STATE OF MICHIGAN

COURT OF APPEALS

JOHN HODGE,

Plaintiff-Appellant,

v

GRAND VALLEY STATE UNIVERSITY,

Defendant-Appellee.

UNPUBLISHED
November 18, 1997

No. 198961
Court of Claims
LC No. 96-016259

Before: White, P.J., and Cavanagh and Reilly, JJ.

PER CURIAM.

Plaintiff appeals as of right an order of the Kent Circuit Court, sitting as the Court of Claims, granting summary disposition to defendant of plaintiff's breach of employment contract claim pursuant to MCR 2.116(C)(8) and (C)(10). We affirm.

Plaintiff is a tenured full professor at defendant's Seidman School of Business and has a Master's Degree in Counseling and Personnel Administration, and a Ph.D. in Education. The Seidman School has sought accreditation from the American Assembly of Collegiate Schools of Business for a number of years. Plaintiff's complaint alleged a breach of contract claim under *Toussaint v Blue Cross & Blue Shield*, 408 Mich 579; 292 NW2d 880 (1980).[1] Plaintiff alleged that in its ongoing attempt to achieve accreditation, defendant implemented written and unwritten policies directing that faculty members conform their credentials and professional practices to meet the accreditation standards. Plaintiff alleged that faculty members were directed to become "qualified" as described in the standards, seek further academic preparation and increase publication rates. Plaintiff alleged that these policies created a reasonable and implied expectation of greater compensation, that he complied with those terms by obtaining a second master's degree in Labor and Industrial Relations, the field in which he teaches, and increasing his publication rate, that he is the only faculty member to have obtained credentials necessary to be "qualified" pursuant to the accreditation standards, and that defendant's failure to increase plaintiff's salary is contrary to the terms and conditions established by defendant.

Defendant filed a motion for summary disposition, arguing that plaintiff's contract claim was too vague to be enforceable because he failed to identify a specific amount of salary increase promised,

presented no specific time period in which the increases would take place, and had failed to identify specific terms for the court to enforce. Defendant argued that written, official University policies and procedures relating to salary adjustments adopted by the University's Board of Control, the governing body with responsibility for setting the terms and conditions of employment for faculty at Grand Valley, governed plaintiff's relationship with defendant and that neither the Dean of the Seidman School nor the Provost could alter those terms without Board approval. Defendant argued that nothing in those governing policies guaranteed plaintiff a specific salary or salary increase.

Defendant further argued that the breach of implied contract claim recognized in *Toussaint, supra*, has never been extended to situations other than wrongful discharge. Defendant argued that even if the *Toussaint* claim were adequately pleaded, the record was devoid of facts to support an enforceable contract for salary increases.

Plaintiff's response to defendant's motion argued that his "legitimate expectations" theory of recovery was founded in *Toussaint, supra,* and in the theory of estoppel. Plaintiff argued that he was expressly and impliedly told that if he published and went back to school he would be qualified and be paid more than the unqualified members of the management department.

The Court of Claims granted defendant summary disposition under MCR 2.116(C)(8) on the basis that salary disputes are not viable under *Toussaint, supra*, and under MCR 2.116(C)(10) on the basis that the alleged promises were too vague to be enforceable. The Court of Claims, referring to *Dumas v Auto Club Ins Ass'n*, 437 Mich 521; 473 NW2d 652 (1991),[2] noted that the Supreme Court had refused to extend *Toussaint* to nondischarge situations involving salary disputes.

On appeal plaintiff argues that he is seeking only to enforce promises made to him personally, under a theory of promissory estoppel. Plaintiff argues that *Toussaint* and *Dumas, supra,* thus do not apply to his claim, and that the dismissal of his breach of contract claim should be reversed to the extent that he alleged a breach of an express promise.

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). A court must consider the pleadings, affidavits, depositions, admissions and any other documentary evidence available to it, giving the benefit of reasonable doubt to the nonmovant. *Id.* The test is whether the kind of record which might be developed would leave open an issue upon which reasonable minds might differ. *Linebaugh v Berdish*, 144 Mich App 750, 754; 376 NW2d 400 (1985).

Promissory estoppel arises when (1) there is a promise (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee (3) which in fact produces reliance or forbearance of that nature (4) under circumstances such that the promise must be enforced if injustice is to be avoided. *Martin v East Lansing School Dist,* 193 Mich App 166, 178; 483 NW2d 656 (1992). The promise must be definite and clear. *Id.*

Plaintiff's complaint did not allege an express promise, and plaintiff did not amend his complaint to add such a claim. Plaintiff did argue in response to defendant's motion for summary disposition that

defendant made express and implied promises that his salary would be increased if he obtained another degree and increased his publication rate. In support of that argument, plaintiff attached deposition testimony of a former chair of the department and a former dean of the Business School.

Plaintiff's former department chair, Dr. Harper, testified:

> First of all, I, for [sic] many times, have argued about his pay and you won't find it in writing because basically we sit in the meetings and talk, we do not take notes, I have talked to the dean, I have talked to the provost, I have talked to John.
>
> I will tell you exactly from my heart what I told John, and John might disagree, I said, "John, I would never pay you the top pay in any department, but I would not have you below the average in the department." I argued the issue, I thought it was wrong.
>
> At one time, John was about 10,000 or $12,000 down, I thought it was ridiculous and wrong. I said once he got his degree, he should be moved, I don't think he should have been done [sic] that far and I think John should have been moved.

The former dean, Dr. Pitman, testified:

> Q Is it true that you told John at some point that he should stop fighting Grand Valley and that you would do the fighting for him to get his salary up?
>
> A What I told him was that I would take his - - - if he could show me that through performance that he'd merited some recognition that I would take that fight up. And, indeed, he came forth with some evidence of things that he didn't feel were recognized in the '80s and I think it's my job, not his job if things aren't what they should be.

We have reviewed the above testimony and other documentary evidence plaintiff submitted below and conclude that plaintiff failed to establish the existence of a definite and clear promise. Dr. Harper's statement was an expression of opinion that plaintiff's salary *should* have been increased after he received his degree, but evidences no promise that plaintiff's salary would be increased. Dr. Pitman's testimony evinces his apparent intent to speak on plaintiff's behalf regarding getting a salary increase, if plaintiff showed him that he merited recognition, but does not rise to the level of a definite and clear promise to increase plaintiff's salary. Even if a reasonable fact-finder could conclude that these statements constituted a promise, plaintiff presented no evidence of what the terms of the contract would be, including the timing and amount of the increases. Nor did plaintiff establish that Dr. Harper and Dr. Pitman had the authority to bind the University.

Under these circumstances, the Court of Claims properly granted defendant summary disposition under MCR 2.116(C)(10).

Affirmed.

/s/ Helene N. White
/s/ Mark J. Cavanagh
/s/ Maureen Pulte Reilly

[1] Plaintiff's original complaint also alleged that defendant had discriminated against him as to compensation on the basis of race under the Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(701) *et seq*. That claim was not dismissed, and is not before us.

[2] In *Dumas*, *supra* at 529, a plurality of the Michigan Supreme Court chose not to extend the "legitimate expectations" leg of *Toussaint* beyond wrongful discharge disputes. See also discussion in *Baragar v State Farm Ins Co*, 860 F Supp 1257, 1261-1262 (CA 6, 1994) (noting the lack of Michigan precedent for extending *Toussaint* beyond wrongful discharge disputes).

Plaintiff cited no authority below or on appeal to support his theory that salary disputes in non-discharge situations present viable claims under *Toussaint*, *supra*.