

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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Hossein Abolhassani,		)	
		)	
Plaintiff,		)	
		)	
v.		)	CIVIL ACTION 1:09-cv-10519-PBS
		)	
Advanced Polymers, Inc.,		)	
Mark Saab and Elisia Saab		)	
		)	
Defendants.		)	
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**MEMORANDUM AND ORDER**

October 2, 2009

SARIS, U.S.D.J.

**I. INTRODUCTION**

Plaintiff Hossein Abolhassani, a civil engineer, brings this action against his former employer Advanced Polymers, Inc. ("API") and its co-owners Mark and Elisia Saab based on his discharge from employment after only one month. Based on a theory of promissory estoppel, he asserts that he detrimentally relied on API's offer of employment by turning down two other job offers. Plaintiff also alleges intentional interference with advantageous business relations, claiming that the Saabs wrongfully induced API to discharge Plaintiff. Defendants have filed a motion to dismiss both claims pursuant to Fed. R. Civ. P. 12(b)(6). After hearing, the motion is ALLOWED.

**II. BACKGROUND**

When all reasonable inferences are drawn in favor of the Plaintiff, the complaint alleges the following facts.

The Saabs are the sole owners of API, a medical products provider located in Salem, New Hampshire. In March 2006, they interviewed Plaintiff for a position at API. (Compl. ¶ 8.) At some point during the interview process, the Saabs represented to Plaintiff that API would hire Plaintiff on a temporary basis for approximately one month, following which API would hire him permanently. (Compl. ¶ 10.) The Saabs also indicated that they would provide Plaintiff with "requisite training for the position." (Compl. ¶ 11.)

Plaintiff rejected two other job offers, and accepted the position at API. (Compl. ¶¶ 14-15.) Plaintiff began working at API on March 27, 2006. (Compl. ¶ 16.) On June 1, 2006, Plaintiff's supervisor informed him that his employment was terminated because he did not meet API's expectations.<sup>1</sup> (Compl. ¶ 22.) Prior to Plaintiff's discharge, he requested training on several occasions. (Compl. ¶ 21.) Defendants never provided Plaintiff with training, nor did they inform Plaintiff that his work was substandard. (Compl. ¶¶ 21, 19.) Plaintiff alleges that he "performed the duties of his position in a competent and professional manner." (Compl. ¶ 18.)

### **III. Discussion**

#### **A. Motion to Dismiss Standard**

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<sup>1</sup> Defendants contend that Plaintiff was terminated on May 1, 2006.

In order to survive a motion to dismiss, a complaint must allege "a plausible entitlement to relief." Rodriguez-Ortiz v. Margo Caribe, Inc., 490 F.3d 92, 95 (1st Cir. 2007) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 559 (2007)). In considering a motion to dismiss for failure to state a claim upon which relief can be granted, courts must take as true the allegations in the plaintiff's pleadings and must make all reasonable inferences in favor of the plaintiff. Rivera v. Rhode Island, 402 F.3d 27, 33 (1st Cir. 2005). "A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (internal quotations and citations omitted). "The court need not accept a plaintiff's assertion that a factual allegation satisfies an element of a claim . . . nor must a court infer from the assertion of a legal conclusion that factual allegations could be made that would justify drawing such a conclusion." Cordero-Hernandez v. Hernandez-Ballesteros, 449 F.3d 240, 244 n.3 (1st Cir. 2006). As the Supreme Court recently put it, the pleading standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Iqbal, 129 S. Ct. at 1949.

**B. Promissory Estoppel**

Plaintiff claims that Defendants are liable under the theory of promissory estoppel based on Plaintiff's detrimental reliance on Defendants' offer of permanent employment. Under the doctrine of promissory estoppel, "[a] promise which the promisor should

reasonably expect to induce action or forbearance on the part of the promisee . . . and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise." Steinke v. Sungard Fin. Sys. Inc., 121 F.3d 763, 776 (1st Cir. 1997). To succeed on a promissory estoppel claim, the plaintiff must allege that "(1) a promisor makes a promise which he should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee, (2) the promise does induce such action or forbearance, and (3) injustice can be avoided only by enforcement of the promise." Neuhoff v. Marvin Lumber & Cedar Co., 370 F.3d 197, 203 (1st Cir. 2004) (citing Carroll v. Xerox Corp., 294 F.3d 231, 242 (1st Cir. 2002)).

Defendants argue that Plaintiff cannot succeed on a promissory estoppel theory where the underlying promise is for at-will employment. Under New Hampshire law, "unless an employment relationship explicitly provides for a definite duration, it is presumed to be at-will." Smith v. F.W. Morse & Co., 76 F.3d 413, 426 (1st Cir. 1996).<sup>2</sup> The at-will presumption "is a gap filler for determining duration when the parties'

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<sup>2</sup> The Court must apply the law of the state which bears the "'most significant relationship' to the parties and events of the case." Williams v. Astra USA, Inc., 68 F. Supp. 2d 29, 36 n.1 (D. Mass. 1999) (quoting Restatement (Second) of Conflict of Laws, § 145(1) (1971)). The Court will apply New Hampshire law because the Defendant-corporation is located in New Hampshire, the Defendant-owners are residents of New Hampshire, and the employment relationship took place in New Hampshire.

contract of employment is silent as to its expiration." Butler v. Walker Power, Inc., 629 A.2d 91, 93 (N.H. 1993). An employer can fire an at-will employee "at any time, for any reason or no reason, unless a statute, a collective bargaining agreement, or some aspect of public policy proscribes firing the employee on a particular basis." Smith, 76 F.3d at 426. Many courts have held that promises of at-will employment are merely illusory, and as such, suits brought for their breach are non-actionable. See, id. at 426 (describing at-will employment contract as "no contract at all"); see generally E. Allan Farnsworth, Contracts §§ 2.13, 2.14 (2d ed. 1990) (explaining that promises to maintain an at-will relationship are illusory).

According to the complaint, the Saabs promised Plaintiff that they would hire him for a definite duration (one month), and they complied with that agreement. After that period terminated, so did Plaintiff's employment. Plaintiff argues that API's promise to hire him "permanently" at the conclusion of one month created an enforceable promise. For a promise of permanent or lifetime employment to be enforceable, it must be expressed in "clear and unequivocal terms." Smith, 76 F.3d at 427. In the majority view, the term "permanent employment" has been construed "to establish only an at-will employment relationship." See Piascik-Lambeth v. Textron Auto Co., 2000 U.S. Dist. LEXIS 20884, at \*25 (D.N.H. 2000). The courts have rejected claims that information contained in job descriptions or optimistic language about the nature or tenure of a job renders the resulting

employment something other than at-will. See, e.g., Steinke, 121 F.3d at 776 (statement by company's president and CEO that he and plaintiff would be "working together over the next five to ten years" not a promise on which plaintiff could reasonably rely).

The law in this area is harsh because a barebone offer of "permanent" employment, without more, is not sufficient to transform an employment relationship from an at-will status. Plaintiff has not alleged that he incurred costs based on this promise (like moving expenses) or that he lost money by turning down the other job offers (like a signing bonus). As API's promise of "permanent" employment after the first month was generic, rather than clear and unequivocal in its terms, it was not legally enforceable. Plaintiff's promissory estoppel claim must fail.

**C. Promissory Estoppel Claim for Failure to Provide Training**

To buttress his promissory estoppel argument, Plaintiff insists that he detrimentally relied on the Saabs' representations that they would provide Plaintiff with training. Although the New Hampshire courts have not directly addressed this point, other courts have held that a promise of job training does not alter the at-will status of an employment relationship. See Dillon v. Champion Jogbra, Inc., 819 A.2d 703, 710 (Vt. 2002) ("it is not clear . . . how the promise of training foreclosed [defendant corporation] from nevertheless terminating [plaintiff] either on an at-will basis or for cause"); see also Trilogy Software, Inc. v. Callidus Software, Inc., 143 S.W.3d 452, 460

(Tex. App. 2004) (explaining that a promise to train an at-will employee is illusory and unenforceable because a defendant can avoid the promise by terminating the employment relationship).

Plaintiff does not allege that the lack of training caused his failure to meet job expectations. Nor does Plaintiff claim that Defendants promised to train him during the initial month. Rather, Plaintiff alleges that he performed his job in a competent and professional manner. (Compl. ¶ 18.) Even if the lack of job training violated the terms of Plaintiff's employment relationship, Plaintiff does not appear to be seeking damages from the breach of this alleged promise, and the Saabs' promise of training did not change the at-will status of Plaintiff's employment.

**D. Intentional Interference with Advantageous Business Relations**

Plaintiff alleges that the Saabs are liable for intentional interference with advantageous business relations because they "knowingly induced" API to discharge him. (Compl. ¶ 29.) Although New Hampshire has not recognized the tort of intentional interference with advantageous business relations, one court has assumed that such a claim is viable. See Jet Wine & Spirits, Inc. v. Bacardi Ltd., 158 F. Supp. 2d 162, 165-66 (D.N.H. 2001). Even if his claim is cognizable, Plaintiff does not present allegations sufficient to satisfy the claim's necessary elements.

To prove intentional interference with advantageous business relations, Plaintiff must establish that (1) he had a business relationship with API, (2) the Saabs knew of this relationship,

(3) the Saabs intentionally and improperly interfered with this relationship, and (4) Plaintiff was damaged by the interference. Id., 158 F. Supp. 2d at 165; see also Welch v. Ciampa, 542 F.3d 927, 943-44 (1st Cir. 2008) (listing the elements of this tort under Massachusetts law).

Critically, for a plaintiff to prevail on such a claim, he must demonstrate that the defendant interfered with a relationship between the plaintiff and a third party.

It is true that, in general, a plaintiff cannot bring a suit for tortious interference against a party to the underlying contract. In the employment context, this usually means that an employee may not sue her employer for interfering with its own contract. But a supervisor can be liable for tortious interference if actual malice was the controlling factor in the supervisor's interference.

Welch, 542 F.3d at 944 (internal citations and punctuation omitted). In this context, "actual malice" is defined as "a spiteful, malignant purpose, unrelated to the legitimate corporate interest." Cariqlia v. Hertz Equip. Rental Corp., 363 F.3d 77, 88 (1st Cir. 2004) (quoting Shea v. Emmanuel College, 682 N.E.2d 1348, 1351 (1997)).

Absent actual malice, then, Plaintiff cannot sue the Saabs for "interfering" with his relationship with API. As co-owners of API, the Saabs are the personal representatives of the corporate entity. See Appeal of Lorden, 594 A.2d 1303, 1306 (D.N.H. 1991) ("directors' acts are legally made on behalf of the corporation."). A corporate agent may be treated as the third

party necessary to an intentional interference claim only when the corporate agent acts with "actual malice." Preyer v. Dartmouth College, 968 F. Supp. 20, 26 (D.N.H. 1997).

Here, Plaintiff asserts that the Saabs "maliciously and unlawfully interfered" with Plaintiff's employment through "improper motive and improper means by failing to offer the promised training and by terminating [Plaintiff's] employment," and acted "with spiteful and malignant intent." (Compl. ¶¶ 30-31.) Plaintiff fails to identify any specific facts in support of these claims of malice. Plaintiff's pleading is simply too conclusory to survive a motion to dismiss. See Twombly, 550 U.S. at 555 ("While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.") (internal citations and punctuation omitted).

#### **V. Conclusion**

For the foregoing reasons, Defendants' Motion To Dismiss [Docket No. 5] is **ALLOWED**.

**S/PATTI B. SARIS**  
United States District Judge