

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

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|-----------------------------------|---|--------------------|
| LINDA HOOD, | : | |
| Plaintiff | : | |
| | : | |
| v. | : | Civil Action No. |
| | : | 3:98 CV 1524 (CFD) |
| AEROTEK, INC. and THOMAS VERARDI, | : | |
| Defendants. | : | |

RULING ON MOTION FOR SUMMARY JUDGMENT

The plaintiff, Linda Hood, brings this action against the defendants, Aerotek, Inc. (“Aerotek”), and its employee, Thomas Verardi, alleging breach of contract, negligent misrepresentation, promissory estoppel, intentional infliction of emotional distress, and negligent infliction of emotional distress, in connection with the staffing of Hood as a Clinical Research Associate at Bristol-Myers Squibb in Connecticut. This action was originally brought in the Connecticut Superior Court, Judicial District of Waterbury, but was removed by the defendants to this Court on July 31, 1998, on the basis of diversity of citizenship.¹

On June 25, 1999, the defendants filed a motion to dismiss Counts II and VI through X of the amended complaint. The defendants’ motion to dismiss was denied on March 14, 2000. Subsequently, the defendants filed a motion for summary judgment as to all claims in the amended complaint [Doc. #32]. For the reasons stated below, the motion is GRANTED IN PART, and DENIED IN PART.

¹As the parties do not dispute diversity of citizenship, this Court has subject matter jurisdiction under 28 U.S.C. § 1331. Additionally, the parties do not dispute the existence of personal jurisdiction or venue, or that Connecticut state law applies.

I. Background²

At various points during her career in clinical research, Linda Hood (“Hood”) obtained temporary employment as a contractor through Aerotek, a Maryland corporation in the business of providing temporary technical staffing to companies throughout the United States. On November 10, 1997, while living in California, Hood was contacted by Melissa Baker, an employee of Aerotek, concerning working on a temporary contract basis as a Clinical Research Associate for Bristol-Myers Squibb (“BMS”) in Wallingford, Connecticut. Hood later spoke with Thomas Verardi (“Verardi”), another Aerotek employee, regarding this employment. On November 12, 1997, Hood had a telephone interview with BMS for the position of Clinical Research Associate. Following the interview, Verardi informed Hood that BMS wished to retain her for the position. Hood and the defendants dispute, however, whether Verardi told Hood that the position was to begin with a two-week trial period or that the position was a firm one-year commitment. It is undisputed, however, that in the following weeks, Verardi assisted Hood in purchasing a used automobile from his brother, and Verardi rented her, on a month-to-month lease, a furnished condominium apartment he owned in Waterbury, Connecticut. Aerotek paid for Hood to fly from California to Connecticut on November 29, 1997.

On December 2, 1997, Hood began working at BMS. On that same day, Hood signed an employment agreement with Aerotek concerning the job at BMS. The agreement provided, in relevant part:

1. Ratification – You understand that this offer of temporary employment with Aerotek is subject to final approval by the Client and that you shall not be entitled

²The facts are taken from the complaint, Rule 9(c) statements, and other summary judgment papers and are undisputed unless otherwise indicated.

to any wages or employment unless actually hired by Aerotek to work the specific assignment pursuant to this agreement. You also understand that this agreement does not go into effect until you actually work on said specific assignment. You acknowledge and agree that your employment with Aerotek is 'at will', with no certain term of employment being offered or promised, and that you or Aerotek may terminate your employment, with or without cause at any time. You agree that by reporting or remaining at work after signing this agreement that you have ratified the same. In addition, you represent and warrant to Aerotek that your employment with Aerotek will not violate the terms or conditions of any other agreement to which you are a party.

....

8. Termination – You shall give a minimum of (5) days notice should you decide to terminate your position with Aerotek. You understand that the length of the assignment is subject to the discretion and needs of the Client and, therefore, a five day notice from Aerotek may not be possible and Aerotek is not required to provide such notice. Upon termination, and to the extent permitted by applicable law, you acknowledge and agree that any amounts owed to you by Aerotek will be deducted from any remaining wages owed to you and refunded to Aerotek.

On December 12, 1997, at the end of Hood's second week of employment, BMS informed Verardi that it did not wish Hood to continue as a contract employee and she was terminated from the position. Hood then brought this lawsuit against Aerotek and Verardi.

II. Standard

In the context of a motion for summary judgment, the burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). A court must grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact." Miner v. City of Glens Falls, 999 F.2d 655, 661 (2d Cir. 1993) (internal quotation marks and citation omitted). A dispute regarding a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for

the nonmoving party.” Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 523 (2d Cir. 1992) (internal quotation marks omitted), cert. denied, 506 U.S. 965 (1992). After discovery, if the nonmoving party “has failed to make a sufficient showing on an essential element of [its] case with respect to which [it] has the burden of proof,” then summary judgment is appropriate. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

“The nonmovant must do more than present evidence that is merely colorable, conclusory, or speculative and must present ‘concrete evidence from which a reasonable juror could return a verdict in his favor.’ ” Alteri v. General Motors Corp., 919 F. Supp. 92, 94-95 (N.D.N.Y. 1996) (quoting Anderson, 477 U.S. at 256). A party may not create its own “genuine” issue of fact simply by presenting contradictory or unsupported statements. See Securities & Exch. Comm’n v. Research Automation Corp., 585 F.2d 31, 33 (2d Cir. 1978). When a motion for summary judgment is supported by documentary evidence and sworn affidavits, the nonmoving party must present “significant probative evidence to create a genuine issue of material fact.” Soto v. Meachum, Civ. No. B-90-270 (WWE), 1991 WL 218481, at *6 (D. Conn. Aug. 28, 1991).

In ruling on a motion for summary judgment, the Court resolves “all ambiguities and draw[s] all inferences in favor of the nonmoving party in order to determine how a reasonable jury would decide.” Aldrich, 963 F.2d at 523. Thus, “[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper.” Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir. 1991), cert. denied, 502 U.S. 849 (1991); see also Suburban Propane v. Proctor Gas, Inc., 953 F.2d 780, 788 (2d Cir. 1992).

III. Discussion

In their motion for summary judgment, the defendants assert that there are no genuine issues of material fact that they are entitled to judgment as a matter of law on all of Hood's claims. The claims—breach of contract, promissory estoppel, negligent misrepresentation, intentional infliction of emotional distress, and negligent infliction of emotional distress—are each discussed below.³

A. Breach of Contract

In Counts I and II of the amended complaint, Hood alleges that the defendants, through Verardi, orally agreed to provide her with a one-year contract of employment with BMS. Hood claims that the defendants breached this oral agreement when she was terminated by BMS after only two weeks. The defendants claim that they are entitled to judgment as a matter of law on this claim because the undisputed facts establish that Hood and Aerotek entered into a written employment agreement on December 2, 1997, that this agreement covered the entire terms and conditions of her employment with BMS, and clearly indicated she would be an “at will” employee, with no commitment to a set period of employment. Even assuming that Hood has presented enough evidence to support her allegations of the prior oral agreement, assert the defendants, as the written agreement was an integrated one, parol evidence is not admissible to vary or contradict the express terms of the agreement.

As Connecticut courts have often noted, the parol evidence rule is not a rule of evidence,

³Counts I and II allege breach of contract against Aerotek and Verardi, respectively; Counts III and IV allege negligent misrepresentation against Aerotek and Verardi, respectively; Counts V and VI allege promissory estoppel against Aerotek and Verardi, respectively; Counts VII and VIII allege intentional infliction of emotional distress against Aerotek and Verardi, respectively; and Counts IX and X allege negligent infliction of emotional distress against Aerotek and Verardi, respectively.

but a substantive rule of contract law. See, e.g., TIE Communications, Inc. v. Kopp, 589 A.2d 329, 333 (Conn. 1991); Security Equities v. Giamba, 553 A.2d 1135, 1138 (Conn. 1989); Damora v. Christ-Janer, 441 A.2d 61, 64 (Conn. 1981). The rule is premised upon the idea that “when the parties have deliberately put their engagements into writing, in such terms as import a legal obligation, without any uncertainty as to the object or extent of such engagement, it is conclusively presumed, that the whole engagement of the parties, and the extent and manner of their understanding, was reduced to writing. After this, to permit oral testimony, or prior or contemporaneous conversations, or circumstances, or usages [etc.], in order to learn what was intended, or to contradict what is written, would be dangerous and unjust in the extreme.” Tallmadge Bros., Inc. v. Iroquois Gas Transmission System. L.P., 746 A.2d 1277, 1290 (Conn. 2000) (internal quotations omitted). The parol evidence rule does not of itself forbid the proffer of “parol evidence,” that is, evidence outside the four corners of the contract concerning matters governed by an integrated contract, but forbids the use of such evidence to vary or contradict the terms of that contract. “Parol evidence offered solely to vary or contradict the written terms of an integrated contract is, therefore, legally irrelevant.” TIE Communications, 589 A.2d at 333.

In order for the bar against the admission of parol evidence to apply, the writing at issue must be integrated, that is, it must have been intended by the parties to be “a final expression of one or more terms of [the] agreement” Associated Catalog Merchandisers, Inc. v. Chagnon, 557 A.2d 525, 528 (Conn. 1989) (internal quotations omitted). “Whether the written contract was actually the final repository of the oral agreements and dealings between the parties depends on their intention, evidence as to which is sought in the conduct and language of the parties and the surrounding circumstances.” Id. (internal quotations omitted). A party can establish that a

written agreement is integrated and thus operates to exclude evidence of an alleged oral communication, “if the subject matter of the latter is mentioned, covered or dealt with in the writing” Id.

Here, the subject matter of the alleged oral communications, that is, the length of the term of employment extended to Hood, is dealt with in the written agreement. The agreement provides that Hood’s employment was “‘at will’ . . . with no certain term of employment being offered or promised, and that [Hood] or AEROTEK may terminate [Hood’s] employment, with or without cause, at any time.” Thus, the written contract is presumed to have been the final agreement of Hood and Aerotek as to the term of length of employment. Hood’s evidence of oral communications that occurred prior to the parties’ reducing their agreement to writing, even if accurate, does not contradict a finding that the parties intended the subsequent writing to be the final version of the agreement. Hood has presented no other evidence suggesting the parties did not intend the written agreement to be the parties’ final expression of their agreement. As well, the fact that the written agreement did not contain an integration clause is not enough by itself to create a genuine issue of material fact as to whether the parties intended the written agreement to be the parties’ final expression of the term of length of employment. Accordingly, the Court finds the written contract to be integrated. As the evidence offered by Hood regarding the oral communications of a one-year contract clearly contradicts the terms of the written agreement, the evidence is barred by the parol evidence rule as inadmissible and irrelevant.

The Court also finds that Torosyan v. Boehringer Ingelheim Pharmaceuticals, Inc., 662 A.2d 89 (Conn. 1995), cited by Hood, is distinguishable from the instant case. In Torosyan, the plaintiff was provided with oral representations and an employment manual which stated that he

may be discharged “for cause.” Two years later, the plaintiff was provided with an updated copy of the defendant’s employee manual, which eliminated the “for cause” language of the original manual. The Connecticut Supreme Court upheld the trial court’s findings that an implied contract existed, based on the oral representations and original employment manual, and that the employer was bound to the “just cause” requirement because the implied contract was not modified by the later manual as the modifications would have “substantially interfered with the plaintiff’s legitimate expectations under his preexisting contract” and were not assented to by the plaintiff. Id. at 99.

The instant case is different from Torosyan, however. Here, notwithstanding the plaintiff’s claims that she was orally informed earlier that she had a one-year contract term, the written agreement she executed on the first day of her employment specifically provided an “at will” term. It is undisputed that she signed that agreement that day, as she commenced her job. Unlike Torosyan, the plaintiff here does not argue that a modification of that written agreement was subsequently imposed on her. Therefore, as no reasonable juror could find breach of contract, the motion for summary judgment is GRANTED as to Counts I and II.

B. Promissory Estoppel

In Counts V and VI of the amended complaint, the plaintiff alleges a cause of action in promissory estoppel, maintaining that the defendants promised her a position for one year and that she relied on this promise to her detriment. The defendants claim that they are entitled to judgment as a matter of law on this claim because, again, even assuming Verardi made a promise of a one-year term of employment, a cause of action under promissory estoppel may not lie where there is a written contract that sets forth the agreement of the parties.

In order to prevail on a claim for promissory estoppel, Hood must establish 1) a clear and definite promise, 2) a change in position in reliance on the promise, and 3) resulting injury. See D'Ulisse-Cupo v. Bd. of Directors of Notre Dame High School, 520 A.2d 217, 221 (Conn. 1987).

The promise must be sufficiently clear and definite such that the promisor could reasonably expect to induce reliance. See id. at 221.

Promissory estoppel, though a cause of action “off the contract,” and thus, available to enforce promises outside the scope of a valid contract, may not be used to create obligations that contradict those explicitly set forth in a written agreement. See NCC Sunday Inserts, Inc. v. World Color Press, Inc., 759 F. Supp. 1004, 1011 (S.D.N.Y. 1991) (“An action for promissory estoppel generally lies when there is no written contract, or the contract cannot be enforced for one reason or another.”); General Elec. Capital Corp. v. DirecTv, Inc., 94 F. Supp. 2d 190, 201 (D. Conn. 1999) (“Promissory estoppel is also available to enforce promises *outside the scope of the Agreement*, provided there was 1) a clear and definite promise that defendants could reasonably expect would induce reliance; and 2) detrimental reliance by plaintiff.”) (emphasis added). Allowing promissory estoppel when the alleged promise contradicts a promise located in an integrated agreement would provide an end-run around the parol evidence rule. See All-Tech Telecom, Inc. v. Amway Corp., 174 F.3d 832, 869 (7th Cir. 1999) (Posner, J.); Walker v. KFC Corp., 728 F.2d 1215, 1220 (9th Cir. 1984) (“Promissory estoppel is not a doctrine designed to give a party . . . a second bite at the apple in the event it fails to prove a breach of contract”). Accordingly, as the promises which are the basis of Hood’s promissory estoppel claim contradict promises within the written contract, her promissory estoppel cause of action may not lie, and the motion for summary judgment is GRANTED as to Counts V and VI.

C. Negligent Misrepresentation

In Counts III and IV of the amended complaint, the plaintiff alleges that the defendants negligently made misrepresentations to Hood regarding the term of her employment and that she relied on those misrepresentations to her detriment. The defendants claim that the undisputed material facts show that there were no material false representations nor reasonable reliance by the plaintiff upon such alleged representations.

Connecticut recognizes the tort of negligent misrepresentation in the employment context as set forth in the Restatement (Second) of Torts § 552 : “[o]ne who, in the course of his business, profession or employment . . . supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.” D’Ulisse-Cupo, 520 A.2d at 223 (quoting Restatement (Second) of Torts § 552 (1977)). “The plaintiff need not prove that the representations made by the [employer] were promissory. It is sufficient . . . that the representations contained false information.” Id. (recognizing a cause of action for negligent misrepresentation although the court found that plaintiff failed to state a cause of action for breach of contract and promissory estoppel).

As the Court finds that genuine issues of material fact exist as to whether the defendants made such misrepresentations and whether Hood relied on them, the motion for summary judgment is DENIED as to Counts III and IV.

D. Intentional Infliction of Emotional Distress

In Counts VII and VIII of the amended complaint, Hood claims intentional infliction of

emotional distress based on the defendants' conduct in promising her a one-year contract of employment and then breaching that promise on which she relied. The defendants maintain that their actions do not rise to the level of intentional infliction of emotional distress as a matter of law.

In order for Hood to prove her claim of intentional infliction of emotional distress, she must establish four elements: (1) that the defendants intended to inflict emotional distress, or that they knew or should have known that emotional distress was a likely result of their conduct, (2) that the conduct was extreme and outrageous, (3) that the defendants' conduct was the cause of Hood's distress, and (4) that the emotional distress sustained by Hood was severe. See Petyan v. Ellis, 510 A.2d 1337, 1342 (Conn. 1986). Connecticut courts have relied on the Restatement (Second) of Torts in interpreting what constitutes "extreme and outrageous" conduct. See Petyan, 510 A.2d at 1342. "The 'extreme and outrageous' standard is a high one: 'Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community.'" Reed v. Town of Branford, 949 F. Supp. 87, 91 (D. Conn. 1996) (quoting Restatement (Second) of Torts §46, comment d (1965)). The question whether the defendants' conduct rises to the level of extreme and outrageous conduct is to be determined by the Court in the first instance. Reed, 949 F. Supp. at 91.

Here, Hood has presented evidence that Verardi knew Hood was to begin the position at BMS on a trial basis, yet maintained that the position was for one year, assisted her in purchasing a used automobile from his brother, and rented her an apartment in Connecticut at monthly rate \$100 higher than he charged other tenants. Verardi engaged in such actions, Hood maintains, for

his own personal benefit, including the commission he obtained for hiring Hood. Even assuming the evidence presented by Hood is accurate, it is insufficient to create a genuine issue of material fact as to whether the defendants' conduct was extreme and outrageous.

Connecticut courts have circumscribed the boundaries of "extreme and outrageous conduct" very narrowly. Actions which may be harmful or quite distressing to plaintiffs have been deemed to fall outside these parameters. See Appleton v. Board of Educ. of Town of Stonington, 757 A.2d 1059, 1063 (Conn. 2000) (allegations that school officials made derogatory comments concerning teacher's performance and ability to read in front of other employees, contacted plaintiff's daughter to recommend that plaintiff take some time off because she was acting erratically, had teacher escorted by police off school property, required her to take psychiatric examinations, forced her to take a leave of absence and, ultimately, forced her to resign, did not amount to "extreme and outrageous" conduct); Emanuele v. Baccaccio & Susanin, No. CV900379667S, 1994 WL 702923, at *2 (Conn. Super. Ct. Dec. 1, 1994) (allegations that employer made false statements regarding plaintiff's work performance, and used coercion, threats, and intimidation to force her to sign a document against her will, all for the purpose of depriving her of benefits and compensation did not constitute "extreme and outrageous conduct"); Whitaker v. Haynes Construction Comp., Inc., 167 F. Supp. 2d 251 (D. Conn. 2001) (employer's alleged actions of hiring employee with intent of firing him once employer's affirmative action plan was approved and firing him on the same day the employer's affirmative action plan obtained state approval not held to constitute "extreme and outrageous" conduct). Here, the Court cannot conclude that the alleged conduct can be regarded as "extreme and outrageous" in light of the stringent standard the Court must apply. Therefore, the defendants' motion for summary

judgment on this basis is GRANTED as to Counts VII and VIII.

E. Negligent Infliction of Emotional Distress

In Counts IX and X of the amended complaint, the plaintiff alleges that the defendants' conduct also amounted to negligent infliction of emotional distress. Again, the defendants maintain they are entitled to judgment as a matter of law on this claim.

In the employment context, the cause of action for negligent infliction of emotional distress only arises where the defendant engaged in unreasonable conduct in the termination process. Parsons v. United Tech. Corp., 700 A.2d 655, 667 (Conn. 1997) (quoting Morris v. Hartford Courant Co., 513 A.2d 66, 69 (Conn. 1986)); see also Belanger v. Commerce Clearing House, 25 F. Supp. 2d 83, 84 (D. Conn. 1998). However, the Second Circuit, in dictum, has stated that it is unclear whether the Connecticut Supreme Court would continue to limit the tort of negligent infliction of emotional distress to actions taken in the course of an employee's termination. See Malik v. Carrier Corp., 202 F.3d 97, 103-04 n.1 (2d Cir. 2000); see also Karanda v. Pratt & Whitney Aircraft, No. CV-98-582025S, 1999 WL 329703, at *5 (Conn. Super. Ct. May 10, 1999), criticized by Dorlette v. Harborside Healthcare Corp., No. CV 990266417, 1999 WL 639915, at *3 (Conn. Super. Ct. Aug. 9, 1999). Nevertheless, it appears that most Connecticut courts continue to adhere to the ruling limiting negligent infliction of emotional distress claims to conduct arising in the termination process, and the Connecticut Supreme Court has not changed the approach of Parsons. See Franco v. Yale University, 161 F. Supp. 2d 133, 140 (D. Conn. 2001) (citing cases). Thus, this Court will follow the Parsons standard.

Accordingly, in order to sustain a claim of negligent infliction of emotional distress in this

setting, Hood must allege that the harmful conduct was engaged in during the course of the employment termination process. As Hood maintains that “the basis for the claim of negligent infliction of emotional distress lies in the nature of the representations, omissions and motive of the Defendants in inducing [her] to leave her home and come to Connecticut to work,” it is apparent that she is not alleging that the defendants’ conduct in the course of termination process caused her emotional distress. Consequently, the motion for summary judgment is GRANTED as to Counts IX and X.

IV. Conclusion

For the foregoing reasons, Aerotek’s motion for summary judgment [Doc. # 32] is GRANTED IN PART, and DENIED IN PART. Only Hood’s negligent misrepresentation claim remains.

SO ORDERED this ____ day of February 2002, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE