IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JANET DORRIES and HENRY WEST, Appellants, v. G.E. IONICS, INC., Respondent.	)	No. 62627-2-I
	)	DIVISION ONE
	)	UNPUBLISHED
	)	FILED: November 16, 2009

Cox, J. — Janet Dorries and Henry West contend that the six-year statute of limitations for written contracts applies to their breach of contract claims. Specifically, they argue their employer's oral promises to "gross up" their salary to include any tax liability resulting from compensation for travel expenses provides the context to understand the objective meaning of the provision of a letter acknowledging the specific dollar amount of their annual salary. We disagree. A promise to "gross up" salary is not expressed or implied in the letter, the context rule cannot be used to add a term to the writing or to bring a claim on the oral promises more than three years after their action accrued. The remaining arguments offered by Dorries and West are not persuasive. We affirm the trial court order granting summary judgment in favor of the employer.

FACTS

Dorries and West were employed as project managers for Ionics, Inc. from 1999 to 2003. Ionics sent Dorries a letter offering her employment as a construction

manager "at [the] rate of $56,000 per year, paid on a monthly basis." Dorries accepted Ionics' offer by returning a signed copy of her letter. West accepted a similar offer "at [the] rate of $80,000 per year, paid on a monthly basis" by returning a signed copy of his letter.

Dorries and West contend that before and after they were employed, representatives of Ionics made oral promises that if the payment of their travel expenses was ever deemed taxable income, then their salary would be "grossed up" to cover the taxes imposed on such income. They contend such a benefit is consistent with the practices for Ionics' industry. They both acknowledged in their depositions that the acceptance letters make no reference to travel expenses, taxes or to "grossing up" their salaries.

From 1999 to 2003, Dorries and West were given work assignments in several different states and countries. In September 2003, as part of a reduction in force, Ionics terminated Dorries' and West's employment. In 2004, Ionics, Inc. was acquired by a division of General Electric and currently functions as G.E. Ionics, Inc. (hereinafter Ionics).

In February 2008, Dorries and West filed a summons and complaint alleging that other states were asserting tax obligations on the theory that Dorries and West resided in those states during their employment with Ionics. They contend Ionics has breached its contract by failing to "gross up" their salaries or otherwise pay federal and state tax obligations resulting from Ionics payment of their travel expenses.

The trial court granted summary judgment in favor of Ionics.

ANALYSIS

Dorries and West argue that there are material issues of fact and summary judgment should have been denied. We disagree. We may affirm an order granting summary judgment if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.[1] We consider all facts and reasonable inferences in the light most favorable to the nonmoving party.[2] We review questions of law de novo.[3]

RCW 4.16.040(1) establishes a six-year limitation period for an "action upon a contract in writing, or liability express or implied arising out of a written agreement." RCW 4.16.080(3) provides that an action on a non-written contract must commence within three years.

Dorries and West assert that "[t]he issue in this case is what is the meaning of the 'rate of $80,000.00 per year for Mr. West's contract and $56,000.00 per year for Ms. Dorries' contract, given the [tax] implications as a result of Ionics' work assignments of Janet Dorries and Henry West."[4] Relying on the context rule of Berg v.

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[1] CR 56(c).

[2] Mountain Park Homeowners Ass'n v. Tydings, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994).

[3] Mains Farm Homeowners Ass'n v. Worthington, 121 Wn.2d 810, 813, 854 P.2d 1072 (1993).

[4] Appellants' Brief at 8.

Hudesman,[5] they point to industry standards and Ionics' oral promises to "gross up" their salary as an explanation of the objective meaning of 'rate of $80,000 per year' and 'rate of $56,000 per year.' Because "[p]arol evidence admitted to interpret the meaning of what is actually contained in a contract does not alter the terms contained in the contract" for purposes of the statute of limitations analysis,[6] they argue that the six-year statute of limitations applies to their claim that Ionics breached its promise to "gross up" their salary.

But the context rule does not alter the objective manifestation of intent standard and context may not be used to contradict, modify or add to the written terms of an agreement.[7] Nor may context, including industry standards, be used for the purpose of importing into a writing an intention not expressed in the writing.[8] Reliance on extrinsic evidence to prove a material contract term precludes the application of the six-year statute of limitations.[9] Here, any specific tax equalization benefit would be an additional material term of the employment agreement, and such a term is not express or implied in the acceptance letters signed by Dorries and West. Neither is extrinsic evidence of industry standards a valid basis to add an additional term to the letters. Reliance on extrinsic evidence to prove that Ionics agreed to "gross up" their salaries precludes the application of the six-year statute of limitations to that alleged oral

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[5] 115 Wn.2d 657, 669, 801 P.2d 222 (1990).
[6] DePhillips v. Zolt Const. Co., Inc., 136 Wn.2d 26, 32, 959 P.2d 1104 (1998).
[7] In re the Marriage of Schweitzer, 132 Wn.2d 318, 327, 937 P.2d 1062 (1997).
[8] Syputa v. Druck Inc., 90 Wn. App. 638, 645, 954 P.2d 279 (1998).
[9] Bogle & Gates, P.L.L.C. v. Holly Mountain Resources, 108 Wn. App. 557, 560, 32 P.3d 1002 (2001).

promise.

Dorries and West offer an alternative written contract theory based upon the April 12, 2004 letter from Linda Taylor, senior counsel for Ionics, to the attorney representing Dorries and West. The letter includes Taylor's description of the "tax equalization" provisions of the indemnification agreements previously sent to the attorney as part of a settlement offer: "[t]hose Indemnification Agreements, if accepted, would provide reimbursement to your clients for any losses in the form of federal and state taxes and related interest or penalties that they have suffered or may suffer in the future as a result of being assigned to work in Washington and California."[1] But both Dorries and West confirmed in their depositions that they did not accept the offer. The Indemnity Agreements were never signed. The argument that the April 12, 2004 letter represents any new agreement or an acknowledgement of an existing agreement is frivolous.

Dorries and West offer arguments that Ionics has failed to provide amended W-2 forms necessary for them to resolve pending tax disputes with California, Illinois, and North Carolina. But they offer absolutely no legal authority regarding those claims as part of this breach of contract action. An appellate court will not consider an assignment of error that is unsupported by citation of authority.[11]

Dorries and West contend that Ionics failed to provide the discovery they need

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[1] Clerk's Papers at 80.

[11] See RAP 10.3(a)(5); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

to establish their claims. They argued to the trial court that the lack of discovery should preclude Ionics from arguing that their damages are speculative, but there is no indication that they sought to compel discovery in the trial court and they cite no authority to support this argument as a basis for any relief on appeal.

Finally, Ionics requests attorney fees for a frivolous appeal. In determining whether an appeal is frivolous justifying the imposition of terms pursuant to RAP 18.9(a), the court is guided by the following considerations: (1) a civil appellant has the right to appeal under RAP 2.2; (2) all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant; (3) the record should be considered as a whole; (4) an appeal that is affirmed simply because the arguments are rejected is not frivolous; and (5) an appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal.[12] Dorries' and West's argument regarding the impact of the context rule is not persuasive, but it is not so devoid of merit that there was no reasonable possibility of reversal. The request for fees is denied.

Affirmed.

Cox, J.

WE CONCUR:

[12] Biggs v. Vail, 119 Wn.2d 129, 138, 830 P.2d 350 (1992); Streater v. White, 26 Wn. App. 430, 613 P.2d 187, review denied, 94 Wn.2d 1014 (1980).