STATE OF MICHIGAN

COURT OF APPEALS

REUBEN E. SLONE, Plaintiff-Appellant,	UNPUBLISHED September 28, 1999
v	No. 210775 Oakland Circuit Court
FEDERAL MOGUL CORPORATION, Defendant-Appellee.	LC No. 97-551024 NZ

Before: Collins, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

In this action for breach of an employment contract, the circuit court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff now appeals as of right. We reverse.

Plaintiff is a former vice president with defendant, who was provided with an employment contract, including a severance provision, as part of an inducement to leave a $200,000 per year job at Electronic Data Systems (EDS). In the process, plaintiff abandoned unvested stock benefits to accept a position entitled "Vice President, Process Development and Change Management," overseeing the restructuring of Federal Mogul. Plaintiff's efforts were part of a program to shift Federal Mogul's emphasis from manufacturing to distribution, which was the vision of Dennis Gormley, Federal Mogul's CEO at the time. Twenty months after plaintiff joined Federal Mogul, Gormley was replaced by Richard Snell, whose vision for the corporation was to change its emphasis back to manufacturing. After plaintiff either quit or was fired, he sued to enforce the severance provision of his employment contract, and summary disposition, pursuant to MCR 2.116(C)(10), was ultimately granted to Federal Mogul on the basis that plaintiff failed to provide support for the contention that he was actually terminated.

This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). On a motion under MCR 2.116(C)(10), "[t]he court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted or filed in the action to determine whether a genuine issue of any material fact exists to warrant a trial." *Id.* On appeal, as below, all reasonable inferences are resolved

in the nonmoving party's favor. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617-618; 537 NW2d 185 (1995).

We first note that plaintiff was clearly a party to a written unilateral employment contract between himself and Federal Mogul.[1] We also note that, despite the provision of that contract entitling plaintiff to severance pay if his employment was terminated for other than cause, plaintiff was an at-will employee.[2] This is so because, under the applicable provision, Federal Mogul was not prohibited from terminating plaintiff's employment without cause and such action did not result in a breach of the contract. Rather, such action was expressly contemplated by the contract, and simply triggered the severance pay provision currently at issue. On the other hand, failure to pay the severance, if and when plaintiff was entitled to it, would be a contract breach.[3] The specific provision of the contract at issue, provides:

> Severance
>
> I appreciate that it may be unusual to discuss an employment interruption at this time. However, I understand the changes which can occur in "corporate America." Therefore, if employment is terminated by Federal-Mogul for other than cause, the candidate will receive one month of base salary severance payment for each month worked, or portion thereof, with a 6 month minimum and 24 month maximum of severance. Group medical and life insurance will also be continued based upon number of months attained under the formula.

"Under ordinary contract principles, if the language of a contract is clear and unambiguous, its construction is a question of law for the court." *Mich Nat'l Bank v Laskowski*, 228 Mich App 710, 714; 580 NW2d 8 (1998). "Contract language should be given its ordinary and plain meaning." *Id.* A contract term that is ambiguous must be construed against the drafter. *Herweyer v Clark Hwy Services*, 455 Mich 14, 22; 564 NW2d 857 (1997). "A provision is ambiguous when its words may reasonably be understood in different ways." *Trierweiler v Frankenmuth Mut Ins Co*, 216 Mich App 653, 656-657; 550 NW2d 577 (1996). While both plaintiff and Federal Mogul proclaim that the severance provision is clear and unambiguous, they each interpret it differently. Federal Mogul claims that the first sentence ("I appreciate that it may be unusual to discuss an employment interruption at this time.") means that the severance only applies if there is an interruption of plaintiff's employment. Federal Mogul further interprets this to apply, not to plaintiff's employment at Federal Mogul, but his employment in general. Conversely, plaintiff views this language merely as a segue to the topic of severance. We are inclined to agree with plaintiff's interpretation of this language, and nonetheless, resolve the ambiguity in his favor.

Consequently, because there is no allegation that plaintiff was terminated for cause, as contemplated by the contract, this case ultimately turns on whether plaintiff resigned or was terminated. Although the evidence in the record is disputed, it suggests that plaintiff, who had been in charge of restructuring before Snell took over and was apparently continuing in that capacity to some extent, recommended that his own position be eliminated and the restructuring function be integrated into the existing operations. Snell was impressed with plaintiff's selflessness and concurred in his conclusion.

Snell had plaintiff examine the corporate chart for another position that might suit him, but ultimately the two agreed that Federal Mogul did not have a need for plaintiff's skills and abilities. When plaintiff brought the matter of his severance to the attention of Federal Mogul's General Counsel, he was subsequently informed that he had voluntarily resigned and that no severance would be forthcoming. Plaintiff then met with Snell, who stated that he had not known about the severance agreement, but affirmed that plaintiff needed to find a new job. Snell told plaintiff he would be kept busy with special projects, but that his number one priority was finding a new job. After several weeks, plaintiff secured a position of comparable remuneration with General Motors. When plaintiff met with Snell to inform him of this development, he also stated that he expected severance pay under the terms of his contract. Snell became angry and the meeting ended with Snell standing in the common area of the executive offices yelling, "you're through; you're finished," and summoning security, while plaintiff fled down the stairs to the parking garage.

The trial court determined that plaintiff had not been terminated because he was never told that as of a specific date he would no longer be employed at Federal Mogul. Federal Mogul argues on appeal that plaintiff resigned, but does not state when this occurred. Plaintiff argues that Federal Mogul terminated him when Snell concurred in the assessment that there was no place for plaintiff at Federal Mogul and, if not then, when Snell yelled, "you're finished," and had security summoned.

We note that on the available facts, it is not at all clear that plaintiff was never given a date after which he could no longer work at Federal Mogul. It could be reasonably inferred that when Snell was shouting, "you're through, you're finished," and was summoning security, it was fairly certain that plaintiff had been informed that his employment was at an end. Moreover, plaintiff correctly points out that even if he had announced his intention to resign in the future, if his resignation was not effective as of that moment, Snell's actions would qualify as a termination. *Cain v Allen Electric*, 346 Mich 568, 580; 78 NW2d 296 (1956) (where a defendant fires an employee who has turned in a notice of resignation "[t]o argue that defendant merely 'accelerated' plaintiff's departure confuses the actual termination with the reason therefore"). Moreover, there is no authority for the conclusion that a discharge said to be effective upon the occurrence of some event reasonably certain to occur is not a termination. By plaintiff's interpretation of events, he was put on notice that he was to be terminated, that this termination would be effective when he obtained new employment, and that he must obtain such new employment within six to eight months. Plaintiff's interpretation is supported by the Supreme Court's observation in the context of constructive discharges. A claim predicated on a constructive discharge accrues at the time the employee resigns, unless the employee has been given notice of termination, in which case the underlying claim accrues at the time notice was given. *Jacobson v Parda Federal Credit Union*, 457 Mich 318, 328-329 n 20; 577 NW2d 881 (1998). Applying this reasoning to the instant case, it is clear that one permissible interpretation of events is that plaintiff was terminated when he was put on notice that he must find new employment, and that finding new employment was merely a condition subsequent, the occurrence of which gave effect to the notice.

This is not to say that plaintiff must necessarily prevail. Clearly there are facts that weigh in favor of both parties' positions. We simply hold that the lone dispositive question in this case (i.e., whether plaintiff quit or was fired), when the evidence is viewed in the light most favorable to plaintiff,

presents a material issue of fact, and the trial court erred by granting summary disposition to Federal Mogul pursuant to MCR 2.116(C)(10).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jeffrey G. Collins
/s/ David H. Sawyer
/s/ Mark J. Cavanagh

[1] Although the terms of the contract were expressed in an offer letter written by the Vice President of Human Resources and addressed to the President of Worldwide Operations, it was clearly a manifestation of willingness to enter a bargain made in such a way as to justify plaintiff in understanding that his acceptance would conclude it. *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997). An offer that seeks acceptance by performance, and which is accepted by performance, forms what is commonly labeled as a unilateral contract. See *In re Certified Question*, 432 Mich 438, 446; 443 NW2d 112 (1989).

> In simplest terms, a typical employment contract can be described as a unilateral contract in which the employer promises to pay an employee wages in return for the employee's work. In essence, the employer's promise constitutes the terms of the employment agreement; the employee's action or forbearance in reliance upon the employer's promise constitutes sufficient consideration to make the promise legally binding. In such circumstances, there is no contractual requirement that the promisee do more than perform the act upon which the promise is predicated in order to legally obligate the promisor.

[2] Just-cause (a/k/a good cause) employment exists when an employer is obligated by contract, an express agreement, or the "legitimate expectations" theory, not to discharge an employee without good cause. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 164-165; 579 NW2d 906 (1998); *Rood v General Dynamics*, 444 Mich 107, 117; 507 NW2d 591 (1993). Hence, where an employer discharges a "just-cause" employee for something less than good cause, it is a breach of the obligation, and gives rise to contract damages resulting from the wrongful discharge. *Corl v Huron Castings, Inc*, 450 Mich 620, 625-626; 544 NW2d 278 (1996).

[3] We point out this distinction because identifying the potential breach lends perspective to the measure of damages. That is, an aggrieved party to a contract is under a duty to mitigate his damages and contract damages are only designed "to place the nonbreaching party in as good a position as if the contract had been fully performed." *Corl*, *supra* at 625-626. See, also, *Morris v Clawson Tank Co*, 459 Mich 256, 264; 587 NW2d 253 (1998) (victim of employment contract breach is obligated to mitigate damages). In this situation, if there was a breach by failure to make payments to which plaintiff was entitled, as opposed to a breach by terminating plaintiff, his subsequent employment, or lack thereof, would have no effect on the amount of his damages. Consequently, defendant's assertion that plaintiff continued to receive substantial income has no relevance to this case.