

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN SYNESIOU,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	
DESIGNTOMARKET, INC.,	:	NO. 01-5358
MARDI HARRISON, DON BROWN, and	:	
TOM LAWRENCE	:	
	:	
Defendants.	:	

MEMORANDUM and ORDER

YOHN, J.

APRIL ____, 2002

Plaintiff, John Synesiou (“Synesiou”), brings this action against defendants, DesignToMarket (“DTM”), Mardi Harrison (“Harrison”), Don Brown (“Brown”) and Tom Lawrence (“Lawrence”) (collectively, “defendants”), alleging a violation of the Pennsylvania Wage Payment and Collection Law (“WPCL”), 43 P.S. § 260.1 *et. seq.* (Count I), breach of contract against DTM only (Count II), promissory estoppel (Count III), and unjust enrichment (Count IV).

Presently before the court is defendants’ motion to dismiss Counts I, III and IV of plaintiff’s complaint. For the reasons set forth below, I will deny defendants’ motion to dismiss Count I, and I will grant defendants’ motion to dismiss Counts III and IV.

BACKGROUND

In his complaint, Synesiou alleges the following relevant facts. On April, 1, 2001, Synesiou entered an employment agreement with DTM, a corporation with its principal place of business in Warminster, Pennsylvania, and members of DTM's board of directors whereby he was to serve as president and CEO for a one year term, to be automatically extended at the expiration of each term. Compl. ¶¶ 9, 10. As part of his employment, Synesiou was required to relocate from Minneapolis to a city with a larger concentration of venture capital firms. Compl. ¶ 23. As a result, Synesiou sold his house in Minneapolis and moved to San Diego. Compl. ¶ 24. The employment agreement, which was to be governed by Pennsylvania law, provided that DTM would cover Synesiou's relocation costs. Compl. ¶¶ 14, 21. The employment agreement also set forth the amount of Synesiou's compensation and a schedule for when this compensation would be paid. Compl. ¶¶ 11-13.

On August 7, 2001, less than 5 months into his employment, Synesiou was terminated without cause. Compl. ¶ 26. Synesiou did not receive advance notice of his termination, nor did he receive the severance or relocation costs to which he was entitled under the employment agreement. Compl. ¶¶ 31-33. As a result, on October 22, 2001, Synesiou filed the instant action.

STANDARD of REVIEW

In ruling on a motion to dismiss for failure to state a claim upon which relief may be granted, the court must accept as true all well-pleaded allegations of fact, and any reasonable inferences that may be drawn therefrom, in the plaintiff's complaint and must determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." *Nami v.*

Fauver, 82 F.3d 63, 65 (3d Cir.1996) (citations omitted); *Colburn v. Upper Darby Township*, 838 F.2d 663, 665-66 (3d Cir. 1988), *cert. denied*, 489 U.S. 1065 (1989) (citations omitted).

Although the court must construe the complaint in the light most favorable to the plaintiff, it need not accept as true legal conclusions or unwarranted factual inferences. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Claims should be dismissed under Rule 12(b)(6) only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of [its] claim which would entitle [it] to relief." *Id.*

DISCUSSION

I. Count I: Violation of Wage Payment and Collection Law

In Count I of his complaint, Synesiou alleges that defendants violated Pennsylvania's Wage Payment and Collection Law ("WPCL"), 43 P.S. § 260.1 *et. seq.*, by failing to pay Synesiou the compensation due to him under the employment agreement. Defendants maintain that Synesiou's WPCL claim fails as a matter of law because (1) DTM is not an "employer" within the meaning of the WPCL, and (2) Synesiou, as a resident of California, is not an employee entitled to WPCL protection.

A. DTM is an "employer" as defined by the WPCL

The WPCL defines "employer" as "every person, firm, partnership, association, corporation, receiver or other officer of a court of this Commonwealth and any agent or officer of the above-mentioned classes employing *any person* in this Commonwealth." 43 P.S. § 260.2a (emphasis added). Defendants' contend that DTM is not such an employer, as Synesiou did not

and cannot allege that DTM employs any person in Pennsylvania. This is not so.

First, Synesiou alleges that DTM was an “employer” as defined by the WPCL. Compl. ¶ 41. In ruling on this motion to dismiss, this court must accept Synesiou’s allegation as true unless defendants can definitively show that it is a false statement or an unwarranted factual inference. However, defendants have not provided any reason as to why this court should not believe Synesiou’s contention that DTM is an “employer” as defined by the WPCL.

Second, although the term “employee” is not defined in the WPCL, the Pennsylvania Superior Court has determined that in applying the WPCL, the definitions of employee provided in the Pennsylvania Unemployment Compensation Act (“UCA”), 43 P.S. § 751 *et. seq.*, and the Pennsylvania Worker’s Compensation Act (“WCA”), 77 P.S. § 1 *et. seq.*, are “persuasive.” *Frank Burns, Inc. v. Interdigital Communications Corp.*, 704 A.2d 678, 680 (Pa. Super. 1998). Both the UCA and WCA define employee to include the officers of a corporation. 43 P.S. § 753(l)(1) (The definition of employee includes one employed to perform “service as an officer of a corporation.”); 77 P.S. § 22 (The term employee includes “every executive officer of a corporation elected or appointed in accordance with the charter and by-laws of the corporation.”).¹ In his complaint, Synesiou also alleges that Harrison and Brown, two of DTM’s officers and executives, are residents of Pennsylvania. Compl. ¶¶ 3,4. Given the fact that DTM’s officers and executives may be considered employees of DTM, and two of DTM’s officers reside

¹ Further support that the officers of DTM are employees under the WPCL is found in the Third Circuit case of *Scully v. US Watts, Inc.*, 238 F.3d 497 (3d Cir. 2001). In *Scully*, the Third Circuit allowed a corporation’s president and chief operating officer to bring a claim under the WPCL against his former corporate employer. Because only employees may assert the protections of the WPCL, *Scully* indicates that the Third Circuit considers corporate officers to be employees.

in Pennsylvania, Synesiou's complaint has alleged sufficient facts for this court to find that DTM employs people within this state and is, therefore, an "employer" as defined by WPCL.

B. *Synesiou is an "employee" entitled to the protections of the WPCL*

Defendants argue that even if DTM is an "employer" under the WPCL, Synesiou's WPCL claim must be dismissed, as Synesiou, a nonresident, was not an employee entitled to the protections of the WPCL. Defendants maintain that it is "settled" that a nonresident may not recover for violations of the WPCL. In support of this contention, defendants rely upon *Killian v. McCulloch*, 873 F. Supp. 938 (E.D. Pa. 1995). In *Killian*, the district court held that the WPCL's protections did not extend to employees who were never based in Pennsylvania and who were not residents of Pennsylvania. 873 F. Supp at 942. In arriving at this conclusion, the court found that "while the [WPCL] assuredly has the effect of deterring wrongful behavior on the part of employers, its primary aim is to ensure that those who are employed in Pennsylvania receive compensation for their work." *Id.* Thus, the court found that the legislature's interest in enacting the WPCL was to protect those who work within Pennsylvania, and not those who work outside the state. *Id.*

At the time *Killian* was decided, no Pennsylvania state court had ruled on the issue of whether a nonresident employee may bring suit in Pennsylvania pursuant to the WPCL, and therefore the *Killian* court was forced to predict what Pennsylvania courts would do when faced with this issue. Such predictions are no longer required without the guidance of any Pennsylvania court whatsoever. In January 2000, a Pennsylvania court rejected *Killian's* holding and allowed a nonresident employee to maintain a WPCL claim when his employment agreement

required the use of Pennsylvania law and made Pennsylvania the exclusive forum for employer-employee disputes. *Crites v. Hoogovens Tech. Services, Inc.*, 43 Pa. D. & C. 4th 449 (Pa. Com. Pl. 2000). In *Crites*, the Pennsylvania court considered whether an Ohio resident, whose employment obligation was in Mexico, was able to bring a WPCL claim against his Pennsylvania employer. 43 Pa. D. & C. 4th at 451. The *Crites* court found that applying the *Killian* holding when an employment agreement specified that it was to be governed by Pennsylvania law would bring about “absurd” results. *Id.* at 456-57. If *Killian* applied, the court found that the nonresident employee would be effectively out of court, as he would be unable to bring suit under the WPCL because of his nonresident status and unable to bring the action under another state’s equivalent of the WPCL because of the employment agreement’s choice of Pennsylvania law. *Id.* at 456. This result was inconsistent with the purposes of the WPCL, which the court found to be *both* protection of Pennsylvania employee wages *and* punishment of “wayward employers” who failed to pay its employees’ wages. *Id.* at 455. Accordingly, the Pennsylvania court rejected *Killian* and allowed the nonresident employee to maintain his WPCL claim.

Applying the Pennsylvania precedent of *Crites* to the present action, this court will allow Synesiou’s WPCL claim.² Synesiou is a California resident who was employed by DTM, a

² Defendants argue that the *Crites* precedent is distinguishable from the present action because *Crites* involved an employment agreement with both a choice of law and choice of forum clause. Doc. 10 at 1-2. Defendants maintain that since the employment agreement here does not contain a choice of forum clause, the holding in *Crites* is inapplicable. Contrary to defendants’ belief, the existence of a choice of forum provision was merely incidental to the *Crites* court’s holding. Even if there had not been a choice of forum clause in *Crites* and the nonresident employee was able to sue his employer in a forum other than Pennsylvania, the choice of law clause would have prevented the nonresident employee from suing under another state’s equivalent of the WPCL. The court reasoned that if nonresidents were absolutely barred from bringing WPCL claims, an employer would effectively be able to protect itself against WPCL liability simply by hiring nonresidents and including a Pennsylvania choice of law clause

Pennsylvania corporation, pursuant to an employment agreement that specified that it was governed by Pennsylvania law.³ Compl. ¶ 21. As a result of the choice of law provision, no matter where Synesiou chose to pursue this action against defendants, he was required to bring his statutory claim for wages under the WPCL.⁴ Because the protections of another state's equivalent of the WPCL are unavailable to Synesiou, if he is not afforded the protections of the WPCL, Synesiou will effectively be out of court and DTM will be immune from any statutory liability for its failure to pay the compensation due to him.⁵ This result offends the second purpose behind the enactment of the WPCL as enunciated by the *Crites* court, to punish

in its employment agreements. *Crites*, 43 Pa. D. & C. 4th at 456. It was because of this employers' liability shield created by the Pennsylvania choice of law provision that the *Crites* court allowed the nonresident employee to maintain his WPCL claim.

³ This court has diversity jurisdiction over the present action, and therefore Pennsylvania choice of law rules will apply. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 196 (1941) Because "Pennsylvania courts generally honor the intent of the contracting parties and enforce choice of law provisions in contracts executed by them," this court will honor the choice of law provision and apply Pennsylvania law to the employment agreement at issue. *Kruzits v. Okuma Machine Tool, Inc.*, 40 F.3d 52, 55 (3d Cir. 1994).

⁴ Defendants also argue that the choice of Pennsylvania law provision in the employment agreement does not necessarily mean that the agreement is governed by the WPCL. Doc. 10 at 2. Defendants suggest that the choice of law clause allows them to selectively choose which Pennsylvania employment laws apply to Synesiou's employment agreement. This is a novel interpretation of contractual choice of law provisions for which defendants have not provided any support. Defendants have not explained why the choice of Pennsylvania law provision in the employment agreement means anything other than what it says, namely that the "employment agreement shall be governed by the laws of the Commonwealth of Pennsylvania." Such laws necessarily include the Pennsylvania WCPL.

⁵ The other district court cases cited by defendants to support their position that Synesiou is not entitled to the protections of the WPCL do not involve choice of law provisions. As such, these cases are not analogous to the present action where a choice of law provision governed the employment agreement and required Synesiou's statutory cause of action for wages to be brought under the Pennsylvania WPCL.

recalcitrant employers for failing to pay employee wages. Accordingly, defendants' motion to dismiss Count I of Synesiou's complaint will be denied.

II. Counts III & IV - Promissory Estoppel and Unjust Enrichment

In Counts III and IV of his complaint, Synesiou brings claims of promissory estoppel and unjust enrichment, respectively. Synesiou's promissory estoppel claim is that he was told by defendants that DTM would pay his relocation costs and that he relied on this promise when he sold his home in Minnesota and relocated to San Diego. Compl. ¶¶ 58-61. Synesiou's unjust enrichment claim is that as a result of defendants' wrongful actions, he was damaged and defendants obtained a benefit to which they were not entitled. Compl. ¶¶ 62-65. Defendants argue that because there is a valid and enforceable written employment agreement that governs these matters, Synesiou's claims for promissory estoppel and unjust enrichment must be dismissed.

A cause of action for promissory estoppel arises when a party relies to his detriment on the representations of another party. *Carlson v. Arnot-Ogden Memorial Hospital*, 918 F.2d 411, 416 (3d Cir. 1990); *Thomas v. E.B. Jermyn Lodge No. 2*, 693 A.2d 974, 977 (Pa. Super. 1997). Promissory estoppel applies to enforce a promise that is not supported by consideration, in other words, when there is no binding contract. *Carlson*, 918 F.2d at 416; *Constar, Inc. v. National Distribution Centers, Inc.*, 101 F. Supp.2d 319, 323 (E.D. Pa. 2000). Thus, promissory estoppel has no application when parties have entered into an enforceable agreement. *Carlson*, 918 F.2d at 416. Similarly, a claim of unjust enrichment is defeated by the existence of an enforceable and binding contract. *Schott v. Westinghouse Electric Corp.*, 259 A.2d 443, 448 (Pa. 1969); *see also*

Matter of Penn Center Transp. Co., 831 F.2d 1221, 1230 (3d Cir. 1987) (plaintiff cannot maintain a claim of unjust enrichment when an express contract existed on the same subject). “Under Pennsylvania law, ‘the quasi-contractual doctrine of unjust enrichment is inapplicable when the relationship between the parties is founded on a written agreement or express contract.’” *Hershey Foods Corp. v. Ralph Chapek, Inc.*, 828 F.2d 989, 999 (3d Cir. 1987) (quoting *Schott v. Westinghouse Electric Corp.*, 259 A.2d 443, 448 (Pa. 1969)). This is because the essence of an unjust enrichment claim is that there is no direct relationship between the parties under which the plaintiff may recover. *Rade, v. Transition Software Corp.*, 1998 WL 767455 at * 9 (E.D. Pa. Oct. 30, 1998).

Here, neither party disputes the existence of a valid and enforceable employment agreement nor does either party dispute the fact that the existence of this agreement precludes Synesiou from obtaining relief under a promissory estoppel or unjust enrichment theory.⁶ As a result, Synesiou argues (1) that he is entitled to plead promissory estoppel and unjust enrichment claims in the alternative and (2) that because his promissory estoppel and unjust enrichment claims are based on matters outside the scope of the employment agreement, these claims are not precluded by the existence of this agreement.

Under Fed. R. Civ. P. 8(a), plaintiffs are free to plead alternative theories of relief. However, the fact that the federal rules permit alternative pleading does not mean that alternatively plead claims may not be dismissed if they fail to state a claim. As stated above, the finding of an enforceable contract defeats the validity of promissory estoppel and unjust

⁶ Should defendants later attempt to change their position with reference to the validity of the employment contract, the court will reconsider this issue.

enrichment claims. *Carlson*, 918 F.2d at 416 (promissory estoppel claim must fail when a valid contract exists); *Halstead v. Motorcycle Safety Foundation Inc.*, 101 F.Supp.2d 455, 459 (E.D. Pa. 1999) (unjust enrichment claim must fail when a valid contract exists); *Schott* 259 A.2d at 448 (unjust enrichment claim inapplicable when a contractual relationship exists between parties); *see also Matter of Penn Center Transp. Co.*, 831 F.2d 1221, 1230 (3d Cir. 1987) (plaintiff cannot maintain a claim of unjust enrichment when an express contract existed on the same subject). Thus, because the parties agree that a valid employment agreement exists here, Synesiou cannot maintain a claim for either promissory estoppel or unjust enrichment, as neither theory is available to provide Synesiou with relief.⁷

In apparent recognition of the obstacle that the valid employment agreement presents to his promissory estoppel and unjust enrichment claims, Synesiou argues that these claims are based on representations that were made to him *after* the execution of the employment agreement and that these claims are beyond the scope of the agreement. As such, Synesiou maintains that his promissory estoppel and unjust enrichment claims are not barred by the existence of the employment agreement.

⁷ Synesiou's reliance on *Eastland v. Du Pont*, 1996 WL 421940 (E.D. Pa. July 23, 1996), and *Gonzalez v. Old Kent Mortgage Co.*, 2000 WL 1469313 (E.D. Pa Sept. 21, 2000), is misplaced here. These cases are readily distinguishable from the present action. In both *Eastland* and *Gonzalez*, the validity and existence of the underlying contractual agreement was in dispute. *Eastland*, 1996 WL 421940 at *2; *Gonzalez*, 2000 WL 1469313 at *4. As such, these courts allowed claims of unjust enrichment to be plead in the alternative in case it was found that no valid contract existed between the parties. By contrast, in the present action, the validity and enforceability of the employment agreement are not at issue. Because of this key difference, the *Eastland* and *Gonzalez* precedents do not instruct this court.

Synesiou's promissory estoppel and unjust enrichment claims⁸ are premised on the allegation that Synesiou relied on defendants' representations that as part of his employment he was required to relocate and that DTM would cover his relocation costs. Compl. ¶ 59. As a result, Synesiou seeks to recover for damages incurred in connection with his relocation. Compl. ¶ 61. An examination of the allegations contained in Synesiou's complaint leads this court to conclude that these matters are within the scope of the employment agreement. In his complaint, Synesiou alleges that the employment agreement provides that DTM would pay plaintiff \$60,000 for his relocation costs. Compl. ¶¶ 14, 23. Additionally, as part of his breach of contract claim, Synesiou alleges that DTM failed to pay the relocation costs that were provided for and due to him under his employment agreement. Compl. ¶¶ 51, 54. Given that Synesiou seeks to recover the same damages under his promissory estoppel and unjust enrichment claims as his breach of contract claim, namely reimbursement for his costs of relocating to San Diego, it is evident that Synesiou's promissory estoppel and unjust enrichment claims concern matters within the four corners of the employment agreement. Thus, Synesiou's promissory estoppel and unjust enrichment claims are defeated by the existence of the employment agreement. Accordingly, these claims will be dismissed.⁹

⁸ Synesiou's complaint does not specifically indicate that his unjust enrichment claim is premised on defendants' representations regarding relocation. Rather, Synesiou's claim of unjust enrichment is based on all of defendants' actions described in his complaint to the extent that defendants accepted a benefit to which they were not entitled and have not paid. Compl. ¶ 63. However, in his memorandum in opposition to defendants' motion to dismiss, Synesiou states that his unjust enrichment claim pertains to his relocation. Doc. 9 at 15.

⁹ Because the existence of the employment agreement bars Synesiou's promissory estoppel and unjust enrichment claims, it is unnecessary for this court to consider defendants' argument that the parol evidence rule also bars these claims. Additionally, by dismissing Synesiou's promissory estoppel and unjust enrichment claims, this court need not consider

CONCLUSION

Defendants' motion to dismiss will be granted in part and denied in part. This court will not dismiss Synesiou's WPCL claim (Count I). Synesiou has alleged sufficient facts for this court to find that DTM is an "employer" as defined by the WPCL, and recent Pennsylvania caselaw instructs this court that plaintiff, although not a Pennsylvania resident, is an employee entitled to the protections of this act. This court will, however, dismiss Synesiou's promissory estoppel (Count III) and unjust enrichment (Count IV) claims. Because the validity of the employment agreement is uncontested and the factual basis for Synesiou's promissory estoppel and unjust enrichment claims is encompassed by this agreement, Synesiou is not entitled to relief under either a promissory estoppel or an unjust enrichment theory.

An appropriate order follows.

defendants' argument that Synesiou has not plead a factual basis to maintain these claims against the individual defendants.

**IN THE UNITED STATES DISTRICT COURT
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JOHN SYNESIOU,	:	
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Plaintiff,	:	
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v.	:	CIVIL ACTION
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DESIGNTOMARKET, INC.,	:	NO. 01-5358
MARDI HARRISON, DON BROWN, and	:	
TOM LAWRENCE	:	
	:	
Defendants.	:	

ORDER

And now this _____ day of April, 2002, upon consideration of plaintiff's complaint (Doc. No. 1); defendants' motion to dismiss Counts I, III, and IV of plaintiff's complaint (Doc. No. 3); plaintiff's opposition thereto (Doc. No. 9); defendants' reply (Doc. No. 10); and plaintiff's letter brief dated March 15, 2002; it is hereby ORDERED that defendants' motion to dismiss Count I of plaintiff's complaint is DENIED. It is further ORDERED that defendants' motion to dismiss Counts III and IV is GRANTED and Counts III and IV are dismissed.

William H. Yohn, Jr., Judge