

Commonwealth of Massachusetts
County of Essex
The Superior Court

CIVIL DOCKET#: **ESCV2007-01659-C**

RE: Cancellieri v Northeast Hospital Corporation et al

TO: Sara G Schwartz, Esquire
Schwartz Hannum
11 Chestnut Street
Andover, MA 01810

NOTICE OF DOCKET ENTRY

You are hereby notified that on **03/20/2009** the following entry was made on the above referenced docket:

MEMORANDUM OF DECISION AND ORDER on Motion for Summary Judgment - ORDER- The defendants' Motion for Summary Judgment is ALLOWED. (Leila R. Kern, Justice). Copies mailed
Dated at Lawrence, Massachusetts this 20th day of March, 2009.

Thomas H. Driscoll Jr.,
Clerk of the Courts

BY: Kevin Jones
Assistant Clerk

Telephone: (978) 687-7463

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 07-1659C

LINDA CANCELLIERI

v.

NORTHEAST HOSPITAL CORPORATION and
PAULA CRONIN

Linda Cancellieri brought a claim of promissory estoppel against her employer, Northeast Hospital Corporation (NHC), and her supervisor, Paula Cronin, and claims of tortious interference with business relationships and intentional infliction of emotional distress against Cronin, as a result of her employment termination. The emotional distress claim has been dismissed. The defendants moved for summary judgment on the two remaining claims. For the reasons that follow, the defendants' Motion for Summary Judgment is **ALLOWED**.

BACKGROUND

Cancellieri, a registered nurse, began working for NHC on May 14, 1991, as an at-will Parent Education Instructor. In May, 1992, Cancellieri took on a second position as an RN in the Obstetrics Department at NHC. Between May, 1992 and May, 2005, Cancellieri held various RN positions related to obstetrics and maternity, with varying hours and duties. In May, 2005, Cronin asked Cancellieri if she would accept the position of Special Care Nursery (SCN) Manager on an interim basis until Cronin found a permanent replacement. She explained that Cancellieri would receive training and support, and would not be on-call for her first few weeks, until she was familiar with her job duties. Cancellieri agreed, with the understanding that she

would go to either Beth Israel Deaconess Medical Center or Children's Hospital in Boston for training in the Neonatal Intensive Care Unit (NICU) and receive additional training as necessary.

After the first few weeks as SCN Manager, Cancellieri still had not received any training in Boston and she asked Cronin when she would receive that training. Cronin never responded. The only orientation Cancellieri received was a three-day orientation with another manager. Cancellieri testified that although she was not satisfied with the amount of training and orientation she received, she did not feel that it negatively impacted her ability to manage. She also testified that over time she developed the skills required for the SCN Manager position.

In August, 2005, Cronin approached Cancellieri and offered her the SCN Manager position on a permanent basis, which Cancellieri accepted. Around the same time, Cancellieri discovered that NHC's 2006 budget did not include her former position. Throughout the following year, Cancellieri held the SCN Manager position without complaint.

In or around October, 2006, Cancellieri discovered that some of the SCN staff was not happy with her as manager. In a meeting with an outside consultant hired by the hospital, Cancellieri told Cronin that given the staff's feelings, she did not want to continue on this way as SCN Manager and that she would like to pursue a position as a PP/Nursery manager. Despite Cronin's approval, she did not apply for or otherwise pursue that position.

Several months later, in a meeting with Cronin on February 8, 2007, Cancellieri again expressed her desire to move to a different position in the hospital. She told Cronin that she was not happy with the SCN position, that it was not a good working environment for her and that she would like to move into an educator position. Also in February, 2007, Cancellieri applied for an educator position in the Maternity Department, but was not hired because she did not have an

masters degree in nursing. She notified Cronin of her intent to transfer to a position in the hospital that would allow her to go back to school. In April, 2007, Cancellieri applied for an evening labor and delivery nurse position, but NHC hired a more qualified candidate from within the union bargaining unit. Sometime after April, 2007, Cancellieri approached Cronin, visibly upset, and told her she wanted to give up the SCN Manager job because it required too many hours and was affecting her personal and family life. Based upon that conversation, Cronin believed that Cancellieri had resigned.

On May 4, 2007, Cronin and Linda Abbott, a human resources representative, met with Cancellieri and told her that she had sixty days to find another position in the hospital and if she was unsuccessful she would receive a severance package. Cancellieri wrote a letter to Cronin on May 14, 2007, asking her if Cancellieri understood correctly that if she did not find a job within sixty days that she would be given a severance package. She did not question Cronin's belief that she had resigned, nor did she ask if she was being terminated and, if so, for what reason. Cronin did not reply until June 12, 2007. The next day, Cronin sent an email to the SCN staff notifying them that Cancellieri was stepping down from the SCN position to pursue other career opportunities that would allow her to better balance school, work and family life, and that her last day would be July 6, 2007. Cancellieri did not give Cronin permission to send this email.

In late June, the Department of Public Health (DPH) arrived at NHC for a surprise inspection. During the inspection, DPH investigated the credentials of the staff. DPH discovered that Cancellieri did not have her BSN degree and asked Cronin if she had a waiver in place to allow managers to perform their jobs without BSN degrees. Cronin replied that Cancellieri was only an interim manager and that she was leaving in a week.

After leaving NHC, Cancellieri actively searched for nursing jobs at other area hospitals. On August 27, 2007, she began working at North Shore Medical Center as an SCN nurse. She has since completed her studies and received her BSN degree.

DISCUSSION

Summary judgment is appropriate where there are no genuine issues of material fact and where the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c); DuPont v. Commissioner of Corr., 448 Mass. 389, 397 (2007). It is the moving party's burden to affirmatively demonstrate the absence of a triable issue, and that the summary judgment record entitles him to judgment as a matter of law. Pederson v. Time, Inc., 404 Mass. 14, 16-17 (1989). The moving party may satisfy this burden either by submitting affirmative evidence that negates an essential element of the opposing party's case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of his case at trial. Flesner v. Technical Commc'ns Corp., 410 Mass. 805, 809 (1991); Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991).

When reviewing a summary judgment record, the court must credit well-pleaded facts in the light most favorable to the non-moving party. Williams v. Hartman, 413 Mass. 398, 401(1992). Bare assertions of inferences, however, raise no genuine issue of material fact so as to defeat summary judgment. Federal Deposit Ins. Corp. v. Csongor, 391 Mass. 737, 742-743 (1984); First Nat. Bank of Boston v. Slade, 379 Mass. 243, 246 (1979) (neither vague allegations and conclusory statements, nor assertions of inferences not based on underlying facts will suffice to demonstrate genuine triable issue on motion for summary judgment).

I. Promissory Estoppel

Cancellieri claims that NHC, via Cronin, made several representations to her on which she relied to her detriment.¹ She claims that Cronin told her that: (1) she would hold the SCN position on an interim basis; (2) she would receive four weeks of training in a NICU unit in Boston; (3) she would receive mentoring and support; and, (4) she would be able to return to her old position after the interim position ended. As a result of these representations, Cancellieri argues, she suffered detriment because she was unable to return to her former position and was ultimately terminated. The defendants have shown that Cancellieri cannot establish that all of the above statements were enforceable promises nor can she establish a connection between the alleged promises and her detriment.

The doctrine of promissory estoppel creates a cause of action for a plaintiff who has relied on a promise made by the defendant and has suffered detriment as a result of her reliance. Loranger Constr. Corp. v. E.F. Hauserman Co., 376 Mass. 757, 760 (1978). A plaintiff relying on a promissory estoppel theory must prove all the elements of a contract other than consideration. Rhode Island Hospital Trust Nat'l Bank v. Varadian, 419 Mass. 841, 850 (1995). To avoid summary judgment, the plaintiff must show that her reliance was reasonable and that the promise was unambiguous. Upton v. JWP Businessland, 425 Mass. 756, 760 (1997). In addition, it is not enough for a plaintiff to allege that the defendant made a "promise"; rather, she must show that the defendant made a promise with an intent to create a legally binding obligation. Rhode Island Hospital Trust Nat'l Bank, 419 Mass. at 850.

¹ Although the complaint states a claim for promissory estoppel, Cancellieri's summary judgment brief argues in terms of negligent misrepresentation. For the purposes of this decision, the distinction between those contract and tort remedies is not relevant, and the claim will be analyzed as one based upon promissory estoppel.

A. Unambiguous Promises

To survive summary judgment, Cancellieri must have sufficient evidence to show that the defendants made an unambiguous promise that they intended to be a binding obligation. Two promises alleged by Cancellieri must fail because they are not unambiguous nor can they be viewed as creating binding obligations. First, Cronin's general assurance that Cancellieri would receive "mentoring and support" is too vague and indefinite to create an unambiguous promise. Cancellieri has no reasonable expectation of proving that the defendants intended this assurance to create a binding obligation to provide mentoring and support.

Next, Cancellieri's claim that the defendants promised that she would be able to return to her old position is not supported by the record. Cancellieri testified that Cronin did not tell her whether her position would remain open or whether she would be able to return to it. Although Cancellieri might assume that "interim" meant she would be able to return to her old position, that assumption is not sufficient to establish an unambiguous promise. Because there is no evidence that anyone at NHC promised Cancellieri that she would be able to return to her former position, she had no reasonable expectation of succeeding on her claim of promissory estoppel with respect to this alleged statement.

The remaining two promises alleged by Cancellieri – that she would receive four weeks of NICU training and that her term as SCN Manager would only be interim – are sufficiently unambiguous to establish binding promises for the purpose of defeating summary judgment. It is undisputed that Cronin promised Cancellieri that she would receive four weeks of training in a NICU in Boston. This specific statement in response to Cancellieri's inquiries made prior to accepting the position is sufficient evidence of an intent to create an unambiguous binding

promise.

As for the promise of an interim position, “interim” is reasonably interpreted as temporary. Cancellieri understood, upon accepting the SCN Manager position, that she would hold the position temporarily. Her belief was reasonably based on the defendants’ representation that she was an “interim” SCN Manager. By using the term “interim” in Cancellieri’s job title, a jury could find that the defendants intended it to be a binding term of the offer for employment. For that reason, the defendants have not shown that Cancellieri cannot succeed on her allegation that the defendants made an unambiguous offer for an interim management position. That does not, however, end this court’s analysis.

B. Detrimental Reliance

Even if Cancellieri can establish that the defendants made unambiguous promises that she would hold the SCN manager position on a interim basis and they would provide her with four weeks of NICU training, she has no reasonable expectation of proving that she relied on those statements to her detriment.

Cancellieri first claims that she resigned from her former position because the defendants promised her that she would only hold the SCN Manager position for an interim period. Her former position was then eliminated and she was unable to return to it. She argues that her inability to return to her former position is sufficient evidence of detriment. Cancellieri’s argument fails because she was free to resign from the interim manager position at any time. Absent a promise that she would be able to return to her old position, Cancellieri cannot show any harm caused by her reliance on the defendants’ representation that she would only be SCN Manager temporarily. In addition, the evidence clearly shows that after approximately three

months the defendants ended Cancellieri's interim position and offered her the position permanently. Cancellieri accepted that offer. Therefore, the defendants did not breach their promise of interim employment.

Cancellieri next makes a blanket allegation that her reliance on the defendants' promises of training and interim employment ultimately led to her termination. Not only is this general allegation insufficient to defeat summary judgment but it is inconsistent with Cancellieri's testimony. She stated that her lack of extensive training *initially* impacted her ability to assist the staff she oversaw, but that over time she gained the necessary skills. She also testified that her lack of clinical training did not affect her ability to manage the SCN. There is no indication that her lack of training led to her termination. Next, Cancellieri's termination – whether she voluntarily resigned or not – was prompted by Cancellieri's complaints about her unhappiness as SCN Manager, her desire to return to school and her repeated attempts to transfer to other positions. There is no evidence in the record to support Cancellieri's claims that her termination was in any way related to the defendants' failure to provide a four-week NICU training or to the defendants initial offer of an interim position.

The defendants have shown that Cancellieri cannot establish the essential elements of her promissory estoppel claim and they are entitled to summary judgment on that claim.

II. Tortious Interference with Advantageous Business Relationship

Cancellieri also claims that Cronin tortiously interfered with her advantageous business relationship with NHC. To survive summary judgment, Cancellieri must establish the four elements of a tortious interference claim: (1) she had a contract with a third party; (2) the defendant knowingly induced the third party to break that contract; (3) the defendant's

interference was improper in motive or means; and, (4) the interference harmed her. Alba v. Sampson, 44 Mass. App. Ct. 311, 314 (1998). Because Cronin was Cancellieri's supervisor, her act of terminating Cancellieri is privileged unless Cancellieri can prove that she acted with actual malice. See Gram v. Liberty Mutual Insurance Co., 384 Mass. 659, 663 (1981). Actual malice is defined as a "spiteful, malignant purpose, unrelated to the legitimate corporate interest of the employer." Sklar v. Beth Israel Deaconess Med. Center, 59 Mass. App. Ct. 550, 554 (2003). The supervisor's actions must amount to more than negligent, sloppy or unfair business practices. Gram, 384 Mass. at 665.

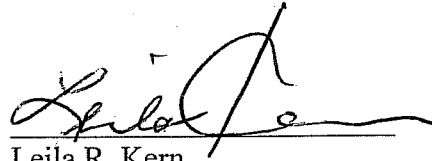
Cancellieri's claim must fail because she cannot establish actual malice. Her only allegations of actual malice are: (1) Cronin improperly alleged that Cancellieri had resigned; (2) Cronin was "unprofessional" and "uncourteous" when she circulated an email explaining Cancellieri's departure as related to Cancellieri's inability to balance work and personal life; and, (3) Cronin forced Cancellieri to resign because the Department of Public Health discovered that Cronin had allowed Cancellieri to work as a manager without her BSN and without a waiver.² The first allegation of actual malice is insufficient because the record shows that Cronin believed that Cancellieri did not want to serve as SCN Manager any longer. Even if she was mistaken when she said that Cancellieri resigned, her mistake is not sufficient to establish a spiteful or malignant purpose not related to the employer's legitimate interests. As for the latter two allegations, not only do they not rise to the level of maliciousness and spitefulness required to overcome the supervisor's privilege, but, even if true, they occurred after NHC terminated

² Cancellieri's argument that she had to be terminated from the SCN position because she did not have a BSN degree is irrelevant.

Cancellieri. These actions by Cronin do not establish tortious interference with Cancellieri's business relationship with NHC.

ORDER

For the foregoing reasons, the defendants' Motion for Summary Judgment is **ALLOWED.**

A handwritten signature in black ink, appearing to read "Leila R. Kern", written over a horizontal line.

Leila R. Kern

Associate Justice of the Superior Court

DATED: March 20, 2009