STATE OF MICHIGAN

COURT OF APPEALS

ELLEN RISKIN,

Plaintiff-Appellant,

v

DETROIT RECEIVING HOSPITAL, and ,UNIVERSITY HEALTH CENTER,

Defendant-Appellees.

UNPUBLISHED
June 10, 1997

No. 184742
Wayne Circuit Court
94 415474 CK

Before: Jansen, P.J., and Reilly and W.C. Buhl,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order which granted summary disposition to defendant pursuant to MCR 2.116(C)(10) on the basis that there was no genuine issue of material fact as to whether defendants breached their employment contract with plaintiff or whether defendants' defense of economic necessity was pretextual. We affirm.

Upon de novo review and considering the facts in a light most favorable to plaintiff, the Court finds that plaintiff has not developed a record which presents an issue upon which reasonable minds could differ. *McCart v Thompson, Inc.*, 437 Mich 109, 114-115, 469 NW2d 284 (1991); *Michigan Mutual v Dowell*, 204 Mich app 81, 85-86; 514 NW2d 185 (1994). This case is distinguishable from *Ewers v Stroh Brewery Co, 178* Mich App 371, 373-374; 443 NW2d 504 (1989), and *Lytle v Malady*, 209 Mich App 179, 198-199; 530 NW2d 135 (1995), because plaintiff has failed to present sufficient documentary proofs to rebut defendants' economic necessity defense and create a jury question on the legitimacy of that defense.

Plaintiff's reliance of *Buczkowski v Allstate Ins Co (On Rehearing)*, 198 Mich App 276, 278-279; 502 NW2d 343 (1993), aff'd 447 Mich 669; 526 NW2d 589 (1994), for the proposition that whether defendant reasonably exercised its discretion is a question for the jury, is misplaced. *Buczkowski* was a declaratory judgment action for liability coverage which addressed the question

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* Circuit judge, sitting on the Court of Appeals by assignment.

whether the plaintiff's act of intentionally firing a gun was covered under the exclusionary clause of the plaintiff's insurance policy. That case provides no support for plaintiff's contention.

The trial court did not err in granting defendants' motion for summary disposition pursuant to MCR 2.16(C)(10).

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ William C. Buhl