[Cite as *Jacobson v. Med. College of Ohio*, 2004-Ohio-4567.]

IN THE COURT OF CLAIMS OF OHIO

ROBERT JACOBSON	:	
Plaintiff	:	CASE NO. 2003-02306 Judge Fred J. Shoemaker
v.	:	DECISION
MEDICAL COLLEGE OF OHIO	:	
Defendant	:	

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{¶1} Plaintiff brought this action against defendant alleging claims of breach of contract and promissory estoppel. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} Defendant is a state institution of higher education created pursuant to Chapter 3350 of the Ohio Revised Code. In 1993, plaintiff, a perinatologist, began his employment with defendant as an assistant professor of obstetrics and gynecology (OB/GYN) on a non-tenure track pursuant to a series of one-year contracts. Plaintiff was also employed as a member of Associated Physicians of Medical College Hospitals (APMCO), a private organization that billed for the clinical services that plaintiff provided. Louis Weinstein, M.D., was plaintiff's supervisor at both defendant and APMCO.

{¶3} In January 1997, plaintiff became the Director of Maternal/Fetal Medicine at St. Vincent Hospital and, accordingly, was eligible for a $15,000 bonus for a one-year appointment. However, after a six-month evaluation, St. Vincent Hospital no longer desired that plaintiff be its director. On May 21, 1997, plaintiff entered into another one-year employment contract with defendant from July 1, 1997, through June 30, 1998. In June 1997, plaintiff relinquished his director's duties but continued to work at St. Vincent Hospital.

{¶4} On June 18, 1997, Weinstein sent plaintiff a letter stating that he did not intend to renew plaintiff's employment contract for the year starting July 1, 1998. Shortly after plaintiff

received notice that his contract would not be renewed, plaintiff advised Weinstein that he wanted to use his accrued vacation time and sick time for "terminal leave" and that he wanted to ensure that he had five years of service in order to vest with the State Teachers' Retirement System (STRS). Plaintiff also asserts that Weinstein promised that he would be paid one half of the $15,000 bonus for the directorship in December 1997, (Plaintiff's Exhibit 2) and that Weinstein agreed to allow plaintiff to use his vacation and sick time as terminal leave.

{¶5} On May 8, 1998, plaintiff and other OB/GYN clinical faculty members received a memo from Weinstein that stated that each faculty member would receive a $5,000 bonus plus a $750 contribution to their retirement accounts to be paid in the second pay period of June as a token of appreciation for their support. (Plaintiff's Exhibit 13.)

{¶6} On June 1, 1998, Carolyn Pinkston (f.k.a. Szymanski), Personnel Department Administrator, sent plaintiff a letter concerning his request to use his accrued leave as terminal leave. (Plaintiff's Exhibit 7.) In the letter, Pinkston stated that at plaintiff's request, she was asked to calculate plaintiff's accumulated vacation time to ascertain a departure date that coincided with his five-year anniversary date of employment which would have been September 2, 1998; that plaintiff was to begin using his accumulated vacation time on July 16, 1998; and that the request had been approved by Weinstein. The letter further stated that plaintiff's request to use accumulated sick time for elective surgery preceding his vacation time was not granted due to staffing shortages.

{¶7} On June 18, 1998, Weinstein delivered a letter to plaintiff wherein Weinstein stated that plaintiff's employment with defendant would be terminated effective July 1, 1998, as stated in the notice of non-renewal from June 18, 1997; and that the previous concern about plaintiff vesting with STRS had been clarified in that plaintiff would be fully vested effective June 30, 1998. (Plaintiff's Exhibit 9.) In addition, Weinstein rescinded plaintiff's $5,750 bonus.

{¶8} On June 26, 1998, Bryan Pyles, Director of Faculty Affairs, sent plaintiff a letter wherein he stated that plaintiff's last day of employment would be June 30, 1998; that plaintiff would receive terminal vacation compensation for all of his accrued and unused vacation time; and that plaintiff's health insurance coverage would continue through July 31, 1998. (Defendant's

Exhibit H.) Pyles testified that plaintiff was compensated by APMCO for his work at St. Vincent Hospital, and that the $5,750 bonus was also APMCO's responsibility. Pyles also testified that plaintiff's request to use his sick leave and vacation leave as terminal leave would have extended his employment past his contract termination date. Pyles explained that there was a difference between terminal leave and accrued vacation time: that terminal leave compensation may consist of accrued and unused vacation time up to a maximum of 160 hours according to policy 06-018; and that the use of sick leave for terminal compensation is available only to those who have been employed by defendant for ten or more years. Pyles also stated that defendant did not have any policy in place to pay employees extra compensation for holidays that they worked.

{¶9} Dr. Amira Gohara, Vice President for Academic Affairs, testified that she had been the dean of defendant's medical school since 1996, and that her duties included providing administrative oversight for faculty contracts, compensation, salary and benefits, vacation and sick leave, and termination and extension of faculty contracts. She testified that the board of trustees must approve any employment contract before it is issued; that she was a board member and a member of the executive committee; and that she had approved Weinstein's recommendation not to renew plaintiff's contract. Gohara further testified that on July 15, 1998, she wrote a memo to the payroll manager stating that plaintiff should be compensated for terminal vacation time according to the specific number of hours accrued and not used, not to exceed 240 hours, which allowed plaintiff to be compensated in excess of the maximum hours established by policy 06-018. (Plaintiff's Exhibit K.) Gohara also stated that she did not take the terminal vacation issue to the Board of Trustees for approval because it was a "benefits" issue as opposed to an "employment term" issue. She also testified that the $15,000 directorship bonus and the $5,750 bonus and retirement contribution would have come from APMCO funds.

{¶10}At trial, plaintiff testified that he was entitled: to the entire $15,000 bonus even though he gave up the director's title, since he had continued to perform the work required of that position; to the $5,750 bonus and retirement contribution based upon his past performance and the promise

contained in the May 8, 1998, letter; and to compensation for 13 holidays that he was required to work throughout his employment with defendant.

BREACH OF CONTRACT

{¶11}Plaintiff entered into a written employment contract with defendant that was to expire on June 30, 1998. (Defendant's Exhibit A.) As a general rule, the goal of the court in construing written contracts is to ascertain the intent of the parties, which is presumed to be stated in the document itself. See *Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth.*, 78 Ohio St.3d 353, 1997-Ohio-202; *Graham v. Drydock Coal Co.*, 76 Ohio St.3d 311, 1996-Ohio-393. Where the terms of a contract are clear and unambiguous, the court cannot find different intent from that expressed in the contract. *E.S. Preston Assoc., Inc. v. Preston* (1986), 24 Ohio St.3d 7. However, where the terms in a contract are ambiguous, extrinsic evidence may be relied upon to determine the intent of the parties. *Ohio Historical Soc. v. Gen. Maintenance & Eng. Co.* (1989), 65 Ohio App.3d 139.

{¶12}Upon review of the contract, the court finds that the contract language is unambiguous. Plaintiff was reappointed to his professorship for the period July 1, 1997, to June 30, 1998. The contract contains the following language: "The nature and type of your appointment is described in the Bylaws of the Trustees of the Medical College of Ohio. Your appointment is subject to the provisions of said Bylaws and other actions of the Board of Trustees currently in effect, or as they may be amended or adopted hereafter."

{¶13}Defendant's Bylaws, Rules and Regulations state the following for termination by non-renewal of a regular, non-tenured contract: "(1) The recommendation to terminate a non-tenured appointment by non-renewal shall be made by the department Chair (if applicable) and the Dean, who shall submit the recommendation in writing to the Vice President for Academic Affairs. The department Chair (if applicable) and the Dean shall inform the faculty member in writing of the decision for non-renewal. (2) The Vice President for Academic Affairs, with the concurrence of the President, shall make the recommendation to the Board. (3) Notice requirements to faculty *** (c) After three or more years of service, a minimum of twelve (12) months before expiration of the

appointment. Such notice must be made before July 1." (Defendant's Exhibit B, Pages 103-104.) Plaintiff received notice of non-renewal on June 18, 1997. The court finds that defendant followed its bylaws and that plaintiff has failed to prove that defendant breached its contract with plaintiff.

PROMISSORY ESTOPPEL

{¶14}Promissory estoppel is defined as follows: "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 of the Law, Contracts 2d (1973), Section 90; *McCroskey v. State* (1983), 8 Ohio St.3d 29, 30.

{¶15}In order for plaintiff's claim of promissory estoppel to succeed, the threshold element of a promise must be met. Defendant must have made a promise to plaintiff which should have reasonably been expected to induce action. *McCroskey*, at 30.

{¶16}Plaintiff alleges that the June 1, 1998, letter written by Pinkston was a promise upon which he reasonably relied. However, the court finds that it was not reasonable for plaintiff to have relied on such letter. R.C. 3350.03 states that, "[t]he board of trustees of the medical college of Ohio at Toledo shall employ, fix the compensation of, and remove the president and such numbers of professors, teachers, and other employees as may be deemed necessary. ***" Thus, the board of trustees has the sole authority to approve employment contracts for defendant. Any representations made by Weinstein or Pinkston would be contrary to express statutory law and, thus, promissory estoppel does not apply. See *Marbury v. Central State Univ.* (Dec. 14, 2000), Franklin App. No. 00AP-597. Mistaken advice or opinions of governmental agents do not give rise to a claim based upon promissory estoppel. *Halluer v. Emigh* (1992), 81 Ohio App.3d 312. Furthermore, testimony at trial revealed that the directorship bonus and the $5,750 bonus would have been paid by APMCO, not defendant. In addition, the June 26, 1998, letter from Pyles demonstrates that plaintiff was paid for his vacation time and that plaintiff had not worked for defendant long enough to be eligible to use his accrued sick leave as terminal leave. Plaintiff has further failed to prove that defendant had any

policy in effect which may have been violated in regard to compensation paid for working on holidays.

{¶17}For the foregoing reasons, the court finds that plaintiff has failed to prove any of his claims by a preponderance of the evidence and, accordingly, judgment shall be rendered in favor of defendant.

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v.	:	
		JUDGMENT ENTRY
MEDICAL COLLEGE OF OHIO	:	
Defendant	:	

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This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

_____
FRED J. SHOEMAKER
Judge

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HTS/cmd
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