

STATE OF MICHIGAN
COURT OF APPEALS

LAWRENCE TRYBULEC,

Plaintiff-Appellant,

v

CLARK FOODSERVICE, INC.,

Defendant-Appellee.

UNPUBLISHED

June 22, 1999

No. 209937

Wexford Circuit Court

LC No. 97-012874 CK

Before: Griffin, P.J., and Wilder and R. J. Danhof,* JJ.

PER CURIAM.

Plaintiff appeals by right an order awarding defendant summary disposition regarding plaintiff's claim alleging breach of an employment contract. We affirm.

Although the trial court relied upon MCR 2.116(C)(10) (no genuine issue of material fact), we review the award de novo pursuant to MCR 2.116(C)(7) (claim barred by the statute of frauds), *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389, 395; 573 NW2d 336 (1997); *Shirilla v Detroit*, 208 Mich App 434, 437; 528 NW2d 763 (1995), considering all documentary evidence submitted by the parties and accepting the contents of the complaint as true unless specifically contradicted by documentation submitted by the movant, *Sewell v Southfield Public Schools*, 456 Mich 670, 674; 576 NW2d 153 (1998).

Plaintiff first argues that a letter he received from defendant evidences a two-year employment contract, thus satisfying the requirement of the statute of frauds, MCL 566.132(1)(a); MSA 26.922(1)(a), that "[a]n agreement that, by its terms, is not to be performed within 1 year from the making of the agreement" be in writing and signed by the party to be charged if it is to be enforced. An employment contract not capable of being performed within one year is within the statute. *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438, 441; 505 NW2d 275 (1993). Consequently, the letter upon which plaintiff relies must sufficiently set forth the essential terms of the agreement to satisfy the statute of frauds and thus render the alleged contract enforceable. *Opdyke Investment Co v Norris Grain Co*, 413 Mich 354, 369; 320 NW2d 836 (1982). We follow a case-by-case approach in determining compliance with the statute of frauds. *Forge v Smith*, 458 Mich 198,

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

206; 580 NW2d 876 (1998). The appropriate requirement is the existence of a note or memorandum having significant probative value in establishing the contract, although its efficacy in fulfilling the statute's purpose depends in each case upon the setting in which it is found. *Goslin v Goslin*, 369 Mich 372, 376; 120 NW2d 242 (1963). Parol and extrinsic evidence may be used to supplement, but not contradict, the terms of the written agreement. *Opdyke, supra* at 367.

Applying these legal principles to the present facts, we find that the evidence regarding an employment contract fails to satisfy the statute of frauds. We agree with the following ruling of the trial court:

Looking at the letter in a light most favorable to the plaintiff, . . . it is my opinion that this is not sufficient to satisfy the Statute of Frauds. It does not state with any definiteness at all that you have a two year term of employment. For example, why wouldn't this be a three year term of employment, four year, or indefinite term of employment. Just because salary is mentioned for the first two years does not mean that this is a two year term of employment. And we have cases which state such, that stating the salary for certain periods does not mean that that's the term of employment. It is not definite enough, it is not clear; in my opinion, does not satisfy the Statute of Frauds.

Defendant is therefore entitled to judgment as a matter of law.

Plaintiff next contends that the trial court erred in granting summary disposition regarding his claim for payment of unpaid bonuses and unused vacation time. The court held that this claim was barred by MCL 408.473; MSA 17.277(3), providing that an employer must pay fringe benefits according to the terms of a written contract or written policy. However, plaintiff did not base his claim on the statute, and this Court has held that the statutory remedy is cumulative, not exclusive, where, as here, a plaintiff is pursuing the common-law remedy of enforcement of a contract. *Murphy v Sears, Roebuck & Co*, 190 Mich App 384, 388; 476 NW2d 639 (1991). Although MCL 408.473; MSA 17.277(3) does not apply to plaintiff's claim, we nevertheless affirm the trial court because it reached the right result. *McCaslin v The Hartford Accident & Indemnity*, 182 Mich App 419, 421; 452 NW2d 834 (1990). Plaintiff's claim is barred by the statute of frauds to the extent that he seeks payment for unpaid bonuses and unused vacation time. He presented no evidence that he was promised that he would be paid the bonuses that he did not receive, or that he would be paid for unused vacation time. In his deposition testimony, plaintiff stated that he did not discuss such specific promises with defendant at all, and the language of the letter does not contain such promises. Because plaintiff failed to satisfy the statute of frauds, defendant is entitled to judgment as a matter of law regarding plaintiff's claim.

Plaintiff also maintains that the trial court erred in holding that the doctrine of promissory estoppel did not preclude defendant from asserting the statute of frauds as a defense. We disagree. Plaintiff argues in essence that resigning from his previous employment position and relocating his family constitute sufficient reliance on defendant's alleged promise of two years of employment. However, this Court has held that "resignation from one position to assume another and relocation of family would be

customary and necessary incidents of changing jobs rather than

consideration to support a promissory estoppel claim.” *Marrero, supra* at 443. Accordingly, the trial court correctly held that plaintiff did not establish promissory estoppel.

Affirmed.

/s/ Richard Allen Griffin

/s/ Kurtis T. Wilder

/s/ Robert J. Danhof