NOT DESIGNATED FOR PUBLICATION

No. 113,563

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

DOUGLAS R. PETERS,
Appellant,

v.

DESERET CATTLE FEEDERS, LLC,
Appellee.

MEMORANDUM OPINION

Appeal from Haskell District Court; BRADLEY E. AMBROSIER, judge. Opinion filed August 26, 2016. Reversed and remanded with directions.

John M. Lindner, of Lindner, Marquez & Koksal, of Garden City, for appellant.

Alan L. Rupe and *Jeremy K. Schrag*, of Lewis Brisbois Bisgaard & Smith LLP, of Wichita, for appellee.

Before LEBEN, P.J., PIERRON and MCANANY, JJ.

Per Curiam: This appeal comes to us following the district court's entry of summary judgment in favor of the defendant, Deseret Cattle Feeders, LLC, in this employment contract dispute. The plaintiff, Douglas R. Peters, contends the district court erred in finding that he was an employee at will. Peters argues that there was a genuine issue of material fact whether the parties had entered into a contract that protected him by providing that if there were a reduction in the workforce, it would be handled by natural attrition through retirements and voluntary resignations rather than by layoffs. He contends he should have been allowed to go to trial to prove this claim. Further, he

contends the court erred in denying a trial on his claim based on the doctrine of promissory estoppel. But in our de novo review of Deseret's motion, when viewing the evidence in the light favoring Peters as we are required to do, we find genuine issues of material fact that must be resolved at trial. Thus, summary judgment was not appropriate, and we reverse the ruling by the district court.

Uncontroverted Facts

The following facts are uncontroverted for purposes of Deseret's motion.

Peters began working for Hitch Enterprises, Inc., in November 2006. Hitch operated a feedlot near Satanta, Kansas, where Peters was an at-will employee working as a shop manager. Hitch custom fed cattle for a variety of different cattle owners. Operating the feedlot was a 24/7 operation.

During his employment at Hitch, Peters was counseled about complaints made by fellow employees in the shop. On one occasion an employee showed up for work drunk. Peters had a talk with him but did not have him tested for alcohol and did not write him up for this misconduct. As a result, safety was compromised because the employee was allowed to work in violation of company policies.

In early 2010, the owners of Hitch began negotiating with Deseret for a sale of the feedlot business. David Secrist, an executive in Deseret's parent company, negotiated with Hitch for the sale. Deseret, unlike Hitch, fed cattle exclusively owned by its parent company. The feedlot had a licensed capacity of 47,500 head of cattle. Deseret intended the Hitch feedlot to be the main feeder operation for the 10 ranches operated by its parent company.

Deseret needed the Hitch employees for the ongoing care of the cattle in the feedlot. Thus, early in the negotiations Deseret informed Hitch that it intended to retain nearly all of the Hitch employees, except for two managers. The two managers, Ronnie Pruitt and Dale Nicodemus, were warned against enticing away any current Hitch employees.

In May 2010, Deseret hired Michael Archibald to serve as general manager of the feedlot once the sale was consummated. Archibald was hired to replace Pruitt.

In May or early June 2010, Hitch held a meeting with its employees to notify them that it was selling the feedlot to Deseret. No Deseret representatives attended the meeting. The Hitch employees were told that they were welcome to consider transferring to other Hitch facilities near Guymon, Oklahoma, if they were unable to work for Deseret. According to Lou Branscum, Hitch told its employees that part of the sales agreement was that there would be no layoffs, that if the Hitch employees did their jobs they would keep their jobs, and that any reduction in the workforce would be accomplished by attrition through retirements and voluntary resignations. Branscum acknowledged that no one from Deseret was present when this statement was made.

In June 2010, Deseret held meetings with Hitch employees. At the time of these meetings Deseret was unfamiliar with the experience level, work history, disciplinary history, attendance, or productivity of Hitch's employees. Deseret informed Hitch's employees that it intended to hire them at the time of the closing and that their job duties would remain relatively similar to their prior duties for Hitch. Deseret did not state for how long it intended to hire Hitch employees.

In July 2010, Deseret representatives met with individual Hitch employees, including Peters. They noted Peters' mechanical experience and experience with fleet

management software. Deseret was impressed with the length of tenure of the Hitch employees.

Michael Archibald, Deseret's new feed yard manager, then hosted a meeting at the Clarion Hotel in Garden City where Deseret's employee benefits were discussed, including its insurance, profit sharing, vacation, and pay policies. Peters, Lew Branscum, Terry Stoppel, another manager, and their wives were present. Deseret made no job offers or other employment promises at this benefits meeting.

Peters testified in his deposition that there was another meeting that followed the Clarion Hotel meeting and before the closing of the sale. That meeting lasted for about 1/2 hour. David Secrist and Michael Archibald, representatives of Deseret, spoke to all the Hitch employees. Peters testified:

> "They let us know that they was—had decided to go ahead and purchase Hitch Feeders; that they did have, I believe it was nine ranches; that all of their cattle were going to be coming into that feedyard; and that everybody that wanted to stay and work at Deseret would be able to, with the exception of Ronnie Pruitt, and that nobody needed to worry about their jobs. They were going to keep everybody on . . . .
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> . . . .
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> "That they were going to downsize but it was going to be due to attrition in people quitting, but they were not going to fire anybody or lay anybody off, as long as they did their job."

In this deposition Peters opined that Deseret could not fire any of its employees for being a poor performer. But, according to Peters, if an employee refused to work Peters would recommend that the employee be terminated. He considered an employee twice showing up for work while drunk grounds for Deseret to discharge the employee. Peters did not know the terms and conditions of Deseret's job offer that limited Deseret's ability

to terminate its employees. He stated that as a supervisor he had the ability to recommend that an employee be fired and that disciplinary action could result in an employee's termination. But he claimed that Deseret could not fire someone for being a poor performer. Peters refused to answer when asked if Deseret could fire someone for showing up and refusing to work. When asked if the employees at Deseret were at-will employees, Peters stated that he did not know.

After an agreement had been reached to sell the business to Deseret but before the closing, Deseret delivered to Hitch its company-owned cattle, and Hitch custom fed Deseret's cattle until the closing on the sale.

Peters completed Deseret's employment enrollment documents on October 26, 2010. These included a mandatory "'Consent to Test for Alcohol or Drugs.'" In it he acknowledged that he would participate in Deseret's drug screening program, and by signing the form he was required to meet all established standards of conduct and job performance. He further acknowledged that failure to meet these requirements would result in immediate termination.

The handbook of Deseret's parent company provided that all employees were considered employees at will. But there is no uncontested fact regarding the application of the parent company's handbook to Deseret or regarding the delivery of the handbook to Peters either before or after he was hired.

Peters' employment with Hitch ended on October 31, 2010. He began working for Deseret as a shop manager on the following day, November 1, 2010. This was the same position with the same seniority he had held at Hitch. His unused vacation time at Hitch carried over to his new employer.

The closing on the sale of the business to Deseret took place the following day, November 2, 2010. At the time of the sale the feedlot, which had a licensed capacity of 47,500 head of cattle, was full, and 40 to 50 Hitch employees worked at the feedlot. At the time of the closing, Deseret had hired, with the exception of Hitch's management team, all of Hitch's employees at the feedlot who wanted a job. These former Hitch employees were employed by Deseret at the same or similar pay and experience level as they had held when employed by Hitch. Thirteen Hitch employees decided not to continue with Deseret. Eight others later quit after initially deciding to continue with Deseret.

According to Deseret, Chris and Jason Hitch intended to offer Hitch employees who lost their jobs in the transition to Deseret some type of "exit package." The exact terms of the exit package is disputed. Employees Terry Stoppel, Mike Lechuga, Clemente Varela, Salvador Angeles, and Roy Browning were not offered any form of severance from Hitch.

At about the time of the closing, Hitch hosted a final cookout for its former employees to thank them for their service. Deseret did not address any of the former Hitch employees at this meeting.

On December 20, 2010, Peters signed a "Wrangler Jeans Purchase Agreement" which provided that if Peters' employment was terminated for any reason, any unpaid jeans purchases would be deducted from his final pay check.

Once Deseret took over the business, it custom fed Hitch's remaining cattle until they could be marketed around Christmas 2010. During this period, Nicodemus, an ongoing employee of Hitch, remained to oversee the care and feeding of Hitch's remaining cattle.

Once taken over by Deseret, the feedlot—licensed for 47,500 head—contained about 43,000 head in the fall, a population that dipped to about 20,000 in mid-June of every year.

In the spring of 2011, Deseret made operational changes regarding the use and repair of machinery and equipment. It decided to use contract labor for specialized work such as rebuilding pens and repairing heavy equipment instead of relying on its own employees. Old equipment was replaced by new equipment which was covered by warranties. The number of feed trucks were reduced from 7 to 4; pickup trucks were reduced from 20 to about 11.

Deseret was satisfied with Peters' job performance. Nevertheless, as a result of these operational changes Peters was terminated in June 2011 and offered a severance package, which he refused.

In June 2013, Peters brought this action for breach of contract and promissory estoppel. Later, in connection with these proceedings, Peters submitted identical statements from Ronnie Pruitt (dated June 2, 2013), Dale Nicodemus (dated June 2, 2013), Lawrence Guerrero (dated July 30, 2013), and Lew Branscum (dated June 22, 2013) asserting: (1) they were Hitch employees when the feedlot was sold to Deseret; (2) Hitch offered 1 year's salary for employees who did not go to work for Deseret; and (3) Deseret promised that if they went to work for Deseret, their employment would be secure, there would be no layoffs, they would continue to be employed as long as they did their jobs, and any reduction in the workforce would be accomplished by attrition from retirements or voluntary resignations.

At their later depositions, Pruitt, Nicodemus, Guerrero, and Branscum testified as follows:

● Pruitt testified that Deseret did not say how long it intended to hire employees, but "they were going to get their employees down through attrition as they left, rather than to let them go."

● Nicodemus testified that Hitch employees "that Deseret did not employ would be offered either—they would have the choice of a position with Hitch's at—in Guymon or some kind of a severance package." The details of the severance package were not spelled out. "I don't believe they ever said it was [salary for] one year so, you know, I don't know that this is actually correct on this statement." He testified, "I don't remember exact wording, but it was indicated that they were going to continue to operate the feed yard as, you know, with the labor that was there. . . . I mean, it was indicated, I don't remember the exact wording, that they were not planning to lay off anybody; that they were going to continue to operate at full strength."

● Guerrero testified that he did not think he read the declaration before signing it. He was not aware that Hitch was offering a year's salary as severance pay. According to Guerrero, Deseret held a meeting after it had taken over the business and "fired five guys in one day. . . . [T]here was a meeting that same evening that they fired them, and they said everybody present at this meeting does not have to worry about their job. . . . [T]heir jobs was secure, that there wouldn't be no more layoffs." During cross-examination by Peters' counsel, Guerrero became upset with repetitive questions and left the deposition.

● Branscum testified that he recalled no offer by Hitch of severance pay for its employees. He testified that the representation that there would be no layoffs came from Hitch rather than from Deseret; but he stated, "[Chris and Jason Hitch] said that was part of the—of the transaction of the buyout of the feed yard."

Branscum said this statement was made at the first Hitch meeting "when they told us they sold the yard" and that this was part of the agreement for the sale of the yard. Deseret representatives were not present for that meeting.

Deseret moved for summary judgment, which the court granted in January 2015. The district court's entry of summary judgment in favor of Deseret on Peters' claims brings the matter to us for a de novo consideration of Deseret's summary judgment motion. See *Osterhaus v. Toth*, 291 Kan. 759, 768, 249 P.3d 888 (2011).

Standards of Review

The standards for summary judgment are well known but are worth repeating. Summary judgment is appropriate only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In considering a summary judgment motion, we resolve all facts and inferences which may reasonably be drawn from the evidence in favor of the party against whom the summary judgment motion was sought. When opposing a motion for summary judgment, an adverse party must come forward with evidence to establish a dispute as to a material fact. In order to preclude summary judgment, the facts subject to the dispute must be material to the conclusive issues in the case. We must deny a motion for summary judgment if reasonable minds could differ as to the conclusions drawn from the evidence. *Stanley Bank v. Parish*, 298 Kan. 755, 759, 317 P.3d 750 (2014).

When a plaintiff lacks evidence to establish an essential element of a claim, there can be no genuine issue of material fact since a complete failure of proof concerning an essential element of the plaintiff's case renders all other facts immaterial. *Crooks v. Greene*, 12 Kan. App. 2d 62, 64-65, 736 P.2d 78 (1987). Thus, summary judgment is

appropriate if the defendant can establish the absence of evidence necessary to support an essential element of a plaintiff's case. *Kuxhausen v. Tillman Partners*, 291 Kan. 314, 318, 241 P.3d 75 (2010).

In considering a summary judgment motion the court "must refrain from the temptation to 'pass on credibility and to balance and weight evidence,' which are proper functions for the factfinder at trial. [Citation omitted.] . . . "'Summary judgment should not be used to prevent the necessary examination of conflicting testimony and credibility in the crucible of a trial.'" [Citations omitted.]" *Esquivel v. Watters*, 286 Kan. 292, 295-96, 183 P.3d 847 (2008).

Defining the terms of a contract requires a determination of the intentions of the parties, which is a question of fact. See *Reimer v. The Waldinger Corp.*, 265 Kan. 212, 214, 959 P.2d 914 (1998). To survive summary judgment a plaintiff in an employment contract dispute must show more than "evidence of his or her own unilateral expectation of continued employment." *Kastner v. Blue Cross & Blue Shield of Kansas, Inc.*, 21 Kan. App. 2d 16, Syl. ¶ 5, 894 P.2d 1092, *rev. denied* 257 Kan. 1092 (1995); see *Inscho v. Exide Corp.*, 29 Kan. App. 2d 892, 896, 33 P.3d 249 (2001), *rev. denied* 273 Kan. 1036 (2002).

The terms of an oral contract and the consent of the parties may be proven by the parties' acts and by the attending circumstances, as well as by the words that the parties employed. *Quaney v. Tobyne*, 236 Kan. 201, Syl. ¶ 3, 689 P.2d 844 (1984). But when the legally relevant facts are undisputed, the terms of a contract become an issue of law. *Nungesser v. Bryant*, 283 Kan. 550, 566-67, 153 P.3d 1277 (2007). Nevertheless, when the central issue in a case turns on the state of mind of one or both parties, courts should be cautious in granting summary judgment. See *Waste Connections of Kansas, Inc. v. Ritchie Corp.*, 296 Kan. 943, 974, 298 P.3d 250 (2013). Summary judgment is "rarely

appropriate" when a party's state of mind is at issue. *Kastner*, 21 Kan. App. 2d 16, Syl. ¶ 5; see *Conyers v. Safelite Glass Corp.*, 825 F. Supp. 974, 977 (D. Kan. 1993).

Analysis

- *Contract Claim*

There is no question that there existed an oral contract of employment between Peters and Deseret. Deseret offered to employ Peters, Peters accepted, and he came to work and was paid for his services. There was an offer, acceptance, and consideration. The issue here is the nature of that employment contract, *i.e.*, whether Peters was an employee at will or an employee with a more secure employment status. Peters claims his employment agreement with Deseret contained the following elements: (1) if he went to work for Deseret, his employment would be secure; (2) he would continue to be employed as long as he performed satisfactorily (essentially, that he could only be discharged for cause); and (3) any reduction in the workforce would be accomplished by attrition from retirements or voluntary resignations, not layoffs.

Deseret argues that because the oral contract does not include a definite duration, the contract is merely for an employment at will. Thus, Peters could be discharged at any time for no cause whatsoever. This contention rests on our Supreme Court's holding in *Johnson v. National Beef Packing Co.*, 220 Kan. 52, 551 P.2d 779 (1976).

In *Johnson*, the plaintiff left a meat packing plant in Iowa to work at the defendant's plant in Liberal. He was told that he would be a probationary employee for the first 90 days, after which he would become a permanent employee if he demonstrated he could do the work. There was no discussion about the duration of his employment. When he later suffered an injury that limited his ability to do the heavy lifting required of

the job, he was fired. Johnson then brought this action claiming his termination violated the promise to him of permanent employment.

In affirming the district court's entry of summary judgment against the plaintiff on this claim, the court cited the general rule that without an expressed or implied agreement on the duration of employment, an agreement to provide permanent employment "'is no more than an indefinite general hiring terminable at the will of either party.'" 220 Kan. at 55. Permanent employment simply means "'a steady job'" as opposed to temporary employment. 220 Kan. at 55. In so holding, the court cited 53 Am. Jur. 2d, Master and Servant § 27:

> "'Where no definite term of employment is expressed, the duration of employment depends on the intention of the parties as determined by circumstances in each particular case. The understanding and intent of the parties is to be ascertained from their written or oral negotiations, the usages of business, the situation and object of the parties, the nature of the employment, and all the circumstances surrounding the transaction. . . .'" 220 Kan. at 54-55.

The plaintiff claimed the defendant's employee manual provided: "'No employee shall be dismissed without just cause.'" 220 Kan. at 54. But the court pointed out that the manual was not published until long after the plaintiff was hired and was not a term bargained for at the time the plaintiff was hired. 220 Kan. at 55.

Other Kansas appellate courts have considered this issue. Eight years later, in *Allegri v. Providence-St. Margaret Health Center*, 9 Kan. App. 2d 659, Syl. ¶ 4, 684 P.2d 1031 (1984), our court recognized the general rule in *Johnson* regarding employment contracts terminable at will by either party in the context of a hospital physical therapist who was discharged by the hospital for an alleged conflict of interest. Relying on

Johnson, the district court granted summary judgment to the hospital on the plaintiff's claim because the plaintiff was an employee at will.

On appeal, the plaintiff argued that there were terms in his employment agreement with the hospital about the duration of his employment that were implied in fact. Our court reversed, restating the above quoted citation of the *Johnson* court from 53 Am. Jur. 2d, Master and Servant § 27. 9 Kan. App. 2d at 663-65. The court stated further: "Intent is normally a question of fact for the jury, [citation omitted], and may be shown by acts, circumstances and inferences reasonably deductible therefrom and need not be established by direct proof. [Citation omitted.]" 9 Kan. App. 2d at 663. Thus, determining whether there was of "a mutual intent to employ plaintiff as long as he did his job satisfactorily" as claimed by the plaintiff required a factual inquiry at trial. 9 Kan. App. 2d at 664.

Three years later, in *Morriss v. Coleman Co.*, 241 Kan. 501, 512, 738 P.2d 841 (1987), our Supreme Court noted the significance of *Allegri* because "it established clearly the rule that intent of the contracting parties is normally a question of fact for the jury and that the determination of whether there is an implied contract in employment requires a factual inquiry." In reversing the district court's summary judgment in favor of the employer, the *Morriss* court recognized an exception to the employment-at-will doctrine when, in interpreting the employment contract broadly under the implied contract theory, there is an implied obligation that the employer not terminate an employee arbitrarily contrary to a policy or program of employer, either expressed or implied, that restricts the employer's right to terminate an employee at will. 241 Kan. at 512-14.

Three years later, in *Pilcher v. Board of Wyandotte County Comm'rs*, 14 Kan. App. 2d 206, 210, 787 P.2d 1204, *rev. denied* 246 Kan. 768 (1990), our court rejected the

plaintiff's claim that her employer had to give her three warnings before firing her, when her only evidence of this claimed policy was that "everyone said it had always been this way."

The following year, in *Brown v. United Methodist Homes for the Aged*, 249 Kan. 124, 815 P.2d 72 (1991), our Supreme Court affirmed the district court's denial of the employer's summary judgment motion and the entry of judgment in favor of a discharged employee who claimed he was wrongfully terminated contrary to the terms of his implied contract of employment. The court in *Brown* observed that the strict holding in *Johnson* has been eroded by the development of various legal theories, citing with approval *Morriss* and *Allegri*. *Brown*, 249 Kan. at 132-36.

Finally, 4 years later, in *Kastner*, 21 Kan. App. 2d at 25, the district court discussed the plaintiff's initial job negotiations and found that he "'fails to demonstrate how this offer and acceptance pertains to anything other than the salary terms and the starting date. Nowhere on the employment offer is there a promise that the Plaintiff will be terminated only for good cause.'" Even viewed in the light most favorable to Kastner, the offer of employment and Kastner's acceptance contribute nothing to support the existence of an implied employment contract. The court further found that the defendant's post-hiring corporate resolution could not serve as the basis for an implied employment contract term because it was not part of the bargain when Kastner began his employment. 21 Kan. App. 2d at 26-27.

Johnson teaches us that when a former employee asserts that he or she was promised permanent employment after completing a period of probation, permanent does not mean forever. The duration of employment depends on the intention of the parties as determined by circumstances in each case. But in *Johnson*, there were no written or oral negotiations, nothing peculiar to the employer's business, and no surrounding

circumstances from which a rational factfinder could conclude that the parties intended and anticipated that the employer would be restrained in any way in deciding whether to terminate an employee. Thus, Johnson was an employee at will. 220 Kan. at 54-56.

But viewing the uncontested facts in our present case and the reasonable inferences that arise from those facts in the light favoring Peters, we conclude that there remain genuine issues of material fact from which a rational factfinder could conclude that Peters was not an employee at will. It does not appear that Peters claims he is entitled to lifetime employment by Deseret. But there are facts from which the factfinder could conclude that the parties agreed prior to Peters' hiring that the duration of his employment would extend beyond any reduction in force if Peters was performing his job satisfactorily.

The feedlot was a 24/7 operation. The feedlot had about 43,000 head of cattle in the fall when Deseret took over the operation. Deseret wanted to acquire the feedlot in order to care for its own cattle that had been reared on 10 ranches operated by its parent company. To accomplish this, Deseret needed to retain nearly all of Hitch's employees. To this end, Deseret warned departing employees Pruitt and Nicodemus against attempting to lure away any Hitch employees.

When Hitch announced to its employees that Deseret was buying the feedlot, Chris and Jason Hitch (according to Branscum) told the employees that the sales transaction included the provision that there would be no layoffs of Hitch employees after the sale. This was confirmed by Nicodemus who said, "[I]t was indicated, I don't remember the exact wording, that they were not planning to lay off anybody." According to Pruitt, Deseret stated that "[a]s people left, they were going to get their employees down through attrition as they left, rather than to let them go." Guerrero testified that Deseret told employees that they did not have to worry about their jobs and there would

be no more layoffs, but that this occurred after Deseret took over the feedlot (and after Peters would have been hired). In view of the testimony of the other witnesses on this topic, including the testimony of Peters, it is unclear whether the factfinder would conclude that Guerrero was mistaken about the timing of this statement. That, of course, is a matter of credibility we leave to the jury. At this stage, we view the evidence in the light favoring Peters.

In his deposition Peters acknowledged that as a supervisor for Deseret, he had the ability to recommend that an employee under his supervision should be fired and that disciplinary action could result in an employee's termination. There is no indication that this could not also apply to Peters. In fact, he acknowledged in his "Consent to Test for Alcohol or Drugs" that he could be fired for not meeting established standards of conduct and job performance. So unlike in *Johnson*, lifetime employment is not at issue.

But Peters also testified that representatives of Deseret told him before he decided to go to work for Deseret that any future downsizing would be accomplished through attrition rather than firing employees. Nevertheless, when Deseret downsized its operation in the spring of 2011, it fired Peters even though it admits that it was satisfied with his job performance.

Viewing the facts in the light favoring Peters, his expectations regarding the employment contract were not unilateral. Deseret recognized Peters' mechanical experience and experience with fleet management software. Deseret was impressed with the length of tenure of the Hitch employees, apparently including Peters. Deseret needed experienced employees to carry the business of the feedlot and care for Deseret's cattle after the sale. It warned two departing Hitch employees from trying to lure away any other Hitch employees. Viewing these facts and the reasonable inferences from these

facts in the light favoring Peters, a rational factfinder could conclude that Deseret extended these assurances to Peters as a part of his employment contract.

There are facts from which reasonable jurors could conclude that accomplishing a reduction in the workforce by firing Peters, who was performing his job satisfactorily, violated the contrary representation made to Peters before he decided to accept Deseret's employment offer. The process for arriving at such a conclusion is consistent with the holdings in *Johnson*, *Allegri*, *Morriss*, *Kastner*, and *Brown*.

The views of other employees on this subject are hardly universal. We express no opinion on whether Peters will or should prevail at trial. We leave the many credibility issues for the ultimate factfinder. But at this stage of the litigation, there remain genuine issues of material fact that preclude summary judgment. Accordingly, we must reverse the district court's summary judgment in favor of Deseret.

■ *Promissory Estoppel Claim*

Peters claims the district court erred in rejecting his promissory estoppel claim. He bases his claim of promissory estoppel on his decision to reject Hitch's offer of a severance package and to take Deseret's job offer.

Promissory estoppel is "an equitable doctrine designed to promote some measure of basic fairness when one party makes a representation or promise in a manner reasonably inducing another party to undertake some obligation or to incur some detriment as a result." *Bouton v. Byers*, 50 Kan. App. 2d 34, 41, 321 P.3d 780 (2014), *rev. denied* 301 Kan. 1045 (2015). To succeed on a claim of promissory estoppel, Peters must show: (1) Deseret reasonably expected Peters to act in reliance on a promise; (2) Peters, in turn, reasonably acted in reliance on that promise; and (3) a court's refusal to enforce

the promise would countenance a substantial injustice. See 50 Kan. App. 2d at 41; *Byers v. Snyder*, 44 Kan. App. 2d 380, 391, 237 P.3d 1258 (2010), *rev. denied* 292 Kan. 964 (2011).

To prove a cause of action based on equitable estoppel, the promise itself must be clear and unambiguous with its terms and "define with sufficient particularity what the promisor was to do. [Citation omitted.]" *Bouton*, 50 Kan. App. 2d at 42. Peters claims he denied Hitch's offer of a severance package in reliance on the promises about the terms of his employment with Deseret. As discussed above, there is a genuine issue of material fact on this issue that precludes summary judgment.

Citing *Chrisman v. Philips Industries, Inc.*, 242 Kan. 772, 780-81, 751 P.2d 140 (1988), Deseret contends that Peters' claim for promissory estoppel should fail because he merely traded one at-will position for another. While there is no issue that Peters' position at Hitch was as an employee at will, as discussed above there is a triable issue on whether Peters was an at-will employee when he agreed to work for Deseret. So Deseret's contention on this point does not support the entry of summary judgment on the promissory estoppel claim.

Viewing the evidence in the light favoring Peters, there is evidence that Hitch offered some form of severance package for employees who chose not to continue on with Deseret, that Deseret made representations to Peters about the security of his employment that it intended Peters to rely on, and that Peters reasonably acted in reliance on Deseret's representations in rejecting Hitch's severance package and going to work for Deseret. Under these circumstances, it would not be unreasonable for the court in exercising its equity powers to enforce Deseret representations to Peters in order to avoid a substantial injustice. Accordingly, Deseret is not entitled to summary judgment on Peters' promissory estoppel claim.

Reversed and remanded for further proceedings.