UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

CIVIL ACTION NO. 99-92-JBC

GENERAL ELECTRIC COMPANY, PLAINTIFF,

v. **MEMORANDUM OPINION AND ORDER**

LATIN AMERICAN IMPORTS, S.A., d/b/a LATAM, et al., DEFENDANTS.

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The parties have agreed to allow the court to decide the defendants' remaining promissory estoppel counter-claim. Having heard arguments of counsel, and having read their memoranda, and being otherwise sufficiently advised, the court will enter judgment in favor of the plaintiff, General Electric (GE), on this claim.

In Count 11 of their complaints, Latam and Gonzalez claim that GE "repeatedly promised Mr. Gonzalez and Latam that if they continued to re-invest and use the profits from the GE businesses for the purpose of further marketing the GE products and advancing GE's interest GE would not replace Latam as GE's appliance distributor with Mabe." A letter from Bob Reid to Latam, dated August 21, 1995, allegedly recites one such promise: "[MABE-Ecuador] will not have the authority to market the GE brands outside of Ecuador. GE Appliances will continue to sell GE brands in Peru through Latam." The defendants maintain that these alleged promises entitle them to assert a claim for promissory estoppel under Florida law.

The basic elements of promissory estoppel under Florida law are set forth in Restatement (Second) of Contracts, § 90 (1979), which states:

> (1) A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted may be limited as justice requires.

Claims based on the doctrine of promissory estoppel must (1) be based on promises that are definite and substantial in nature; (2) show a justifiable reliance on the promises made; and (3) show detrimental reliance on such promises. *W.R. Grace & Co. v. Geodata Services*, *Inc.*, 547 So.2d 919, 924-25 (Fla. 1989). Latam must prove these elements by clear and convincing evidence. *Id*. at 925.

The doctrine of promissory estoppel cannot be used to avoid the statute of frauds. Therefore, the oral representations GE allegedly made to Latam cannot form the basis of a promissory estoppel claim. *Tannenbaum v. Biscayne Osteopathic Hospital, Inc.*, 190 F.2d 777, 779 (Fla. 1966). The only written representation – and thus the only basis for Latam's promissory estoppel claim -- is Bob Reid's letter of August 21, 1995. On July 1, 2002, this court denied summary judgment on Latam's promissory estoppel claim regarding GE's alleged promise to use only Latam, not Mabe, to distribute GE products in Peru, and in so doing found that this alleged promise appeared to be sufficiently definite to allow the case to proceed to trial. Nevertheless, having heard the proof at trial, the court concludes that the representations contained in the Reid letter are "too indefinite to contradict the unambiguous language in the [parties' 1996 distributorship] [a]greement." *Eclipse Medical, Inc. v. American Hydro-Surgical Instruments, Inc.*, 1999 WL 181412, at*12 (S.D. Fla. 1999). GE's alleged promise assumes meaning only if it extends the terms or length of the parties'

1996 agreement beyond December 31, 1998.[1] That agreement, however, clearly and unambiguously expired on December 31, 1998. To hold GE to such an alleged promise where the parties' contract specifically addressed the duration of the parties' relationship would be "to wreak havoc with basic contract law," a result also disallowed in *W.R. Grace & Co.*, 547 So.2d at 925 and *Eclipse Medical*, 1999 WL 181412, at *12.

Even if the nature of the alleged promise itself did not defeat the claim of promissory estoppel, the claim would fall because Latam's alleged reliance on GE's alleged promise was not justified, as that promise was indefinite as to duration; transgressed the termination and integration (merger) clauses of the parties' written contract; and was inconsistent with another term of that contract.

To justify reliance, a promise must not be "entirely indefinite as to terms and time." *Hygema v. Markley*, 187 So. 373 (Fla. 1939); *see also Argonaut Dev. Group*, *Inc. v. SWH Funding Corp.*, 150 F.Supp.2d 1357, 1364 (S.D. Fla. 2001)(applying Florida law). The promise upon which Latam allegedly relied did not address the duration of GE's alleged promise, and was thus entirely indefinite as to time. Therefore, Latam's alleged reliance upon that promise was unreasonable. *See Argonaut*, 150 F.Supp.2d at 1364.

Additionally, GE's alleged promise specifically contradicted both the termination and integration clauses of the parties' 1996 written contract. The termination clause permitted GE to terminate the contract upon at least 180 days' written notice, for any reason or no reason at all. The alleged promise upon which Latam relies disregards the termination

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[1] The defendants, in supplemental written argument, concede as much: "GE's contractual right to terminate Latam remains intact. The only limitation affects what GE can do after that termination. . . ." Latam's Supplemental Memorandum, filed on August 15, 2002, at 7.

provision and suggests that GE had bound itself to continue using Latam (and to refrain from using Mabe) for an indefinite period of time. The integration clause stated, among other things, that the 1996 agreement represented the parties' entire agreement and that any subsequent representations relating to the parties' agreement would not be binding upon GE unless made in writing. The promise Latam seeks to enforce, however, clearly relates to the parties' agreement and was made before the parties signed the 1996 agreement. Therefore, Latam could not reasonably rely upon such a promise as a matter of law. *Eclipse Medical*, 1999 WL 181412, at *12 (promises to have "long-lasting partnership" and that plaintiffs "would continue to have the exclusive right to sell certain products to the customers in their territories" were indefinite because, among other things, they "were made without any regard whatever to the termination provision of the contract or the contractual requirement that any modifications, amendments or changes be in writing"); *W.R. Grace & Co.*, 547 So.2d at 925 (promise made by defendant's employees on three occasions that plaintiff would be provided additional work beyond the time frame set in the parties' written contract if the plaintiff would purchase additional equipment was indefinite because those promises "would have required the plaintiff's services for a considerable period of time without any regard whatever to the termination provision of the [written] contract or the contractual requirement that any modifications, amendments or changes be in writing.")

Furthermore, because the parties' contract did not make Latam an exclusive distributor of GE products in Peru (but only "a" distributor), any reliance on a promise that GE would not allow Mabe to distribute products in Peru is inconsistent with the parties' written contract. Therefore, any reliance on GE's alleged promise, insofar as it is premised

on the notion that Latam would act as the exclusive distributor of GE products, was not justified. *See Eclipse Medical*, 1999 WL 181412, at * 13 (reliance upon a promise is not reasonable where that promise is "inconsistent and irreconcilable with the express terms of the parties' written agreements"); *Barnes v. Burger King Corp.*, 932 F. Supp. 1441, 1443 (S.D. Fla. 1996).

Finally, even if Latam's reliance were justifiable, it has failed to prove detrimental reliance by clear and convincing evidence. The mere fact that Latam expended significant amounts of time and money in reliance on GE's promise is not sufficient. "[T]o properly state a claim for promissory estoppel under Florida law 'requires more than mere reliance. It requires reliance that cause a detrimental change of position.'" *Eclipse Medical*, 1999 WL 181412, at *13, quoting *Pinnacle Port Community Ass'n, Inc., v. Orenstein*, 872 F.2d 1536, 1543 (11th Cir. 1989). Thus, Latam was required to prove that it did something in reliance on GE's promise beyond what it was required to do under the parties' distributorship agreement. *See id.* In Count 11, however, Latam claims only that it "expended substantial amounts of monies, time, and efforts in introducing and marketing GE products to the Peruvian markets," acts which were clearly required under the parties' distributorship agreement. Latam's trial proof-- the injection of additional capital -- showed nothing further.[2] Latam has not shown, by clear and convincing evidence, that it relied upon GE's alleged promise in any other extra-contractual way. Accordingly,

[2] Latam points to injections of capital in late 1995 ($1,000,000) and again in 1997 ($600,000) as proof of its detrimental reliance upon GE's alleged promise. The evidence, however, did not demonstrate in a clear and convincing fashion that these sums were actually additions of new capital into the business. Even assuming they were newly invested monies, however, they fail to demonstrate detrimental reliance as a matter of law, under *Eclipse Medical* and *Pinnacle Port*.

IT IS ORDERED that the defendants' counter-claim under the doctrine of promissory estoppel is **DISMISSED WITH PREJUDICE**.

This the _____ day of _____, 2002.

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JENNIFER B. COFFMAN, JUDGE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY