

Court of Appeals of New York.
Kenneth D. SMALLEY, et al., Respondents,
v.
The DREYFUS CORPORATION, et al., Appellants.
Feb. 12, 2008.

KAYE, Chief Judge:

Five at-will employees sued their former employer, the Dreyfus Corporation, for fraudulent inducement to enter into and remain in the employment of Dreyfus. We conclude that these plaintiffs have not stated a cause of action.

As alleged in the amended complaint, in January 2001, plaintiff Gerald Thunelius, then the director of Dreyfus' Taxable Fixed Income Group (TFIG), heard a rumor that Mellon Financial Corporation, Dreyfus' parent corporation, had made an offer to acquire the fund management company of Standish Ayer & Woods. When asked, Dreyfus' chief executive officer (CEO) told Thunelius that no merger had occurred or was being considered. Relying on those assurances, plaintiff Martin Fetherston in December 2002 accepted employment in the TFIG. Mellon acquired Standish in March 2001. Between 2001 and 2004, Thunelius repeatedly asked Dreyfus' officers whether there were plans to merge the TFIG with Standish, and they denied any planned merger. During these years, plaintiffs Kenneth Smalley, Darlene Haut and Michael Allen allege that they accepted jobs with the TFIG in reliance on the denials by Dreyfus' officers. ^{FN1}

FN1. Plaintiffs concede that they were at-will employees. The employment contract each plaintiff signed with Mellon stated: "I understand that such employment will be for an indefinite period and may be terminated at any time, with or without notice." None of their contracts referenced any alleged merger plans.

The amended complaint continues that in April 2004, Dreyfus' CEO told the TFIG that any merger of the group into Standish was "off the table," and that the group would remain intact for at least another year. By early fall 2004, merger rumors resurfaced, which at the time Dreyfus' officers refused to confirm or deny. In late 2004, the two groups merged, and in February 2005-four years after the alleged merger discussions began-Dreyfus fired every member of the TFIG.

The five sued Dreyfus ^{FN2} in Supreme Court, asserting several causes of action, only one of which-fraudulent inducement-remains relevant. The court dismissed the entire complaint noting that at-will employees cannot reasonably rely upon their employers' promises of continued employment, and that these employees failed to allege injuries apart from their termination. The Appellate Division, four-one, modified Supreme Court's order by reinstating the fraudulent inducement claim, concluding that Dreyfus misrepresented a present material fact and that the plaintiffs alleged injuries distinct from termination; the fifth Justice would have dismissed the entire complaint. We now reverse.

FN2. "Dreyfus" refers to all of the defendants, including Dreyfus' chief executive officer, chief investment officer, Mellon Financial Corporation (Dreyfus' parent corporation) and Mellon's chairman.

New York law is clear that absent "a constitutionally impermissible purpose, a statutory proscription, or an express limitation in the individual contract of employment, an employer's right at any time to terminate an employment at will remains unimpaired" (*Murphy v. American Home Prods. Corp.*, 58 N.Y.2d 293, 305 [1983]). Thus, either the employer or the employee generally may terminate the at-will employment for any reason, or for no reason. In the decades since *Murphy*, we have repeatedly refused to recognize exceptions to, or pathways around, these principles (see *Horn v. New York Times*, 100 N.Y.2d 85 [2003]; *Ingle v. Glamore Motor Sales*, 73 N.Y.2d 183 [1989]; *Sabetay v. Sterling Drug*, 69 N.Y.2d 329 [1987]; *Weiner v. McGraw-Hill, Inc.*, 57 N.Y.2d 458 [1982]).

Relying on a decision of the United States Court of Appeals for the Second Circuit-*Stewart v. Jackson & Nash* (976 F.2d 86 [2d Cir1992])-plaintiffs urge that theirs is not a breach of contract case, but rather a legally cognizable tort claim, for fraudulent inducement.

In *Stewart*, defendant law firm recruited an environmental law attorney (plaintiff Victoria Stewart), telling her that it had secured a large environmental law client, that she would work on that client's matters and that the firm was establishing an environmental law department, which she would head. When Stewart arrived at the firm, however, she learned that the firm was still trying to secure the client, and she performed only general litigation work. The firm later terminated her employment, and she brought suit for damages. Reversing the United States District Court, the Second Circuit denied the law firm's motion to dismiss Stewart's fraudulent inducement claim both because the firm's promises concerning the environmental law client and department were misstatements of present fact, and because the alleged injuries-thwarting her professional objective to specialize in environmental law, and damaging her career potential-occurred well before plaintiff's termination and were unrelated to it.

Without adopting or rejecting the Second Circuit's rationale, we note that *Stewart* is fundamentally different from the case now before us. The core of plaintiffs' claim is that they reasonably relied on no-merger promises in accepting and continuing employment with Dreyfus, and in eschewing other job opportunities. Thus, unlike *Stewart*, plaintiffs alleged no injury separate and distinct from termination of their at-will employment.^{FN3} In that the length of employment is not a material term of at-will employment, a party cannot be injured merely by the termination of the contract-neither party can be said to have reasonably relied upon the other's promise not to terminate the contract. Absent injury independent of termination, plaintiffs cannot recover damages for what is at bottom an alleged breach of contract in the guise of a tort.

FN3. We need not and do not reach the additional question whether the alleged representations regarding the no-merger "plans" were existing fact or future intent.

Accordingly, the order of the Appellate Division, insofar as appealed from, should be reversed, with costs, defendants' motion to dismiss the complaint in its entirety granted and the certified question answered in the negative.

Order, insofar as appealed from, reversed, with costs, defendants' motion to dismiss the complaint in its entirety granted and certified question answered in the negative.

Judges CIPARICK, GRAFFEO, READ, SMITH, PIGOTT and JONES concur.

N.Y., 2008.

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--- N.E.2d ---, 2008 WL 357400 (N.Y.), 2008 N.Y. Slip Op. 01252