

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

OTIS AND FIONA OLMAN,

Plaintiffs,

v.

Case No. 8-16-CV-00637

FULL MOON SPORTS, INC.,
& BRUCE BELCHER

Defendants.

DEFENDANT'S MOTION TO DISMISS COUNT FIVE
FOR FAILURE TO STATE A CLAIM
AND SUPPORTING MEMORANDUM

Defendant Full Moon Sports, Inc., asks that this Court dismiss Count Five of plaintiff Otis Olman's complaint for failure to state a claim upon which relief can be granted. In Count Five, Olman alleges he was the victim of fraud when he justifiably relied on an oral promise of lifetime employment at the time he renewed his employment relationship with Full Moon. Yet Olman admits in his complaint that he signed a written contract with Full Moon in which he specifically agreed to a *four-year* term. Based on this admission, Olman's fraud count fails as a matter of Florida law. Florida courts consistently hold that a person alleging fraud cannot justifiably rely on an oral promise that is contradicted by the express terms of a contract he enters into. For this reason, the Court should dismiss Count Five of Olman's complaint under Rule 12(b)(6).

* * *

Count Five of Olman's complaint alleges he was defrauded when Full Moon's regional manager "promised Olman he could remain as manager of the Jacksonville store until he retired." Complaint ¶ 47. Olman also alleges he "reasonably relied" on this promise in renewing his employment with Full Moon and declining the opportunity to become partner in another business. *Id.* ¶ 50.

In order to state a claim for fraud, a plaintiff must allege (1) a false statement of material fact, (2) made by a person who knew or should have known the statement was false, (3) with the intent that the plaintiff rely on the false statement, and (4) on which the plaintiff justifiably or reasonably relies to his detriment. See *Taylor Woodrow Homes Florida, Inc. v. 4/46-A Corporation*, 850 So. Ed 536 (Fla. 5th DCA 2003). A long line of Florida decisions affirms that a party alleging fraud cannot "reasonably rely" on a promise that directly contradicts the term of a contract entered into after the alleged fraudulent statement is made. As one Florida court has observed, "a party may not recover in fraud for an alleged false statement when disclosure of the truth is subsequently revealed in a written agreement between the parties." *Taylor Woodrow, supra*. Likewise, in *Wilson v. Equitable Life Assurance Society of the*

United States the court affirmed that "a party cannot maintain an action in fraud if the alleged misrepresentation is explicitly contradictory to a specific and unambiguous provision in a written contract." 622 So. 2d 25, 28 (Fla. 2d DCA 1993).

The federal district court's decision in *Eclipse Medical, Inc. v. American Hydro-Surgical Instruments, Inc.*, 262 F. Supp. 2d 1334 (S.D. Fla. 1999) is directly on point. In *Eclipse*, the plaintiffs alleged they were defrauded when the defendant "gave false assurances that [it] intended and agreed to a long-term relationship," but terminated their distributorship upon expiration of the written contract term. *Id.* at 1342. The court rejected the plaintiff's fraud claim as a matter of law because "the clear and unambiguous language of the Agreement itself specifically contradicts [the] alleged misstatements" As the court commented, "Florida courts have made clear that no action for fraud in the inducement will lie when the alleged fraud contradicts the subsequent written contract." *Id.*; see also *Pettinelli v. Danzig*, 722 F.2d 706, 709-10 (11th Cir. 1984) (reliance was unjustified when alleged misrepresentations were contradicted by subsequent contract terms); *Barnes v. Burger King Corp.*, 932 F. Supp. 1420, 1428 (S.D. Fla. 1996) (reliance on promises contradicted by the terms of a franchise agreement was "unreasonable as a matter of law").

Therefore, Count Five of Olman's complaint fails to state a claim of fraud under Florida law because his complaint admits he unreasonably relied on a promise that was clearly and unambiguously contradicted by the employment contract he signed. Count Five of the complaint should be dismissed.

Respectfully submitted,

Harrison Ames, Esq.

Lord, Howe & Mercy, P.A.
Counsel for Full Moon Sports, Inc.
[Further detail omitted]

[Certificate of Service omitted]