IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

BILLY G. MORRIS,

Plaintiff.

No. 4:01-cv-40475

VS.

AMERICAN FREIGHTWAYS, INC.,

Defendant.

RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on Defendant's Motion for Summary Judgment. Plaintiff, Billy G. Morris, filed his complaint in Iowa District Court for Polk County on July 20, 2001, asserting promissory estoppel as his cause of action. Defendant, American Freightways, Inc. ("AF"), filed a Notice of Removal on August 6, 2001. Plaintiff resisted removal and moved to remand on August 16, 2001. Judge Wolle denied the resisted Motion to Remand on September 6, 2001. Defendant moved for summary judgment on May 20, 2002.¹

Hearing was held on the motion on July 26, 2002.² Attorney Roger Stetson appeared for Defendant, and Attorney Mark Sherinian appeared for Plaintiff. For the reasons discussed below, Defendant's Motion for Partial Summary Judgment [Clerk's No. 13] is **granted**.

Plaintiff moved to amend his complaint to add a defamation claim (as Count II) on June 13, 2002. Before leave to amend was granted, Defendant moved to dismiss the defamation claim based on Plaintiff's proposed Amended Complaint, which was attached to his Motion to Amend, on the grounds that Plaintiff failed to plead the alleged defamatory statements. Plaintiff resisted the Motion to Dismiss on July 5, 2002, and filed a Second Amended Complaint on July 9, 2002. Magistrate Judge Bremer granted Plaintiff's June 13, 2002, Motion to Amend [Clerk's No. 24] on July 9, 2002. Defendant replied to Plaintiff's Second Amended Complaint on July 12, 2002, submitting that since Plaintiff never moved to amend a second time, his Second Amended Complaint was not properly part of the record. During the July 26, 2002, hearing on the motions, Defendant's Motion to Dismiss [Clerk's No. 29] was withdrawn by counsel for the Defendant, and it is therefore no longer before the Court.

² Defendant's motion for summary judgment has now become a motion for partial summary judgment as a result of the pleadings referenced in footnote 1.

I. Background

AF is a trucking company for which Plaintiff was a supervisor, employed on an at-will basis. Plaintiff's nephew, Jeremy Morris, was also employed by Defendant. In 2000, Jeremy was involved in an incident in which he was accused of improperly loading a truck for the Fisher Company. Because Jeremy had a history of safety and disciplinary problems, AF's human resources department conducted an investigation, lead by Steve Coccarelli ("Coccarelli"), into the Fisher incident. Coccarelli concluded that Jeremy had improperly and carelessly loaded the truck and, due to Jeremy's continuing problems, recommended terminating his employment.

AF alleges that while Coccarelli was conducting his investigation, AF began to receive reports that Plaintiff was attempting to undermine the investigation of Jeremy's behavior, namely by discussing the matter with other employees. Specifically, AF asserts that Bobby Haug ("Haug"), another AF employee, informed Coccarelli that he felt Plaintiff had attempted to pressure him into giving a false statement regarding the Fisher incident. Coccarelli subsequently made a telephone call to Plaintiff, requesting that he send him the names of all individuals with whom he had spoken about the Fisher incident. Plaintiff provided three names to Coccarelli over the phone. Haug's name was not included among them. Coccarelli then asked Plaintiff to send him the list of names via fax. After this phone call, but before faxing the information, Plaintiff called Coccarelli back and requested assurances that he would not be retaliated against for providing the information. Plaintiff alleges that Coccarelli assured him that there would be no retaliation for providing the requested information, thus, Plaintiff proceeded to fax him the requested information.

Plaintiff was later relieved of duty pending the outcome of the investigation. Ultimately, his employment was terminated. AF maintains that the reason for Plaintiff's termination was that he omitted Haug's name from the requested list of names, which constituted dishonesty. Plaintiff later availed himself of AF's "Due Process Policy" (an internal appeals process available to aggrieved employees), but then declined to attend the hearing when he learned that he would not be allowed to be accompanied by counsel. Plaintiff subsequently brought this lawsuit, which is based in part on a theory of promissory estoppel.

Legal Analysis

A. Standard for Summary Judgment

"[C]laims lacking merit may be dealt with through summary judgment under Rule 56."

Swierkiewicz v. Soreman, 122 S.Ct. 992, 998-999 (2002). "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). See also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); ACT Inc. v. Sylvan Learning Center, 296 F.3d 657, 661 (8th Cir. July 11, 2002); Herring v. Canada Life Ins. Co., 207 F.3d 1026, 1029 (8th Cir. 2000).

The party moving for summary judgment bears the initial burden of demonstrating the absence of a genuine issue of fact for trial. <u>Doe v. Sauer</u>, 186 F.3d 903, 905 (8th Cir. 1999) (citing <u>Celotex</u>, 477 U.S. at 323); <u>see also Shelter Ins. Co. v. Hildreth</u>, 255 F.3d 921, 924 (8th Cir. 2001); <u>McGee v. Broz</u>, 251 F.3d 750, 752 (8th Cir. 2001). Once the moving party has carried its burden, the opponent must show that a genuine issue of material facts exists. <u>National Bank of Commerce of El Dorado</u>, <u>Arkansas</u>, v. <u>Dow</u>

<u>Chemical Co.</u>, 165 F.3d 602, 607 (8th Cir. 1999). The court gives the nonmoving party the benefit of all reasonable inferences and views the facts in the light most favorable to that party. <u>de Llano v. Berglund</u>, 282 F.3d 1031, 1034 (8th Cir. 2002); <u>Pace v. City of Des Moines</u>, 201 F.3d 1050, 1052 (8th Cir. 2000).

"Summary judgment is appropriate when the evidence, viewed in a light most favorable to the nonmoving party, demonstrates that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law." Clark v. Kellogg, 205 F.3d 1079, 1082 (8th Cir. 2000). Summary judgment should not be granted if the court can conclude that the evidence would not allow a reasonable trier of fact to return a verdict for the non-moving party. Roeder v. Metropolitan Ins. & Annuity Co., 236 F.3d 436 (8th Cir. 2001). In light of these standards, the Court considers the present motion.

B. Promissory Estoppel

Under Iowa law, to establish a claim of promissory estoppel, the plaintiff must prove:

(1) a clear and definite promise; (2) the promise was made with the promisor's clear understanding that the promisee was seeking an assurance upon which the promisee could rely and without which he would not act; (3) the promisee acted to his substantial detriment in reasonable reliance on the promise; and (4) injustice can be avoided only by enforcement of the promise.³

The Iowa Supreme Court has held: "[T]here is nothing about the employment-at-will relationship itself that precludes reliance on a theory of promissory estoppel." Schoff, 604 N.W.2d at 49. The Schoff court went on to explain that other jurisdictions' limitation or rejection of the promissory estoppel theory in the context of at-will employment was due to a deficiency of proof of one of the required elements, not simply because of the nature of the employment relationship in and of itself. Id. n.2; see, e.g., Sakelaris v. Rice/Maddox P'ship, 883 F. Supp. 64, 66 (D.S.C. 1995) (holding that it is unreasonable as a matter of law to rely on a promise consisting solely of at-will employment); Duart v. FMC Wyo. Corp., 859 F. Supp. 1447, 1462 (D. Wyo. 1994) (holding where the plaintiff was promised merely at-will employment, he could not, without more, establish detrimental reliance).

Schoff v. Combined Ins. Co. of America, 604 N.W.2d 43, 49 (Iowa 1999). The burden is on the plaintiff to prove each element by "strict proof". <u>Id.</u> at 50. With respect to the first element, a promise will not be implied from representations made by an employer; rather, strict proof is required that the employer promised to do or not to do a specific act, and that the employer did not "simply state the employer's view or impression of something". <u>Id.</u> at 51.

(1) Clear and Definite Promise

The <u>Schoff</u> court defined "a clear and definite promise" as follows:

A "promise" is "[a] declaration . . . to do or forbear a certain specific act". <u>Black's Law Dictionary</u> 1213 (6th ed. 1990). A promise is "clear" when it is easily understood and is not ambiguous. <u>See Webster's Third New International Dictionary</u> 419 (unab. ed. 1993). A promise is "definite" when the assertion is explicit and without any doubt or tentativeness. <u>See</u>, <u>id.</u> at 592.

Schoff, 604 N.W.2d at 50-51.

The facts of Schoff are instructive to the case at bar. Plaintiff Schoff applied for employment at Combined Insurance's place of business. Id. at 46. The employment application stated that bonding by Combined's bonding company was a condition of employment. Id. The application also asked whether Schoff had ever been convicted of a felony, to which he answered "No". Id. However, he had been convicted of two serious misdemeanors, and he disclosed this fact during his employment interview. Id. When Schoff asked whether the misdemeanor convictions would be a problem, the district manager assured him that "as long as [you] have no felony convictions, [your] criminal record [will] be no problem". Id.

What Schoff did not reveal to Combined was that his two serious misdemeanor convictions began with him being *charged* with two *felonies*. <u>Id.</u> Upon acceptance of his at-will employment at

Combined, Schoff was required to apply for fidelity bond coverage. <u>Id.</u> A bond application was completed in Schoff's presence, and Schoff signed the application. <u>Id.</u> Nothing about Schoff's criminal record was included because it was the district manager's understanding that only felony convictions were relevant to bonding. <u>Id.</u> Three months later, Schoff was terminated for failure to be bonded. <u>Id.</u> The bonding company had denied coverage because Schoff had been charged with two felonies and had failed to disclose this information on his application. <u>Id.</u>

The Iowa Supreme Court held, as a matter of law, that the district manager's promise to Schoff that his *criminal record* would not cause a problem with employment "d[id] not clearly and definitely encompass a promise that Schoff's *felony charges* would not be a problem or that his *failure to be bonded* would not be a problem", <u>id.</u> at 51 (emphasis added), and thus "d[id] not meet the strict standard required for a clear and definite promise". <u>Id.</u> at 52.

The alleged promise that Coccarelli made to Plaintiff is similarly fatal to his promissory estoppel claim. The parties agree that the promise was essentially that AF would not retaliate against Plaintiff for providing a list of names of the people with whom he had spoken regarding the Fisher incident. However, Coccarelli stated in his Declaration that Plaintiff was terminated due to Coccarelli's belief that Plaintiff intentionally and dishonestly omitted Haug's name from the list. He also indicated that this omission convinced him that Plaintiff had indeed pressured Haug to provide a false statement concerning the Fisher incident.⁴

_

⁴ The parties both agreed with the Court at oral arguments that an employer's mere belief that an employee was dishonest is a sufficient reason to terminate an at-will employment relationship; proof of guilt is not required. See Theisen v. Covenant Med. Ctr., Inc., 636 N.W.2d 74, 79, 82 (Iowa 2001) (holding that the doctrine of employment at-will permits termination at any time, for any lawful reason or no reason at all; holding that "[e]mployment at-will, by definition, does not require the employer's decision to be logical or rational"). Thus, whether Plaintiff *actually* spoke to Haug or pressured him to

The Court finds that Coccarelli's promise to Plaintiff that AF would not retaliate against him for providing the list of names "did not clearly and definitely encompass a promise" that AF would not terminate Plaintiff if it believed that he dishonestly omitted a name from the list or that AF would not terminate Plaintiff if Coccarelli believed that he pressured another employee to provide a false statement. Thus, the Court finds that this promise "does not meet the strict standard required for a clear and definite promise" under Iowa law. This alone entitles AF to summary judgment. See Neely v. American Family Mut. Ins. Co., 930 F. Supp. 360, 375 (N.D. Iowa 1996) (granting defendant's motion for judgment as a matter of law when plaintiff failed to establish a clear and definite promise); Schoff, 604 N.W.2d at 52 (affirming grant of summary judgment when plaintiff failed to establish clear and definite promise). Nevertheless, the Court will complete the analysis by briefly addressing the elements of reliance and substantial detriment in a claim of promissory estoppel.⁵

(2) Promisor's Understanding that Promisee Sought an Assurance Without Which Promisee Would Not Act

The parties agree that Plaintiff was seeking an assurance upon which he could rely and without which he would not have faxed the requested information.

_

make a false statement is of no consequence, and Plaintiff's attempt to create an issue of material fact from this issue will not defeat summary judgment. See Carter v. St. Louis Univ., 167 F.3d 398,401 (8th Cir. 1999) ("[T]he non-moving party cannot simply create a fact dispute; rather, there must be a genuine dispute over those facts that could affect the outcome of the lawsuit.").

⁵ AF also claims that the equities do not entitle Plaintiff to this relief, because Plaintiff declined to participate in AF's post-termination review procedures. Plaintiff counters that he so declined only because his counsel was not allowed to be present. AF argues that this is not an excuse. See Coffman v. Tracker Marine, L.P., 141 F.3d 1241, 1247 (8th Cir. 1998) (finding employee did not have the right to insist on an "outside facilitator", and no constructive discharge existed where employee quit without giving the employer a reasonable chance to work out a problem). The Court finds it unnecessary to further address the injustice element of a promissory estoppel claim.

(3) Detrimental Reliance

Plaintiff contends that he acted to his substantial detriment because he was terminated upon providing the requested list of names. AF counters that Plaintiff did not really rely to his substantial detriment by providing the requested list because, as an at-will employee, he could have been fired for any reason⁶ or no reason at all, so he did not change his position by faxing the list. See Kallich v. North <u>Iowa Anesthesia Assocs., P.C.,</u> 179 F. Supp. 2d 1043, 1053 (N.D. Iowa 2002) (holding that the plaintiff could not have reasonably relied to his detriment on a promise of continued employment when his employment contract provided for termination without cause, and that there was no "'injustice' to be avoided in the face of such contractual provisions"); Liertz v. Coca Cola Enters., Inc., 36 F. Supp. 2d 1295, 1303 (D. Kan. 1999) ("A plaintiff's alleged damages resulting from his termination do not amount to detrimental reliance if he is an at-will employee because the defendant could discharge the plaintiff at any time, for any reason."); Sakelaris v. Rice/Maddox P'ship, 883 F. Supp. 64, 66 (D. S.C. 1995) ("Reliance on a promise consisting solely of at-will employment is unreasonable as a matter of law."); Duart v. FMC Wyo. Corp., 859 F. Supp. 1447, 1462 (D. Wyo. 1994) (where plaintiff was merely promised at-will employment, he could not establish detrimental reliance).

Because Plaintiff could have been terminated for any reason or for no reason at all, the Court finds that his "jeopardizing" his at-will employment by faxing the list of names does not constitute detrimental reliance. Since Plaintiff had already provided the list of names orally over the telephone at

_

⁶ Particularly, AF contends that it could have terminated Plaintiff for refusing to fax the list of names, as this would have constituted refusal to cooperate in a company investigation. See Theisen, 636 N.W.2d at 81 (where employer's investigation procedures violated neither law nor public policy, employer's decision to terminate plaintiff for failing to cooperate in the investigation was not wrongful).

the time the promise was made, the Court finds that merely providing the same information via fax does not constitute the "strict proof" of "substantial detriment" contemplated by the Iowa Supreme Court.

CONCLUSION

Defendant has shown that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law on Plaintiff's promissory estoppel claim. Accordingly, the Motion for Partial Summary Judgment [Clerk's No. 13] is **granted**.

IT IS SO ORDERED.

Dated this 20th day of August, 2002.

JAMES E. GRITZNER, JUDGE/) UNITED STATES DISTRICT COURT