terms known to both parties. Defendant would not have reasonably expected Plaintiff to rely on an agreement that was currently being negotiated.

Appearances:

Debra K. Wallet, Esq., *Attorney for Plaintiff*

Brian F. Jackson, Esq., *Attorney for Defendant*

OPINION

Van Horn, J., October 2, 2006

Statement of the Case

Plaintiff, Mary Beth Alphin ("Plaintiff"), filed a civil complaint on September 20, 2004, raising three causes of action against her former employer, the Defendant, Wilson College, Inc. ("Wilson"): breach of contract, wage payment and collections law violation, and promissory estoppel.

Plaintiff was employed by Wilson from June 1, 1994 until the date of her termination on March 11, 2004. Plaintiff worked in the position of Director of Alumnae Programs ("DAP") during her entire span of employment at Wilson. The DAP serves as a liaison between the Wilson College Alumnae Association and the Wilson College Administration, and due to the nature of the job, a special committee of the Alumnae Association recommends a candidate to the President of the College for the position of DAP.

On March 11, 2004, the Plaintiff was discharged from her position of DAP in a meeting with Donald Bowman, Interim Vice President for Advancement of Wilson College, and Donald P. Kime, Wilson College Director of Human Resources, who acted at the direction of Lorna Edmundson, President of Wilson College. Plaintiff was terminated for performance issues and insubordination. Plaintiff claims that after she received notice of her termination, she requested consideration for severance pay through the end of the fiscal year, June 30, 2004. Plaintiff claims that when she returned to pick up her belongings the next afternoon, March 12, 2004, Mr. Bowman informed her that the President had agreed to her request. Mr. Bowman does not recall making such a statement. Wilson claims that if Mr. Bowman did make a statement agreeing to the Plaintiff's request for severance, it was an agreement to negotiate for some severance, as Mr. Bowman did not have authority to enter into a final severance agreement with Plaintiff.

The next week, Plaintiff and Wilson began negotiating a Separation Agreement and Release. Plaintiff engaged counsel to represent her in these negotiations, which continued for several months until they broke down, and no agreement between Plaintiff and Wilson was reached.

In the first count of her Complaint, Plaintiff claims that Wilson breached its contract by not paying Plaintiff compensation that it promised to pay through the end of the fiscal year. Plaintiff states that this promise was made in consideration of Plaintiff's work as DAP for nearly ten years. Plaintiff also asserts that she was employed by the Board of Directors of the Wilson College Alumnae Association, though compensated by the Defendant, and the Alumnae Association never terminated her.

In her second count, Plaintiff asserts that Defendant was her employer, or alternatively, an agent of her employer, and Defendant has withheld her wages since the calendar quarter beginning July 1, 2004. The Plaintiff also claims that Defendant has made unauthorized deductions from Plaintiff's wages in violation of §3 of the Wage Payment and Collection Law, 43 P.S. §260.3.

In her third and final count, Plaintiff asserts a promissory estoppel claim against the Defendant. Plaintiff claims that agents of Wilson promised Plaintiff that she would be paid by Wilson through June 30, 2004. Plaintiff claims that the agents of Defendant should reasonably have expected that Plaintiff would act and rely on this promise, and that Plaintiff did rely on this promise by delaying an employment search and proceeding with travel plans. Therefore, Plaintiff claims that injustice may only be avoided through enforcement of the Defendant's promise.

Defendant Wilson denies all of Plaintiff's allegations. Wilson disputes the validity of Plaintiff's claims by arguing that Plaintiff was an at-will employee, employed by Defendant Wilson College, and has been paid all wages and benefits owed to her for the term of her employment. The Defendant maintains that if all wages and benefits owed to the Plaintiff have not been paid, it is because of a good faith dispute. Defendant asserts that promissory estoppel is not a recognized exception to at-will employment in Pennsylvania. Defendant also maintains that no promise existed for Plaintiff to rely on, Defendant would not reasonably have expected Plaintiff to rely on an agreement that was in the process of being negotiated, and Plaintiff in fact did not rely on any promise or agreement.

Defendant does not believe Plaintiff can assert a valid claim against the Defendant for lack of

authority to terminate her employment because the Alumnae Association's by-laws clearly state that the DAP "shall be employed by the College." Defendant paid Plaintiff's wages and benefits, supervised and evaluated Plaintiff, and after Plaintiff's termination, she applied for and received unemployment compensation, naming Defendant Wilson as her employer. Defendant also denies that one of its representatives ever promised the Plaintiff that Wilson would pay the Plaintiff's salary and benefits through June 30, 2004.

After reviewing the facts surrounding the claims set forth in the Plaintiff's Complaint, the Defendant filed a Motion for Partial Summary Judgment as to the first and third counts of the Complaint, the breach of contract claim and the promissory estoppel claim. Both parties have filed briefs asserting their respective positions and both parties have agreed to accept a decision based on their briefs.

After carefully reviewing the submitted briefs, the Court is now ready to render a decision on each issue presented in the Motion.

Discussion

Summary Judgment Generally

Under Pennsylvania Rule of Civil Procedure 1035.2, summary judgment is appropriate in one of two circumstances:

1. whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or
2. if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa. R.C.P. 1035.2.

According to the Pennsylvania Supreme Court, the "failure of a non-moving party to adduce sufficient evidence on an issue essential to its case and on which bears the burden of proof such that a jury could return a verdict in its favor establishes the entitlement of the moving party to judgment as a matter of law." Young v. Pa. Dep't of Transp., 744 A.2d 1276, 1277 (Pa. 2000). "A jury cannot be allowed to reach a verdict merely on the basis of speculation or conjecture." Id. The moving party has the burden of proving that there is no genuine issue of material fact. Thompson Coal Co. v. Pike Coal Co., 412 A.2d 466 (Pa. 1979). In response, the non-moving party may not rest upon pleadings alone, but must set forth specific facts which demonstrate a genuine issue for trial. Phaff v. Gerner, 303 A.2d 826 (Pa. 1973). In determining whether summary judgment is appropriate, the record should be viewed in the light most favorable to the non-moving party. E.g., Mazetti v. Mercy Hosp. of Pittsburgh, 776 A.2d 938, 945 (Pa. 2001).

In following established precedent, the Court uses this framework for each Summary Judgment issue, as analyzed below.

Summary Judgment Regarding Breach of Contract Claim

Plaintiff raised her breach of contract claim as one count, but set forth the theory that Defendant was not her employer, and thus she was never terminated from her position, as well as the claim that the Defendant promised to pay a severance to the Plaintiff and breached its promise. The Court will address these arguments one at a time.

1. Plaintiff's Employment

Plaintiff does not dispute the Defendant's claim that Plaintiff was an at-will employee. In Part B of her response to the Defendant's Motion for Summary Judgment, Plaintiff acknowledges that her employment relationship with Wilson College is "largely undisputed," and she agrees that Defendant paid her salary and benefits, she reported to a College official, and she filed for unemployment against Wilson College, listing the Defendant as her employer on any and all forms requesting the identification of her employer. See Brief in Opposition to Defendant Wilson College's Motion for Partial Summary Judgment, page 7. The Alumnae Association of Wilson College By-Laws, which describes the Plaintiff's former position

in Article V, Section 2, clearly states, "The Director of Alumnae Programs shall be employed by the College." Answer and New Matter, Exhibit A. Plaintiff has presented no evidence in any way suggesting that she meets one of the four exceptions to Pennsylvania at-will employment: "1) an agreement for a definite duration; (2) an agreement specifying that the employee will be discharged for just cause only; (3) sufficient additional consideration; or (4) an applicable recognized public policy exception." Rapagnani v. Judas Co., 736 A.2d 666 (Pa. Super. 1999). Plaintiff's evidence does not establish any employment other than by Wilson College. She includes an affidavit of the Alumnae Association President who states that the Association and its Board have "endeavored to communicate regularly with the College's administration" and that based upon her experience in various positions within the Association, she "would have expected the College administration to have solicited input from the Association" before discharging the Plaintiff. Affidavit of Amy Zapp, pages 2-3. These statements do not establish anything other than at-will employment under Pennsylvania law, as they do not reference any of the exceptions stated above. The only other evidence put forth by the Plaintiff is a 1968 Newsletter article entitled, "Report of the Special Committee to Study the Proposed Amendments to the By-Laws." Deposition of Mary Beth Alphin, Exhibit 2. This article consists of a recommendation, and does not include any evidence of the by-laws actually enacted. Additionally, this article is certainly outdated in light of the fact that the most recent revisions were made to the by-laws in 1996 and 2001. See id., Exhibits 3 and 4. Therefore, Plaintiff has failed to produce evidence of facts that establish that the Defendant Wilson College did not have the authority to terminate her employment.

2. *The Claim of Severance*

The Defendant asserts that Plaintiff has not produced sufficient evidence to establish a cause of action for breach of contract. In order to pursue a breach of contract, an enforceable contract must have been created. To form a contract, there must be an offer, acceptance, and consideration or mutual meeting of the minds. Jenkins v. County of Schuylkill, 658 A.2d 380 (Pa. Super. 1995). In this case, there was an offer. Plaintiff requested severance pay of wages and benefits through the end of the fiscal year. She informed Mr. Bowman and Mr. Kime of her request when they informed her of her discharge. Deposition of Mary Beth Alphin, page 71. The Plaintiff asserts that Mr. Bowman met her the next day and informed her that President Edmundson had agreed to pay her through June. Id., page 73. This assertion must be accepted as true, as facts must be considered in a light most favorable to the non-moving party. See Mazetti, 776 A.2d at 945. However, in light of this assumption, the Plaintiff still has not presented evidence sufficient to establish that a contract between herself and the Defendant was formed. "An offer may be accepted by conduct and what the parties do pursuant to the offer is germane to show whether the offer is accepted." Mountain Properties, Inc. v. Tyler Hill Realty Corp., 767 A.2d 1096, 1101 (Pa. Super. 2001), citing O'Brien v. Nationwide Mut. Ins. Co., 689 A.2d 254, 259 (Pa. Super. 1997). The fact that Plaintiff argues that her offer was accepted and Defendant argues that it did not accept the offer is irrelevant because the parties' actions speak for themselves. The discussion in which the offer may or may not have been accepted took place on a Friday. Early the following week, Plaintiff engaged an attorney and Plaintiff and Defendant were involved in negotiations to determine the terms of severance and an appropriate Separation Agreement and Release. See Deposition of Donald Kime, Exhibits 5-8 (E-mail messages between Plaintiff's attorney and Defendant's attorney regarding negotiations). These negotiations went on for several months. See id. "In order for an enforceable agreement to exist, there must be a 'meeting of the minds,' whereby both parties mutually assent to the same thing..." Mountain Properties, Inc., 767 A.2d at 1101, citing Schreiber v. Olan Mills, 627 A.2d 806, 808 (Pa. Super. 1993). Obviously there was no meeting of the minds between parties if they both continued to engage in negotiations through attorneys for a significant period of time. The question of whether an offer and acceptance has occurred is determined by what a reasonable person in the position of the parties would conclude based on the conduct of the parties in the context of the surrounding circumstances. Id., citing Temple Univ. Hosp., Inc. v. Healthcare Mgmt. Alternatives, Inc., 764 A.2d 587 (Pa. Super. 2000). In this case, no reasonable person would think that an agreement had been reached by parties who were still engaging attorneys to negotiate the terms of that agreement. The Court agrees with Plaintiff's assertion that "whether or not Alphin was an at-will employee of Wilson College is irrelevant to a legal analysis of the breach of contract claim." Brief in Opposition to Defendant Wilson College's Motion for Partial Summary Judgment, page 8. However, Plaintiff has failed to prove that a valid contract existed before the Plaintiff and the Defendant began negotiating terms of that same contract.

Defendant also argues that the consideration cited by the Plaintiff in her Complaint, performance of her duties for the Defendant for approximately ten years, is not valid as consideration because it is past performance. This assertion is valid because past performance is insufficient consideration for a contract. See Cardamone v. Univ. of Pittsburgh, 384 A.2d 1228, 1232 (Pa. Super. 1978). Plaintiff asserts a new claim for consideration in her Brief in Opposition to Defendant's Motion for Partial Summary Judgment, and now claims that her offer to "go quietly" was valid consideration for the contract because she would refrain from upsetting alumnae. While this promise to refrain from publicizing her termination may have been proper consideration if a contract had been formed, the definition of leaving quietly was a term being negotiated

as part of the separation agreement, and thus was never agreed upon by the parties. See Deposition of Donald Kime, Exhibit 5 (An e-mail from the Defendant's attorney including an e-mail message in its entirety from the Plaintiff's attorney for negotiations, in which the Plaintiff's attorney writes, "I have apprised [sic] my client that no comments should be made regarding the matter even at this point.") The email message from the Plaintiff's attorney illustrates that the terms of what "going quietly" meant were still in dispute.

Plaintiff has failed to present evidence to establish that she was not an employee of Defendant Wilson College and has failed to present evidence that a contract between the parties was ultimately reached. For these reasons, the Court grants the Defendant's Motion for Summary Judgment as to Count I of the Plaintiff's Complaint, breach of contract.

Summary Judgment Regarding Promissory Estoppel Claim

Defendant also moves for summary judgment on Count III of the Plaintiff's Complaint, promissory estoppel. To establish a claim for promissory estoppel, the Plaintiff must prove the existence of:

(1) a promise (2) which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and (3) which does induce such action or forbearance is binding if (4) injustice can be avoided only by the enforcement of the promise.

E.g., Weaverton Transp. Leasing Inc. v. Moran, 834 A.2d 1169, 1174 (Pa. Super. 2003).

Promissory estoppel allows a party to enforce a promise when consideration is lacking. See Sullivan v. Chartwell Inv. Partners, 873 A.2d 710, 717 (Pa. Super. 2005). However, this doctrine may not be "loosely applied." Weaverton, 834 A.2d at 1174. The Pennsylvania Superior Court emphasizes that if promissory estoppel were loosely applied, any promise, "regardless of the complete absence of consideration, would be enforceable." Id.

In the instant case, the record shows that the parties engaged in negotiations to determine the terms of their agreement, and that these negotiations lasted from the middle of March at least through the middle of August, 2004. Negotiations eventually failed, and no agreement was reached. Plaintiff maintains in her Complaint that she relied on the representations of Defendant by delaying her search for future employment and by proceeding with travel plans, which she otherwise may not have made. Plaintiff states in her deposition that she began looking for employment two weeks after she was terminated. Deposition of Mary Beth Alphin, 92:15 – 93:9 ("I did start looking right away. It was necessary.") According to the Plaintiff's statement, there was no significant delay in seeking employment. Additionally, negotiations between the Plaintiff and the Defendant for the Separation Agreement and Release were ongoing during the time the Plaintiff began her employment search and during the time of Plaintiff's travel. Negotiations continued during the time the Plaintiff states she would have had to act to obtain a refund for her trip, and negotiations were still ongoing during and after the time of the Plaintiff's June 2004 trip to England. Deposition of Mary Beth Alphin, 90:5-8; Deposition of Donald Kime, Exhibits 5-8. Plaintiff's cause of action for promissory estoppel cannot go forward because Plaintiff has failed to provide sufficient evidence to establish that there was a promise made by the Defendant, with terms known to both parties. Even if the Court were to go further in analysis, the Defendant could not have reasonably expected the Plaintiff to rely on a promise or agreement that was currently being negotiated. The fact that the Plaintiff began looking for future employment shortly after she was terminated, and continued with her travel plans while still in the process of negotiating her Separation Agreement indicates that she did not act in reliance on any perception of representations made by the Defendant. Therefore, it is not true that injustice can only be avoided by enforcing the agreement, because Plaintiff has failed to produce evidence essential to establishing that a promise to pay severance existed. Additionally, Defendant would not have reasonably expected the Plaintiff to rely on an agreement that was currently being negotiated. Furthermore, Plaintiff did not demonstrate that she relied on any representation of an agreement because she began looking for employment within two weeks of her termination, and proceeded with travel arrangements with the knowledge that her Separation Agreement was not finalized, because she was still in the process of negotiating the Agreement. For the above reasons, the Court grants the Defendant's Motion for Summary Judgment on the count of promissory estoppel.

Conclusion

The Defendant's Motion for Partial Summary Judgment as to Counts I and III of the Plaintiff's Complaint is granted for all the reasons stated herein. The case will proceed with Count II of the Plaintiff's Complaint as to the wage payment and collection law claim. All other matters are dismissed as per the

Defendant's Motion for Partial Summary Judgment.

ORDER OF COURT

And now this 2nd day of October, 2006, after consideration of Defendant's Motion for Partial Summary Judgment, briefs submitted by counsel and presented to the Court on this matter, its is hereby ordered that (1) Defendant's Motion for Summary Judgment in regard to the breach of contract action is hereby granted and (2) the Defendant's Motion for Summary Judgment in regard to the promissory estoppel action is hereby granted.