

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

JOHN B. DEFONTES	:	
	:	
Plaintiff,	:	
v.	:	NO. 3:06cv1126 (MRK)
	:	
THE MAYFLOWER INN, INC.,	:	
	:	
Defendant.	:	

RULING AND ORDER

Presently pending before the Court is Defendant's Motion for Summary Judgment [doc. # 32]. At argument on the Motion, Plaintiff's counsel acknowledged that The Mayflower Inn, Inc. (The "Inn") is entitled to judgment on the First Count of the Complaint [doc. # 1], which alleges breach of an express employment contract, and the Third Count, which alleges breach of the duty of good faith and fair dealing in connection with an express employment contract. That leaves three counts – the Second Count, alleging breach of an implied employment contract, the Fourth Count, alleging breach of the duty of good faith and fair dealing regarding the implied employment contract, and the Fifth Count, alleging promissory estoppel.

At argument, Mr. Defontes' counsel asserted two bases for the existence of an implied employment agreement requiring just cause for termination. He first argued that Mr. Defontes left a good job and traveled to Connecticut in reliance on statements by the owners of the Inn that he was becoming a member of their "family" and that he was to take "ownership" of the Spa for which he would become the Director. In the context of this case, these statements are insufficient as a matter of law to form the basis for an employment agreement requiring just cause for termination. It is undisputed that the letter offering Mr. Defontes employment makes no mention of termination, and

on its face it constitutes an offer for employment at will. During his deposition, Mr. Defontes acknowledged that neither before, nor after, receiving the letter did he ever discuss with anyone from the Inn the length of his employment. *See* Def.'s Mot. for Summ. J. [doc. # 32], Ex. 1 (Defontes Dep.) at 36:9 to 37:14. He also testified that the employment letter was complete and no term of his employment was missing from it. *See id.* at 39:25 to 40:3. Importantly, he also gave the following testimony:

- Q. Yes. Did you ever ask Adriana, Robert or Lisa whether you could stay until you were ready to leave?
- A. Never asked. I just got there.
- Q. Did you have any discussions with anyone as to the grounds under which you could be terminated?
- A. No.
- Q. Ever discuss with any of the owners of The Mayflower whether you could only be terminated for just cause?
- A. No.
- Q. Did you ever have any discussion with any of the owners of the Mayflower Inn as to what criteria might be used in deciding to terminate your employment?
- A. No.
- Q. Anyone promise you any specific length of time that you would be employed at the spa?
- A. No promise.

Id. at 169:1-17. Furthermore, in his response to Defendant's Rule 56(a)(1) Statement, Mr. Defontes admitted the truth of the following statement: "At no time did the owners of the Mayflower Inn or the General Manager make any representation or promise to Defontes that his employment was other than at will." *See* Pl.'s Rule 56(a)(2) Statement [doc. # 36-2], ¶ 71. Finally, Mr. Defontes testified that his prior employment in the spa industry was at will.

In the face of this testimony, no reasonable juror could conclude that the very vague statements made about membership in the "family" and "ownership" of the Spa constituted, or could

reasonably be construed as, contractual undertakings or promises that Mr. Defontes would not be terminated without just cause, or that his employment was anything other than at-will employment. *See, e.g., Burnham v. Karl & Gelb, P.C.*, 50 Conn. App. 385, 389 (1998); *D'Ulisse-Cupo v. Bd. of Dirs. of Notre Dame High Sch.*, 202 Conn. 206, 211 n.2 (1987). This case is thus quite different from *Coehlo v. Posi-Seal International, Inc.*, 208 Conn. 106, 109-11 (1988), where an employee had expressly raised issues of job security with his employer before accepting employment and was told that he would not be terminated because of conflicts between the manufacturing department and quality control. Nothing even remotely similar to those conversations occurred here. Therefore, the Inn is entitled to summary judgment on Mr. Defontes' implied contract claim (and associated good faith and fair dealing claim) insofar as those claims are based upon statements by the Inn's owners that Mr. Defontes would become a member of their family and needed to take ownership of the Spa.¹

However, Mr. Defontes asserted the Inn's Employee Handbook as an alternative basis for an implied employment agreement. "It is firmly established [in Connecticut] that 'statements in an employer's personnel manual may . . . under appropriate circumstances . . . give rise to an express or implied contract between the employer and employee.'" *Gaudio v. Griffin Health Servs. Corp.*, 249 Conn. 523, 532 (1999) (quoting *Magnan v. Anaconda Indus., Inc.*, 193 Conn. 558, 564 (1984)).

¹ For the same reasons, the Inn is also entitled to summary judgment on the promissory estoppel count, which is based entirely on the same statements. It is apparent from the undisputed record that in connection with the negotiation of his employment with the Inn, no one made any "clear and definite" promise to Mr. Defontes regarding the duration of his employment or the need for just cause for termination. *Stewart v. Cendant Mobility Servs. Corp.*, 267 Conn. 96, 104-06 (2003) ("A fundamental element of promissory estoppel . . . is the existence of a clear and definite promise which a promisor could reasonably have expected to induce reliance."). Nor could a reasonable jury conclude that Mr. Defontes reasonably relied upon those statements as an indication of the duration of his employment or the need for just cause for termination. *See D'Ulisse-Cupo*, 202 Conn. at 214-15 (stating that mere expressions of expectation, intention, hope, or desire, which show no real commitment, cannot be expected to induce reliance).

Here, the Inn's Handbook contains the following provision:

PROBATIONARY-AT-WILL PERIOD:

Your first ninety (90) days of employment is your probationary-at-will period. This period gives you, and Mayflower Inn, a chance to determine whether we meet each other's initial expectations. At the end of this ninety (90) - day period your supervisor will conduct a performance review with you covering areas such as performance, job skills, safety record, disciplinary record, attendance, cooperation with fellow employees and responsiveness to guests.

Should your performance in these areas be unsatisfactory, your probationary-at-will period may be extended. You may be released at any time during your probationary-at-will period.

During the probationary period, you are ineligible for paid sick leave and/or vacation time; however, if your employment continues, vacation time and sick time commence at the hire date.

Pl.'s Mem. in Opp'n to Mot. for Summ. J. [doc. # 36], Ex. D at 6. Moreover, another section of the Handbook states: "If you engage in conduct which violates a Mayflower Inn standard or rules, you will be subject to disciplinary action including a verbal warning, suspension or discharge at the sole discretion of the Mayflower Inn." *Id.* Among the standards and rules are the following: "22. Careless, negligent or inefficient performance of assigned duties, including inability to perform the job as required. . . . 24. Failure to perform the job to the required standards." *Id.* at 14.

There are many factual disputes regarding the Handbook, none of which this Court should resolve on a motion for summary judgment. *See, e.g., Williams v. Utica Coll. of Syracuse Univ.*, 453 F.3d 112, 116 (2d Cir. 2006); *Bouboulis v. Transp. Workers Union of Am.*, 442 F.3d 55, 59 (2d Cir. 2006). For one, there is a factual dispute regarding whether Mr. Defontes ever received the Handbook. Apparently, in interrogatory answers, the Inn stated that it gave Mr. Defontes a copy, while Mr. Defontes, for his part, does not recall seeing the Handbook. It is not clear to the Court that

it necessarily matters in terms of the Inn's obligations to its employees whether Mr. Defontes saw the Handbook or not, but in the event it does matter (as the Inn suggests), the issue is in dispute and therefore is not a proper subject for disposition by summary judgment.

For another, it is not at all clear what the Handbook promised the Inn's employees. For example, does the use of the term "Probationary-*At-Will* Period" imply that after 90 days an employee is no longer at will? It is undisputed that Mr. Defontes worked at the Inn for more than 90 days. Did he then become something other than an at-will employee? Was he, at a minimum, entitled to a performance review before termination? It is undisputed that Mr. Defontes was summarily fired without any explanation of the reasons for his termination or whether his performance was inadequate in any way. Given the ambiguity of the Handbook language (coupled with the fact that no party has provided the Court with any evidence regarding the Inn's course of performance under it), the question of whether the Handbook gives rise to an implied promise that after 90 days employment will not be terminated without cause, is one for a jury, not this Court. As the Connecticut Supreme Court stated in *Gaudio*, "In the absence of [express contractual] language . . . the determination of what the parties intended to encompass in their contractual commitments is a question of the intention of the parties, and an inference of fact. Because it is an inference of fact, determining the intent of the parties is within the province of the jury . . ." *Gaudio*, 249 Conn. at 533 (quotations and citations omitted).

Finally, if the Handbook requires cause for termination, there is the question of whether the Inn had cause to terminate Mr. Defontes' employment. That, too, presents disputed issues of fact. Mr. Defontes certainly acknowledged in his deposition that he did not accomplish some things that were his responsibility to accomplish. However, he also testified that the owner's daughter was

responsible for many of the delays and that he was being made the scapegoat for the daughter's failings. Mr. Defontes also testified and explained that many of the tasks that the owners now blame him for not completing did not have to be completed by the time he was fired. Given the fact that Mr. Defontes was never told why he was fired and that (according to Mr. Defontes) the Inn's owners never complained about his performance or warned him about any deficient performance, a jury could well decide to credit Mr. Defontes' version of events and discredit the owners'. In any event, it is sufficient for present purposes to emphasize that in this particular case, the record presented shows that there is a genuine issue of disputed fact regarding Mr. Defontes' performance and the owners' motivations. The issue of just cause, therefore, belongs to the jury, not this Court. *See Rothenberg v. Lincoln Farm Camp, Inc.*, 755 F.2d 1017, 1022 (2d Cir. 1985) ("Although Rothenberg's affidavit stated that the Camp officials had always informed him that his services were being performed in a satisfactory manner, Loren's affidavit stated that Rothenberg's services had clearly proven unsatisfactory Plainly there are issues of fact to be tried."); *Barber v. Saint Gobain Performance Plastics Corp.*, No. 1:04-CV-106, 2006 WL 2662853, at *11 (D. Vt. Sept. 14, 2006) (just cause issue for jury); *Coehlo*, 208 Conn. at 122-23 ("[W]hether an employer has terminated an employee because of a legitimate [reason] or for other reasons is an issue to be determined by the trier of fact.").

In sum, the Court GRANTS IN PART and DENIES IN PART Defendant's Motion for Summary Judgment [doc. # 32]. The Court grants summary judgment to Defendant on the First, Third, and Fifth Counts of the Complaint and on the Second and Fourth Counts to the extent those claims are based upon statements by the Inn's owners that Mr. Defontes would become a member of their family and needed to take ownership of the Spa. The Court denies summary judgment on

the Second and Fourth Counts to the extent those counts are founded on the alleged implied commitments in the Inn's Handbook. The Court will issue a separate scheduling order regarding trial.

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: December 3, 2007.