

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-009483

01/10/2014

HONORABLE LISA DANIEL FLORES

CLERK OF THE COURT
S. Uppendahl
Deputy

JASON JUSTUS, et al.

KATHRYN RUTH ELIZABETH
BAILLIE

v.

CITY OF CHANDLER

MICHAEL D MOBERLY

UNDER ADVISEMENT RULING

The Court heard oral argument on Defendant's Motion for Judgment on the Pleadings, filed September 30, 2013. A response and reply were filed. The Court considered the parties' papers related to the motion, and reviewed Plaintiffs' complaint.

The Court notes that the complaint at ¶2 referred to the City of Chandler Meet and Confer Ordinance, Ord. No. 3619 § 2-13.5. This document was attached to Defendant's motion as Exhibit A. The complaint at ¶4 claimed breach of contract based on the 2011-2013 Memorandum of Understanding, entered June 9, 2011, between Defendant City of Chandler and CLEA, a collective bargaining unit of Chandler police officers. This document was attached to Defendant's motion as Exhibit B. The complaint at ¶ 21 referred to a written informal grievance submitted by CLEA to Dawn Lang, Chandler's Management Service Director. This document was attached to Defendant's motion as Exhibit C. Exhibits A and B are matters of public record and central to Plaintiff's claims and may be considered without converting the Rule 12(c) motion to a Rule 56 motion. Although the Court read the e-mail exchange included as Exhibit C, the Court did not rely on Exhibit C in reaching its decision. For these reasons, the Court did not treat the instant motion as a Rule 56 motion for summary judgment.

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The Court concurs with Defendant, for reasons more fully explained in its motion and reply and the argument made by counsel, as follows:

Plaintiffs' claimed violations are grievances as defined in Article 2, Section 2 – 1(B). Plaintiffs alleged breach of contract relates to compensation and wages, based on the MOU. State law does not provide a specific method of review of this issue; ARS § 23-355 provides a discretionary remedy if Plaintiffs prevail on their claim for unpaid wages, but the additional remedy does not equate to a “review” of the issue.

The MOU's grievance procedures found in Article 2, Section 2 – 1(C) are mandatory.

In Arizona, the use of the word “may” in an administrative procedure does not render the procedure permissive; the exhaustion requirement still applies. See *Mullenaux v. Graham County*, 207 Ariz. 1, 82 P.3d 362 (App. 2004). Here, as in the 8th Circuit case *Bonnot v. Congress of Independent Unions LOC*, “[t]he obvious purpose of the ‘may’ language is to give an aggrieved party the choice between arbitration or the abandonment of its claim. The presence of this or similar language has not prevented the conclusion that a claim, if pressed, is compulsorily subject to arbitration.” *Bonnot*, 331 F.2d 355, 359 (8th Cir. 1964). Plaintiffs’ claims are subject to the mandatory grievance procedures, with which Plaintiffs failed to comply. Plaintiffs’ claim of breach of the implied covenant of good faith and fair dealing is superfluous. Plaintiffs’ bad faith claim stems from the alleged breach of their express rights under the MOU; they seek the same relief already demanded for breach of contract. For that reason, their bad faith claim is subject to the same exhaustion requirement as the breach of contract claim and their bad faith claim may be disregarded as superfluous.

In addition, to the extent Arizona previously recognized an implied covenant of good faith and fair dealing in the employment context, the Arizona legislature abrogated it with the enactment of the Arizona Employment Protection Act (“EPA”). “Before the EPA was enacted, our supreme court recognized exceptions to the at-will presumption based not only on public policy grounds but also on . . . the ‘implied covenant of good faith and fair dealing.’ But the plain wording and legislative intent of § 23-1501 have changed the legal landscape. The EPA specifies the limited exceptions to that general rule.” *Taylor v. Graham County Chamber of Commerce*, 201 Ariz. 184, 193, 33 P.3d 518, 527 (App. 2001). Those limited exceptions are claims for breach of a written employment agreement and claims related to termination of the employee. Plaintiffs’ breach of contract claim clearly is one of the limited exceptions, but the bad faith claim is not.

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Plaintiffs' promissory estoppel theory fails as a matter of law.

To begin with, as a general rule, promissory estoppel does not lie against the state or its municipalities or political subdivisions. *State ex rel. Romley v. Gaines*, 205 Ariz. 138, 67 P.3d 734 (App. 2003), *Johnson International Inc. v. City of Phoenix*, 192 Ariz. 466, 967 P.2d 607 (App. 1998).

Also, Plaintiffs' complaint alleges, and Defendant does not dispute, the existence of an express written contract. The legal theory of promissory estoppel applies when there is a promise by one party and substantial detriment caused to the other party by justifiable reliance on that promise, although the parties never entered into a contract. There is no promissory estoppel claim when the parties entered into an express contract.

For all the reasons stated above,

IT IS ORDERED granting Defendant's Motion for Judgment on the Pleadings and dismissing Plaintiffs' complaint for failure to state a claim upon which relief can be granted. The Court will take no further action on Plaintiffs' pending Motion to Certify Class.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.