

This 30th day of January, 2015, upon consideration of the parties' cross-motions *in limine*, it appears to the Court that:

1. Plaintiff Michael Levine ("Levine") brought this claim for promissory estoppel against Defendants Firestone Hotel Group, Inc. ("Firestone"), David Grimaldi ("Grimaldi"), Delaware Hotel Associates, L.P. ("DHA") and Minmetals, Inc. ("Minmetals") alleging that Grimaldi, acting on behalf of all defendants, promised Levine a position as Director of Sales and Marketing ("DOSM") at the Crowne Plaza Hotel ("Hotel") in Claymont, Delaware.¹ Levine alleges that he relied on that promise to his detriment when he resigned his position with Pyramid Hotel Group ("Pyramid"), owner of another hotel where he was employed, only to learn that the defendants were not going to fulfill their promise of employment.² Defendants deny that any final employment agreement was reached and deny that Levine is entitled relief.

2. The parties have requested a pre-trial ruling from the Court, via cross-motions *in limine*, as to the appropriate measure of damages should Levine prevail on the merits. Defendants argue that Levine's damages are limited to approximately four weeks of pay since Firestone (the entity which managed the hotel and Levine's prospective employer) was terminated along with all of its employees on February 12, 2012, four weeks after Levine's purported starting date

¹ Compl. D.I. 1, ¶ 27.

² *Id.* at ¶¶ 21-25, 29.

of January 16th.³ Levine maintains that the proper measure of damages is the extent to which he was injured due to resigning from his previous employment, including lost wages and other damages.⁴

3. The defendants all filled different roles with the hotel. Firestone managed the hotel.⁵ DHA owned the hotel.⁶ Minmetals owned DHA.⁷ Grimaldi was the Managing Director of DHA, President of Firestone and Managing Director of Minmetals U.S. Real Estate Investment Group.⁸

4. In early September 2011, a representative of Firestone contacted Levine about a job opportunity at the hotel.⁹ Ultimately, after a series of interviews and meetings with various individuals, including Grimaldi, Firestone tendered an offer letter to Levine to become DOSM at the hotel.¹⁰ On December 19, 2011, Levine signed the offer letter to become DOSM as well as a non-competition agreement, and began performing work for the defendants.¹¹ Levine then submitted his resignation to Pyramid on December 27, 2011, effective January 13, 2012,

³ Defendants' Pre-Trial Motion Respecting Damages (Defs.' Mot. *in Limine*), D.I. 58, ¶ 2.

⁴ Plaintiff's Motion *in Limine* to Preclude Defendants' Testimony or Argument That Plaintiff's Damages Are Limited to the Time Period Firestone Managed the Hotel and/or Defendants Could Have Terminated His Employment at Any Time Due to the Employment at Will Doctrine (Pl.'s Mot. *in Limine*), D.I. 59, ¶¶ 3,4.

⁵ Compl., D.I. 1, ¶¶ 2, 7-11.

⁶ *Id.* at ¶ 3.

⁷ *Id.* at ¶ 4.

⁸ *Id.* at ¶ 5.

⁹ Op. Br. in Support of Pl.'s Mot. for Summary Judgment, D.I. 44 at 2,3.

¹⁰ *Id.* at ¶ 2.

¹¹ Compl., D.I. 1, ¶ 12.

anticipating a starting date with the hotel of January 16th.¹² What followed and why is a matter of dispute, but the end result was that Levine was not allowed to start work at the hotel and was unable to return to Pyramid.¹³ As of the date of the filing of the Complaint, Levine had been unable to secure a position commensurate with his experience and convenient to his residence.¹⁴

5. On February 12, 2012, Firestone's management contract was terminated, causing all of Firestone's employees to be terminated on that date as well.¹⁵ According to defendants, Levine understood that he would be working for Firestone as an at-will employee.¹⁶ In the defendants' view, Levine's status as an at-will employee of Firestone, coupled with the fact that all of Firestone's employees were terminated on February 12th, limits Levine's potential recovery to the period from January 16th to February 12th.¹⁷

6. Levine argues that the proper measure of damages in a promissory estoppel case is the extent to which a plaintiff is injured.¹⁸ Here, Levine's injuries were sustained when he resigned his employment with Pyramid based upon the unfulfilled promise of employment at the hotel with Firestone, resulting in lost

¹² *Id.* at ¶¶ 15, 17.

¹³ *Id.* at ¶¶ 19, 23.

¹⁴ *Id.* at ¶ 23.

¹⁵ Defs.' Mot. *in Limine* at ¶ 4.

¹⁶ *Id.* at ¶ 5 (citing Levine Dep., Exhibit B to Defendant's Motion for Summary Judgment, at p. 138, lines 14-17 ("I was being hired by Firestone, so, the intention was to work for Firestone. So, if Firestone were no longer – Firestone was the entity that I was taking the risk on.")).

¹⁷ *Id.* at ¶¶ 4,5.

¹⁸ Pl's Mot. *in Limine* at ¶ 2.

wages and other damages.¹⁹ He considers the fact that Firestone ceased managing the hotel irrelevant, because he suffered lost wages whether or not Firestone managed the hotel due to his resignation from Pyramid.²⁰ Thus, Levine claims that he is entitled wages lost as a result of his induced resignation from Pyramid even after Firestone was terminated.²¹ Further, he contends that had he been employed by Firestone, it is mere speculation that he would have lost his job when Firestone was terminated, since it was entirely possible that the new management company would have retained him if he was already in place and working.²²

7. Defendants point out that Levine knew that he was to be an at-will employee of Firestone.²³ In that capacity, Levine understood, “In the event that Firestone is no longer managing the property that means there is a strong possibility that I will be out of a job.”²⁴ Defendants argue that Levine also understood that he was taking a “risk” with Firestone, citing Levine’s own deposition testimony, “I was being hired by Firestone, so, the intention was to work for Firestone. So, if Firestone were no longer – Firestone was the entity that I was taking the risk on.”²⁵ Defendants argue that it is beyond dispute that Levine

¹⁹ *Id.*

²⁰ *Id.* at ¶ 3.

²¹ *Id.*

²² *Id.* at ¶ 4.

²³ Defs.’ Mot. *in Limine* at ¶ 5.

²⁴ *Id.*, quoting Ex. A (email dated January 13, 2012 from Levine to Grimaldi).

²⁵ *Id.*, citing Levine Dep., Exhibit B to Defendants’ Motion for Summary Judgment, at p. 138, lines 14-17.

would have lost his job along with all of the other Firestone employees when Firestone was terminated.²⁶ Defendants view Levine's claim for lost wages beyond the four weeks Firestone managed the hotel after January 16th as seeking a windfall to which is not entitled under the law.²⁷

8. Under Delaware law, to prevail on a claim for promissory estoppel a plaintiff must prove that (1) a promise was made; (2) it was the reasonable expectation of the promisor to induce action or forbearance on the part of the promisee; (3) the promisee reasonably relied on the promise and acted to his detriment; and (4) that such a promise is binding because injustice will be avoided only by enforcement of the promise.²⁸ It is the fourth element – enforcing the promise in order to avoid injustice – on which the Court must focus in order to assay damages. At first blush, the phrase “enforcement of the promise” would seem to simply mean specific performance of the contract or expectation damages. However, as then Vice Chancellor (now Chief Justice) Strine wrote in his exegesis on promissory estoppel in *Ramone v. Lang*,²⁹ “...the words ‘enforcement of a promise’ have not been read as referring solely to specific performance or expectation damages but to an appropriate, case specific remedy for the plaintiff,

²⁶ *Id.* at ¶¶ 4,6.

²⁷ *Id.* at ¶ 2.

²⁸ *Lord v. Souder*, 748 A.2d 393, 398-99 (Del.2000).

²⁹ 2006 WL 4762877 (Del. Ch., Apr. 3, 2006).

fashioned by the court using all of its powers from equity and the common law.”³⁰

The interests of justice allow a court to award damages based on either expectation or reliance interests.³¹ Regardless of the appropriate measure of damages, ““Unless there is unjust enrichment of the promisor, damages should not put the promisee in a better position than performance of the promise would have put him.””³²

9. Taking the above considerations into account, it is clear to the Court that, should Levine prevail on his promissory estoppel claim, his damages are limited to the period for which Firestone managed the hotel. To the extent that the measure of his damages is expectation damages, Levine’s expectation was to be employed by Firestone, but only for as long as Firestone managed the hotel. To the extent that the measure of his damages is reliance damages, what Levine relied upon when he resigned his position with Pyramid was a promise that he would be able to take the risk of employment with Firestone, but, again, for only as long as Firestone managed the hotel. To hold otherwise would put Levine in a better position than he would have been if the promise had been fulfilled. The role of damages in a promissory estoppel case is to prevent injustice, not to provide risk insurance.

³⁰ *Id.*, at *16, citing CORBIN ON CONTRACTS § 8.9, at 33.

³¹ *Id.*, citing RESTATEMENT (SECOND) OF CONTRACTS § 90(1) (1981).

³² *Id.*, quoting RESTATEMENT (SECOND) OF CONTRACTS § 90, cmt. d.

10. Finally, Levine contends that it is impermissible speculation to assume that he would have been discharged along with all of Firestone's other employees when they were dismissed on February 12, 2012. On the contrary, the Court believes that what is speculative is the notion that Levine alone would have remained, especially in light of the absence of any evidence to that effect.

11. Accordingly, Plaintiff's Motion *in Limine* is **DENIED**. Defendants' Motion *in Limine* is **GRANTED**.

IT IS SO ORDERED.

/s/ Ferris W. Wharton, Judge