

STATE OF MICHIGAN
COURT OF APPEALS

JAMES SMITH, JOHN GATEWOOD, and ODIS
SOLOMON

UNPUBLISHED
August 28, 2012

Plaintiffs-Appellants,

v

ROYAL OAK TOWNSHIP,

No. 303939
Oakland Circuit Court
LC No. 2010-113507-CK

Defendant-Appellee.

Before: O'CONNELL, P.J., and JANSEN and RIORDAN, JJ.

PER CURIAM.

Plaintiffs appeal by right from the summary disposition entered in favor of defendant under MCR 2.116(C)(10). We affirm the summary disposition on the claims asserted by plaintiffs Smith and Solomon and on the contract claim asserted by plaintiff Gatewood. However, we reverse the summary disposition on plaintiff Gatewood's claims of implied contract and promissory estoppel, because the record presents material factual issues on those claims.

Plaintiffs retired from the Royal Oak police force in the 1990s. Later, when each plaintiff became eligible for Medicare, defendant paid for supplemental Medicare benefits for plaintiffs and their dependents. In 2010, defendant informed plaintiffs that it would no longer pay for those retirement medical benefits. Instead, plaintiffs would be covered by a health maintenance organization plan that apparently provided basic Medicare benefits. Plaintiffs challenged defendant's decision and filed suit, asserting claims of express contract, implied in fact contract, and promissory estoppel.

After numerous orders preserving the status quo, the trial court granted summary disposition in favor of defendant. The trial court determined that plaintiff Smith was covered by a collective bargaining agreement that required defendant to provide retirement medical benefits. Citing *Reese v CNH America LLC*, 574 F 3d 315 (CA 6, 2009), the trial court concluded that the collective bargaining agreement did not preclude defendant from altering the level of those benefits. The court also concluded that there was no other express contract applicable to plaintiffs and that, as such, summary disposition was appropriate on the express contract claims.

The trial court then turned to the implied contract claims. The court determined that Smith could not state an implied contract claim because the collective bargaining agreement

precluded pursuit of an implied contract claim. The court went on to determine that the other plaintiffs had failed to present sufficient evidence to create an issue of fact concerning mutual assent for an implied contract. The court concluded that even if there was an implied contract, defendant would have authority to modify any retirement medical benefits provided by the implied contract, again citing *Reese*, 574 F3d 315.

The trial court similarly rejected plaintiffs' promissory estoppel claims. The court concluded that plaintiffs had not presented evidence that defendant promised to provide retirement medical benefits at the existing level of coverage.

We review de novo the trial court's ruling on summary disposition. *Dancey v Travelers Prop Cas Co*, 288 Mich App 1, 7; 792 NW2d 372 (2010). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). We consider the pleadings and the other relevant record evidence in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial. *Dancey*, 288 Mich App at 7.

We conclude that the record presents no genuine issues of material fact on plaintiffs' contract claims. To avoid summary disposition on those claims, plaintiffs had to present evidence on each of the essential elements of a contract: "(1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation." *Hess v Cannon Twp*, 265 Mich App 582, 592; 696 NW2d 742 (2005). In addition, plaintiffs had to establish that the parties to the alleged contract had authority to bind defendant. See *Sittler v Bd of Control of Mich College of Mining & Technology*, 333 Mich 681, 687; 53 NW2d 681 (1952).

Plaintiffs argue that the collective bargaining agreement, in combination with other documents in the record, creates questions of fact concerning the existence of an express contract to provide a certain level of retirement medical benefits. We disagree. To create an express contract, the documents or the parties' statements must demonstrate both a manifest offer by defendant to provide a particular level of medical benefits and an unambiguous acceptance of that offer by plaintiffs. See *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997). The general references in the record to the provision of "medical insurance" do not constitute a manifest offer to provide a particular level of retirement medical benefits. Absent some proof of a manifest offer by defendant and an unambiguous acceptance by plaintiffs, there was no contract as a matter of law, and defendant was entitled to summary disposition on plaintiffs' contract claims.

We recognize that the collective bargaining agreement itself is a contract. That contract is applicable only to Smith (neither Solomon nor Gatewood were members of the collective bargaining unit). The application and interpretation of the collective bargaining agreement (CBA) was a question of law for the court, unless the CBA was ambiguous. See *Butler v Wayne Co*, 289 Mich App 664, 671-672; 798 NW2d 37 (2010).

There is no ambiguity in the CBA with regard to retirement medical benefits. The CBA states: "Health Maintenance Organization coverage will be made available to all retirees and

their dependents with such costs being paid for by the Township and only during the life of the retiree.” The CBA does not define “Health Maintenance Organization coverage,” nor does the CBA specify any particular level of coverage. The CBA requires only that defendant make Health Maintenance Organization coverage available to Smith and that defendant pay any cost of that coverage.

The record demonstrates that defendant made health maintenance organization (HMO) coverage available to Smith through a specified plan. The parties agree that the HMO coverage is the same as basic Medicare coverage and that defendant currently pays nothing for the coverage. The parties also agree that the coverage differs from the retirement medical benefits originally available to Smith. Nonetheless, the coverage fulfills defendant’s obligation under the CBA as a matter of law. The trial court properly granted summary disposition in favor of defendant under the CBA.

As an alternative to their express contract theory, plaintiffs contend that the evidence indicates the parties had a contract implied in fact. To prevail on the implied contract claim, plaintiffs must establish that the parties’ conduct demonstrated a mutual intention to form a binding contract with regard to the level of retirement medical benefits. See *Erickson v Goodell Oil Co*, 384 Mich 207, 211-212; 180 NW2d 798 (1970).

An implied contract is not actionable when there is an express contract covering the same subject matter. *Scholz v Montgomery Ward & Co, Inc*, 437 Mich 83, 93; 468 NW2d 845 (1991). In this case, the CBA covered the topic of retirement medical benefits. Accordingly, because Smith was subject to the CBA, he cannot pursue an implied contract claim. *Id.*

Solomon’s implied contract claim also fails. He argues that documents in the record, including the personnel manual, create a question of fact regarding an implied contract for a particular level of retirement benefits. The manual stated that retirees and their spouses were entitled to the same level of health insurance coverage as full-time employees. However, the manual also expressly stated that it was not a binding contract, as follows: “The policies and procedures in this manual do not constitute a legal contract” Given this limitation on the effect of the manual, Solomon cannot rely on the manual to support his implied contract claim.

The other documents in the record are similarly insufficient to create a question of fact regarding mutual assent to a particular level of retirement benefits. The record indicates that discussions took place concerning Solomon’s retirement and that one topic of those discussions was retirement medical benefits. The trial court correctly determined that the discussions lacked any indication of mutual assent to a particular level of benefits. Moreover, as defendant correctly asserts, any implied contract to provide retirement medical benefits was indefinite regarding the level of benefits. See *Reese*, 574 F 3d at 327. Because the record lacks any evidence establishing mutual assent to a particular level of benefits between defendant and Solomon, the trial court correctly granted summary disposition in favor of defendant on Solomon’s implied contract claim.

However, unlike the other plaintiffs, Gatewood submitted documentary evidence regarding the parties’ understanding of the level of retirement medical benefits that defendant would provide. Gatewood submitted a March 29, 1999, memorandum regarding retirement. The

memorandum was addressed to Gatewood from Township Clerk Gwendolyn Turner, bearing her handwritten initials. The memorandum stated, among other things: “Your current medical coverage will be maintained.”

In addition to the memorandum, Gatewood submitted an affidavit from Township Trustee David Ford. Ford attested that he attended the Trustees’ meeting in which the trustees considered Gatewood’s retirement. Ford further attested that the trustees “voted to provide the post-retirement benefits stated in the March 29, 2009 [sic] letter to Mr. Gatewood, specifically including medical insurance benefits for him and his dependents.” Ford continued, “When we approved his benefits, as described in the referenced documents, we understood and intended that they would not be subject to reduction or elimination after his retirement.”

Viewed in the light most favorable to Gatewood, Ford’s affidavit and Turner’s memorandum are sufficient to present a factual issue as to whether defendant and Gatewood reached a mutual assent in 1999 concerning the continuation of his medical benefits throughout his retirement. Although Ford refers to a letter dated 2009 (as opposed to the 1999), Ford’s statements create a question of fact concerning an implied 1999 contract. The record also presents a question of fact as to whether the Township Trustees actually ratified the terms of Gatewood’s retirement package (assuming, for the purposes of summary disposition, that ratification was required). Defendant submitted an affidavit indicating there was no record of the ratification; but Ford attested that the Trustees expressly approved Gatewood’s retirement package. Given these factual issues, the trial court erred in entering summary disposition against plaintiff Gatewood on his implied contract claim.¹

The same factual issues require reversal of the summary disposition on Gatewood’s promissory estoppel claim. The promissory estoppel claim required proof that (1) defendant promised to provide a specific level of retirement medical benefits; (2) defendant should reasonably have expected the promise to induce Gatewood to take some action; (3) Gatewood took some action in reliance on the promise; and (4) justice or equity requires enforcement of the promise. See *Ardt v Titan Ins Co*, 233 Mich App 685, 692; 593 NW2d 215 (1999) (reciting the elements of promissory estoppel). In this case, the documentary evidence indicates that defendant may have made a definite promise to continue Gatewood’s medical benefits throughout his retirement. Gatewood attested that he relied on general assurances of continued retirement medical benefits, and that he would have sought alternative employment had he known that his medical benefits could change after retirement. Questions of fact remain regarding whether these alleged assurances constituted a definite promise for purposes of the promissory estoppel and regarding whether Gatewood relied on any other alleged promise.

¹ Defendant asserts that the statute of frauds, MCL 566.132, bars the implied contract claim and that municipalities cannot enter into implied contracts. We disagree with both assertions. See *Hill v Gen Motors Acceptance Corp*, 207 Mich App 504, 510; 525 NW2d 905 (1994) (statute of frauds does not apply where, as here, there is a possibility that the terms of an oral agreement can be completed within a year); *City of Auburn v Brown*, 60 Mich App 258, 263-265; 230 NW2d 385 (1975) (describing contracts implied in fact with regard to municipalities).

These factual issues preclude summary disposition on Gatewood's promissory estoppel claim. See *Ardt*, 233 Mich App at 692-693.

The factual issues do not, however, pertain to plaintiffs Smith or Solomon. Neither Smith nor Solomon presented sufficient evidence to create a question of fact concerning a promise to provide a certain level of retirement medical benefits. At best, the evidentiary references with regard to Smith and Solomon provided a general assurance of HMO coverage, which, according to the record, is still available to them. The trial court thus correctly granted summary disposition in favor of defendant on the promissory estoppel claims of Smith and Solomon.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Michael J. Riordan