

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES R. CANTIN,

Plaintiff-Appellant,

v

MCINERNEY, INC., and ROBERT
MCINERNEY,

Defendants-Appellees.

UNPUBLISHED

May 20, 2008

No. 277986

Macomb Circuit Court

LC No. 2006-002794-CK

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

In this wrongful discharge case, plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) on the ground that plaintiff failed to show a question of fact with regard to whether his employment with McInerney, Inc. ("defendant"),¹ was terminable at will. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was hired by defendant as a used car salesperson in July 1997. Plaintiff alleges that he was later assaulted by a coworker who was a friend of defendant's operating officer, Robert McInerney. Plaintiff resisted McInerney's efforts to have plaintiff drop criminal charges against the coworker and agree not to sue the attacker. McInerney demoted plaintiff in August 2004, and plaintiff was terminated on January 11, 2005. The termination occurred after plaintiff was asked twice to sign employee performance reviews stating that his sales were "not satisfactory."

Plaintiff asserted that defendant's agents made express oral statements of job security to him, and that defendant's policies and procedures as stated in the employment manual instilled a legitimate expectation of job security. The circuit court concluded that plaintiff failed to establish that his employment was terminable only for just cause and granted defendants' motion for summary disposition under MCR 2.116(C)(10).

¹ Plaintiff does not challenge the circuit court's dismissal of his claims against the individual defendant.

Summary disposition may be granted under MCR 2.116(C)(10) when “there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law.” This Court reviews a trial court’s decision on a motion for summary disposition *de novo*. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

“Employment contracts for an indefinite duration are presumptively terminable at the will of either party for any reason or for no reason at all.” *Rood v Gen Dynamics Corp*, 444 Mich 107, 116; 507 NW2d 591 (1993). In the absence of a contractual provision for a definite term, a party may overcome the presumption of employment at will by presenting sufficient proof of a contractual provision forbidding discharge absent just cause. *Id.*, p 117. The provision may become part of the employment contract as a result of explicit promises or promises implied in fact. *Id.* In either case, this contractual theory is premised on mutual assent to be bound. *Id.*, pp 118-119.

A second, alternative, theory of enforceability, which does not depend on contract principles, is the “legitimate expectations” theory announced in *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579; 292 NW2d 880 (1980). *Rood, supra*, pp 117-118. “[E]mployer policies and procedures may [] become a legally enforceable part of an employment relationship *if* such policies and procedures instill ‘legitimate expectations’ of job security in employees.” *Id.*

Plaintiff contends that oral statements, coupled with statements in defendant’s employment manual, gave rise to a just-cause employment contract implied in fact or resulted in legitimate expectations of just-cause employment.

“‘A contract is implied where the intention as to it is not manifested by direct or explicit words between the parties, but is to be gathered by implication or proper deduction from the conduct of the parties, language used or things done by them, or other pertinent circumstances.’” *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 639-640, 662; 473 NW2d 268 (1991), quoting *Miller v Stevens*, 224 Mich 626, 632; 195 NW 481 (1923). Using an objective test that looks at the circumstances surrounding the transaction, including writings, oral statements, and other conduct by which the parties manifested their intent, the issue is “whether a reasonable person could have interpreted the words or conduct in the manner that is alleged.” *Rood, supra*, p 119. “[I]n an effort to recognize oral contracts for job security only where the circumstances suggest both parties intended to be bound, the *Rowe* Court held that ‘oral statements of job security must be clear and unequivocal to overcome the presumption of employment at will.’” *Rood*, pp 118-119 (citation and internal quotation marks omitted).

In analyzing legitimate expectations claims, this Court determines what, if anything, the employer has promised, and if a promise was made, whether it is reasonably capable of instilling a legitimate expectation of just-cause employment. *Rood, supra* at 138-139. “[O]nly policies and procedures reasonably related to employee termination are capable of instilling such expectations.” *Id.*, p 139. If the employer policies are incapable of being interpreted as promises of just cause employment, summary disposition pursuant to MCR 2.116(C)(10) is appropriate. *Rood, supra*, p 140.

Plaintiff testified that on the day he was hired, sales manager Larry Zale gave him an employment manual. According to plaintiff, Zale told him, “there are the rules, follow them,”

and told him that “as long as you follow the rules in the book . . . nobody is terminated from McInerney, I have been here a long time.” Plaintiff stated that Zale gave him assurances that he would “have [a] job here as long as you work” and told him that the “only reason you would be terminated would be for theft and dishonesty.”

Defendant’s employee policy manual nowhere states an employment at-will policy. Nor does the manual expressly provide that employment was terminable only for just cause. The circuit court’s opinion quoted the employee manual provisions plaintiff relied on:

Plaintiff further avers that in addition to the oral statements, the employee policy manual buttresses his argument that the oral assurances were an express promise of just cause employment. The sections relied upon by plaintiff are as follows:

SECTION I / Purpose of Handbook

By effectively communicating with one another, we will grow in **fulfilling our customer needs** . . . the major catalyst for growth of our corporation. With corporate growth, you can be assured of personal growth in job performance, job security, and job earnings. (Emphasis in original.)

SECTION II / Personnel Policy

This company’s personnel policy is based on the well proven belief that management and its employees constitute a mutually valuable partnership thru which each individual receives great benefit from a lively, progressive, prosperous, and cooperative group working as a single unit with everyone striving for the **same goal, to contribute at least a fair share toward a total dealership performance in rendering a good public service**. It is impossible to outline all the details of the operation of a business as large as this, but we set forth here our basic policies as clearly as possible and declare our intention to maintain friendly relations with our employees and to do our best to keep our policies abreast of the best practices in industry. (Emphasis in original.)

Employee Relations

We are very interested in having you feel good about your job. Experience has taught us that a dissatisfied or unhappy employee is not an efficient worker. If there are conditions or situations which interfere with your work, please talk to your department head about it. If you don’t care to talk the matter over with your department head, feel free to discuss it with our top management.

Steady Employment

Our dealership is a growing organization serving a public need. You are thus assured of steady employment as long as you are producing for us.

We expect each employee to be a maximum producer, always doing his part to accomplish our common objectives.

Section III / General Rules and Operating Procedures

21. Repeated violations will be cause for suspension or grounds for discharge. Such actions by the company are most regretfully taken. Therefore, it would be to your advantage to discuss any further questions you may have with your supervisor so that these rules and operating procedures are thoroughly understood.

Mr. McInerney testified on deposition that his basic policy was that “if you’re doing your job, you don’t violate any law, you get along with people, and you make money, that you are a profitable employee, I will keep you.” McInerney testified that he “might have” told prospective employees “that they will have job as long as they don’t violate [McInerney’s] rules regarding theft.” McInerney also testified that he could not have fired plaintiff for refusing to sign the performance review. However, he also testified that he relied on his managers to do firing and hiring.

We agree with the circuit court that plaintiff failed to show a “clear and unequivocal” assurance of job security, as required by *Rowe, supra*, 437 Mich at 645; that the record does not reflect a clear intention to contract for permanent or just-cause employment; and that “the statements attributed to defendants concerning job security are more reasonably interpreted as optimistic hopes for a long and satisfying employment relationship.” Optimistic hopes about the future of a plaintiff’s employment do not suffice to prove just-cause employment. *Rowe, supra* at 640. We also agree with the circuit court that plaintiff did not establish a legitimate expectations claim. As noted in *Rood, supra* at 127, policy statements of fairness and a commitment to maintain good will, loyalty and harmony among employees are not inconsistent with at-will employment. We agree with the circuit court that the employee manual and oral statements on which plaintiff relied “convey that if the business does well, the employee will benefit.”

Affirmed.

/s/ Helene N. White

/s/ Joel P. Hoekstra

/s/ Michael R. Smolenski