STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

FILED: JULY 26, 2012

JAMES LAURENT	:	
	:	
V.	:	**C.A. No.: 09-0545**
	:	
ST. MICHAEL'S COUNTRY DAY SCHOOL	:	

DECISION

STERN, J. Before the Court is Defendant St. Michael's Country Day School's ("Defendant" or "St. Michael's") Super. R. Civ. P. 56 Motion for Summary Judgment on Count I, Count II, and Count III of a complaint filed against it by the Plaintiff James Laurent ("Plaintiff" or "Laurent").[1] Plaintiff's underlying lawsuit arises out of a termination of Plaintiff's employment contract by Defendant. Defendant filed the instant motion on Feb. 3, 2012. Plaintiff has filed an objection to the instant motion and a subsequent supplemental memorandum.

I

Facts and Travel

Plaintiff's underlying lawsuit arises out of a termination of Plaintiff's employment contract by Defendant. (Pl.'s Compl.) St. Michael's is a private educational institution located in Newport, Rhode Island. St. Michael's offers classes for prekindergarten through middle school. Defendant does not engage in a collective bargaining agreement with its employees; rather Defendant sends an "Offer of Employment" for the upcoming year to the individuals the

[1] Count I-Breach of contract; Count II-Breach of implied covenant of good faith and fair dealing; Count III-Promissory Estoppel.

Defendant wishes to hire for the following year. Mr. Laurent was employed by St. Michael's as a history teacher for twelve years, including the 2008-2009 academic year.

Toward the end of the 2008-2009 academic year, Mr. Laurent received a document titled "OFFER OF EMPLOYMENT FOR THE YEAR 2009-2010 EMPLOYEE COMPENSATION PROJECTION" ("Offer"). (Pl.'s Ex. A.) The Offer was signed by Mr. Whitney Slade ("Mr. Slade") in his capacity as the Head of the School and dated May 6, 2009. The Offer was consequently signed by Laurent on May 7, 2009. The terms of the Offer included the position offered to Laurent, the base salary as $46,715; the daily rate of $225.68; and benefits. Below the parties' signatures, the Offer also included the following disclaimer: "This is not a contract. All employment at St. Michael's Country Day School is strictly on "at will" basis. This offer of employment can be withdrawn at the discretion of the Head of School." (Pl.'s Ex. A.)

Undisputed by both parties is that on June 8, 2009, Plaintiff got into an argument ("Incident") with Ms. Lauren Abraham ("Ms. Abraham"). Ms. Abraham is the Head of St. Michael's Lower School and is also a direct supervisor of Laurent's daughter-in-law, who was a teacher at the Lower School. Allegedly, a few days prior to June 8, 2009, after consultation with Abraham, Laurent's daughter-in-law was advised that she would probably not be rehired for the upcoming 2009-2010 academic year.

It is undisputed that the Incident led to Defendant's decision to terminate Laurent's employment. The decision to terminate Laurent was made at a subsequent meeting conducted by the Head of the School and his managing team. Laurent was not present at the meeting. In order to avoid a potentially hostile environment created by Laurent, Defendant decided to terminate Laurent's employment. At the meeting, it was decided that the Defendant would inform Laurent of his termination after St. Michael's graduation. Thus, on June 10, 2009, Mr. Slade advised the

Plaintiff that his employment for the academic year 2009-2010 had been terminated, effective immediately.

On August 7, 2009, the Plaintiff filed a complaint on three counts: Count I-Breach of contract; Count II-Breach of implied covenant of good faith and fair dealing; Count III-Promissory Estoppel. On May 9, 2012, Plaintiff also filed a Motion to Amend his Complaint to add following counts: Count IV-Intentional Infliction of Emotional Distress; Count V-Negligent Infliction of Emotional Distress; Count VI-Libel, Slander and Defamation; Count VII-Spoilation; and Count VIII-Punitive Damages.

II

Standard of Review

Summary judgment is an extreme and drastic remedy that should be applied cautiously. Golderese v. Suburban Land Co., 590 A.2d 395, 396 (R.I. 1991) (quotation omitted). Summary judgment is proper when "no genuine issue of material fact is evident from the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, and the motion justice finds that the moving party is entitled to prevail as a matter of law." Smiler v. Napolitano, 911 A.2d 1035, 1038 (R.I. 2006) (quoting Rule 56(c)). On considering a motion for summary judgment, this Court reviews the evidence and draws all reasonable inferences in the light most favorable to the nonmoving party. Chavers v. Fleet Bank (RI), N.A., 844 A.2d 666, 669 (R.I. 2004). "The party opposing summary judgment bears the burden of proving, by competent evidence, the existence of facts in dispute." Lynch v. Spirit Rent–A–Car, Inc., 965 A.2d 417, 424 (R.I. 2009) (quoting Cullen v. Lincoln Town Council, 960 A.2d 246, 248 (R.I. 2008)). The opposing party, however, cannot rest on "allegations or denials in the pleadings or on conclusions or legal opinions." Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1225 (R.I. 2006).

Summary judgment shall properly be entered, "if, when viewing evidence in the light most favorable to the nonmoving party, 'there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.'" Higgins v. Rhode Island Hosp., 35 A.3d 919, 922 (R.I. 2012) (quoting Trust of McManus v. McManus, 18 A.3d 550, 552 (R.I.2011)). On such a motion, the Court is to determine only whether a factual issue exists and it is not permitted to resolve any such factual issues. O'Conner v. McKenna, 116 R.I. 627, 633, 359 A.2d 350, 353 (1976) (quotations omitted). Thus the emphasis is on issue finding, not issue determination. Id.

III

Analysis

St. Michael's asserts that the clear language of the employment offer between the Defendant and Plaintiff provides that the employment is at-will and could be terminated at any time by the Head of the School, with or without cause. Defendant further maintains that because Mr. Laurent's employment was at-will, he could not assert claims for Promissory Estoppel and Breach of Implied Covenant of Good Faith and Fair Dealing. In its supplemental memorandum in support of its objection to Plaintiff's Motion for Summary Judgment, Defendant asserts that the "at-will" provision expressly conditioned Plaintiff's employment on an at-will basis. The Defendant further contends that the provision providing that the Offer "is not a contract," put its employees on notice that they had no right or expectation to continued employment with the Defendant. The Defendant also argues that because the Offer only provides that the employment is for "year 2009-10," rather than a specific start and an end date, the employment was for indefinite duration. Additionally, Defendant asserts that Plaintiff's failure to understand the term "at-will" does not create ambiguity.

The Plaintiff counters that the annual employment contracts were generally accepted by the St. Michael's community as contracts for a set term—specifically for the following academic year—and that it was generally understood that if a teacher was awarded a contract for the upcoming academic year, he or she was entitled to hold that position for the full term, except in extraordinary circumstances. The Plaintiff further contends that the language of the contract is contradictory, unclear, and ambiguous, and thus, the language should be construed against the Defendant.

A

Count I - Breach of Contract

In Count I, the Plaintiff claims that he had an employment contract with Defendant and the Defendant breached its contract by terminating Plaintiff's services, without cause or justification. Furthermore, Plaintiff claims that the Defendant's acts were willful, wanton, and unexcused. Thus, as a result, the Plaintiff alleges that he suffered damages and injury. Conversely, Defendant argues that the terms of the contract clearly provide that Laurent was an "at-will" employee and as such, Laurent's employment was terminable for a good reason, a bad reason, or no reason at all.

Whether a contract is clear and unambiguous is a question of law. Beacon Mut. Ins. Co. v. Spino Bros., Inc., 11 A.3d 645, 648-49 (R.I. 2011) (quotations omitted). However, when there is an ambiguity in the contractual language, the "construction of the [ambiguous] term becomes one of fact." Cassidy v. Springfield Life Insurance Co., 106 R.I. 615, 619, 262 A.2d 378, 380 (1970) (citing Russolino v. A. F. Rotelli & Sons, Inc., 85 R.I. 160, 128 A.2d 337 (1957)). As such, a question of fact is for the fact-finder to decide. Tedesco v. Connors, 871 A.2d 920, 924 (R.I. 2005) ("[J]udges do not answer a question of fact; juries do not answer a question of law."). It is well settled that in determining whether the policy is ambiguous this Court gives:

> "words their plain, ordinary, and usual meaning. The Court considers the policy in its entirety and does not 'establish ambiguity by viewing a word in isolation or by taking a phrase out of context.' The Court will 'refrain from engaging in mental gymnastics or from stretching the imagination to read ambiguity into a policy where none is present.' In determining whether the contract has an ambiguous meaning, this Court cannot consider the subjective intent of the parties; but rather must consider the intent expressed by the language of the contract. A contract, however, is ambiguous when it is 'reasonably susceptible of different constructions.'" Bliss Mine Road Condominium Association v. Nationwide Property and Casualty Insurance Co., 11 A.3d 1078, 1083-84 (R.I. 2010)

"When ambiguity is present, and the document's language is susceptible to more than one reasonable interpretation, the language will be strictly construed with all ambiguities decided against the drafter." Monahan v. Girouard, 911 A.2d 666, 672 (R.I. 2006). When, however, no ambiguity exists, "judicial construction is at an end for the terms will be applied as written." Rivera v. Gagnon, 847 A.2d 280, 284 (R.I. 2004).

As a preliminary matter, this Court notes that an employment contract for a definite or determinable term, as distinguished from a contract for an indefinite or indeterminable term, may be terminated by either party only for good or just cause. See Slifkin v. Condec Corp., 13 App. 538, 549, 538 A.2d 231 (Conn. 1988). On the other hand when the duration of the contract is uncertain, the contract is terminable at the will of either party without regard to cause. See Galloway v. Roger Williams University, 777 A.2d 148, 150 (R.I. 2001) ("at-will employees [are] subject to discharge at any time for any permissible reason or for no reason at all"); see also Neri v. Ross-Simons, Inc., 897 A.2d 42, 47 (R.I. 2006) (citing Payne v. K-D Manufacturing Co., 520 A.2d 569, 573 (R.I. 1987) ("In this jurisdiction when the duration of a contract is uncertain, the contract is to be considered terminable at will.").

Considering the document in its entirety, this Court first notes that the document is entitled, "OFFER OF EMPLOYMENT," and was signed by the Head of the School. Under

contract law, in order for a contract to be formed, there must be a "mutual assent or, in other words, an intention to promise or be bound through offer and acceptance." Filippi v. Filippi, 818 A.2d 608, 624 (R.I. 2003) (citing Smith v. Boyd, 553 A.2d 131, 133 (R.I. 1989)). "'[I]t is a party's objective intent that will be considered as creating either an offer or acceptance.'" Id. Additionally, "a bilateral contract requires mutuality of obligation, which is achieved when both parties are bound legally by the making of reciprocal promises." Id. at 624 (citations omitted). Importantly, "[m]utuality of obligation fulfills the consideration requirement of contracts." Id. Consideration must satisfy the "bargained-for exchange test." See id. Specifically, a bargained-for exchange is something "sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise." Id.

Here, the Defendant explicitly offered Plaintiff employment for the 2009-2010 year with specific salary and benefits information. Furthermore, below the signature line, the Defendant explained that in order to "[t]o accept this offer," the employee must sign it and return it to the business office of the School. Thus, as each party agreed to receive a specific benefit in exchange for the opposing party's return promise of that benefit, there is seemingly valid consideration. Specifically, the Plaintiff agreed to provide teaching services in exchange of Defendant's promise to compensate the Plaintiff for the services rendered. This kind of bargained-for exchange and compensation for services meets the prerequisite threshold of a legally binding contract.

However, below the parties' signatures, the drafter of the document inserted a disclaimer stating, "[t]his is not a contract." This could reasonably be construed as an indication to the offeree that the document, in itself, is not a contract, but requires acceptance to be perfected through the above mentioned process of "sign[ing] and return[ing] one copy to the business office as soon as possible." The disclaimer also states that "[t]his offer of employment can be

withdrawn at the discretion of the Head of School." This could reasonably be construed as an indication to the offeree which individual at St. Michael's was vested with the authority to withdraw this Offer. However, once an offer is accepted, it cannot simply be "withdrawn." Here, as mentioned, the Offer provides for a specific method of acceptance. In between the other two disclaimer sentences, the disclaimer states that "[a]ll employment . . . is strictly on 'at will' basis." Defendant, by lodging the term "at will" in the disclaimer, has attempted to capture the entire import of legal rights and obligations surrounding the term notwithstanding the surrounding indicia of a term employment. See City of East Providence v. United Steelworkers of America, Local 15509, 925 A.2d 246, 253 (R.I. 2007) ("It is well settled that this Court will eschew a hypertechnical interpretation of a contract term in favor of a more commonplace construction.").

This Court finds, that on one hand, objectively the Offer was intended by the parties as a legally binding contract. On the other hand, the conflicting language undermines the determination that the parties have mutual assent as to the type of the document signed and the terms of the same document, and consequently, the intended nature of the employment between the parties. Also, at least for the purposes of summary judgment, the Court notes that the Defendant is the drafter of the document in question, and "[w]hen ambiguity is present, and the document's language is susceptible to more than one reasonable interpretation, the language will be strictly construed with all ambiguities decided against the drafter." Monahan, 911 A.2d at 672. Further, "[w]hen a provision of a contract or agreement may be construed different ways, the practice of this court is to 'adopt that construction which is most equitable and which will not give one party an unconscionable advantage over the other.'" Donelan v. Donelan, 741 A.2d 268, 270 (R.I. 1999) (citing Flynn v. Flynn, 615 A.2d 119, 121 (R.I. 1992)). Though not rising to the level of unconscionability, the Defendant desires the document in question to operate in

both ways. The Defendant admittedly uses the documents as a means of gleaning the intention of employees to commit to another year of service to St. Michael's, while in the same breathe, the Defendant also wishes to maintain that such documents should not serve as a basis of understanding of a contractual employment relationship between the parties.

This Court further notes that the disclaimer is located below the parties' signature which additionally raises a factual question as to whether there was a mutual assent between the parties with regard to the language located below their signature. The place of the signature is immaterial except in cases where the law specifies a particular place such that "words written on a contract as a portion of the instrument to be signed by the parties become part of the obligation, although the signatures are not below them, but above them or on the preceding page." 17A Am. Jur. 2d Contracts § 176 (citing Sherwood v. Gerking, 306 P.2d 386 (1957) (fact that notation on contract form appears below the signatures of parties does not necessarily exclude it as term of the contract)). Therefore, rather than adding clarity to the document, if the disclaimer is part of the agreement, it creates further ambiguity on its face.

The title of the document encompasses an "OFFER OF EMPLOYMENT FOR THE YEAR 2009-2010." (Emphasis added.) Although, the Defendant argues that this is an indefinite period of time, and thus an at-will employment, the duration as indicated on the document is determinable. A determinable duration is presumed to create a term employment contract and as such requires termination for cause. See Slifkin, 538 A.2d at 231.

In addition to the document's expression of determinable duration, this Court notes that even "the presumption that a hiring unaccompanied by an expression of time is at will can be rebutted by evidence that the parties intended that it would be a fixed period." Sch. Comm. of City of Providence v. Bd. of Regents for Ed., 112 R.I. 288, 292, 308 A.2d 788 (1973). While in DelSignore v. Providence Journal Co., the Rhode Island Supreme Court found that an

employee's failure to direct the Court "to anything in the [employer's] policies, practices, procedures, or employee memoranda that would give rise to a reasonable belief that [the employee] was anything other than an at-will employee" was dispositive to the employee's implied contract theory. 691 A.2d 1050, 1052 (R.I. 1997). In Kraine v. Derecktor, the Rhode Island Supreme Court reviewed a trial justice's jury instruction which found as a matter of law that there was an employment contract between the parties. 528 A.2d 1094, 1096 (R.I. 1987). Based on the evidence at trial, the Court held that the trial justice's instruction was not "clearly wrong." Id. at 1097. The record indicated a discussion between the parties regarding a preference "to go year-to-year" and a letter from the employer to the employee stating in part:

> "Dear [employee]:
>
> I am pleased that you have accepted the position of General Manager for the WMEC Program.
>
> Following are the items which I believe to be inclusive of the areas we discussed:
>
> 1. Annual salary of $75k.
>
> 2. Blue Cross-Blue Shield will not be paid by the company for approximately one year due to prior arrangements." Id. at 1095.

Here, like in Kraine, St. Michael's has, (1) acknowledged a preference similar to going "year-to-year," (2) has indicated the position the Plaintiff accepted within the document, (3) expressed the Plaintiff's salary in annual terms, and (4) described how benefits are to be allocated across that period. See 528 A.2d at 1095. Further, as called for in School. Committee of City of Providence and as was absent in DelSignore, the Plaintiff has pointed to several of the "policies, practices, [and] procedures" of the parties that could provide a reasonable basis for the Plaintiff to form an understanding of a contractual term relationship. DelSignore, 691 A.2d at 1052 (R.I. 1997); Sch. Comm. of City of Providence 308 A.2d 788 (1973).

Accordingly, both parties raised a genuine issue of material fact as to whether there was a mutual assent as to the duration of a contractual relationship. For the foregoing reasons, this Court finds that the terms of the document are not clear and unambiguous. Thus, this Court denies the Defendant's Motion for Summary Judgment on Count I. It is clear from the evidence submitted by Plaintiff and Defendant that a dispute exists about the parties' intent in signing the Offer.

B

Count II - Breach of Implied Covenant of Good Faith and Fair Dealing

Here, the Plaintiff argues that Defendant breached its obligation of good faith and fair dealing by terminating the agreement without cause or justification. The Plaintiff claims he has suffered injury and damage as a direct result of Defendant's breach of implied covenant.

"'[V]irtually every contract contains an implied covenant of good faith and fair dealing between the parties.'" Dovenmuehle Mortgage, Inc. v. Antonelli, 790 A.2d 1113, 1115 (R.I. 2002) (quoting Centerville Builders, Inc. v. Wynne, 683 A.2d 1340, 1342 (R.I. 1996) (quoting Crellin Technologies, Inc. v. Equipmentlease Corp., 18 F.3d 1, 10 (1st Cir. 1994)) However, "an implied covenant of good faith and fair dealing is generally not recognized in the at-will employment context under Rhode Island law." Dunfey v. Roger Williams University, 824 F. Supp. 18, 23 (D. Mass. 1993) (citing Lopez v. Bulova Watch Co., Inc., 582 F. Supp. 755, 767 (D. R.I. 1984)). Because this Court found that the terms of the document are ambiguous, this Court denies Count II of the Defendant's Motion for Summary Judgment.

C

Count III - Promissory Estoppel

Plaintiff alleges in Count III that he is entitled to recovery under the doctrine of Promissory Estoppel, arguing that he reasonably relied on the Defendant's promise of

employment during the 2009-2010 year, and as such, he has suffered injury as a result of his justifiable reliance.

Under the doctrine of promissory estoppel, an offeror whose promise induces an offeree to act or forbear to act is estopped from claiming the contract is invalid for lack of consideration. See Alix v. Alix, 497 A.2d 18, 21 (R.I. 1985) (citing Restatement (Second) of Contracts § 90 (1981)). The doctrine of promissory estoppel is 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." Restatement (Second) Contracts § 90 at 242 (1981). Although, the doctrine of promissory estoppel was developed as a substitute for consideration, our Supreme Court has extended its application to "varied situations in which the promisee's reliance on the promise was induced, and injustice may only be avoided by enforcement of the promise." East Providence Credit Union v. Geremia, 103 R.I. 597, 601-02, 239 A.2d 725, 728 (1968) (quoting Filippi v. Filippi, 818 A.2d 608, 625 (R.I. 2003) (internal citation omitted)). "To invoke the doctrine of promissory estoppel, a promisee must demonstrate the existence of:

> '1. A clear and unambiguous promise;
>
> 2. Reasonable and justifiable reliance upon the promise; and
>
> 3. Detriment to the promisee, caused by his or her reliance on the promise.'" Dellagrotta v. Dellagrotta, 873 A.2d 101, 110 (R.I. 2005) (quoting Filippi, 818 A.2d at 626).

This Court denies Count III because a genuine issue of material fact exists as to the type of employment between the parties.

CONCLUSION

After reviewing the document in its entirety, and giving the language its plain, ordinary and usual meaning, this Court finds that the document was not clear, unambiguous, nor open to only one reasonable interpretation. The Defendant's Motion for Summary Judgment with respect to Count I, Count II, and Count III of Plaintiff's complaint is DENIED. Additionally, this Court reserves on Plaintiff's Motion to Amend Count IV-Intentional Infliction of Emotional Distress, Count V-Negligent Infliction of Emotional Distress, Count VI-Libel, Slander and Defamation, Count VII-Spoilation, and Count VIII-Punitive Damages.