IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

KAREN PRASSER, PLAINTIFF, v. CITY OF SOLON, ET AL DEFENDANTS.	)	Case No. CV 13-802183 JUDGE MICHAEL E. JACKSON **JOURNAL ENTRY AND OPINION: DEFENDANTS' AND PRASSER'S MOTION FOR SUMMARY JUDGMENT: PRASSER'S PROMISSORY ESTOPPEL CLAIM. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT: PRASSER'S FRAUDULENT MISPREPESENTATION CLAIM.**

For the reasons stated in this Journal Entry and Opinion, the Court grants as a matter of law the motions for summary judgments filed by Defendants, the City of Solon (Solon) and Solon Mayor Susan Drucker (Drucker) (collectively, Defendants) and against Plaintiff Karen Prasser (Prasser) on her claims for promissory estoppel and fraudulent misrepresentation. Accordingly, Prasser's motion for summary judgment on her claim for promissory estoppel is denied.

On April 27, 2016, the Court heard oral arguments on cross-motions for summary judgment filed by the parties. Defendants filed their motion for summary judgment on March 15, 2016 seeking judgment as a matter of law on Prasser's claims for: age discrimination, retaliation, promissory estoppel, fraudulent misrepresentation, defamation, and false light. Drucker also seeks judgment as a matter of law by asserting governmental immunity.

Prasser filed motions for summary judgment on March 21, 2016. In one of her motions, she seeks judgment as a matter of law on her claims against Defendants for age discrimination, retaliation, and promissory estoppel. In her second motion, she seeks judgment as a matter of law on Defendants' counterclaims for breach of a fiduciary duty, unjust enrichment, conversion, and civil theft. On April 25, 2016, Prasser filed a motion for judgment on the pleadings for Defendants' claim for injury due to a criminal act.

Given the number of issues and their complexity, the Court has and will issue its rulings in stages by separate Journal Entries and Opinions.[1] On May 24, 2016, the Court decided to grant Defendants judgment as a matter of law on Prasser's claims for false light and defamation. Prasser was not seeking judgment as a matter of law on those claims. On June 10, 2016, the Court denied Prasser's motion for judgment on the pleadings.

Law & Analysis

"A party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party's claims. The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion that the nonmoving party has no evidence to prove its case. Rather, the moving party must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) which affirmatively

[1] During the motion hearing, Prasser's counsel began the hearing by "conceding that there are genuine issues of material fact on all claims that are before the Court." Hearing Trans. page 84. Later in the hearing, when Defense counsel argued that Prasser withdrew her claims for summary judgment, Prasser asserted that she was not withdrawing her claims for summary judgment, but claimed there were genuine issues of material fact. Hear. Trans. page 154. The Court disagrees with Prasser's views on genuine issues of material facts concerning the claims in this Journal Entry and Opinion.

demonstrates that the nonmoving party has no evidence to support the nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. However, if the moving party has satisfied its initial burden, the nonmoving party then has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial and, if the non-movant does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party." *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107, 662 N.E.2d 264.

Promissory Estoppel

"Promissory estoppel is an adequate remedy for a fraudulent oral promise or breach of an oral promise, absent a signed agreement. *Olympic Holding Co., L.L.C. v. ACE Ltd.*, 122 Ohio St.3d 89, 2009-Ohio-2057, 909 N.E.2d 93, ¶ 40, citing *Karnes v. Doctors Hosp.* (1990), 51 Ohio St.3d 139, 142, 555 N.E.2d 280 (promissory estoppel is an "equitable doctrine designed to prevent the harm resulting from the reasonable and detrimental reliance of [the promisee] upon the false representations of [the promisor]."

A claim for promissory estoppel is based on "'[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.' '… [T]he plaintiff must establish the following elements: 1) a clear and unambiguous promise, 2) reliance on the promise, 3) that the reliance is reasonable and foreseeable, and 4) that he was injured by his reliance.'" *Militiev v. McGee*, 8th Dist. Cuyahoga No. 94779, 2010-Ohio-6481, ¶ 39 (citations omitted).

Prasser asserts that Defendants made a clear and unambiguous promise to her, that if she

resigned, Defendants would tell people that she resigned for personal reasons.

This claim arises from the following facts which are not in dispute. On September 6, 2012, Prasser attended a meeting with Solon Law Director Thomas Lobe (Lobe), Human Resource Director Thomas Cornhoff (Cornhoff), and Human Resource Coordinator Jessica Vest (Vest). During the meeting, Prasser was given two options by them as representatives of Solon: (1) resign, or (2) go on administrative leave.

Prasser asserts that during the meeting she heard Lobe state that the administrative leave was unpaid. However, Lobe and Vest stated it was paid administrative leave, and Prasser was told it was paid administrative leave. Def. Ex. 2 Affidavit of Jessica Vest; Def. Ex. 3 pages 124-126. Vest represented that is was Cornhoff, who drafted the resignation letter and the paid administrative leave memo, and that both Lobe and Cornhoff made it clear that the options were resign or paid administrative leave.[2] Def. Ex. 2 Affidavit of Jessica Vest.

Equally important, Prasser did not understand, but failed to ask, what it meant to be on administrative leave. Def. Ex. 1 page 232. In addition, Prasser answered numerous questions in her deposition, about if she would have made a different decision in the meeting if she had appreciated the fact that administrative leave would be paid. She repeatedly responded that she did not know whether she would have accepted the paid administrative leave, and stated that "the reason [she] didn't do it is because [she] was concerned that she was going to be terminated. Def. Ex. 1 pages 72-77.

[2] Cornhoff was never questioned by Prasser whether she was given the option of paid administrative leave; rather, he was briefly questioned why Prasser was given the options that she was given. Cornhoff Depo. pages 160-161.

Prasser further speculated that she would have asked more questions if she heard paid administrative leave, but that she "wholeheartedly believed" that because of the series of events she would be terminated. Def. Ex. 1 pages 232-233. She stated that she resigned because she did not feel that she had a choice and because of other events leading up to the meeting. Prasser testified that she "was compelled to choose resignation because [she] believed [she] was going to be terminated." Def. Ex. 1 page 118.

However, Prasser was not told that she would be terminated if she took administrative leave. She also was not told to choose resignation. Def. Ex. 2 Jessica Vest Affidavit. Nevertheless, Prasser believed that her option was to resign or be terminated, and that "Mr. Lobe was giving [her] the option to resign because termination was not a good thing." Def. Ex. 1 pages 75-77, 118. Solon's representatives showed Prasser a pre-prepared letter of resignation, but not the memo explaining administrative paid leave. Def. Ex. 1 page 115.

Prasser asked Cornhoff "Who is going to believe that I'm going to resign from this place I love?" Def. Ex. 1 page 118-119. The only evidence when Cornhoff responded to her question, is stated in his affidavit dated February 27, 2016. He stated that he replied after she signed the letter of resignation, by saying they will state "it's for personal reasons." *Id.* page 276; Def. Ex. 10. Prasser did not direct the Court to any other part of the record that would lead reasonable minds to conclude that the statement was made before she made the decision to sign the resignation letter. Prasser does not direct the Court to any portion of the record that establishes that she was relying on Cornhoff's statement in making her decision to resign or accept administrative leave. While she argued in her briefs, and at the hearing that she signed the letter only after the reassurance by Cornhoff, that argument is not based on any fact in evidence.

Rather, the evidence demonstrates she formed a subjective belief that she would be terminated if she choose administrative leave, that signing the letter of resignation was the best option for her, and that Cornhoff answered her question after she signed it.

Based on these facts that are in the record, the Court has determined that Prasser's question - "Who is going to believe that I'm going to resign from this place I love?" - is evidence of her intent to resign. Prasser characterizes Cornhoff's answer - that they will say, "it's for personal reasons"- as a clear and unambiguous promise to her and that she detrimentally relied on Cornhoff's statement that Solon representatives would respond to an inquiry concerning her departure by stating that she resigned for personal reasons. Prasser Br. in Opp. page 27. However, she fails to offer any evidence that it occurred before she signed her resignation letter, or that it caused her to substantially change her position. The fact that Cornhoff's answer occurred after she signed the resignation letter establishes that she did not determinately rely on that answer and that she did not have a substantial change of position by tendering her resignation. There simply is no evidence to support that Prasser relied to her detriment. Further, the Court also cannot determine that Prasser changed her position because of Cornhoff's answer when she plainly had no intention of pursuing the administrative leave position because she misunderstood it, but failed to inquire about it.

Even if Prasser had established there was detrimental reliance base on Cornhoff's answer to her question, there is nothing in the record to draw any reasonable inferences that she suffered an injury or damage to her reputation. The only possible inferences that could be drawn are from the published news articles that mentioned Prasser had resigned two days before Solon issued a press release regarding "irregularities and fraud." As discussed in detail in the Court's May 24,

2016 Journal Entry and Opinion, the Court determined that she failed to establish that Solon officials published defamatory statements or placed her in a false light regarding her resignation. *Karen Praser v. City of Solon, et al*, Cuyahoga C.P., No. 802183 (May, 24, 2016). In fact, the evidence actually established that Prasser herself was the source of information because the journalist who wrote the articles discovered Prasser's September 4, 2012 letter to Kennedy in a Freedom of Information Act request to Solon. It was the information in her letter that allows one to make the inference that her resignation was connected to the Solon press release published on September 14, 2012 concerning "irregularities and fraud. Finally, the Court notes that Prasser offered no arguments and did not address how Defendants could be liable for a promissory estoppel claim when its press release did not even mention Prasser's resignation.

The Court finds that there is no genuine issue of material fact, on the elements of reliance and detriment, and reasonable minds can come to but one conclusion, and that conclusion is that Prasser did not rely on Cornhoff's statement when she signed the resignation letter, and there has been no detriment to her by Solon not responding to inquiries about her departure as being for personal reasons. Therefore, Defendants are granted judgment as a matter of law because Prasser cannot prove essential elements of her promissory estoppel claim.

Furthermore, because promissory estoppel is an equitable remedy the Court examined whether injustice can only be avoided by enforcing the promise. Neither party discussed this fundamental issue concerning how injustice can only be avoided by enforcing "the promise" to tell the public that Prasser resigned for personal reasons, rather than she just resigned. In fact, in Prasser's letter by lead counsel, Caryn Groedel, to Lobe on December 28, 2012 she includes a formal request that Solon <u>not</u> disseminate information stating that Prasser resigned, and she puts

Solon on notice that she believes constructive discharge has occurred Def. Ex. 15. Thereafter, Prasser filed this lawsuit in February 2013 in which she alleges that she did not resign, rather that she was constructively discharged because of her age. Later, Prasser was indicted for theft in office, and tampering with records on September 24, 2013 as a result of the independent investigation into Solon's concern with irregularities associated with SCA.

As the Court analyzed in its opinion and journal entry granting Defendants judgment as a matter of law on Prasser's false light and defamation claims, Defendants refused to comment about Prasser's resignation and the investigation into SCA irregularities during the independent investigation, and criminal case against Prasser. *Karen Praser v. City of Solon, et al,* Cuyahoga C.P., No. 802183 (May, 24, 2016). Prasser is the one who has publicized her position that she was forced to resign and was wrongfully discharged, not Defendants.

Under these circumstances, the Court cannot determine that injustice can only be avoided by enforcing Cornhoff's promise and Prasser's detrimental reliance, even assuming both occurred, that Defendants will state that she resigned for personal reasons. Essentially, the remedy that she seeks by enforcing Cornhoff's statement has been made moot by her own actions in filling suit alleging wrongful termination by Solon.

For all the forgoing reasons, Defendants are granted judgment as a matter of law on Prasser's claim for promissory estoppel, and Prasser is denied judgment as a matter of law on this claim.

Fraudulent Misrepresentation

A claim for fraudulent misrepresentation "… requires proof of the following elements: (1) a representation or, where there is a duty to disclose, concealment of a fact, (2) which is

material to the transaction at hand, (3) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred, (4) with the intent of misleading another into relying upon it, (5) justifiable reliance upon the representation or concealment and (6) a resulting injury proximately caused by the reliance. *Karsnak v. Chess Fin. Corp.*, 8th Dist. Cuyahoga No. 97312, 2012-Ohio-1359, ¶ 54, citing *Cohen v. Lamko, Inc.,* 10 Ohio St.3d 167, 169, 10 Ohio B. 500, 462 N.E.2d 407 (1984).

Prasser argues that she is entitled to relief for a fraudulent misrepresentation claim based on the same Cornhoff statement that would entitle her to relief under the theory of promissory estoppel. Because, this Court has determined that there are no genuine issues of material fact on reliance, or detriment and reasonable minds can come to but one conclusion and that conclusion is that Prasser did not detrimentally rely on Cornhoff's statements. She has failed to establish an essential element of fraudulent misrepresentation. Therefore, Defendants are granted judgment as a matter of law on Prasser's fraudulent misrepresentation claim.

Furthermore, fraudulent misrepresentations claims are based on past or existing facts, not on promises or representations about future actions and conduct. *Powers v. Pinkerton, Inc.*, 8th Dist. Cuyahoga NO. 76333, 2001-Ohio-4119, 25-26 (citation omitted). Representations about future conduct are actionable only when one makes a promise about future conduct, and at the time he makes the representation, he does not intend to keep the promise. *Id.*

It is undisputed that Cornhoff's statement was about future conduct, what would or could be said in response to why Prasser resigned. Defendants argue that there is nothing in the record that demonstrates that at the time Cornhoff made the statement, he did not have the present intent to carry out the representation. Prasser does not rebut this argument by directing the Court to

evidence in the record. Prasser correctly argues that he or Solon never told the press that her resignation was due to personal reasons. She concludes that common sense proves the element of intent to mislead - if Cornhoff did not intend for her to rely on his representation, he would not have made it.

Prasser's argument and conclusion lack merit. "Fraud cannot be predicated upon the mere fact that a promise has been broken * * *. There must be evidence to justify a trier of fact in concluding that, when the promise was made, there was no intention of performing it * * *. It would be as wrong morally as legally, as offensive to logic as to law, to hold that mere denial and nonperformance are evidence that, if a promise was made, it was made fraudulently * * *. Bad, indeed, would be the case of the honest man who has made no such promise if, when falsely charged with it, he may not deny it without having his truth considered as some evidence either that there was such undertaking or that it was deceitfully made." *Powers v. Pinkerton, Inc.*, 8th Dist. Cuyahoga NO. 76333, 2001-Ohio-4119, 28-29 (Citations omitted.). Without objective facts in the record, Prasser cannot demonstrate that Cornhoff did not intend to perform as stated.

Based on the evidence presented, there is no genuine issue of material fact, and reasonable minds can come to but one conclusion, and that conclusion is that Prasser cannot prove Defendants made a fraudulent statement. Therefore, another essential element of Prasser's claim fails, and Defendants are granted judgment as a matter of law on Prasser's claim for fraudulent misrepresentation.

CONCLUSION

For all the forgoing reasons, Defendants are granted judgment as a matter of law on Prasser's claims for promissory estoppel, and fraudulent misrepresentation, and Prasser is denied

judgment as a matter of law on her claim for promissory estoppel.

IT IS SO ORDERED.

DATED: _____ **JUDGE MICHAEL E. JACKSON**

THE CLERK OF COURT SHALL SERVE A COPY OF THE FOREGOING JOURNAL ENTRY AND OPINION ON ALL COUNSEL OF RECORD AT THE ADDRESS LISTED ON THE COURT DOCKET.