

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 27, 2012

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2011AP1959
STATE OF WISCONSIN**

Cir. Ct. No. 2009CV1459

**IN COURT OF APPEALS
DISTRICT III**

BILL K. EDWARDS,

PLAINTIFF-APPELLANT,

V.

PACIFIC CYCLE, INC.,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for St. Croix County:
HOWARD W. CAMERON, JR., Judge. *Affirmed.*

Before Neubauer, P.J., Reilly and Gundrum, JJ.

¶1 PER CURIAM. Bill K. Edwards appeals from a judgment dismissing on summary judgment his claims against Pacific Cycle, Inc. Edwards claims were based on his belief that he was entitled to severance benefits when he

left Pacific Cycle. We affirm because the record reveals no material factual dispute suggesting that Edwards was entitled to severance benefits.

¶2 We review decisions on summary judgment by applying the same methodology as the circuit court. *M & I First Nat'l Bank v. Episcopal Homes Mgmt., Inc.*, 195 Wis. 2d 485, 496, 536 N.W.2d 175 (Ct. App. 1995). That methodology has been recited often and we need not repeat it here except to observe that summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 496-97.

¶3 Edwards was employed by InSTEP, Inc. as a product manager in Mendota Heights, Minnesota. In March 2003, Pacific Cycle of Madison, Wisconsin, acquired InSTEP. Edwards remained as a product manager for Pacific Cycle after the acquisition. After he left Pacific Cycle in November 2003, Edwards learned that the Pacific Cycle-InSTEP Purchase Agreement contained a clause addressing employee severance rights. Paragraph 4.1.d. stated:

(d) Employee Severance Matters. In the event that at any time during the one year period from the Closing Date until the first anniversary of the Closing Date (the "Covered Period") the Company terminates the employment (other than a termination for Cause) of an employee of the Company who was an employee of the Company as of the Closing Date, or in the event any such employee resigns for Good Reason during such one year following the Closing, then the Company shall pay to such employee a lump sum amount (subject to applicable tax withholding requirements) equal to the amount set forth for such employee in Schedule 4.1(d) hereto.

"Good Reason" is defined in the Purchase Agreement as follows:

"Good Reason" means any of the following: (i) a reduction in the cash compensation of the employee; (ii) a material reduction in the benefits provided to the employee (other

than pursuant to an organization wide change in benefit programs by Pacific); (iii) a material demotion in responsibilities or duties of the employee; or (iv) a required relocation to a place other than a location within 50 miles of the location at which the employee performed substantially all of his or her duties immediately before the required relocation.

¶4 Edwards brought various claims against Pacific Cycle based on his belief that he was entitled to severance benefits under these provisions. The circuit court dismissed these claims on summary judgment.

¶5 On appeal, Edwards raises four issues: (1) he is a third-party beneficiary of the Purchase Agreement's severance provisions, (2) he satisfied the conditions to receive severance from Pacific Cycle, (3) the circuit court should not have dismissed his unjust enrichment and quantum meruit claims that he had a right to receive severance benefits, and (4) the circuit court should not have dismissed his claim that Pacific Cycle defrauded him of his right to severance benefits. We assume without deciding that Edwards was a third-party beneficiary of the Purchase Agreement. The dispositive issue is whether there was a disputed issue of material fact as to whether Edwards satisfied the conditions for severance benefits under the Purchase Agreement. We agree with the circuit court that Edwards did not satisfy those conditions.

¶6 In support of its summary judgment motion, Pacific Cycle submitted excerpts from Edwards' deposition. In May or June 2003, Edwards and colleagues visited Pacific Cycle in Madison to discuss company matters. Pacific Cycle expressed an interest in having the employees relocate to Madison as soon as possible.

¶7 In August, Edwards met over lunch with Pacific Cycle executive Robert Ippolito. At that time, Edwards' pay exceeded the pay for Pacific Cycle's

product managers.¹ During the meeting, Edwards expressed interest in a director's position. Ippolito told Edwards he could "take care of that." From Ippolito's statement, Edwards assumed that he would become a director of product marketing or management when he moved to Madison. He wanted the title, but he expected to have the same duties and responsibilities. Edwards agreed to relocate to Madison. Edwards met with Pacific Cycle's human resources department about relocation issues, listed his home for sale and began looking for a residence in the Madison area. Edwards' wife resigned from her employment.

¶8 In the middle of September, after entering into a contract to sell his home and prior to a Pacific Cycle business trip, Edwards inquired about printing new business cards showing his director's position. When Ippolito stated that he did not recall any discussion about a director's position, Edwards decided not to move to Madison. Edwards was able to cancel the sale contract on his home when the buyer failed to meet a contingency.

¶9 When Edwards returned from his business trip in mid-October, he told Pacific Cycle that the sale of his home had fallen through, and he was not going to place the home on the market until market conditions improved. Edwards did not reveal that the real reason for his decision not to move to Madison was his disappointment with the outcome of the discussion about his director's role. Edwards continued working out of the Mendota Heights office but started looking for employment elsewhere.

¹ Edwards received an increase in his compensation after the acquisition.

¶10 Edwards accepted employment in Arizona because he did not want to work for Pacific Cycle, a company that had lied to him. In addition, Edwards had a home near the Arizona employer. Edwards gave his two-week notice on November 3. At the time Edwards resigned, Pacific Cycle had been making arrangements to have Edwards work from his home because the Mendota Heights office was closing. In July 2009, Edwards learned about the severance benefit from a former InSTEP colleague.

¶11 In opposition to Pacific Cycle's summary judgment motion, Edwards submitted deposition excerpts. However, those excerpts did not materially contradict the excerpts submitted by Pacific Cycle in support of its summary judgment motion.

¶12 On summary judgment, the circuit court concluded that Edwards did not depart Pacific Cycle for a "good reason" as defined in the Purchase Agreement. Good reasons included a reduction in compensation, material reduction in the employee's benefits, material demotion in the employee's responsibilities or duties, or required relocation more than fifty miles from the employee's work place. It is undisputed that Edwards' compensation increased after Pacific Cycle acquired his employer, his benefits were not reduced, he did not suffer a material demotion relating to his responsibilities and duties, and he was not required to relocate. In fact, Edwards was permitted to work out of his home once he declined to move to Madison.² Edwards admitted that he left Pacific Cycle because he felt executives had lied to him about the specifics of his

² Edwards' appellate briefs neglect to disclose this relevant fact. Rather, Edwards argues that because the Mendota Heights office was closing, the pressure on him to relocate increased.

future with the company, and he did not want to work for a company he could not trust. Because Edwards did not leave the company for a “good reason,” he was not entitled to severance benefits under the Purchase Agreement.

¶13 Edwards argues that he lost his promotion to director, triggering the material demotion section of the “good reason” definition. It is clear from the summary judgment record that there was no meeting of the minds on the question of whether Edwards would become a director. More importantly, the “good reason” definition of material demotion addresses demotion in the context of an employee’s responsibilities or duties, not title. There is no evidence in the record that Edwards’ responsibilities would have changed had he been designated a director. The only matter in dispute was Edwards’ title.

¶14 Edwards argues that he was pressured to move to Madison. While that may be so, the record does not indicate that his continued employment with Pacific Cycle was conditioned upon relocating to Madison. In fact, the record establishes that after Edwards informed Pacific Cycle he would not relocate, Pacific Cycle made arrangements to permit Edwards to work from home because the old InSTEP Mendota Heights office was closing.

¶15 Because Edwards was not eligible for severance benefits, all of his claims were properly dismissed on summary judgment.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

