STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM MOGREN and ROBERT ROSITCH, Plaintiffs-Appellants,	UNPUBLISHED April 23, 2002
v	No. 229067 Muskegon Circuit Court
SPX CORPORATION, Defendant-Appellee.	LC No. 99-039363-CK

Before: Gage, P.J., and Griffin and G. S. Buth*, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs worked for defendant in management positions in defendant's hy-lift division. In January 1996 defendant introduced a new bonus plan for its management personnel. The economic value added incentive compensation plan, commonly known as the EVA plan, compensated management employees in each division based on the performance of each division as compared against pre-determined strategic objectives. If a division exceeded its objective, its eligible employees received proportionately larger bonuses calculated pursuant to a bonus multiplier.

Defendant sold its hy-lift division to the W.A. Thomas Company. Management employees in the hy-lift division were informed that they would receive a bonus based on the division's performance through the sale closing date, October 31, 1996. Plaintiffs' bonuses were calculated pursuant to a bonus multiplier of 1.5. Plaintiffs accepted the bonuses and began employment with the W.A. Thomas Company. Subsequently, plaintiffs learned that management personnel from other divisions, some of whom had a connection to the hy-lift division, were granted bonuses based in part on the performance of the hy-lift division throughout all of 1996. Defendant used a multiplier of 4.0 to calculate the hy-lift division portion of those bonuses. Plaintiffs learned that Richard Homan, an employee of the sealed power division, who devoted a small portion of his time to activities connected with the hy-lift division, received a supplemental bonus payment based on the yearlong performance of the hy-lift division. Defendant declined to pay plaintiffs supplementary bonuses.

Plaintiffs filed suit alleging breach of contract, unjust enrichment, and fraud. Plaintiffs alleged defendant failed to pay bonuses correctly computed under the EVA plan, that defendant's failure to correctly calculate the bonuses resulted in its unjust enrichment, and defendant fraudulently induced work under a bonus plan that it never intended to meet. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the EVA plan was expressly not contractual and did not impose a duty to pay any employee a bonus, that it exercised its discretion to pay employees in plaintiffs' position a bonus based on the performance of the hy-lift division through October 31, 1996, and that the EVA plan bonus calculation for Homan, a sealed power division employee, was based on consideration of different factors and was required by the purchase agreement with the W.A. Thomas Company. The trial court granted defendant's motion, concluding that nothing in the plan could be construed to give any employee the right to receive a bonus. The decision to grant bonuses was solely within defendant's discretion.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Plaintiffs argue that the trial court erred by granting defendant's motion for summary disposition. Their argument is that once defendant declared a bonus, it was required to award bonuses consistently among its employees. We affirm. The EVA plan provided that the decision to declare bonuses was within defendant's sole discretion. It was undisputed that defendant declared and paid management employees in the hy-lift division, including plaintiffs, bonuses calculated on the division's performance through October 31, 1996, the date of its sale to the W.A. Thomas Company. Plaintiffs do not contend that defendant's use of this method was not permitted under the EVA plan.

The evidence showed that Homan, who was employed by a different division that was not sold, was given a bonus – the calculation of which required consideration of factors that were not applicable to plaintiffs' circumstances. Defendant did not breach an agreement to make a declared payment to plaintiffs, as did the defendant in *Cain v Allen Electric & Equipment Co*, 346 Mich 568, 579-580; 78 NW2d 296 (1956), and did not calculate bonuses for plaintiffs and Homan pursuant to the same method and then attempt to create an exception for Homan alone, as disapproved by *Michaels v Amway Corp*, 206 Mich App 644, 650; 522 NW2d 703 (1994). Plaintiffs' assertion that defendant was required to calculate their bonuses pursuant to the same method used to calculate the bonus paid to Homan is unsupported by citation to relevant authority. Summary disposition was proper.

Affirmed.

/s/ Hilda R. Gage
/s/ Richard Allen Griffin
/s/ George S. Buth