

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

CANDACE L. SNEBERGER

v.

BTI AMERICAS, INC.;
RALPH MANAKER;
THOMAS LACNY; and
ANNE LIESZ

CIVIL ACTION

NO. 98-932

M E M O R A N D U M

Broderick, J.

November 30, 1998

Plaintiff Candace Sneberger, a resident of Pennsylvania, brings this diversity action against BTI Americas, Inc. ("BTI"), a Delaware corporation with a principal place of business in Illinois, Ralph Manaker ("Manaker"), Thomas Lacny ("Lacny"), and Anne Liesz ("Liesz"), all residents of Illinois, alleging breach of contract, fraud, negligent misrepresentation, estoppel, unjust enrichment, defamation and violation of the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1 et seq. Manaker and Lacny are both officers of BTI. Liesz is an employee of BTI. Plaintiff claims that she is entitled to receive payments as commissions on sales she made as an employee of BTI under a valid employment contract. In the alternative, Plaintiff seeks to recover these commissions as tort damages for fraud or negligent misrepresentation or under quasi-contract principles of estoppel and unjust enrichment. Plaintiff also claims that, after she

resigned from BTI, she was defamed by Liesz and BTI in a memo circulated to numerous employees of BTI.

Presently before the Court is a motion brought by Defendants BTI, Manaker, Lacny and Liesz to dismiss Plaintiffs' Complaint as to Defendants Manaker, Lacny and Liesz for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) and to dismiss Counts III, IV, V, VI, and VII of Plaintiff's amended complaint for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6). BTI is not contesting this Court's jurisdiction. Plaintiff has filed a response thereto and Defendants' filed a reply.

For the reasons stated below, Defendants' motion to dismiss for lack of jurisdiction will be granted as to Defendants Manaker, Lacny and Liesz in that Plaintiff has failed to demonstrate that any of these Defendants, in their individual capacities, has sufficient contacts with the Commonwealth of Pennsylvania to allow this Court to exercise personal jurisdiction over them. Defendants' motion to dismiss for failure to state a claim upon which relief may be granted will be denied as to Counts III, IV, V, VI, and VII of Plaintiff's amended complaint.

Normally, "[w]here a court is asked to rule on a combination of Rule 12 defenses, it should pass on the jurisdictional issues first." Friedman v. Israel Labour Party, 957 F. Supp. 701, 706 (E.D. Pa. 1997) (citing 5A Charles Alan Wright & Arthur R.

Miller, Federal Practice and Procedure § 1351 (1987)). See also Giusto v. Ashland Chemical Co., 994 F. Supp. 587 (E.D. Pa. 1998). The Court will therefore address Defendants' 12(b)(2) claims first.

I. Personal Jurisdiction

A defendant's challenge to a court's personal jurisdiction imposes on the plaintiff the burden of coming forward with facts, by affidavit or otherwise, establishing with reasonable particularity sufficient contacts between the defendant and the forum state to support jurisdiction. Carteret Savings Bank v. Shushan, 954 F.2d 141, 146 (3d Cir. 1991); Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 63 (3d Cir. 1984); Compagnie Des Bauxites de Guinea v. Insurance Company of N. America, et al., 651 F.2d 877, 880 (3d Cir. 1981). Any disputed facts must be construed in favor of the Plaintiff. Carteret, 924 F.2d at 142, n.2.

Absent a federal statute to the contrary, District Courts are authorized to exercise personal jurisdiction over non-residents to the extent permissible under the law of the state in which the District Court is located. Fed. R. Civ. P. 4(e)(1). See Pennzoil Products Co. v. Colelli & Assoc., Inc., 149 F.3d 197,200 (3d Cir. 1998). The Pennsylvania long arm statute, 41 Pa. Cons. Stat. Ann. § 5322(b), allows a court to exercise jurisdiction over non-residents "to the fullest extent permitted

by the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the constitution of the United States." The reach of the Pennsylvania long arm statute is thus co-extensive with the due process clause of the federal Constitution. Pennzoil, 149 F.3d at 200; Vetrotex Certainteed Corporation v. Consolidated Fiber Glass Products Company, 75 F.3d 147, 150 (3d Cir. 1996); Dollar Savings Bank v. First Security Bank of Utah, N.A., 746 F.2d 208 (3d Cir. 1984); Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 63 (3d Cir. 1984). This Court's inquiry into personal jurisdiction is thus an inquiry into the constitutional propriety of the exercise of jurisdiction. Renner v. Lanard Toys Ltd., 33 F.3d 277,279 (3d Cir. 1994); Max Daetwyler Corp. v. Meyer, 762 F.2d 290 (3d Cir. 1985).

"The due process limit to the exercise of personal jurisdiction [over an out-of-state defendant] is defined by a two-prong test." Vetrotex, 75 F.3d at 150. First, the defendant must have constitutionally sufficient "minimum contacts" with the forum. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985). The Court must examine "the relationship among the forum, the defendant and the litigation," Shaffer v. Heitner, 433 U.S. 186, 204 (1977), to "determine whether the defendant has 'purposefully directed' its activities toward residents of the forum. Vetrotex, 75 F.3d at 150 (quoting Burger King, 471 U.S. at 472). A defendant must take some act to "purposefully avail itself of the privilege of conducting activities within the forum state,

thus invoking the benefits and protections of its laws." Hanson v. Deckla, 357 U.S. 235, 253 (1958). Second, once minimum contacts are shown, the Court may exercise jurisdiction when it determines, "in its discretion, that to do so would comport with 'traditional notions of fair play and substantial justice.'" Vetrotex, 75 F.3d at 150-151 (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).

A Court's exercise of personal jurisdiction over a non-resident defendant may be either general or specific. Dollar Savings Bank, 746 F.2d at 211. "General jurisdiction may be invoked when the claim does not 'arise out of or is unrelated to the defendant's contact with the forum.'" Carteret Savings Bank, FA v. Shushan, 954 F.2d 141 (3d Cir. 1992) citing Dollar Savings Bank, 746 F.2d at 211. To establish general jurisdiction the defendant must have had continuous and substantial contacts with the jurisdiction. Pennzoil, 149 F.3d at 200. Specific jurisdiction, by contrast, is "invoked when the claim is related to or arises out of the defendant's contacts with the forum." Dollar Savings Bank, 746 F.2d at 211.

In the instant case, Plaintiff acknowledges that this Court does not have general jurisdiction over the individual defendants. See Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss (Document No. 8) at 5-6. The Court will, therefore, only address whether or not this Court has specific personal jurisdiction over each individual defendant.

A. Defendants Manaker and Lacny

Plaintiff's amended complaint makes the following claims against Defendants Manaker and Lacny in their individual capacities: violation of the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1 et seq. (Count I), fraud (Count III), and negligent misrepresentation (Count IV). Specifically, Plaintiff alleges that she entered into a contract with BTI through negotiations with Manaker and Lacny and that BTI has now breached that contract by not paying her the commissions to which she claims she was entitled. Plaintiff's amended complaint alleges that Manaker and Lacny are individually liable as employers under the Pennsylvania Wage Payment and Collection Law. Plaintiff also claims that Manaker and Lacny are individually liable to her in tort for statements they made to her which induced her to continue her employment with BTI.

At the time of Plaintiff's employment, both Manaker and Lacny were officers of BTI. According to the allegations of Plaintiff's amended complaint and the letter agreements attached thereto, in February, 1997 Lacny and Manaker entered into negotiations with Plaintiff regarding her continued employment with BTI. Plaintiff's claims in this matter arise out of the representations which allegedly were made to her during these negotiations.

Generally, under the "fiduciary shield doctrine," a court does not have personal jurisdiction over an individual defendant whose only contacts with the forum have been as an officer or

agent of a corporation. See Elbeco Inc. v. Estrella de Plato, Corp., 989 F. Supp. 669, 676 (E.D. Pa. 1997); Aircraft Guaranty Corp. v. Strato-Lift, Inc., 974 F. Supp. 468, 474 (E.D. Pa. 1997); TJS Brokerage & Co. v. Mahoney, 940 F. Supp. 784, 789 (E.D. Pa. 1996); Gross v. Schnepfer, 62 B.R. 323, 327 (E.D. Pa. 1986) (finding no personal jurisdiction over corporate officer who came to Pennsylvania to negotiate and sign contract when the contract was signed in his official, not individual capacity); Martin v. Sturm, Ruger & Co, Inc., 548 F. Supp. 1, 2 (E.D. Pa. 1981) (holding that to establish personal jurisdiction over an individual defendant plaintiff must demonstrate that the defendant did business within the state on his own behalf rather than on behalf of the corporation); Stop-A-Flat Corp. v. Electra Start of Michigan, 507 F. Supp. 647, 651 (E.D. Pa. 1981) (finding no jurisdiction over corporate president whose only contacts with the state were in connection with the breached distributorship agreement and where there was no suggestion that the defendant's allegedly defamatory remarks were made by him as an individual).

As an initial matter, the Court notes that the mere fact that Manaker and Lacny may be personally liable as employers under the Pennsylvania Wage Payment and Collection Law does not automatically give this Court jurisdiction over them, absent a showing by Plaintiff that the defendants have the requisite minimum contacts. Central Pa. Teamsters Pension Fund v. Burten, 634 F. Supp. 128, 131-32 (E.D. Pa. 1986). Therefore, the Court

will examine whether or not Manaker and Lacny were acting in their individual or corporate capacities at the time they undertook the acts alleged in Plaintiff's amended complaint.

Lacny's affidavit states that he visits Pennsylvania very infrequently on business, that his contact with Pennsylvania has been limited to periodic phone calls with Plaintiff and customers, and that all contacts that he has had with Pennsylvania occurred in his capacity as an officer of BTI. Affidavit of Thomas Lacny (Document No. 5, Exhibit A) at ¶¶ 10-14. Manaker's affidavit states that he has never conducted business on a personal basis in Pennsylvania, that he visits Pennsylvania infrequently but that he has traveled to Pennsylvania once to visit customers since 1995 and he has had dinner with Plaintiff in Philadelphia one time, that he makes a few phone calls a year to Pennsylvania and that all of the contacts that he has had with Pennsylvania, including meeting with Plaintiff, occurred in his capacity as an officer of BTI. Affidavit of Ralph Manaker (Document No. 5, Exhibit C) at ¶¶ 6, 10-15.

Plaintiff's affidavit is inconsistent with these statements by Manaker and Lacny largely in terms of the frequency of the correspondence she had with them. Plaintiff's affidavit states that she had negotiations with Manaker and Lacny in February, 1997 which took place through "voicemail messages, letters and facsimiles" sent to and from BTI's offices and Plaintiff's

offices in Pennsylvania. Affidavit of Candace L. Sneberger (Document No. 8, Exhibit A) at ¶ 7. Plaintiff also states that during her employment with BTI she maintained regular communications with Manaker and Lacny regarding her sales transactions and received regular facsimiles and packages from them. Id at ¶ 9. Finally, Plaintiff states that Lacny visited southeastern Pennsylvania at least twice in 1996 and 1997 to make sales presentations to a client and Manaker visited Pennsylvania in February 1997 to meet with her to discuss business matters, including her employment with BTI. Id.

Plaintiff has brought forth no evidence that either Manaker or Lacny was acting in an individual capacity during any of their contacts with Pennsylvania. The negotiations that took place between Plaintiff and Defendants concerned the terms of Plaintiff's employment with BTI. All of the contacts with Lacny and Manaker that Plaintiff refers to her in affidavit concern her employment with BTI. There has also been no evidence presented by Plaintiff that there is any other basis for this Court to exercise jurisdiction over Manaker and Lacny. Plaintiff has brought forth no evidence that Lacny or Manaker had any other contacts with Pennsylvania on which this Court could base personal jurisdiction. Therefore, the Court finds that based upon the affidavits of Plaintiff, Manaker and Lacny, the only constitutionally-significant contacts Manaker and Lacny had with Pennsylvania occurred in their roles as officers of the

corporation.

The Court recognizes that some courts have adopted an exception to the fiduciary shield doctrine when the corporate officer is involved in tortious conduct. See Donner v. Tams-Witmark Music Library, Inc., 480 F. Supp. 1229, 1233-34 (E.D. Pa. 1979). Corporate officers can be held personally liable for tortious conduct of the corporation if they "personally took part in the commission of the tort, or if they specifically directed other officers, agents or employees of the corporation to commit the act." Donner, 480 F. Supp. at 1233 (citing Donsco, Inc. v. Casper Corp., 587 F.2d 602, 606 (3d Cir. 1978); Zubik v. Zubik, 384 F.2d 267, 275 (3d Cir. 1967), cert. denied, 390 U.S. 988 (1968)). Courts recognizing such an exception have reasoned that permitting personal jurisdiction in these circumstances is necessary to prevent the corporate defendant from using a corporate shield to protect himself from suit. Elbeco, 989 F. Supp. at 676. In deciding whether or not a corporate officer will be subject to personal jurisdiction, the following factors are used: the defendant's "role in the corporate structure, the quality of the officer's contacts, and the extent and nature of the officer's participation in the alleged tortious conduct." Elbeco, 989 F. Supp. at 676 (internal quotations omitted).

Without deciding whether or not such an exception to the fiduciary shield doctrine is appropriate, this Court notes that Plaintiff's tort allegations against Manaker and Lacny are essentially that they engaged in contract negotiations with her

on behalf of BTI and that she relied on the statements they made and continued her employment with BTI. Defendants, in their motion to dismiss, concede the existence of a valid employment contract. This Court will not subject Manaker and Lacny to personal jurisdiction based on tort allegations that are substantially the same as Plaintiff's breach of contract allegations when there is no indication that any statements made to Plaintiff by Lacny and Manaker were made in their individual capacities or that the statements were made for any reason other than to negotiate the terms of Plaintiff's continuing employment with BTI.

Therefore, the Court finds that Plaintiff has failed to meet her burden of establishing with reasonable particularity sufficient contacts between Defendants Manaker and Lacny and the forum state to support jurisdiction. Accordingly, the Court will grant the motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2) as to Defendants Manaker and Lacny.

B. Defendant Liesz

Plaintiff's amended complaint alleges a claim against Defendant Liesz for defamation. Count VII of Plaintiff's amended complaint alleges that shortly after Plaintiff terminated her employment with BTI, Liesz, who was then employed by BTI in the strategic development department, circulated a memorandum on her own behalf and on behalf of BTI which defamed Plaintiff. The

memorandum, a copy of which is attached to Defendants' motion to dismiss as Exhibit E (Document No. 5), indicates that it was sent to eighteen addressees. Plaintiff's complaint alleges that the named individuals were employees of BTI. However, Plaintiff, in the affidavit she has submitted in support of her opposition to Defendants' motion, states that she has "personal knowledge that the defamatory matter contained in the memorandum of Ms. Liesz has been published to persons not listed as addressees on the memorandum." Affidavit of Candace L. Sneberger (Document No. 8, Exhibit A) at ¶ 13. Plaintiff does not elaborate on the identity of these other persons.

Plaintiff does not allege that this Court may exercise jurisdiction over Liesz apart from Liesz's conduct in making and publishing the allegedly defamatory statement about Plaintiff. An affidavit submitted by Liesz states, inter alia, that she is a resident of Illinois who has never resided in Pennsylvania, owned property in Pennsylvania, or conducted business in Pennsylvania, either on a personal basis or through her employment with BTI. Affidavit of Anne Liesz (Document No. 5, Exhibit B). Plaintiff has not come forward with any evidence to dispute Liesz' testimony nor has Plaintiff brought forth any evidence that Liesz has had any other contacts with the forum, apart from the distribution of the March 2, 1998 memorandum, which could support an exercise of this Court's jurisdiction.

Rather, Plaintiff suggests that the single act of distributing a memorandum to employees of BTI from BTI's office in Illinois is sufficient for this Court to exercise jurisdiction over Liesz. Plaintiff has not offered any evidence that the allegedly defamatory memorandum was directed at Pennsylvania or that any of the employees that Liesz addressed it to were in Pennsylvania. Plaintiff's complaint does not even allege that the memorandum was in fact even ever received by anyone in Pennsylvania or that she, in fact, suffered any damage to her reputation in Pennsylvania. Even Plaintiff's affidavit only states that "the allegations of dishonesty and unprofessionalism contained in the memorandum from Ms. Liesz could readily lead to significant harm to my reputation in the business community, including those clients, competitors and suppliers located in southeastern Pennsylvania." Affidavit of Candace L. Sneberger (Document No. 8, Exhibit A) at ¶ 13.

The Court finds that the evidence presented by Plaintiff is therefore distinguishable from the situation in Calder v. Jones, 465 U.S. 783 (1984), where the United States Supreme Court held that it was proper for a court in California to exercise personal jurisdiction over two Florida men who had written an allegedly defamatory article that was published in a newspaper whose largest circulation was in California. The Court in Calder noted that "[t]he allegedly libelous story concerned the California

activities of a California resident. . . . [T]he brunt of the harm, in terms of both the respondent's emotional distress and the injury to her professional reputation, was suffered in California. In sum, California is the focal point both of the story and of the harm suffered." Calder, 465 U.S. at 788-89.

In this case, Plaintiff has not proven that Liesz must have or should have known that the allegedly defamatory memorandum "would end up in Pennsylvania [or] that its effects could be felt in Pennsylvania." Giusto, 994 F. Supp. at 592. The Court finds that Liesz's contacts with the forum were not sufficient so that she "should reasonably anticipate being hailed into court" in Pennsylvania. Worldwide Volkswagen Corp. v. Woodson, 444 U.S. 286, 287 (1990). Therefore, the Court finds that Plaintiff has failed to meet her burden establishing with reasonable particularity sufficient contacts between Defendant Liesz and the forum state to support jurisdiction. Accordingly, the Court will grant the motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2) as to Defendant Liesz.

II. Motion to Dismiss Pursuant to Fed. R. Civ. Pro. 12(b)(6)

Having dismissed the individual defendants for lack of personal jurisdiction, the Court must now consider Defendant BTI's motion to dismiss Counts III, IV, V, VI, and VII of Plaintiff's amended complaint for failure to state a claim upon

which relief can be granted.

In deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) the Court "'primarily considers that allegations in the complaint, although matters of public record, orders, items appearing in the record of the case and exhibits attached to the complaint may also be taken into account.'"

Giusto v. Ashland Chemical Co., 994 F. Supp. 587, 592 (E.D. Pa. 1998) (quoting 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure, Civil 2d § 1357 (1990); see also Chester County Intermediate Unit v. Penna. Blue Shield, 896 F.2d 808, 812 (3d Cir. 1990). The Court must accept as true the facts as alleged in Plaintiff's complaint and must "draw all reasonable inferences from those facts in the light most favorable to the plaintiff." Giusto, 994 F. Supp. at 592-93; Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990).

A. Counts III and IV: Fraud and Negligent Misrepresentation

Count III of Plaintiff's complaint alleges that Manaker and Lacny made representations to her on behalf of BTI, that the defendants knew the statements to be false at the time they were made, that the statements were made with the intent to induce Plaintiff to continue her employment with BTI, and that Plaintiff relied on these representations to her detriment. Under Rule 9(b) of the Federal Rules of Civil Procedure, allegations of

fraud must be stated "with particularity." The Court finds that the allegations in Plaintiff's complaint are pled with sufficient particularity to survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6).

Plaintiff also alleges in Count III that the defendants acted "knowingly, willfully and in conscious disregard" of Plaintiff's rights, entitling her to punitive damages. Punitive damages in a fraud action may be maintained when the plaintiff proves malice or wanton disregard by the defendant. Casper v. Cunard Line, Ltd., 560 F. Supp. 240 (E.D. Pa. 1983). A claim for punitive damages may be dismissed pretrial where the allegations of the complaint do not demonstrate that the defendants had the requisite mental state. Carlson v. Arnot-Ogden Memorial Hosp., 918 F.2d 411, 417 (3d Cir. 1990). Here, Plaintiff has alleged that Defendants acted wilfully and in disregard of her rights. The Court finds, therefore, that Plaintiff has properly pled a cause of action for punitive damages in her fraud count.

BTI does not allege that Count IV does not properly allege a claim for fraudulent misrepresentation. Rather, BTI alleges that Plaintiff is precluded from recovering on the fraud and negligent misrepresentation claims under the "economic loss doctrine." The economic loss doctrine prevents a plaintiff from recovering in tort economic losses which are otherwise covered by a contract. See Duquesne Light Co. v. Westinghouse Elec. Corp., 66 F.3d 604,

620 (3d Cir. 1995). The doctrine is "designed to 'maintain[] the separate spheres of the law of contract and tort.'" Id. (quoting New York State Elec. & Gas Corp. v. Westinghouse Elec. Corp., 564 A.2d 919, 925 (Pa. Super. 1989) (en banc)). The doctrine applies to negligent misrepresentation as well as other types of tort claims. See Eagle Traffic Control v. Addco, 882 F. Supp. 417, 419 (E.D. Pa. 1995).

Therefore, if a valid contract exists between Plaintiff and BTI then Plaintiff will be precluded from recovering on her fraud and negligent misrepresentation claims under the economic loss doctrine. However, at this stage of the litigation, Plaintiff is permitted to plead causes of action in the alternative under Federal Rule of Civil Procedure 8(e)(2). Rule 8(e)(2) states in relevant part: "A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses....A party may also state as many separate claims or defenses as the party has regardless of consistency...." Fed. R. Civ. Pro. 8(e)(2).

Since Plaintiff has properly alleged fraud in Count III and negligent misrepresentation in Count IV, Plaintiff's claims will not be barred, at this stage of the litigation, by the fact that she has elsewhere alleged the existence of a valid contract which, if proved, would bar her recovery under these claims. Therefore, the Court will deny BTI's motion to dismiss pursuant

to Federal Rule of Civil Procedure 12(b)(6) as to Counts III and IV of Plaintiff's amended complaint.

B. Count V: Estoppel

Plaintiff does not specify in her amended complaint whether her claim is for promissory or equitable estoppel. In Plaintiff's memorandum in opposition to BTI's motion to dismiss, she states her claim as one of equitable estoppel. However, the elements of estoppel that she lists in her memorandum are those for promissory estoppel and the authority she cites refers to the elements of a promissory estoppel claim as well. Document 8 at 17.

If this Court construes Count V as pleading a claim of equitable estoppel, Count V must be dismissed. "Equitable estoppel is not a separate cause of action. It may be raised either as an affirmative defense or as grounds to prevent the defendant from raising a particular defense." Carlson v. Arnot-Ogden Memorial Hosp., 918 F.2d 411, 416 (3d Cir. 1990).

Promissory estoppel, however, can be a separate cause of action. Carlson, 411 F.2d at 416. In order to prevail on a claim for promissory estoppel, a plaintiff must show that the defendant made a promise to the plaintiff that was designed to induce reliance by the plaintiff, that the plaintiff did in fact rely on this promise, and that, as a result of this reliance, the

plaintiff suffered damages so that injustice can only be avoided by enforcing defendant's promise. Carlson, 411 F.2d at 416. The Court finds that Count V of Plaintiff's complaint properly pleads all of the elements of a claim of promissory estoppel.

Therefore, this Court will construe, for the purposes of resolving the instant motion to dismiss, Count V of Plaintiff's amended complaint as a claim under promissory estoppel.

Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (holding that in deciding a motion to dismiss under 12(b)(6) all inferences should be drawn in favor of the Plaintiff and dismissal "is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved.").

BTI argues that, even if Plaintiff is found to have pled a claim for promissory estoppel, Plaintiff cannot recover under promissory estoppel because a valid contract exists. Because promissory estoppel is a quasi-contract equitable remedy, it is generally "invoked in situations where the formal requirements of contract formation have not been satisfied and where justice would be served by enforcing a promise." Carlson, 411 F.2d at 416. Therefore, when the parties have formed an enforceable contract, "relief under a promissory estoppel claim is unwarranted." Id.

However, as discussed above, Plaintiff is permitted, at this

stage of the litigation, to plead causes of action in the alternative under Federal Rules of Civil Procedure 8(e)(2). Therefore, this Court will deny BTI's motion to dismiss Count V of Plaintiff's amended complaint for failure to state a claim on which relief may be granted.

C. Count VI: Unjust Enrichment

Unjust enrichment is a quasi-contract remedy created to compensate the plaintiff where the defendant has received a benefit to which he is not entitled. See Schenck v. K.E. David, Ltd., 666 A.2d 327, 328-29 (Pa. Super. 1995) allocatur denied, 676 A.2d 1200 (Pa. 1996). BTI does not allege that Plaintiff has failed to properly plead the elements of a claim for unjust enrichment. Rather, BTI alleges that Plaintiff cannot recover in unjust enrichment because a valid contract exists. Because unjust enrichment is a quasi-contract equitable remedy, "no implied-in-fact contract can be found when [] the parties have an express agreement dealing with the same subject." Matter of Penn Cent. Transp. Co., 831 F.2d 1221, 1229 (3d Cir. 1987).

However, as discussed above, Plaintiff is permitted at this stage of the litigation to plead causes of action in the alternative under Federal Rule of Civil Procedure 8(e)(2). Therefore, the Court will deny BTI's motion to dismiss Count VI of Plaintiff's amended complaint pursuant to Federal Rule of

Civil Procedure 12(b)(6).

D. Count VII: Defamation

Plaintiff's complaint alleges that she was defamed by a memorandum sent by Defendant Liesz, on behalf of BTI, to eighteen named BTI employees and that, as a result of these false statements, she suffered harm to her business and professional reputation. BTI does not contest that Plaintiff's amended complaint properly alleges all the elements of a claim for defamation. Rather, BTI argues that Plaintiff's claim for defamation must be dismissed because the allegedly defamatory statement was privileged.

"In Pennsylvania, a conditional privilege 'applies to private communications among employers regarding discharge and discipline.'" Giusto v. Ashland Chemical Co., 994 F. Supp. 587, 593 (E.D. Pa. 1998) (quoting Daywalt v. Montgomery Hospital, 573 A.2d 1116, 1118 (Pa. Super. 1990)). A conditional privilege applies when "the circumstances are such as to lead any one of several persons having a common interest in a particular subject matter correctly or reasonably to believe that facts exist which another sharing such common interest is entitled to know." Burns v. Supermarkets Gen. Corp., 615 F. Supp. 154, 158 (E.D. Pa. 1985). The privilege may be lost where the defendant is motivated by spite or ill will, Campbell v. Willmark Serv.

System, Inc., 123 F.2d 204, 207 (3d Cir. 1941), where the communication was made for "an improper motive, in an improper manner, or was not based on reasonable or probable cause," Krochalis v. Insurance Co. of N. Am., 629 F. Supp. 1360, 1366 (E.D. Pa. 1985), or where the statement is false and the defendant acts with reckless disregard as to the truth or falsity of the statement. Smith v. Greyhound Lines, Inc., 614 F. Supp. 558, 562 (E.D. Pa. 1984). An employer's privilege to publish information about an employee's termination may also be lost if the information is "disseminated beyond the circle of those who reasonably need to know...." Momah v. Albert Einstein Medical Ctr., 978 F. Supp. 621. 634 (E.D. Pa. 1997).

The Court need not decide at this juncture whether or not the allegedly defamatory statement in this case was conditionally privileged. Plaintiff's amended complaint alleges that the statements contained in the memorandum were false and that they were made with reckless disregard for the truth of the statements. At this stage of the proceedings, the Court must accept the allegations of Plaintiff's complaint as true. Giusto, 994 F. Supp. at 593. Therefore, there remains a question as to whether or not the statement was conditionally privileged and whether or not that privilege was abused. For the foregoing reasons, the Court will deny BTI's motion to dismiss Count VII of Plaintiff's amended complaint pursuant to Federal Rule of Civil

Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.

An appropriate Order follows.