

**Peterson v Trustee of Columbia Univ. in the City of
New York**

2013 NY Slip Op 31488(U)

July 3, 2013

Supreme Court, New York County

Docket Number: 158205/2012

Judge: Melvin L. Schweitzer

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: MELVIN L. SCHWEITZER
Justice

PART 45

BRADLEY S. PETERSON, MD.

INDEX NO. 158205/2012

-v-
TRUSTEES OF COLUMBIA UNIVERSITY

MOTION DATE _____

MOTION SEQ. NO. 001

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is *by Defendants to dismiss the complaint is GRANTED, with leave to replead.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: July 3, 2013

Melvin L. Schweitzer
MELVIN L. SCHWEITZER

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

of Columbia University in the City of New York d/b/a Columbia University in the City of New York (Columbia University); Jeffrey Lieberman (Dr. Lieberman) and David Strauss (Dr. Strauss) (collectively, defendants) move to dismiss Dr. Peterson's claims of breach of contract (against Columbia University), breach of fiduciary duty (against Dr. Lieberman), aiding and abetting breach of fiduciary duty, (against Dr. Strauss) tortious interference of a contract (against Drs. Lieberman and Strauss) and fraud in the inducement (against Dr. Lieberman and Columbia University).

The following represents Dr. Peterson's factual account. In or about July 2001, Dr. Peterson was recruited from Yale University to Columbia University, joining as (1) Associate Professor in Child Psychiatry at CUCPS; (2) Director of Neuropsychiatry in the Division of Child Psychiatry at CUCPS; and (3) a faculty member at the Sackler Institute for Developmental Psychobiology at CUCPS. In these positions, from 2001 to 2008, Dr. Peterson founded and funded for a MRI Unit at NYSPI and Columbia University to aid his work in advancing methods for processing and statistical analysis of MRI images.

In 2008, Dr. Peterson was advised by Dr. Lieberman he was being considered for several promotions. Dr. Lieberman promised Dr. Peterson that if Dr. Peterson accepted the promotions, he would support Dr. Peterson in his new roles while ensuring Dr. Peterson would be able to continue making advances in the Laboratory and MRI Unit. This and other promises were memorialized in an "Employment Letter." Exhibit B. The letter states "[CUCPS is] committed to providing [Dr. Peterson] with the necessary resources to support [Dr. Peterson] in this new leadership roles [sic] including the facilitation of [Dr. Peterson's] own career development." The letter also indicated Columbia agreed to pay Dr. Peterson \$400,000 in annual salary for accepting these new responsibilities. Dr. Peterson accepted promotions to (a) Director of the

Division of Child Psychiatry at Columbia University; (b) Director of the Department of Child Psychiatry at New York State Psychiatric Institute; and (c) Chief of Child Psychiatry at New York Presbyterian Hospital; while continuing roles as (d) Founding Director of MRI Research at CUPCS and NYSPI; and (e) head of his Laboratory.

At the time of Dr. Peterson's promotion, the Department of Psychiatry was running at a significant deficit. The deficit was not discussed in either pre-employment conversations or in the Employment Letter. Dr. Peterson came to believe Drs. Lieberman and Strauss promoted Dr. Peterson in order to secure funds, which would help pay the Department's yearly deficit of \$5 million. If the defendants' were seeking funding for the Department, they promoted wisely, as Dr. Peterson was able to acquire significant grants and gifts from many sources, including Mr. Thomas Klingenstein. Mr. Klingenstein's gifts were designated to be used specifically for Dr. Peterson's strategic plan. From May 2008 to November 2010 the Division of Child Psychiatry, led by Dr. Peterson, raised approximately \$70 million in total new funds to support clinical services, renovations, strategic planning, and research.

In addition to his fund-raising accomplishments, Dr. Peterson supervised the recruitment of Dr. Dorothy Grice, a renowned human genetics researcher, an additional twenty (20) new, junior research faculty members, and established a genetics repository that research groups at Columbia University could use. His positive performance was documented in official evaluations conducted by Dr. Lieberman from March 23, 2007 to June 30, 2012. These evaluations complimented, amongst other things, Dr. Peterson's active grants, as well as his mentorship and management skills. The evaluations repeatedly noted Dr. Peterson had exceeded performance standards.

Despite his strong performance, Dr. Peterson hadn't received everything he had been promised, and asked Dr. Lieberman to honor the following commitment memorialized in the Employment Letter: "... the Ruane chair, currently occupied by Tim Walsh, will revert back to child after we have established a new chair in eating disorders to support him. At the same time the department is giving \$346,000 to the child division in consideration for this temporary assignment that will be available for your use." Dr. Lieberman did not pay the \$346,000 until late 2011, never reallocated the Ruane chair, and did not pay \$176,000 in annual revenue associated with this chair.

Dr. Peterson also requested \$50,000 he felt he had been promised by the following clause in the Employment Letter: "We will provide the Division of Child Psychiatry with up to \$50,000 per year for education, training and resident recruitment activities based on availability of PI and departmental non-personnel funds." This request was denied.

Soon after Dr. Peterson's requests, he found himself subject to increasing professional scrutiny. First, in mid-2010 Dr. Lieberman directed him to work with an external executive coaching consultant, Dr. Jeffrey L. Hoput, Dr. Hoput was complimentary of Dr. Peterson and his strategic vision. Second, on June 9, 2011, Dr. Lieberman informed Dr. Peterson he had received unspecified "complaints" from unnamed postdoctoral students that Dr. Peterson was "aloof," did "not suffer[] fools gladly," was not "fully inclusive", and "support[ed] only the interests of the faculty" that were consistent with his own. Dr. Peterson, although perplexed by the complaints, suggested Dr. Lieberman provide supervisory counseling to address the complaints raised. Dr. Lieberman rejected this suggestion, and sought an internal, formal review. Only after Mr. Klingenstein expressed concern to Dr. Lee Goldman, Dean of the Faculties of Health Sciences and Medicine at the CUCPS (Dean Goldman), was the review, in the interest of

fairness, conducted externally. The review, submitted around January 10, 2012, was general in nature and complimentary of Dr. Peterson's teaching; however the review also asserted Dr. Peterson had too many assignments. Dr. Lieberman claimed the review committee had also told him there were "serious problems" with Dr. Peterson's leadership style, although this was not mentioned by the written report or by any other faculty. Finally, around February 16, 2012, Dr. Lieberman created an "Advisory Committee", designed to keep tabs on Dr. Peterson. This Committee was headed by Dr. Strauss, who reported to Dr. Lieberman and had operational decision-making authority for the Division of Child Psychiatry. Aware this was a tool for Dr. Lieberman to constructively discharge him, Dr. Peterson requested a personal confidential advisor, and then individual consultation with members of the Advisory Committee, in two separate letters dated March 21 and April 9, 2012. The first letter was ignored and the second letter rejected. Dr. Peterson then went to Dean Goldman and voiced his concerns over the undelivered promises, as well as Dr. Lieberman's refusal to compromise with Dr. Peterson on the review processes. Dean Goldman was not receptive to these concerns.

During these review processes, Dr. Lieberman also began to reduce the resources under Dr. Peterson's control. In December 2010, he removed sixteen offices from the Division of Child Psychiatry, a move described by Dr. David Shaffer as "... inevitably downsiz[ing] the department and possibly its reputation. This [is] a damaging blow to Brad's [Dr. Peterson's] plans for reorienting and restructuring the Department of Child Psychiatry."

Around May 18, 2012, Dr. Peterson was removed from the position of Chief of the Division of Child Psychiatry. He was demoted to Director of the "Center for Pediatric Neuropsychiatry at the Columbia University Medical Center" (the Center). Around July 21, Dr. Peterson's salary was cut by \$80,000. Around August 1, Dr. Peterson learned that an

additional \$45,000 was being stripped from his salary, given he was going to be asked to step down as Head of the MRI unit and was to be replaced by Dr. Strauss (publically announced on October 16, 2012). Around the same time, Dr. Peterson's applied neuroscience faculty was removed from the Laboratory/Center and reassigned to the MRI Unit, making it impossible for Dr. Peterson to implement his strategic plan.

In August 2012 Dr. Lieberman, together with Dr. Strauss, terminated Dr. Peterson's administrative assistant for his Laboratory and the MRI Unit, Josie Batista (Ms. Batista) with only a few weeks' notice. This crippled Dr. Peterson's management of the laboratory, and Drs. Lieberman and Strauss refused Dr. Peterson's offer to temporarily fund Ms. Batista's salary, without explanation.

Dr. Lieberman also refused to allow Dr. Peterson to transfer the National Institute of Health's T32 institutional training grant (T32 Training Grant), for which he is the Principal Investigator, to the Center. Around October 18, 2012, Dr. Strauss relayed a request from the Executive Committee in Child Psychiatry to Dr. Peterson to transfer the T32 Grant to Dr. Moria Rynn (Dr. Rynn) the Interim Director of the Division of Child Psychiatry. This was an effort by Drs. Lieberman and Strauss to acquire control of the T32 grant from Peterson. Dr. Rynn has refused to share applications for T32 fellowships with Dr. Peterson, making administration of the grant impossible.

Finally, Drs. Lieberman and Strauss, in late October 2012, informed the faculty in the Laboratory they no longer reported to Dr. Peterson and now were working in the MRI Unit and reporting to Dr. Strauss. This runs contrary to the following clause in the Employment Letter: "In the event that the leadership of the MRI unit should change, all resources within your Pediatric Imaging Laboratory will remain in your lab."

Discussion

On a motion to dismiss for failure to state a cause of action, the court accepts all factual allegations pleaded in plaintiff's complaint as true, and gives plaintiff the benefit of every favorable inference. CPLR 3211 (a) (7); *Sheila C. v Povich*, 11 AD3d 120 (1st Dept 2004). The court must determine whether "from the [complaint's] four corners[,] 'factual allegations are discerned which taken together manifest any cause of action cognizable at law.'" *Gorelik v Mount Sinai Hosp. Ctr.*, 19 AD3d 319 (1st Dept 2005) (quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 (1977)). Vague and conclusory allegations are not sufficient to sustain a cause of action. *Fowler v American Lawyer Media, Inc.*, 306 AD2d 113 (1st Dept 2003).

Breach of Contract

To establish a breach of contract, a plaintiff must allege: (1) the existence of a valid contract; (2) plaintiff's performance of the contract; (3) defendant's breach of the contract; and (4) resulting damages. *Morris v 702 E Fifth St. HDFC*, 46 AD3d 478, 479 (1st Dept 2007). An effective employment contract details "the identity of the parties, the terms of employment, which include the commencement date, the duration of the contract, and the salary." *Durso v Baisch*, 37 AD3d 646, 647 (2d Dept 2007) (quoting *Merschrod v Cornell Univ.*, 139 AD2d 802, 805 (3d Dept 1988)). "Absent an agreement establishing a fixed duration, an employment relationship is presumed to be hiring at will, terminable at any time by either party." *Sabetay v Sterling Drug, Inc.*, 69 NY2d 329, 333 (1987).

Dr. Peterson argues that the specific language in the Employment Letter extends tenure, derived from his title as Professor of Psychiatry, to his new administrative positions. Since Dr. Peterson's appointments will "commence immediately upon acceptance of this position," and, because the Employment letter explicitly states that Dr. Peterson's Directorship and Chief

appointments would be “in addition to” his “appointment as Professor of Psychiatry with tenure,” there is a reasonable inference of tenure regarding the additional administrative positions. Defendant relies on the well-established principle that, absent a specified duration, employment is presumably at-will *Sabetay*, 69 NY2d at 333, as well as *LoGerfo v Trustees of Columbia University*, 35 AD3d 395 (2d Dept 2006). *LoGerfo*, similar to this case, features a letter agreement between a tenured professor and Columbia without a “definite term of duration,” which was thus found to be “terminable at will by either party.” AD3d at 397. There is no reason to deviate from *LoGerfo* and accept the Dr. Peterson’s novel argument.

Dr. Peterson’s promotions memorialized in the 2008 Employment Letter were at-will, and termination from these positions does not, on its own, support a breach of contract claim. *See In re Gen. Media, Inc.*, 368 BR 334, 341 (Bankr. SD NY 2007) (“Under New York law, she was an at-will employee, and has no claim for breach of contract based solely upon her termination.”); *Barcellos v Robbins*, 50 AD3d 934, 935 (2d Dept 2008) (“An employee who does not work under an agreement for a definite term of employment is an at-will employee who may be discharged at any time with or without cause.”).

Dr. Peterson notes that even with at-will employment, breach of contract claims “separate and distinct from termination of [plaintiff’s] at-will employment [should be] sustained.” *JCS Controls, Inc. v Stacey*, 57 AD3d 1372, 1374 (4th Dept 2008). He alleges, *inter alia* the following clauses in the Employment Letter represent enforceable breached promises:

-“When an employee vacates a space, you can fill that space with his/her replacement or as Director you can reallocate space within your division. . . .”
Dr. Peterson argues the removal of sixteen offices from the Division of Child Psychiatry breaches this clause.

-“We will provide the Division of Child Psychiatry with up to \$50,000 per year for education, training and resident recruitment activities based on availability of

PI and departmental non-personnel funds.” Dr. Peterson argues that 50,000 per year in funds for these purposes were not paid, breaching this clause.

-“Your salary will consist of 400,000 per annum.” Dr. Peterson argues cutting his salary without notice breaches this clause.

Dr. Peterson further contends any ambiguities in these or other terms would not be an appropriate basis for dismissal of a breach of contract claim. *See Microtel Franchise and Dev. Corp. v Country Inn Hotel*, 923 F Supp 415, 420 (WD NY 1996).

Defendants argue the contract is unenforceable due to vagueness. In order to be enforceable, a contract must be “reasonably certain in its material terms.” *Cobble Hill Nursing Home, Inc. v Henry & Warren Corp.*, 74 NY2d 475, 482 548 NE2d 203 (1989). There “must be a manifestation of mutual assent sufficiently definite to assure that the parties are truly in agreement with respect to all material terms.” *Express Indus. & Terminal Co. v N. Y. State Dept. of Transp.*, 93 NY2d 584, 589, 715 NE2d 1050, 1053 (1999). If “there is no way to tell from the face of the document how the parties intended to establish” performance, breach of contract claims should be dismissed. *Id.* Courts are encouraged to use particular caution in looking for these manifestations of mutual assent within academia; given that “[t]he management of the university is primarily the responsibility of those equipped with the special skills and sensitivities necessary for so delicate a task”, courts should be hesitant to interfere in matters like faculty promotion within the university setting. *N.Y. Institute of Tech. v State Div. of Human Rights*, 40 NY2d 316, 322 (1976).

One claim in particular illuminates the strength of the defendants’ position. Dr. Peterson alleges that the reduction of office space breached two separate promises in the offer letter. Compl. ¶ 97. Dr. Peterson first argues the reduction of office space violates the promise that “[w]hen an employee vacates a space, you can fill that space with his/her replacement or as

Director you can reallocate space within your division.” *Id.* However this clause is followed by an express disclaimer vesting discretion in the defendants, emphasizing, with “space [] our most limited resource, the department does need to review space allocation with the divisions as programs and projects ramp up or wind down.” In instances like these, with discretion (of the allocation of office space between divisions) placed solely with defendants, a breach of contract claim lacks merit. *Hunter v Deutsche Bank AG, N.Y. Branch*, 56 AD3d 274 (1st Dept 2008). Several of Dr. Peterson’s other claims suffer similar defects. Promises to pay a salary “reviewed annually” as well as “provid[ing] the Division of Child Psychiatry with *up to* \$50,000 per year for education, training and resident recruitment activities *based on availability of PI and departmental non-personnel funds*,” (emphasis added) for the same reason cannot support a breach of contract claim.

Dr. Peterson also claims the reallocation of office space violates the Employment Letter promise that “[CUCPS is] committed to providing [Dr. Peterson] with the necessary resources to support [Dr. Peterson] in this [sic] new leadership roles including the facilitation of [Dr. Peterson’s] own career development[.]” Compl. ¶ 97. This clause provides, on its face, virtually zero guidance for the court to determine the agreed upon meaning by the parties. The Employment Letter is replete with similarly vague terms. Other such terms include promises to “work with you to develop additional funds and sources of revenue . . .” and “work together and jointly define funding priorities and uses of funds raised.” If there are terms which are “impenetrably vague and uncertain”, and said terms are material, there is not a binding and enforceable contract. *Express Indus*, 93 NY2d at 589-90. The primary bases for Dr. Peterson’s acceptance of the promotions, as described by Dr. Peterson himself, were Dr. Lieberman’s commitments of continuous support and career development, memorialized in the employment

agreement. Compl. ¶ 17-18. But for these promises, Dr. Peterson would have not accepted the promotions Compl. ¶ 91. Thus, in Dr. Peterson's own mind, these promises were unquestionably material terms. Furthermore, the level and manner of support provided by an employee's superior is a "term[] of employment", buttressing the materiality of these terms.

There are terms within the Employment Letter which neither vest discretion in the defendants nor are impenetrably vague. *E.g.* Compl ¶¶ 97, 101. However, *all* material terms must be definite to create an enforceable contract. *Great Circle Lines, Ltd. v Matheson & Co.*, 681 F2d 121, 124 (2d Cir 1982) ("Under general contract law principles no contract exists where the parties fail to agree on all the essential terms or where some are too indefinite to be enforceable."); *Thome v Alexander & Louisa Calder Found.*, 70 AD3d 88, 103-04, 890 NYS2d 16, 27 (1st Dept 2009) ("there must be a manifestation of mutual assent sufficiently definite to assure that the parties are truly in agreement with respect to *all* material terms.) (emphasis added). With material terms impenetrably vague, there is no enforceable contract, and thus no breach of contract claim.

The traditional discretion allocated to universities to manage their own affairs also supports dismissal of the breach of contract claim. Courts should be hesitant to interfere in issues between universities and their employees, particularly those issues regarding employment, promotion or retention. *Perinpanayagam v Univ. of N.Y. at Buffalo*, 39 AD3d 1220, 1221 (4th Dept 2007) ("It is well settled that the judicial review of a determination of an educational institution with respect to the appointment, promotion, and retention of faculty is limited."); *Maas v Cornell Univ.*, 94 NY2d 87, 93 ("Courts retain a restricted role in dealing with and reviewing controversies involving colleges and universities") (quotation omitted). With this principle in mind, there would need to be a clear contract in order for judicial interference to be

appropriate in these circumstances. The Employment Letter, a fraternal welcoming from Dr. Lieberman, does not have the necessary clarity to be enforceable, let alone a heightened clarity which would be a glaring necessity for courts to interfere. The breach of contract cause of action is necessarily dismissed.

Tortious Interference with a Contract

The Employment Letter is not an enforceable contract. For this reason, Dr. Peterson's tortious interference claim necessarily fails. *Hill v Coates*, 78 AD3d 439, 439 (1st Dept 2010) ("Without demonstrating the existence of a valid and enforceable contract, plaintiff was unable to state a claim for tortious interference with contract."). The tortious interference cause of action is dismissed.

Breach of Fiduciary Duty

Dr. Peterson argues Dr. Lieberman, knowingly and maliciously, breached a fiduciary duty owed to Dr. Peterson. The alleged fiduciary duty is characterized by Dr. Peterson as inherent within Dr. Lieberman's role as Chairman and Director of the Department of Psychiatry. Dr. Peterson also argues it is inappropriate to resolve a breach of fiduciary duty claim at the motion to dismiss stage, given the necessarily fact-specific nature of the inquiry. *See Wiener v Lazard Freres & Co.*, 672 NYS2d 8, 14 (1st Dept 1998). The ongoing conduct between himself and Dr. Lieberman, Dr. Peterson urges, underscores the fiduciary duty owed between the two parties. *See Id.* (classifying fiduciary duty question as an inquiry into "ongoing conduct").

Defendant argues that there is no fiduciary duty inherent within the chairman-professor, employee-employer relationship between Drs. Lieberman and Peterson. There is ample case law supporting this position. *Risley v Rubin*, 272 AD2d 198, 199, 708 NYS2d 377 (1st Dept 2000) ("the mere fact that [defendant] was plaintiff's chairman at the university did not give rise to a

fiduciary relationship between [defendant] and plaintiff.”); see *Maas v. Cornell Univ.*, 245 AD2d 728, 731 (3d Dept 1997) (noting no fiduciary duty created by employment relationship between educational institution and tenured employee); *Schenkman v N.Y. Coll. Of Health Professionals*, 29 AD3d 671, 672 (2d Dept 2006) (denying the existence of a fiduciary relationship between university employees and the University/chairman).

Despite this precedent, Dr. Peterson stresses the inquiry must be fact specific and cannot be dismissed at this stage. However, he alleges nothing separate and distinct from his employee-employer relationship with Dr. Lieberman which would lead to a fiduciary duty. All of Dr. Peterson’s allegations inherently derive from his and Dr. Lieberman’s professional relationship, as he admits. Compl. ¶ 120. Merely alleging the particular manner in which Dr. Lieberman affected Dr. Peterson’s career in his capacity as Chairman does not create a fiduciary duty when courts have held, time and again, relationships such as these do not create a fiduciary duty. Therefore the cause of action for breach of fiduciary duty is dismissed.

Aiding and Abetting Breach of Fiduciary Duty

Given that Dr. Lieberman did not breach a fiduciary duty to Dr. Peterson, the aiding and abetting cause of action against Dr. Strauss is necessarily dismissed.

Fraudulent Inducement

To state a cause of action for fraud in the inducement, a plaintiff must allege (1) a misrepresentation of fact; (2) which was false and known to be false by defendant; (3) made for the purpose of inducing the other party to rely upon it; (4) as well as justifiable reliance of the other party on the misrepresentation or material omission; and (5) injury caused as a result of that reliance. *Orchid Constr. Corp v Gottbetter*, 89 AD3d 708 (2nd Dept 2011). There also may

be fraud through omission, but in order to be actionable an omission requires a duty to disclose *Cong. Fin. Corp. v John Morrell & Co.*, 790 F Supp 459, 472 (SDNY 1992).

Dr. Peterson argues Dr. Lieberman's promises to him, knowingly false at the time spoken, support a viable fraud cause of action. In support Dr. Peterson relies on *Sabo v Delman*, 3 NY2d 155, 160 (1957) (internal citations omitted) ("[I]f a promise was actually made with a preconceived and undisclosed intention of not performing it, it constitutes a misrepresentation of 'a material existing fact' upon which an action for recession [based on fraudulent inducement] may be predicated."). Dr. Peterson alleges Dr. Lieberman made affirmative promises of support and control to him, knowing he did not intend to honor these promises. This, Dr. Peterson argues, is a misrepresentation of present fact, distinct from a misrepresentation of future intent to perform, which is not actionable. See *First Bank of Americas v Motor Car Funding, Inc.*, 257 AD2d 287, 292 (1st Dept 1999). Dr. Lieberman knew Dr. Peterson would justifiably rely on these misrepresentations, and Dr. Peterson only accepted the promotion based on these misrepresentations. Finally, if the Employment Letter is not a binding contract, Dr. Peterson argues, the Letter becomes a tool in which Dr. Lieberman executed the fraudulent inducement.

Defendants argue "when a party asserts fraudulent inducement to an employment agreement, he must show: (1) that the alleged inducing misrepresentation was collateral to the agreement; and (2) was not inconsistent with the agreement." *Rehman v State Univ. of N.Y. at Stony Brook*, 596 F Supp 2d 643, 659 (EDNY 2009) (citing *Naccarato v Commercial Capital Corp.*, 19 Misc 3d 1109(a), 2008 WL 795774, at *5 (Super Ct, NY County 2008)). Citing *Rehman*, defendants urge that the allegations offered by Mr. Peterson are promissory statements as to what will be done in the future, which cannot support a fraudulent inducement claim. 596 F Supp 2d at 659; see *WIT Holding Corp. v Klein*, 282 AD2d 527, 528 (2001).

Dr. Lieberman's allegations are non-actionable future promises, as opposed to misrepresentations of present fact. In *Sabo*, the defendant promised to help finance the manufacture of a particular machine for the plaintiff, while knowing his lone goal was defraud the plaintiff's interest in said machine. 3 NY2d at 158-59. Other surviving fraudulent inducement claims similarly focus on specific events or conditions, such as defendants claiming market conditions for a particular type of debt instrument to induce agreement. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v Wise Metals Group, LLC*, 19 AD3d 273, 275 (1st Dept 2005). This is another example of "[a]n expression or prediction as to some future event, known by the author to be false or made despite the anticipation that the event will not occur, [that] is deemed a statement of a material existing fact, sufficient to support a fraud action." *Id.* (quotations omitted). In contrast, courts have found more general promises as non-actionable future promises. *Compare, Rehman*, 596 F Supp 2d at 647 (holding promises from defendant to "fast-track" plaintiff to a tenured position as well as provide him "sufficient non-clinical time to pursue research activities", are non-actionable future promises.), with *Smalley v Dreyfus Corp*, 10 NY3d 55, (2008) (identifying a false assertion of a large secured client to induce employment as a misrepresentation of present fact, and therefore a basis for a fraudulent inducement claim) (citing *Stewart v Jackson & Nash*, 976 F2d 86 (2d Cir 1992)).

Dr. Peterson's claims, in degree of specificity, mirror the promises from *Rehman*. Dr. Peterson alleges Dr. Lieberman reneged on his "promise[] [that he would] support Dr. Peterson and his faculty and staff in effecting the meaningful advancements Dr. Peterson was poised to make." Compl. ¶ 89. There is no specific task or condition promised. He also alleges Dr. Lieberman failed to support him by not "providing [Dr. Peterson] with the necessary resources to support [him] . . . [and] facilitate[e] [his] own career development", despite

promising to do so in both the letter and “prior discussions.” Again, in this instance, there is no specific misrepresentation of present fact alleged. These promises, while important to both sides, on their own consist of nothing more than “defendants’ hopes for the future”, and thus cannot support a fraud claim. *Quasha v American Natural Beverage Corp.*, 171 AD2d 537, 537 (1st Dept 1991) *see also Montchal v Northeast Sav. Bank*, 243 AD2d 452, 453 (1997) (noting “vague and speculative assurances” by the defendant will not support a fraudulent inducement claim).

There are specific clauses within the Employment Letter which rise to the required level of specificity to sustain a cause of action for fraudulent inducement. *E.g.* Employment Letter at 3 (“In addition, the Ruane chair, currently occupied by Tim Walsh, will revert back to child after we have established a new chair in eating disorders to support him. At the same time the department is giving \$346,000 to the child division. . . .”). However, Dr. Peterson does not allege that he justifiably relied on these promises, or other more specific promises from the Employment Letter. It was not a justifiable reliance on the restoration of the Ruane chair which caused Dr. Peterson to accept the promotions. Rather, it was the general offers of “support” in helping Dr. Peterson “effect[] meaningful advancements” which, according to Dr. Peterson, induced his acceptance. Compl. ¶ 89-91. Without justifiable reliance, these promises also cannot support fraudulent inducement claim.

Finally, Dr. Peterson urges the importance of the non-disclosure of the Department’s yearly deficit. However, this is not a misrepresentation but a failure to disclose, which requires a duty to disclose in order to be actionable. *John Morrell & Co.*, 790 F Supp at 472. Dr. Peterson does not allege such a duty, let alone a breach of said duty.

With no allegations of justifiable reliance on misrepresentations of present fact, Dr. Peterson fails to state a claim for fraudulent inducement. The cause of action is thus dismissed.

Conclusion

Accordingly, it is

ORDERED that defendants' motion to dismiss is granted in full, and plaintiff is granted leave to replead his complaint.

Dated: July 3, 2013

ENTER:



J.S.C. MELVIN L. SCHWEITZER