NORMA I. CRUZ *v.* VISUAL PERCEPTIONS, LLC, ET AL.
(AC 33010)

Gruendel, Lavine and Schaller, Js.

Argued February 7—officially released June 19, 2012

(Appeal from Superior Court, judicial district of Hartford, Peck, J.)

Richard D. Carella, with whom was *David R. Makarewicz*, for the appellants (defendants).

Proloy K. Das, with whom was *Andrew L. Houlding*, for the appellee (plaintiff).

Opinion

GRUENDEL, J. The defendants, Visual Perceptions, LLC, and Robert W. Aube, Jr.,[1] appeal from the judgment of the trial court in favor of the plaintiff, Norma I. Cruz. On appeal, the defendants argue that the court improperly (1) determined that the parties entered into an employment contract for a definite term and that the plaintiff's employment could therefore only be terminated for just cause and (2) awarded the plaintiff consequential damages as a result of medical expenses she incurred. We affirm the judgment of the trial court.

The record reveals the following factual and procedural history relevant to the defendants' claims. The plaintiff was hired as a laboratory manager by the defendant in February, 2006. On February 2, 2006, the plaintiff and Aube signed a document that included the plaintiff's rate of compensation, commission opportunities, benefits and work schedule. Thereafter, on April 6, 2006, the plaintiff and Aube signed a second document that revised the terms of the plaintiff's employment, providing for a raise in her salary.

In February, 2007, the plaintiff provided Aube with a handwritten list of updated terms of her employment wherein she requested another raise. On March 1, 2007, the plaintiff and Aube signed a third document, stating "[t]his will cover the 36 month period starting April 1, 2007 and ending March 31, 2010." Aube terminated the plaintiff's employment at Visual Perceptions, LLC, on October 16, 2008, and litigation followed.

On January 6, 2010, the plaintiff filed a revised amended complaint.[2] Count one alleged that the March 1, 2007 document constituted an employment contract between the plaintiff and the defendant for a fixed term of thirty-six months, and that her termination breached that contract. Counts two and three sought an accounting and payment of commissions for the term of the alleged employment contract against the defendant and Aube, respectively. The defendants filed an answer denying the existence of an employment contract and claiming, by way of special defenses, rescission, payment, and accord and satisfaction as to all counts of the revised amended complaint. The defendants also claimed that Aube could not be liable personally pursuant to General Statutes § 34-134 as to count three. The defendant asserted a counterclaim against the plaintiff for breach of contract, breach of the covenant of good faith and fair dealing, and statutory theft pursuant to General Statutes § 52-564.

The matter was tried to the court on March 23 and April 27, 2010. The plaintiff and the defendants submitted posttrial briefs on June 25, 2010, and final argument was held before the court on July 6, 2010. In its memorandum of decision, the court first determined that the March 1, 2007 document constituted a contract of

employment for a definite term and was terminable only for good or just cause. The court then determined that because the defendants did not present evidence to support a finding of good or just cause to terminate the plaintiff's employment, the plaintiff was discharged in violation of the contract. The court found that the plaintiff was entitled to damages from the date of her termination through the end date of the term of the contract. On December 6, 2010, the court awarded the plaintiff $60,964.11, representing the plaintiff's lost wages, less unemployment compensation, with the addition of medical expenses incurred due to a loss of health insurance coverage and an underpaid bonus. This appeal followed. Additional factual and procedural history will be set forth as necessary.

I

The defendants argue that the March 1, 2007 document is not a guaranteed employment contract for a definite term. They claim that, absent a clear and definite promise of three years of guaranteed employment, it was error for the court to find that it was an employment contract for a definite term of thirty-six months and that the plaintiff's employment could only be terminated for cause. We disagree.

"The existence of a contract is a question of fact to be determined by the trier on the basis of all of the evidence. . . . On appeal, our review is limited to a determination of whether the trier's findings are clearly erroneous. . . . This involves a two part function: where the legal conclusions of the court are challenged, we must determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision; where the factual basis of the court's decision is challenged we must determine whether the facts set out in the memorandum of decision are supported by the evidence or whether, in light of the evidence and the pleadings in the whole record, those facts are clearly erroneous." (Internal quotation marks omitted.) *MD Drilling & Blasting, Inc.* v. *MLS Construction, LLC*, 93 Conn. App. 451, 454, 889 A.2d 850 (2006).

"When, as here, there is definitive contract language, the determination of what the parties intended by their contractual commitments is a question of law. . . . Accordingly, our review is plenary. . . . The reviewing court must decide whether [the trial court's] conclusions are legally and logically correct and find support in the facts that appear in the record." (Citation omitted; internal quotation marks omitted.) *Genua* v. *Logan*, 118 Conn. App. 270, 273–74, 982 A.2d 1125 (2009).

A

We first address the defendants' claim that the court improperly determined that the March 1, 2007 document was an employment contract for a definite term.

The court found that the document explicitly stated the duration of the plaintiff's employment, was definite and certain as to its terms and requirements, and thus was a valid and binding employment contract for a definite term.

Employment agreements are interpreted as any contract. *Slifkin* v. *Condec Corp.*, 13 Conn. App. 538, 544, 538 A.2d 231 (1988). "The rules governing contract formation are well settled. To form a valid and binding contract in Connecticut, there must be a mutual understanding of the terms that are definite and certain between the parties. . . . [A]n agreement must be definite and certain as to its terms and requirements. . . . A contract requires a clear and definite promise." (Citation omitted; internal quotation marks omitted.) *Geary* v. *Wentworth Laboratories, Inc.*, 60 Conn. App. 622, 627, 760 A.2d 969 (2000). "Certain material terms such as the duration, salary, fringe benefits and other conditions of employment are deemed essential to an employment contract." Id., 628.

In reviewing the court's finding that the employment contract was one for a definite term, it is helpful to distinguish certain lower court decisions relied on by the defendants. The defendants point to three Superior Court decisions to support their proposition that an agreement, even one including a term of months or years, should not be treated as a contract for a definite term. See *Ward* v. *Distinctive Directories, LLC*, Superior Court, judicial district of Hartford, Docket No. CV-04-4005440-S (May 25, 2005) (39 Conn. L. Rptr. 391); *Strouch* v. *CDI Corporation-Northeast*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. CV-90-0386501-S (November 18, 1994), aff'd, 40 Conn. App. 928, 670 A.2d 341 (1996); *Paris* v. *Northeast Savings F.A.*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. CV-91-0398144-S (June 1, 1994) (11 Conn. L. Rptr. 575). In each of these cases, a contract provision linked the employee's compensation to a certain time period. In *Wade* v. *Distinctive Directories, LLC*, supra, 39 Conn. L. Rptr. 391, the employment contract guaranteed a minimum salary of $4583.33 for the first six months of employment. In *Strouch* v. *CDI Corporation-Northeast*, supra, the employment contract provided for a starting salary of $42,000 per year and guaranteed a "minimum commission of $18,000 for [the] first two years of employment." In *Paris* v. *Northeast Savings F.A.*, supra, 11 Conn. L. Rptr. 576, the terms of the employment contract provided for a base salary of $75,000 for a six month period plus incentives and commissions, which would be reduced after the first six months. The courts held that those terms did not create agreements for guaranteed employment for the time periods specified. For example, in *Ward* v. *Distinctive Directories, LLC*, supra, 39 Conn. L. Rptr. 392, the court noted that the reference to the first six months of employment

"related to the very specific terms set forth for income, as opposed to an agreement for a definite term." The promise, therefore, was of a salary, "not of an amount of time in which the defendant would guarantee to employ the plaintiff." Id. While it certainly may be true that a contract provision expressing an employee's compensation in terms of an annual salary does not create a contract for employment of definite duration, these cases are not instructive where the contractual language of duration was not linked to the plaintiff's compensation.

The language of the contract exhibits an employment contract for a definite term during which the plaintiff would be employed as optical laboratory manager, and all other conditions of employment articulated in the contract would be applicable.[3] The document is titled "Norma Cruz Employment Contract" and begins with the statement, "This will cover the 36 month period starting April 1, 2007 and ending March 31, 2010."[4] We conclude that the plain language of the contract unambiguously demonstrates that the parties intended to create a contract for a definite duration of thirty-six months. It specifically provides how many personal days would be allocated to the plaintiff for the duration of the contract[5] and provides that any increase in health insurance premium would be absorbed by the defendant "for the *duration of the contract*." (Emphasis added.) In light of the foregoing, the court's finding that the March 1, 2007 document was an employment contract for a definite term is not clearly erroneous.

B

Having concluded that the contract is one for a definite term, we turn to the issue of whether the plaintiff was employed at will. The defendants assert that merely including a term of employment does not create an enforceable promise of guaranteed employment for the term of the contract. They argue that, absent a provision explicitly stating that the plaintiff could only be terminated for just cause, the plaintiff remained an at-will employee. We disagree.

"In Connecticut, an employer and employee have an at-will employment relationship in the absence of a contract to the contrary. Employment at will grants both parties the right to terminate the relationship for any reason, or no reason, at any time without fear of legal liability." (Internal quotation marks omitted.) *Thibodeau* v. *Design Group One Architects, LLC*, 260 Conn. 691, 697–98, 802 A.2d 731 (2002). Parties must specifically contract for a right to be terminated only for cause. *Torosyan* v. *Boehringer Ingelheim Pharmaceuticals, Inc.*, 234 Conn. 1, 14–15, 662 A.2d 89 (1995). Employment contracts of indefinite duration are terminable at the will of either party. *Somers* v. *Cooley Chevrolet Co.*, 146 Conn. 627, 629, 153 A.2d 426 (1959) ("[t]he plaintiff's employment was indefinite as to duration, and either

party could have legally terminated it at any time with or without cause").

The presumption of at-will employment does not apply to contracts that create employment for a fixed duration. *Slifkin* v. *Condec Corp.*, supra, 13 Conn. App. 548–49; see also *Taravella* v. *Wolcott*, 599 F.3d 129, 134 (2d Cir. 2010) ("Under Connecticut law, employment is at-will by default, and parties must specifically contract a right to be terminated only for cause. . . . An exception exists for contracts that create employment for a fixed period."). In *Slifkin*, a provision in the parties' employment contract stated that the plaintiff " 'would be afforded an opportunity to continue in the employ of [the defendant] for a sufficient number of years to qualify for 100% vesting in each of the employer benefit plans,' " an ascertainable period of time. *Slifkin* v. *Condec Corp.*, supra, 548. There was no condition in the contract expressly requiring satisfactory performance by the plaintiff, nor was there a provision providing bases for the plaintiff's discharge. Id., 545–47. The plaintiff's employment was terminated before the vesting of his employer benefit plans. Id., 539–40. This court determined that it was a contract for a definite or determinable period of time, and held that "[a]n employment contract for a definite or determinable term . . . may be terminated by either party only for good or just cause." Id., 549; see also 24 S. Williston, Contracts (4th Ed. 2002) § 66:1, p. 382 ("unless the employment contract specifically obligates both the employer and the employee for a definite term of employment, the employment is considered to be indefinite and terminable at the will of either party"); S. Harris, 14 Connecticut Practice Series: Connecticut Employment Law (2005) § 1.2, p. 3 ("[t]he employment at-will rule will not apply when the employer and employee have expressly agreed, subject to traditional contract formation principles, that employment will be for a specified duration or term").

The court, having determined that the contract was an employment contract for a definite term of thirty-six months, relied on *Slifkin* to find that the contract was therefore only terminable for good or just cause. While the defendants argue that the fact that the document does not contain an explicit promise that the plaintiff could not be terminated except for good cause means that she remained an at-will employee, their argument does not comport with *Slifkin*.[6] As we discussed in part I A of this opinion, the plaintiff's contract with the defendants was for a definite period of time, lasting from April 1, 2007 through March 31, 2010. As an employment contract for a definite term, it could only be terminated for good cause. See *Slifkin* v. *Condec Corp.*, supra, 13 Conn. App. 548–49. The court found for the plaintiff because it concluded that the defendants did not have good or just cause to terminate the plaintiff's employment, and the defendants do not

challenge that finding on appeal. Accordingly, we conclude that the court properly determined that the plaintiff was discharged in violation of the contract.

II

The defendants also claim that the court improperly awarded the plaintiff consequential damages as a result of medical expenses she incurred due to the loss of health insurance coverage. We agree with the plaintiff that the record is inadequate to review this claim.

During the trial, the plaintiff introduced into evidence medical bills over the defendants' objection. The plaintiff was provided health insurance coverage through the defendants' COBRA[7] plan. While she used that coverage for a period of time, she ended the coverage and testified at trial that it was because she could no longer afford the premium. The medical bills were for treatment she received during the time period specified in her contract after her health insurance coverage lapsed. In her posttrial brief, she requested $4269.94 for those medical bills as part of the damages for her breach of contract claim.[8] The court awarded damages as requested by the plaintiff, noting that the defendants presented no evidence contradicting the plaintiff's calculation of damages. The award of damages was subject to a recalculation pending an accounting to determine the amount owed to the plaintiff for her bonus and commission, and a hearing on the matter was scheduled for December 6, 2010.

On November 17, 2010, the defendants filed a motion for reargument and reconsideration. They argued that the court's conclusions as to consequential damages for loss of medical insurance were contradictory to the plaintiff's testimony at trial. They also argued that the court failed to factor the plaintiff's final paycheck into its calculation of damages. On December 6, 2010, the court granted the motion as to the claim relating to the final paycheck. Upon reargument, the plaintiff agreed to withdraw her claim as to that amount.

On appeal, the defendants claim that the plaintiff was not entitled to consequential damages for her medical expenses because it was not reasonably foreseeable that she would terminate her insurance coverage after her discharge. "The general rule in breach of contract cases is that the award of damages is designed to place the injured party, so far as can be done by money, in the same position as that which he would have been in had the contract been performed. . . . In making its assessment of damages for breach of [any] contract the trier must determine the existence and extent of any deficiency and then calculate its loss to the injured party. The determination of both of these issues involves a question of fact which will not be overturned unless the determination is clearly erroneous." (Internal quotation marks omitted.) *Briggs* v. *Briggs*, 75 Conn.

App. 386, 399, 817 A.2d 112, cert. denied, 263 Conn. 912, 821 A.2d 767 (2003).

In the present case, the court provided no factual or legal basis for its award of consequential damages, and no articulation was requested. "When the decision of the trial court does not make the factual predicates of its findings clear, we will, in the absence of a motion for articulation, assume that the trial court acted properly." *DeLuca* v. *DeLuca*, 37 Conn. App. 586, 588, 657 A.2d 690 (1995). "Our role is not to guess at possibilities, but to review claims based on a complete factual record developed by the trial court." (Internal quotation marks omitted.) *Ocwen Federal Bank, FSB* v. *Charles*, 95 Conn. App. 315, 329, 898 A.2d 197, cert. denied, 279 Conn. 909, 902 A.2d 1069 (2006). Because the record is inadequate with respect to the basis of the court's award of consequential damages, we cannot conclude that the award was clearly erroneous.

The judgment is affirmed.

In this opinion SCHALLER, J., concurred.

[1] At all relevant times, Aube, a doctor of optometry, was the principal of Visual Perceptions, LLC. For the sake of clarity, we refer to Visual Perceptions, LLC, individually as the defendant and to Aube by name, or to both parties collectively as the defendants.

[2] The revised amended complaint contains six counts. Counts four and five were withdrawn by the plaintiff following argument held on July 6, 2010. Count six was dismissed by the court at the conclusion of the plaintiff's case-in-chief.

[3] We note that the defendants argue that the court should have looked to the parties' intent and point to testimony from Aube stating that he did not intend for the document to act as a guarantee of employment. However, "[t]he question is not what intention existed in the minds of the parties but what intention is expressed in the language used. . . . In interpreting contract items, we have repeatedly stated that the intent of the parties is to be ascertained *by a fair and reasonable construction of the written words* . . . ." (Citations omitted; emphasis added; internal quotation marks omitted.) *Barnard* v. *Barnard*, 214 Conn. 99, 110, 570 A.2d 690 (1990). "Similarly, any ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms." (Internal quotation marks omitted.) *Levine* v. *Massey*, 232 Conn. 272, 279, 654 A.2d 737 (1995). Because we conclude that the language of the contract is unambiguous, the contract must be given effect according to its terms.

[4] Unlike the dissent, we perceive no ambiguity in the phrase "[t]his will cover the 36 month period . . . ." The provision means that the contract, and the terms therein, would be applicable for the period starting April 1, 2007, and ending March 31, 2010.

[5] The contract provides that the plaintiff will have ten personal days available to her in 2007, twelve days in 2008, fourteen days in 2009 and fifteen days in 2010.

[6] Instead, the defendants rely on *Gaudio* v. *Griffin Health Services Corp.*, 249 Conn. 523, 533, 733 A.2d 197 (1999), to argue that where an employment agreement does not contain express contract language definitively stating that an employee is at will or terminable only for just cause, the determination of what the parties intended to encompass in their contractual commitments is a question of the intention of the parties. *Gaudio*, however, involved an implied contract arising from an employment manual, and not an express contract for a definite term, as in the present case. Id., 525–26.

[7] See the Consolidated Omnibus Budget Reconciliation Act of 1985, 29 U.S.C. §§ 1161-68.

[8] This was an award of consequential damages. The Restatement (Second) of Contracts provides that an injured party has a right to damages as measured by: (1) direct damages, consisting of "the loss in value to him of the other party's performance caused by its failure or deficiency"; 3 Restatement (Second), Contracts § 347 (a) (1981); plus, (2) "any other loss, including

incidental or consequential loss, caused by the breach . . . .” Id., § 347 (b). “Consequential damages . . . include those damages that, although not an invariable result of every breach of this sort, were reasonably foreseeable or contemplated by the parties at the time the contract was entered into as a probable result of a breach.” (Internal quotation marks omitted.) *Milford* v. *Coppola Construction Co.*, 93 Conn. App. 704, 715, 891 A.2d 31 (2006).