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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

CHARLES C. EMMA,)	Appeal from the Circuit Court
)	of Kane County.
Plaintiff-Appellant,)	
)	
v.)	No. 08—L—553
)	
PINNACLE ACTUARIAL RESOURCES,)	
INC.,)	Honorable
)	Judith M. Brawka,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hutchinson concurred in the judgment.

ORDER

Held: The trial court properly dismissed counts I and II of plaintiff's amended complaint alleging promissory estoppel and fraudulent inducement, and it properly denied plaintiff's request for a declaratory judgment in count III because the Stock Transfer Restriction Agreement did not lack consideration.

Plaintiff, Charles C. Emma, filed a complaint against defendant, Pinnacle Actuarial Resources, Inc., based on his signing of a Stock Transfer Restriction Agreement. Pinnacle moved to dismiss Emma's complaint under section 2—615 of the Code of Civil Procedure (735 ILCS 5/2—615 (West 2008)). The trial court granted Pinnacle's motion to dismiss, and Emma appeals. We affirm.

I. BACKGROUND

Pinnacle was a business engaged in consulting in property and casualty insurance matters. Emma had worked for Pinnacle for over ten years in various capacities, including shareholder, vice-president, and member of the board of directors. Pinnacle issued shares of voting stock in 2003. In 2005, another consulting firm, Navigant Consulting, Inc., expressed interest in acquiring Pinnacle. In 2006, Pinnacle drafted a “Stock Transfer Restriction Agreement” (Restriction Agreement) which required shareholders to sell their stock to Pinnacle upon their termination from Pinnacle. The price paid for the stock depended upon the circumstances surrounding the shareholder’s departure; shareholders who left Pinnacle for a competitor were given a reduced price for their shares as compared to shareholders who retired from Pinnacle. On December 8, 2006, Emma and Pinnacle’s other six shareholders signed the Restriction Agreement. In 2007, Pinnacle declined to accept Navigant’s offer to purchase the company. Emma then left Pinnacle in 2008 to work for Navigant. The Restriction Agreement required Emma to sell his shares to Pinnacle for a reduced price, and Emma filed suit, challenging the circumstances under which he signed the Restriction Agreement.

On September 23, 2008, Emma filed a two-count complaint against Pinnacle. In count I, premised on promissory estoppel, Emma alleged that the president and agent of Pinnacle, Steven Lehmann, induced him to enter into the Restriction Agreement. In count II, Emma alleged fraud based on false statements of fact made by Lehmann. On November 17, 2008, Pinnacle moved to dismiss Emma’s complaint under section 2—615 of the Code. The trial court granted this motion on March 10, 2009, but gave Emma leave to replead.

Emma filed a first amended complaint on April 15, 2009, which added a third count for declaratory judgment. The first amended complaint alleged as follows. On January 2, 2003,

Pinnacle filed articles of incorporation with the State of Illinois and issued 1,000 shares of voting stock. As of December 2006, Pinnacle had a total of 1,050 outstanding shares divided among seven shareholders. President Lehman had 325 shares (31% ownership) and Emma, acting as vice-president at the time, had 150 shares (14.3% ownership). The remaining five shareholders each possessed 325 shares, 150 shares, 50 shares, 25 shares, and 25 shares.

When Navigant expressed interest in acquiring Pinnacle, Emma favored the acquisition; he would have received over \$2 million for his shares in the acquisition. During the course of negotiations with Navigant, Pinnacle presented the Restriction Agreement to its shareholders, but Emma refused to sign it. In the last few months of 2006, however, Lehmann pressured Emma to sign the Restriction Agreement by telling him that his failure to sign it would impair the transfer of the stock certificates after Navigant acquired Pinnacle. Lehmann told Emma that the Restriction Agreement was necessary to complete the deal with Navigant. In particular, Lehmann told Emma that he knew of other shareholders' positions; that the necessary votes were available to approve the acquisition; that a remaining obstacle was Emma's execution of the Restriction Agreement; and that the necessary majority of shareholder votes to approve the Navigant acquisition could be met, but only if Emma signed the Restriction Agreement. Emma signed the Restriction Agreement on December 8, 2006, based on Lehmann's assurances that: (1) the necessary majority vote of the shareholders were in favor of the acquisition/merger; and (2) the execution of the Restriction Agreement was an obstacle keeping Pinnacle from merging with Navigant.

In 2007, Navigant offered to acquire Pinnacle for at least \$15,000 per share. Despite Lehmann's representations, Pinnacle decided not to move forward with the merger on May 14,

2007.¹ Because Lehmann assured Emma that the Navigant acquisition could still be accomplished, Emma continued to work at Pinnacle until May 9, 2008, at which time he resigned as vice-president and from the board of directors. At the time of Emma's resignation, he owned 12.5% in equity in the company. Although Pinnacle was estimated to have equity of \$2,000,000, Pinnacle invoked the Restriction Agreement to substantially reduce the value of Emma's shares.

In count I, Emma alleged promissory estoppel in that Lehmann induced Emma to sign the Restriction Agreement. Specifically, Emma alleged that: he believed that Lehmann had knowledge as to what the shareholders needed to do to complete the acquisition by Navigant and knowledge of whether Pinnacle would obtain the necessary majority vote to complete the acquisition; Lehmann told Emma that his signature on the Restriction Agreement was necessary to complete the deal with Navigant; and Pinnacle knew that Emma would not have agreed to the Restriction Agreement but for Lehmann's promise that Pinnacle would follow the necessary majority vote of the shareholders in regard to Navigant's acquisition of Pinnacle. Emma alleged that he relied on Lehmann's statements to his detriment, and that after the necessary majority was not obtained to approve the Navigant acquisition, he was deprived of the \$15,000 per share that Navigant had offered. But for Emma's reliance on Lehmann's promises, he would have received, at a minimum, the value of his equity in the company at the time of his resignation.

In count II, Emma alleged fraudulent inducement based on the following false statements of material fact by Lehmann: that the Restriction Agreement would not matter or have any legal effect

¹While four out of the seven shareholders supported the acquisition (53%), it is undisputed that a two-thirds majority vote was required to approve the acquisition.

once the Navigant acquisition was complete²; that Emma’s failure to sign it would impair the transfer of stock certificates once Navigant acquired Pinnacle; that Lehmann knew of other shareholders’ positions and the necessary votes were available to approve the acquisition; that a remaining obstacle was Emma’s signing of the Restriction Agreement; that the Restriction Agreement was necessary to complete the deal with Navigant; that Pinnacle would act pursuant to a majority vote of the shareholders in regard to the Navigant acquisition; and that Pinnacle would accept an offer from Navigant to purchase Pinnacle. Emma alleged that Lehmann knew the statements were false but made them with the intent of inducing him to sign the Restriction Agreement. According to Emma, he never would have signed the Restriction Agreement but for Lehmann’s false statements, which he relied upon to his detriment. As a result, Emma signed a Restriction Agreement that severely restricted his right to sell his shares of stock upon leaving Pinnacle.

In count III, Emma sought a declaratory judgment that the Restriction Agreement was invalid. Emma argued that because the Restriction Agreement did not increase the value of his shares, it lacked consideration.

Pinnacle responded with a motion to dismiss counts I and II of Emma’s first amended complaint, and a motion for judgment as to count III of that complaint. Regarding count I alleging promissory estoppel, Pinnacle argued that Emma failed to state a cause of action because (1) Lehmann’s alleged statement that Emma was required to sign the Restriction Agreement to complete the deal for the sale of Pinnacle was not a “promise,” and (2) even assuming that there was an enforceable promise to follow the vote of the “necessary majority” regarding Navigant’s acquisition

²The Restriction Agreement stated that it “shall terminate” upon “the effectiveness of a merger, consolidation, or other acquisition of substantially all of the Corporation’s assets.”

of Pinnacle, Emma failed to allege that Pinnacle broke this promise in that Pinnacle followed the shareholders' two-thirds majority vote to reject Navigant's offer. With respect to count II alleging fraudulent inducement, Pinnacle argued that it was virtually identical to the initial claim for fraud that had already been dismissed. In addition, Pinnacle argued that Emma failed to allege the necessary elements of fraudulent inducement because (1) none of the alleged statements were statements of current and material fact but instead opinions or speculations of the future, and (2) plaintiff failed to allege that Lehmann knew that the statements were false. Finally, as to count III seeking a declaratory judgment, Pinnacle asked the court to deny Emma's request and instead enter judgment that the Restriction Agreement was valid. Pinnacle maintained that the parties made mutual promises in support of the agreement.

In Emma's response to Pinnacle's motion to dismiss his claim based on promissory estoppel, Emma argued that the promise by Lehmann "was not to follow the vote but to *obtain* and follow the necessary majority vote to complete" the acquisition. (Emphasis in original). In its responsive pleading, Pinnacle argued that Emma was not allowed to "amend his pleading through his brief." On the merits, Pinnacle argued that even had this promise been alleged, it could not be the basis for a promissory estoppel claim because Emma had no right to rely on promises that were not within Lehmann's control.

On September 3, 2009, the trial court dismissed count I alleging promissory estoppel with prejudice. In stating its rationale, the court clarified what "promise" it thought Emma was alleging. According to the court, Emma was not "talking about a promise for a necessary majority." Instead, Emma was alleging that the "promise that was made was that the deal was going to happen if [he] signed this, and he signed it, and the deal didn't happen." Because Pinnacle had no power to control

the happening of that future deal through the voting power of its shareholders, the court ruled that Emma could not reasonably rely on such a promise and dismissed that count with prejudice. With respect to count II alleging fraudulent inducement, the trial court dismissed that count *without* prejudice and gave Emma leave to replead. The court gave Emma an opportunity to plead a claim for “fraudulent inducement on a scheme basis.” Regarding count III, in which Emma sought a declaratory judgment that the Restriction Agreement lacked consideration, the court denied Emma’s request and entered judgment in favor of Pinnacle.

On October 29, 2009, Emma filed his second amended complaint³ that expanded on his fraudulent inducement claim, and we summarize only those allegations not present in his prior (first amended) complaint. Emma alleged as follows. During the negotiations between Pinnacle and Navigant, Lehmann’s contact at Navigant was Jeff Stoecklein. Lehmann informed Emma and other shareholders that Stoecklein told Lehmann that the Restriction Agreement was “crucial” to the Pinnacle-Navigant acquisition and that all of “Pinnacle’s employees must sign the Restriction Agreement or the Navigant” acquisition would not be “completed.” Around the same time, Lehmann told Emma that Stoecklein had communicated to him that if Emma “did not sign the Restriction Agreement by December of 2006, Navigant said they would end all negotiations with Pinnacle.” However, Stoecklein never discussed the Restriction Agreement with Lehmann. In particular, Stoecklein never told Lehmann that the Restriction Agreement was crucial to the acquisition; that all of Pinnacle’s shareholders needed to sign that agreement to complete the acquisition; or that Navigant would end all purchase discussions if Pinnacle’s shareholders failed

³Emma’s second amended complaint also included counts I and III for purposes of appeal.

to sign it. As a result, Lehmann knew that the statements he made to Emma regarding Navigant's requirement that the Restriction Agreement be signed were false.

Emma further alleged that he had communicated to Lehmann that he did not want to sign the Restriction Agreement, and that Lehmann, in an effort to convince Emma to sign it, made these false representations regarding the effect of the Restriction Agreement on Navigant's acquisition. According to Emma, he did not want negotiations with Navigant to end and would not have signed the Restriction Agreement had he known that Lehmann's representations were false. Finally, Emma alleged that Lehmann made two additional false statements of material fact: (1) that "the necessary majority of shareholder votes to approve the Navigant acquisition could be met, but only if Emma signed the Restriction Agreement," and (2) that "Pinnacle would accept an offer from Navigant to purchase Pinnacle but only if the Restriction Agreement was signed."

Pinnacle moved to dismiss count II of Emma's second amended complaint, arguing that Emma failed to state a cause of action for fraudulent inducement because the statements allegedly made by Lehmann did not relate to current and material facts, and because Emma failed to allege that "any future representations were made as a scheme to defraud" or that he reasonably relied on the alleged misrepresentations.

In his response to Pinnacle's motion to dismiss, Emma argued that Lehmann's statements were not a future promise, but that even if they were, they were made in furtherance of a scheme to deprive him of the true value of his stock.

In a written order dated March 17, 2010, the trial court granted Pinnacle's motion to dismiss count II of Emma's second amended complaint. The court determined that Emma's allegations of a scheme to defraud were statements about future events that depended on the actions of a third party

not within Lehmann's control. Precisely because the alleged misrepresentations related to the actions of a third party over which Lehmann had no control, the court also found that it was not reasonable for Emma to rely on those statements. Finally, the court determined that Emma had not established that the alleged misrepresentations were the proximate cause of the damages he sought. Because it was the shareholder vote and not the misrepresentations that stopped the deal, the court determined that the misrepresentations did not proximately cause Emma's damages.

Emma filed a timely notice of appeal. On appeal, he challenges the trial court's dismissal of counts I and II and its judgment in favor of Pinnacle on count III.

II. ANALYSIS

We first begin by addressing whether the trial court erred by determining that Emma did not allege sufficient facts to state a claim for promissory estoppel or fraudulent inducement. A motion to dismiss under section 2--615 "challenges the legal sufficiency of a complaint based on defects apparent on its face." *Heastie v. Roberts*, 226 Ill. 2d 515, 531 (2007). To determine the legal sufficiency of a complaint, all well-pleaded facts are taken as true and all reasonable inferences from those facts are drawn in favor of the plaintiff. *Springfield Heating & Air Conditioning, Inc. v. 3947-55 King Drive At Oakwood LLC*, 387 Ill. App. 3d 906, 908-09 (2009). When reviewing a trial court's granting of a section 2--615 motion to dismiss, the reviewing court must view the complaint in a light most favorable to the plaintiff and ask whether the allegations contained in the complaint are sufficient to state a cause of action. *Id.* at 909. All facts apparent from the face of the pleadings, including any exhibits attached thereto, must be considered. *Beahringer v. Page*, 204 Ill. 2d 363, 365 (2003). We review a trial court's granting of a section 2--615 motion to dismiss *de novo*. *Springfield Heating & Air Conditioning*, 387 Ill. App.3d at 909.

A. Promissory Estoppel

“Promissory estoppel is ‘an equitable doctrine invoked to prevent a person from being injured by a change in position made in reasonable reliance on another’s conduct.’” *Ross v. May Co.*, 377 Ill. App. 3d 387, 392 (2007), quoting *Kulins v. Malco, a Microdot Co.*, 121 Ill. App. 3d 520, 527 (1984). To establish a claim of promissory estoppel, the plaintiff must prove that: (1) the defendant made an unambiguous promise to the plaintiff; (2) the plaintiff relied on such promise; (3) the plaintiff’s reliance was expected and foreseeable by the defendant; and (4) the plaintiff relied on the promise to his detriment. *Newton Tractor Sales, Inc. v. Kubota Tractor Corp.*, 223 Ill. 2d 46, 51 (2009). In addition, the plaintiff’s reliance must be reasonable and justifiable. *Quake Construction, Inc. v. American Airlines, Inc.*, 141 Ill. 2d 281, 310 (1990). The promise essential to a claim of promissory estoppel need not be expressed, only unambiguous. *Chatham Surgicore v. Health Care Service*, 356 Ill. App. 3d 795, 802 (2005). In order to have an agreement, the parties must have a distinct intention common to both and without doubt or difference. *Id.* at 802. The intention of the parties must in some way be communicated, since a person’s intention can be ascertained by another only by means of outward expressions such as words and acts. *Id.*

Regarding the two elements of an unambiguous promise and reasonable reliance, Emma alleged the following in his amended complaint: that Lehmann was the president of Pinnacle who owned 31% of the voting stock; that Emma owned 14.3% of the voting stock; that the remaining five shareholders owned 31%, 14.3%, 5%, 5%, 2%, and 2% of the voting stock; that Lehmann informed Emma that he had acquired knowledge of other shareholders’ positions; that the necessary votes to approve the acquisition could be met, but only if Emma signed the Restriction Agreement; that Emma believed that Lehmann, as president, had knowledge as to what Pinnacle stockholders needed

to do to complete the acquisition and knowledge of whether the necessary majority vote would be obtained; that Lehmann told Emma that a remaining obstacle to the acquisition was his execution of the Restriction Agreement; that Lehmann told Emma that his signature on the Restriction Agreement was necessary to complete the deal; and that Emma reasonably relied on Lehmann's statements in signing the Restriction Agreement.

At the outset, we note that Emma argues in his reply brief, as he did in his response to Pinnacle's motion to dismiss before the trial court, that "[i]t was the assurances of Lehman [*sic*] to obtain the votes that is the basis for the promissory estoppel claim." However, the promise to *obtain* the necessary majority is different than the promise of knowing whether the necessary majority vote would be obtained. In any event, we are not convinced that Lehmann's statements, either to obtain the necessary majority or to have knowledge that the necessary majority vote would be obtained, constituted an unambiguous promise. It is undisputed that the acquisition by Navigant depended on two-thirds of Pinnacle's shareholders voting to approve the deal. As the trial court reasoned, Emma did not plead that Lehmann or Pinnacle held the votes or controlled the decision; rather, it was in the hands of the shareholders. As a result, it appears that rather than an unambiguous promise, Lehmann's statements were more akin to a prediction of how the vote would turn out. See *Stringer Construction Co. v. Chicago Housing Authority*, 206 Ill. App. 3d 250, 260 (1990) (a prediction, opinion, or prophesy is not a promise, and the evidence established at most a prediction that HUD would approve the changes and provide the additional funding).

But even assuming that Lehmann's statements amounted to an unambiguous promise that the deal would happen if Emma signed the Restriction Agreement, Emma has failed to sufficiently allege reasonable reliance upon such statements. In determining whether a party's reliance was

reasonable, the court must consider all of the facts that the party knew, as well as those facts that the party could have discovered through the exercise of ordinary prudence. *Tirapelli v. Advanced Equities, Inc.*, 351 Ill. App. 3d 450, 456 (2004). Knowing that the acquisition depended on a two-thirds vote of the shareholders, and that Emma and Lehmann's votes combined did not amount to the necessary majority vote, Emma knew that Lehmann could not control whether the acquisition would occur. As previously stated, Lehmann had no control over how the other shareholders would vote regarding the acquisition, and even if he claimed to know how they would vote, they could always change their mind.

While Emma recognizes that the acquisition depended upon the actions of third parties, he nevertheless claims that his reliance was reasonable. On this point, *Ross* is instructive. There, the plaintiff/employee alleged that he detrimentally relied on a manager's statements that he would remain employed as long as he wanted to work. *Ross*, 377 Ill. App. 3d at 394. The trial court found that based upon these allegations, the plaintiff had not sufficiently alleged the elements for promissory estoppel because he could not establish that he reasonably relied upon the statements. *Id.* According to the facts in that case, every employee handbook issued to the plaintiff had contained an explicit disclaimer informing employees that the *only person* who could alter their at-will employment status was the senior vice president of human resources. *Id.* In other words, it was not within the manager's authority or control to guarantee the plaintiff's employment, it was within the senior vice president's control. The appellate court agreed. *Id.*

As in *Ross*, Lehmann's "promises" were not within his control, and Emma has not established that he could reasonably rely on them. Indeed, it would be dangerous precedent to expand reasonable reliance to a situation where the promisor was not responsible for fulfilling his

own promise but instead promised or guaranteed the actions of third parties. Therefore, the trial court properly determined that Emma failed to allege sufficient facts to state a claim for promissory estoppel.

B. Fraudulent Inducement

Emma next challenges the trial court's dismissal of count II alleging fraudulent inducement. To state a cause of action for common-law fraud, a plaintiff must plead a false statement of material fact; knowledge by the defendant that the statement was false; the defendant's intent that the statement induce the plaintiff to act; the plaintiff's reliance on the truthfulness of the statement; and damages that result from reliance on the statement. *Napcor Corp. v. JP Morgan Chase Bank, NA*, 406 Ill. App. 3d 146, 154 (2010). While it is true that misrepresentations of intention to perform future conduct, even if made without a present intention to perform, do not generally constitute fraud, the supreme court has recognized an exception to this rule. *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 168 (1989). Under this exception, such promises are actionable if the false promise or representation of future conduct is alleged to be the scheme employed to accomplish the fraud. *Id.*

According to Emma, the following statements by Lehmann evidenced a scheme to defraud him: (1) that the Restriction Agreement was necessary to complete the deal with Navigant; (2) that Lehmann acquired knowledge of Pinnacle's other shareholders' positions, that the necessary votes were available to approve the acquisition, and that a remaining obstacle was Emma's execution of the Restriction Agreement; (3) that the necessary majority of shareholder votes to approve the Navigant acquisition could be met, but only if Emma signed the Restriction Agreement; (4) that Lehmann's principal contact at Navigant was Stoecklein; (5) that Stoecklein spoke for Navigant's

interest and had authority on Navigant's behalf regarding the Pinnacle-Navigant merger; (6) that Stoecklein informed Lehmann that the Restriction Agreement was crucial to the acquisition and that all of Pinnacle's employees had to sign the Restriction Agreement or the Navigant acquisition would not be completed; (7) that if Emma did not sign the Restriction Agreement by December 2006, Stoecklein told Lehmann that Navigant would end all negotiations with Pinnacle; (8) that the Restriction Agreement would not matter once the Navigant acquisition was complete; (9) that Emma's failure to sign the Restriction Agreement would impair the transfer of stock certificates once Navigant acquired Pinnacle; (10) that Pinnacle would accept an offer from Navigant but only if the Restriction Agreement was signed; (11) that Pinnacle would act pursuant to a majority vote of the shareholders in regard to the Navigant acquisition; and (12) that the Restriction Agreement would have no legal impact or effect once the Navigant acquisition was complete.

Again, we determine that Emma has failed to allege sufficient facts of reasonable reliance. As stated, the question of reasonable reliance takes into account both what the plaintiff knew and what he could have learned through the exercise of ordinary prudence. *Johnson v. Waterfront Services Co.*, 391 Ill. App. 3d 985, 993 (2009). Justifiable reliance has been characterized as a plaintiff's burden to prove his right to rely upon the statement. *Id.* "In other words, a plaintiff may not close his eyes and then claim that he has been deceived by others." *Id.*

As with his claim premised on promissory estoppel, the critical factor defeating Emma's claim of fraudulent inducement is that all of his allegations pertained to future events that were not within Lehmann's control. We have already discussed how Lehmann had no control over whether the Navigant acquisition would ultimately occur. Instead, that decision was in the hands of the shareholders, who needed a two-thirds majority vote to accept Navigant's offer. Likewise, Emma's

additional allegations of what Stoecklein told Lehmann suffer the same fate in that they hinged on the actions of a different third party, Navigant. Just as Lehmann could not control the vote of Pinnacle's shareholders, he could not control whether Stoecklein and Navigant would pursue a deal with Pinnacle. In the end, Pinnacle did make an offer but the deal fell through based on Pinnacle not acquiring the necessary shareholder vote.

The facts in this case resemble *Kusiciel v. LaSalle National Bank*, 106 Ill. App. 3d 333 (1982), where tenants of a shopping center brought an action against the landlord based on various representations made by the leasing agent. The plaintiffs claimed that the following fraudulent representations induced them into entering into a commercial lease in a shopping center: that the shopping center would be fully rented and all stores open for business no later than a specified month; that certain named businesses would be tenants of the shopping center; and that the reconstruction work on a major access road to the shopping center would be completed by a certain date. *Id.* at 334, 338. Because all of these representations related to events that were to occur in the future and which were not within the defendants' control, the trial court found that these representations were not promises made without any intention of performing them but instead were predictions of events that depended in essential part on the conduct of others. *Id.* at 338. As a result, the representations were not a proper basis for a fraud claim, and the appellate court agreed. *Id.* at 338-39.

As was the case in *Kusiciel*, the fraudulent representations made by Lehmann in this case concerned a future deal the outcome of which he could not control. As a result, Emma has failed to allege sufficient facts of justifiable reliance, which is fatal to his claim of fraudulent inducement. See *Dloogatch v. Brincat*, 396 Ill. App. 3d 842, 847 (2009) (failure to prove justifiable reliance is

fatal to claims of fraudulent misrepresentation). The trial court thus correctly dismissed count II of Emma's second amended complaint.

C. Declaratory Judgment as to Validity of Restriction Agreement

Emma's final argument is that the court erred by granting judgment in favor of Pinnacle as to count III, in which he sought a declaratory judgment that the Restriction Agreement was invalid. Emma argues that there was no mutual consideration for that agreement, in that he agreed to sell his stock to Pinnacle at a discounted price upon his departure without any mutual promise or agreement from Pinnacle in return.

An enforceable contract is an exchange and its elements include offer, acceptance, and consideration. *All American Roofing, Inc. v. Zurich American Insurance Co.*, 404 Ill. App. 3d 438, 449 (2010). Consideration is the bargained-for exchange, whereby one party receives a benefit or the other party suffers a detriment. *Id.* "Thus, a promise for a promise is, without more, enforceable." *McInerney v. Charter Golf, Inc.*, 176 Ill. 2d 482, 487 (1997). Where there is any other consideration for the contract, mutuality of obligation is not required. *Id.* at 488. In other words, a contract does not lack mutuality merely because its obligations appear unequal or because every obligation or right is not met by an equivalent counter obligation or right in the other party. *Keefe v. Allied Mortgage Corp.*, 393 Ill. App. 3d 226, 230 (2009); see also *Tortoriello v. Gerald Nissan of North Aurora, Inc.*, 379 Ill. App. 3d 214, 237 (2008) (the parties to a contract need not have identical rights and obligations; the mutuality requirement is satisfied if each party has given sufficient consideration for the other's promise).

The Restriction Agreement stated that the "Shareholders and the Corporation believe it to be in the best interests of the Shareholders and the Corporation to preserve the continuity of

management of the Corporation and to provide for the orderly disposition of the stock held at any time by the Shareholders.” It further stated that “it is in the best interests of the Corporation and its shareholders to establish a price at which Shareholders will sell and the Corporation will buy the shares and thereby avoid disagreements regarding price.” Upon a shareholder’s death or termination of employment, the Restriction Agreement provided that Pinnacle would purchase all of the shareholder’s shares for a set price depending on the circumstances of the departure.

In reviewing the Restriction Agreement, we disagree with Emma that it lacks consideration. The Restriction Agreement contains mutual promises that the shareholder will sell and Pinnacle will buy all of the shareholder’s shares at a certain price. See *Hagshenas v. Gaylord*, 199 Ill. App. 3d 60, 72 (1990) (unlike the holders of public stock, shareholders in a small corporation do not usually have an available market to sell their shares). Though Emma is dissatisfied with the fixed price he received for his shares based on his decision to leave Pinnacle and work for a competitor, it does not change the fact that the Restriction Agreement was premised on promises both by Pinnacle and the shareholders. Accordingly, the trial court properly rejected Emma’s claim that the Restriction Agreement lacked consideration and denied his motion for a declaratory judgment to that effect.

III. CONCLUSION

For the reasons stated, we affirm the judgment of the circuit court of Kane County.

Affirmed.