

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

|                               |   |                     |
|-------------------------------|---|---------------------|
| JOHN PYM, M.D.,               | : | DECEMBER TERM, 2003 |
|                               | : |                     |
| Plaintiff,                    | : | No. 003577          |
|                               | : |                     |
| v.                            | : | COMMERCE PROGRAM    |
|                               | : |                     |
| EINSTEIN PRACTICE PLAN, INC., | : | Control No. 050861  |
|                               | : |                     |
| Defendant.                    | : |                     |

**ORDER**

**AND NOW** this 21<sup>ST</sup> day of July, 2004, upon consideration of defendant's Preliminary Objections to the Amended Complaint, plaintiff's response thereto, the memoranda in support and opposition, and all other matters of record, and in accordance with the memorandum opinion filed contemporaneously herewith, it is hereby **ORDERED** that said Objections are **SUSTAINED** in part and that Counts II and III of the Amended Complaint are dismissed.

The remaining Preliminary Objections are **OVERRULED** and defendant is directed to file an Answer to the remaining Count of the Amended Complaint within twenty (20) days of the date of entry of this Order.

**BY THE COURT:**

\_\_\_\_\_  
**C. DARNELL JONES, II, J.**

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|                               | : |                     |
| Defendant.                    | : |                     |

**MEMORANDUM OPINION**

The court hereby considers the Preliminary Objections of defendant, Einstein Practice Plan, Inc. (“EPP”) to the Amended Complaint of plaintiff, Dr. Pym, who was formerly employed by EPP pursuant to a written employment contract (the “Employment Agreement”). *See* Amended Complaint, Ex. A. In this action, Dr. Pym claims that he was improperly terminated by EPP and that EPP was legally obligated either to continue to employ him pursuant to the Employment Agreement or to negotiate and enter into a new employment contract with him. Dr. Pym has asserted claims against EPP for breach of contract, promissory estoppel, and breach of the duty of good faith and fair dealing. EPP has filed Preliminary Objections to all such claims.

**I. EPP’s Preliminary Objection to the Claim for Breach of Contract Must Be Sustained.**

Dr. Pym claims that EPP breached the Employment Agreement between them by improperly terminating him. EPP objects that the Amended Complaint and the exhibits thereto show that EPP did not breach the Employment Agreement.

The Employment Agreement provides that “[e]ither party may terminate this Agreement or any renewal hereof by providing the other with one hundred eighty (180) days prior written notice.” Amended Complaint, Ex. A. On August 23, 2002, EPP informed Dr. Pym by letter that

your Employment Agreement made as of March 9, 1999 will not be renewed under its current terms. It is EPP, Inc.'s intent to renegotiate a new contract with you. If we cannot come to mutual agreement regarding terms and conditions, your current contract will terminate on February 28, 2003.

*Id.*, Ex. B (the "August 23, 2002 Letter").

EPP sent this letter to Dr. Pym over 180 days before the intended termination date set forth in the letter. Furthermore, the letter makes sufficiently clear EPP's intention not to continue the parties' relationship under the existing Employment Agreement. Since the August 23, 2002 Letter satisfies the termination notice requirements of the Employment Agreement, EPP has not breached its contract with Dr. Pym by refusing to employ him beyond the termination date set forth in that letter. Therefore, Dr. Pym's breach of contract claim must be dismissed.

## **II. EPP's Preliminary Objection to the Claim for Breach of Good Faith and Fair Dealing Must Be Sustained.**

Dr. Pym entitles his third Count "Breach of Good Faith and Fair Dealing," to which EPP properly objects.

[T]he implied covenant of good faith does not allow for a claim separate and distinct from a breach of contract claim. Rather, a claim arising from a breach of the covenant of good faith must be prosecuted as a breach of contract claim, as the covenant does nothing more than imply certain obligations into the contract itself.

JHE, Inc. v. SEPTA, 2002 WL 1018941 \*5 (Phila. Co. May 17, 2002). Since Dr. Pym's breach of contract claim fails, as set forth above, his related claim for breach of the duty of good faith and fair dealing also fails.

In order to save this claim, Dr. Pym argues that it is actually a claim for breach of the duty to negotiate in good faith. This court will not dismiss a valid claim simply because it is given the wrong name in the complaint. *See Gavula v. ARA Services, Inc.*, 756 A.2d 17, 22 (Pa. Super. 2000). However, even if viewed as a claim for breach of the duty to negotiate, Count III does not contain a viable claim.

“Without determining whether a cause of action for breach of a duty to negotiate in good faith exists in Pennsylvania, it is evident that the facts as pleaded in this matter do not give rise to such a cause of action.” Jenkins v. County of Schuylkill, 441 Pa. Super. 642, 652, 658 A.2d 380, 385 (1995). A “cause of action for breach of a duty to negotiate in good faith [does not exist] where no specific terms were agreed upon and the language of the letter did not reveal that the parties intended to be bound by any terms of the original [contract].” Caplen v. Burcik, 2000 WL 33711068 \*7 (Phila. CCP Aug. 4, 2000), *remand for recon. on other grounds*, \_\_\_ Pa. \_\_\_, 847 A.2d 56 (2004).

In this case, “the purported agreement to negotiate in good faith [i.e., the April 23, 2002 Letter] did not evidence a mutual intent to be bound to specific terms.” *Id.* at \*8. In fact, the letter makes clear that the parties had not, and might never, “come to mutual agreement regarding terms and conditions.” Amended Complaint, Ex. B. Therefore, Count III of Dr. Pym’s Amended Complaint does not set forth a valid claim for breach of the duty to negotiate in good faith, and it must be dismissed.

### **III. EPP’s Preliminary Objection to the Claim for Promissory Estoppel Must Be Overruled.**

Dr. Pym asserts a claim against EPP for promissory estoppel, to which claim EPP also objects.

In order to maintain an action in promissory estoppel, [Dr. Pym] must show that 1) [EPP] made a promise that [it] should have reasonably expected to induce action or forbearance on the part of [Dr. Pym]; 2) [Dr. Pym] actually took action or refrained from taking action in reliance on the promise; and 3) injustice can be avoided only by enforcing the promise.

Crouse v. Cyclops Industries, 560 Pa. 394, 403, 745 A.2d 606, 611 (2000).

In this case, Dr. Pym alleges that EPP, in the August 23, 2002 letter and in subsequent oral communications, repeatedly promised that it would negotiate a new

contract of employment with him. Amended Complaint, ¶¶ 16-18. Dr. Pym also alleges that he forbore from seeking other employment in reliance upon such promises and that, as a result, he became unemployed. *Id.* at ¶¶ 19, 25-27. Such allegations satisfy the pleading requirements for a claim of promissory estoppel, so Dr. Pym may proceed against EPP on this claim.<sup>1</sup>

### **CONCLUSION**

For all the foregoing reasons, defendant's Preliminary Objections to plaintiff's Amended Complaint are sustained in part and overruled in part.

**BY THE COURT:**

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**C. DARNELL JONES, II, J.**

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<sup>1</sup> The questions of whether EPP did make such promises and whether it was reasonable for Dr. Pym to expect that an offer would be forthcoming from EPP are not ones that the court can resolve at this stage, and they may ultimately have to be answered by the jury.