STATE OF MICHIGAN

COURT OF APPEALS

KEN STACK and TOTAL GOLF SERVICES, INC.,	UNPUBLISHED March 3, 2009
Plaintiffs-Appellees,	
v	No. 281294 Oakland Circuit Court
CITY OF ROYAL OAK,	LC No. 2005-065701-NI
Defendant-Appellant.	

Before: Jansen, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment entered in favor of plaintiffs Ken Stack and Total Golf Services, Inc.,[1] following a jury trial. We affirm.

On March 16, 1998, plaintiff entered into two contracts with defendant to serve as superintendent and manager of defendant's two golf courses, the Normandy Oaks Golf Course and the Royal Oak Golf Course. In December 2000, defendant's city commission voted to extend plaintiff's contracts for a two-year period and adjusted the salary rate to include a cost of living increase, not to exceed five percent. In September 2002, defendant's city commission approved a five-year extension of the contracts. This resolution, preserved in the meeting minutes, further provided that the city attorney was "authorized to prepare an addendum to extend the current contract and the Mayor and City Clerk are authorized to execute same." However, the city attorney never prepared an addendum, and plaintiff was removed from the positions before the expiration of the five-year extension. Consequently, plaintiffs filed a complaint seeking damages for breach of contract, alleging that the contracts could not be terminated unless defendant demonstrated just cause. Defendant moved for summary disposition, asserting that contracts involving municipalities were unenforceable unless placed in writing, and the extensions were never reduced to writing. The trial court denied the motion, holding that: (1) defendant had not identified any authority for the proposition that extensions to employment contracts must be in writing; (2) if a writing were required, defendant's adoption of the published minutes constituted a sufficient, binding writing; and (3) the offer of employment

[1] As used in this opinion, the singular term "plaintiff" is used to refer to plaintiff Ken Stack only.

was accepted by performance. At trial, the judge instructed the jury that there was a contract, but the issue of breach and damages was submitted to the jury.[2] The jury ruled in favor of plaintiffs, and defendant appeals as of right.

Defendant first argues that the trial court erred in denying its motion for summary disposition on plaintiffs' breach of contract claim. We disagree. A trial court's decision on a motion for summary disposition is reviewed de novo on the entire record to determine whether the prevailing party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Additionally, the issue of the existence and interpretation of a contract also presents a question of law reviewed de novo. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). When reviewing a motion brought under MCR 2.116(C)(10), the court must examine the documentary evidence presented below and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 361-362; 547 NW2d 314 (1996).

Although defendant asserts that a municipal contract must be in writing, it fails to cite any Michigan authority in support of this claim. In Michigan, the legislative branch has the power to contract. See *Taxpayers of Michigan Against Casinos v State of Michigan*, 478 Mich 99, 109; 732 NW2d 487 (2007). "Generally, no other officer or board, other than the common council, has the power to bind the municipal corporation by contract." *Manning v City of Hazel Park*, 202 Mich App 685, 691; 509 NW2d 874 (1993). The empowering document governing municipal officers is customarily the city charter. *Id*.

Chapter 3, § 2, of defendant's charter states that the city commission is defendant's "legislative and governing body" and possesses the "power and authority to pass such ordinances and adopt such resolutions as they shall deem proper in order to exercise any or all of these powers possessed by [defendant]." Chapter 3, § 6, adds that "[t]he Commission shall act only by ordinance or resolution." It is undisputed that the only written contracts between the parties are the superintendent contract and the manager contract signed by plaintiff in March 1998. Thereafter, the contracts were extended and modified by unanimously adopted commission resolutions, as reflected in the commission's minutes.

On September 9, 2002, the commission adopted a resolution stating:

> BE IT RESOLVED that the City Commission *hereby approves* a five-year extension of the contract with Mr. Ken Stack as Golf Course Manager/Groundskeeper concurrent with his management duties now in effect; and

[2] At trial, defendant took issue with plaintiff's performance of his duties. However, that theory is not raised on appeal.

> BE IT FURTHER RESOLVED that the City Attorney is authorized to prepare an addendum to extend the current contract and the Mayor and City Clerk are authorized to execute same. [Emphasis added.]

Contrary to defendant's argument, the clear and unambiguous language of the resolution evidences an actual approval of the contract extension. The resolution is not a mere statement of intent to enter into a contract sometime in the future.

Chapter 5, § 2, of defendant's charter provides that an ordinance is adopted when approved by a majority of the commission. Chapter 5, § 4, requires that the mayor and the city clerk sign all ordinances upon final approval. Examining a virtually identical provision, however, our Supreme Court stated that the signing of an ordinance is a ministerial act intended to authenticate the ordinance, and that failure to do so does not affect its validity. See *City of North Muskegon v Miller*, 249 Mich 52, 60-61; 227 NW 743 (1929). Similarly, the requirement here that the addendum be drafted and signed is intended to authenticate and certify the commission's approval of plaintiff's contract extension. If the requirement affected the validity of a resolution, then the mayor and the city clerk would effectively have veto power over commission resolutions, which they could exercise by simply failing to act. See *id*. There is nothing in defendant's charter granting such power to the mayor and the city clerk. Thus, we reject defendant's argument that the validity of the resolution was contingent on the drafting and signing of an addendum.[3] Therefore, the trial court properly denied defendant's motion for summary disposition.

Defendant next argues that the trial court erred in denying its motion for summary disposition with respect to plaintiffs' implied contract claim. However, because an express contract existed and an implied contract theory was not submitted to the jury, it is unnecessary to consider this issue.

Lastly, defendant argues that the trial court erred in denying its motion for remittitur. We disagree. A trial court's decision on a motion for remittitur will not be reversed absent an abuse of discretion, viewing the evidence in the light most favorable to the nonmoving party. *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 462; 750 NW2d 615 (2008). An abuse of discretion occurs only when the trial court's decision is outside the range of "reasonable and principled outcome[s]." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

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[3] Furthermore, even if the formal drafting and signing of an addendum were viewed as a condition precedent to a valid contract extension in this case, defendant "cannot avoid liability . . . where they caused the failure of the condition." *Harbor Park Market, Inc v Gronda*, 277 Mich App 126, 131-132; 743 NW2d 585 (2007). Additionally, the writing requirement can be satisfied by reading multiple documents together. *Chronowski v Park-Sproat Corp*, 306 Mich 676, 682-685; 11 NW2d 286 (1943). In light of the fact that the meeting minutes were later approved and evidently authenticated by the mayor's signature, the challenge to the sufficiency of the existence of a written contract is without merit.

When deciding a motion for remittitur, a trial court must determine whether the jury's verdict was supported by the evidence. *Silberstein*, *supra* at 462. "This determination must be based on objective criteria." *Id*. "If the award of economic damages falls reasonably within the range of the evidence," it should not be disturbed. *Id*.; see also *Anton v State Farm Mut Automobile Ins Co*, 238 Mich App 673, 683; 607 NW2d 123 (1999). Conflicts in the evidence are for the jury to resolve. *Id*. at 684-686.

Although a verdict can be reduced based on a plaintiff's failure to mitigate damages, the issue whether there was an unreasonable failure to mitigate damages is a jury question. *Wolff v Automobile Club of Michigan*, 194 Mich App 6, 16-17; 486 NW2d 75 (1992). If the verdict is within the range of the evidence presented, it cannot be reduced. *Id*. A verdict should not be set aside simply because the method of computation used cannot be determined, unless the award is not within the range of evidence presented at trial. *Diamond v Witherspoon*, 265 Mich App 673, 694; 696 NW2d 770 (2005).

In the present case, the parties agree that at the time of plaintiff's termination, he was earning $5,623.34 a month. Of that amount, $4,396.17 was for the superintendent contract, and $1,227.17 was for the manager's contract. Further, under the commission's December 4, 2000, resolution, plaintiff was entitled to yearly cost of living adjustments of no more than five percent. It is also undisputed that plaintiff received a $2,000 performance bonus every year, except for the 2004 golf season. If sufficiently proven, the jury can consider evidence that the plaintiff was paid a yearly bonus. See *Silberstein*, *supra* at 462, 464.

In the present case, defendant contends that the jury verdict exceeded the range of evidence presented. However, plaintiff testified to his employment following the termination, and his anticipated earnings, although he was currently operating from a draw system. The resolution of the conflict in the evidence was for the jury and was within the range of the evidence presented. *Silberstein*, *supra*; *Anton*, *supra*; *Wolff*, *supra*. Therefore, the trial court did not abuse its discretion in denying the motion for remittitur.

Affirmed.

/s/ Kathleen Jansen
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood