STATE OF MICHIGAN

COURT OF APPEALS

HAYES LEMMERZ INTERNATIONAL – SOUTHFIELD, INC.,

Plaintiff-Appellant,

v

BRADLEY W. SHANTRY,

Defendant-Appellee,

and

WHEEL TO WHEEL, INC.,

Defendant.[1]

UNPUBLISHED
September 6, 2002

No. 227660
Oakland Circuit Court
LC No. 99-017155-CL

Before: Cooper, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of summary disposition in favor of defendant.[2] We affirm.

Defendant participated in plaintiff's predecessor's college co-op program while he attended Kettering University. Through the co-op program, plaintiff and its predecessor paid approximately $62,000 for defendant's education. Plaintiff seeks reimbursement because defendant left plaintiff's employ shortly after graduation.

On appeal, plaintiff argues that, for a number of reasons, the trial court erred in granting summary disposition in favor of defendant. We disagree. We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d

[1] Pursuant to a stipulation, this Court previously dismissed Wheel to Wheel, Inc., from this appeal.

[2] It is not clear whether the trial court granted summary disposition pursuant to MCR 2.116(C)(8) or (10); however, because the trial court considered matters outside the pleadings, this Court reviews the case under MCR 2.116(C)(10). *Kubisz v Cadillac Gage Textron, Inc*, 236 Mich App 629, 633, n 4; 601 NW2d 160 (1999).

201 (1998). In evaluating a motion for summary disposition brought under MCR 2.116(C)(10), "a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion" to determine whether a genuine issue regarding any material fact exists. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). If the nonmoving party fails to present evidentiary proofs showing a genuine issue of material fact for trial, summary disposition is properly granted. *Smith v Globe Life Ins Co*, 460 Mich 446, 455-456, n 2; 597 NW2d 28 (1999).

Plaintiff first argues that the trial court improperly granted defendant's motion for summary disposition on plaintiff's breach of contract claims. Plaintiff presented evidence that, viewed in the light most favorable to plaintiff, established an express agreement that plaintiff's predecessor would pay defendant's educational expenses in return for defendant's commitment to work for plaintiff during school and for two years full-time following graduation. Plaintiff also presented evidence that defendant agreed that if he failed to meet the employment obligations, he would reimburse plaintiff. However, a letter agreement dated June 7, 1999, specifically terminated all prior agreements, express or implied, between defendant and plaintiff's predecessor. That agreement, which defendant signed a week later, states that "by signing below, I acknowledge that all other contracts or agreements, whether express or implied, between me and the Company, [its predecessor,] or their subsidiaries and affiliates are hereby terminated effective as of the date of this letter set forth above." Although plaintiff argues strenuously that the June 7, 1999 agreement was not an integrated document and had no effect on the alleged prior "collateral" co-op agreement concerning defendant's post-graduation employment, we disagree. Clear and unambiguous contract language must be enforced as written. *Century Surety Co v Charron*, 230 Mich App 79, 82-83; 583 NW2d 486 (1998). In addition, any ambiguity in the agreement must be construed against the drafter. *Lichnovsky v Ziebart Int'l Corp*, 414 Mich 228, 239; 324 NW2d 732 (1982). The June 7, 1999 agreement expressly terminates *all* prior agreements between defendant and plaintiff's predecessor, including the co-op participation agreement. See *Scholz v Montgomery Ward & Co, Inc*, 437 Mich 83; 468 NW2d 845 (1991). Summary disposition was proper on the breach of contract claims.

Plaintiff also argues that the trial court erred by granting summary disposition on its promissory estoppel claim. We disagree. To invoke promissory estoppel, the party relying on it must demonstrate:

> (1) 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 produced reliance or forbearance of that nature; and (4) in circumstances such that the promise must be enforced if injustice is to be avoided. [*Booker v Detroit*, ___ Mich App ___, ___; ___ NW2d ___ (2002), quoting *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438, 442; 505 NW2d 275 (1993).]

Viewing the evidence in the light most favorable to plaintiff, we conclude that plaintiff met the first three criteria. However, plaintiff failed to demonstrate that the promise must be enforced to avoid injustice. Because plaintiff specifically and voluntarily terminated the prior co-op participation agreement with defendant before his employment obligations were fulfilled,

no injustice will come from alleviating defendant of any repayment obligations. Therefore, the trial court properly granted summary disposition on plaintiff's promissory estoppel claim.

Finally, plaintiff argues that the trial court erred in granting summary disposition on plaintiff's unjust enrichment claim. Again, we disagree.

Michigan recognizes the equitable right of restitution when a person has been unjustly enriched at the expense of another. *Michigan Educational Employees Mut Ins Co v Morris*, 460 Mich 180, 198; 596 NW2d 142 (1999). "The elements of a claim for unjust enrichment are: (1) receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant." *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993); see also MEEMIC, *supra*. The remedy implies a quasi or constructive contract with an implied obligation to pay for the benefits received to ensure that justice is obtained. *MEEMIC, supra*, citing *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 185-186; 504 NW2d 635 (1993). "However, a contract will be implied only if there is no express contract covering the same subject matter." *Barber, supra*.

We conclude that the June 7, 1999 employment agreement was an express agreement covering the same subject-matter as the alleged earlier oral agreement – the terms of defendant's post-graduation employment with plaintiff or its predecessor. The June 7, 1999 agreement voluntarily terminated defendant's alleged employment and repayment obligations; therefore, this Court is precluded from implying a contract and granting plaintiff equitable restitution. See *Barber, supra*.

Affirmed.

/s/ Jessica R. Cooper
/s/ Joel P. Hoekstra
/s/ Jane E. Markey