

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JOHN SUPRANOVICH,)
)
 Plaintiff)
 v.) Civ. No. 96-204-B
)
 ST. JOSEPH HEALTHCARE)
 FOUNDATION, ET AL.)
)
 Defendant)

ORDER AND MEMORANDUM OF DECISION

BRODY, District Judge

Plaintiff, John Supranovich, sues Defendants, St. Joseph Healthcare Foundation (the Hospital) and Sister Mary Norberta, Chief Executive Officer and President of St. Joseph Healthcare Foundation, for damages resulting from Defendants' termination of Plaintiff's employment.¹ Defendants filed a Motion to Dismiss Counts V (breach of covenant of good faith and fair dealing), VII (negligent infliction of emotional distress), and VIII (intentional infliction of emotional distress) for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Defendants also filed a Motion to Dismiss Count VI (misrepresentation) for allegedly being duplicative of Count III (fraud). In his response, Plaintiff agreed to dismiss Count V.

¹ In a ten-count Complaint, Plaintiff alleges the following: (Count I) Defendants violated the prohibitions against age discrimination codified in the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, and the Maine Human Rights Act, 5 M.R.S.A. §§ 4551-4632; (Count II) Defendants violated the prohibitions against gender discrimination codified in Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e to 2000e-17, and the Maine Human Rights Act, 5 M.R.S.A. § 4551-4632; (Count III) fraud; (Count IV) unjust enrichment; (Count V) breach of covenant of good faith and fair dealing; (Count VI) misrepresentation; (Count VII) negligent infliction of emotional distress; (Count VIII) intentional infliction of emotional distress; (Count IX) breach of contract; (Count X) promissory estoppel; and (Count XI) punitive damages.

Accordingly, the Court dismisses Count V of Plaintiff's Complaint. For the reasons set forth below, the Court also grants Defendants' Motion to Dismiss Counts VII and VIII, but denies the Motion as to Count VI.

I. MOTION TO DISMISS

In a motion to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil Procedure the Court takes all of the plaintiff's factual averments as true and indulges every reasonable inference in the plaintiff's favor. Talbott v. C.R. Bard, Inc., 63 F.3d 25, 27 (1st Cir. 1995). The Court may grant a motion to dismiss "only if it clearly appears, according to the facts alleged, that the plaintiff cannot recover on any viable theory." Correa-Martinez v. Arrillaga-Belendez, 903 F.2d 49, 52 (1st Cir. 1990).

II. BACKGROUND

Supranovich, a fifty-one year old man, worked at the Hospital from May 30, 1988, to October 1, 1994, as its Vice President of Public Affairs and Development. During the time Supranovich worked at the Hospital, Sister Norberta assured him that his continued employment was secure. In reliance on Sister Norberta's assurances, Supranovich bought a new home and incurred additional debt.

In 1990, the Hospital ceased paying Supranovich and the other officers at the Hospital an annual bonus. Instead, it asked Supranovich and the other officers to enter into employment agreements that provided for payment upon severance from employment. Although the Hospital stopped paying Supranovich an annual bonus, it never executed the employment agreement providing for payment upon severance from employment.

On August 30, 1994, Sister Norberta told Supranovich that his position with the Hospital

would be eliminated as of October 1, 1994, and that his employment with the Hospital would be terminated on that date. Defendants informed Supranovich that the reason for his termination was that the Hospital needed to reduce its expenses. The Hospital believed the best way to achieve this goal was to eliminate management positions such as the one held by Supranovich. The Hospital said that his termination was not based on his job performance.

Following Supranovich's termination, Sister Norberta reportedly indicated that Supranovich could have continued working at the Hospital had he accepted a transfer or demotion to a lesser position. Although Sister Norberta discussed such a transfer with Supranovich in early 1994, she never in fact specifically offered him the opportunity to transfer. They never discussed the possibility of a transfer again. On or about December 5, 1994, the Hospital hired a thirty-three year old woman to serve as Director of Public Affairs and Development, even though she had significantly less experience in public affairs and development than Supranovich. The Hospital had not posted an advertisement for this new position.

On July 26, 1995, Supranovich filed complaints for gender and age discrimination with the Maine Human Rights Commission and the United States Equal Employment Opportunity Commission. Both commissions issued "Right to Sue" notices.

III. MISREPRESENTATION

Defendants contend that Count VI states a claim for intentional, rather than negligent, misrepresentation. Defendants move to dismiss Count VI because they allege intentional misrepresentation is identical to fraud, which Supranovich claims in Count III. Supranovich argues that Count VI states a claim based on negligent misrepresentation. Without resolving the

issue as to whether or not intentional misrepresentation is identical to fraud, the Court holds that, for purposes of this motion to dismiss, Supranovich alleges enough facts in his Complaint to state a claim for negligent misrepresentation.² A claim for negligent misrepresentation differs from a claim for fraud. The Court denies Defendants' Motion to Dismiss Count VI.

IV. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Under Maine law, a defendant may be liable for intentional infliction of emotional distress if his conduct was “so extreme and outrageous as to exceed all possible bounds of decency.” Dempsey v. National Enquirer, 702 F. Supp. 927, 930 (D. Me. 1988) (quoting Gurski v. Culpovich, 540 A.2d 764, 766-67 (Me. 1988)). Moreover, “[i]t is for the Court to determine, in the first instance whether the Defendant’s conduct may reasonably be regarded as so extreme and outrageous [as] to permit recovery, or whether it is necessarily so.” Id. (quoting Rubin v. Matthews, 503 A.2d 694, 699 (Me. 1986)).

Defendants move to dismiss Supranovich’s claim for intentional infliction of emotional distress. The Court is persuaded that there is no basis for a finding that Defendants’ alleged conduct could be found to be “so extreme and outrageous as to exceed all possible bounds of decency.” Id. (quoting Gurski v. Culpovich, 540 A.2d 764, 766-67 (Me. 1988)). The Court grants Defendants’ Motion to Dismiss Count VIII.

V. NEGLIGENCE INFLICTION OF EMOTIONAL DISTRESS

A defendant will be liable for negligent infliction of emotional distress under Maine law

² “A party will be liable for negligent misrepresentation if in the course of his business he supplies false information for the guidance of others in their business transactions, and the other party justifiably relies upon it to his pecuniary detriment.” Guiggey v. Bombardier, 615 A.2d 1169, 1173 (Me. 1992).

if (1) he were negligent, (2) the plaintiff suffered emotional distress that was a reasonably foreseeable result of the defendant's conduct, and (3) the plaintiff suffered severe emotional distress as a result of the defendant's negligence. See Bolton v. Caine, 584 A.2d 615, 617-18 (Me. 1990). Defendants contend that any emotional distress Supranovich may have suffered was not a foreseeable result of Defendants' alleged behavior. The Court does not address this argument. Instead, the Court holds that Supranovich has not alleged enough facts from which a reasonable jury could make a finding that Supranovich suffered severe emotional distress. See Gammon v. Osteopathic Hospital of Maine, Inc., 534 A.2d 1282, 1285 n.8 (Me. 1987) (defining serious mental distress as being "where a reasonable person, normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the event.") (quoting Rowe v. Bennett, 514 A.2d 802, 805 (Me. 1986)). The Court grants Defendants' Motion to Dismiss Count VII.

V. CONCLUSION

The Court grants Defendants' Motion to Dismiss as to Counts V, VII, and VIII, but denies the Motion as to Count VI.

SO ORDERED.

MORTON A. BRODY
United States District Judge

Dated this 30th day of December, 1996.