STATE OF MICHIGAN

COURT OF APPEALS

EDWARD F. THIEDE, JR.,

Plaintiff-Appellant,

V

RAYTHEON COMPANY, d/b/a RAYTHEON SYSTEMS COMPANY, and JOANNE L. SAUNDERS,

Defendants-Appellees.

UNPUBLISHED
May 21, 2002

No. 225820
Oakland Circuit Court
LC No. 98-010080-NZ

Before: Hood, P.J., and Gage and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's opinion and order granting defendants summary disposition of his breach of contract, wrongful discharge and employment discrimination claims pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff contends that the trial court erred in granting defendants summary disposition because genuine issues of material fact existed regarding his claims. We review de novo a trial court's summary disposition ruling. In reviewing a motion brought under subrule MCR 2.116(C)(10), this Court considers the pleadings and relevant documentary evidence in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial, or whether the moving party is entitled to judgment as a matter of law. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Plaintiff first argues that he presented evidence to support his claim that defendant Raytheon Company breached a contract. Plaintiff suggests that when the company hired him, as chief operating officer of a company division called Systems Engineering and Manufacturing Systems (SEAMS), it had promised to promote him to the position of division president when the existing president retired. Any valid contract, oral or written, must consist of an offer and an acceptance. The acceptance must be unambiguous and in strict conformance with the terms of the offer. If an offer requires no specific form of acceptance, acceptance may be implied from the offeree's conduct. *Pakideh v Franklin Commercial Mortgage Group, Inc*, 213 Mich App 636, 640; 540 NW2d 777 (1995).

Plaintiff did not present evidence that the company made any actual offer. Plaintiff merely pointed to statements made by the president of his division that plaintiff "would be in a

position" to assume the division presidency when the president retired, and to similar statements made by company executives. These statements fall short of an offer, instead appearing as discussions of future possibilities that might come to pass. In light of the insufficient evidence of any offer, we conclude that the trial court properly granted summary disposition of plaintiff's breach of contract claim pursuant to MCR 2.116(C)(10).

Plaintiff also asserts that his termination was wrongful because his position was subject to termination only for just cause. The presumption of employment at will may be overcome with proof of either a contract provision for a definite term of employment, or one that forbids discharge absent just cause. A plaintiff may prove such contractual terms by showing (1) an express agreement, either written or oral, regarding job security that is clear and unequivocal, or (2) a contractual provision, implied at law, where an employer's policies and procedures instill a "legitimate expectation" of job security in the employee. In reviewing a legitimate expectation claim, a court first must consider what, if anything, the employer has promised, then determine whether the promise is reasonably capable of instilling a legitimate expectation of just cause employment. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 164-165; 579 NW2d 906 (1998).

We find that plaintiff failed to present evidence of a clear and unequivocal oral promise of just cause employment. The one oral promise on which plaintiff relies—that the company agreed to pay plaintiff's expenses for relocating from Connecticut to Michigan, provided that he did so within three years, and that until plaintiff moved the company would reimburse his commuting expenses—did not constitute a clear and unequivocal promise that he would have just cause employment, either during those three years or at any other time. The promise only addressed what the company would do to ease the financial burden involved in plaintiff's acceptance of a job in another state, and had nothing to do with the terms of plaintiff's employment in the position.

Furthermore, the fact that Raytheon had personnel policies generally promising to treat employees fairly does not give rise to any legitimate expectation of just cause employment. Even assuming that plaintiff had at least constructive awareness of these policies during the time of his employment, *Prysak v R L Polk Co*, 193 Mich App 1, 7; 483 NW2d 629 (1992), the policies were too vague to give rise to legitimate expectations of just cause employment. *Lytle*, *supra* at 165-166 ("A lack of specificity of policy terms or provisions . . . is grounds to defeat any claim that a recognizable promise in fact has been made."), citing *Rood v General Dynamics Corp*, 444 Mich 107, 139; 507 NW2d 591 (1993).

Plaintiff also suggests that the existence of an "employee problem resolution procedure" and a related arbitration agreement between himself and his employer was evidence of his just cause employment. We note, however, that the arbitration agreement, which is comprehensive, gives examples of several matters that may be arbitrated. These examples, such as discrimination and tort claims, do not depend for their viability on a just cause employment relationship. Moreover, the arbitration agreement explicitly disclaims that it creates contractual rights or changes the nature of the employment relationship. See *Lytle*, *supra* at 166 (observing that policy language that disclaims a contract "[a]t the very least . . . renders [any] 'proper cause' statement too vague and indefinite to constitute a promise").

Lastly with respect to the wrongful discharge issue, we observe that in filling out his application for employment plaintiff was put on notice that his employment relationship would

be at will, and signed an acknowledgement of this fact. This factor alone is sufficient to defeat plaintiff's claim that a jury question existed regarding whether he had just cause employment status. *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 646; 473 NW2d 268 (1991). Accordingly, we find that the trial court properly granted summary disposition of plaintiff's wrongful discharge claim pursuant to MCR 2.116(C)(10).

Plaintiff next claims that Raytheon discriminated against him on the basis of his gender by hiring a woman, defendant Joanne Saunders, rather than promoting him to the position of division president. The trial court found that plaintiff made a prima facie case of discrimination, but that Raytheon had articulated a legitimate nondiscriminatory reason for its hiring decision, which plaintiff failed to rebut as pretextual. See *Hazle v Ford Motor Co*, 464 Mich 456, 462-466; 628 NW2d 515 (2001) (describing the applicable burden shifting analysis).

Raytheon offered a number of nondiscriminatory reasons for its decision to hire Saunders, including her strong engineering background, her positive relationship with the company division's principal customer, and her willingness to relocate immediately to the company's location so that she would be available for the networking required to establish contacts that would ensure the division's growth. Plaintiff failed to present evidence that any of these proffered reasons were pretextual. Plaintiff suggested that the company's executives lied in their deposition testimony when they attributed the hiring decision to the outgoing division president, and that this lie created a jury question whether the company's proffered reasons were pretextual. Plaintiff mischaracterized the testimony of the company executives, who never said that the hiring decision was solely the outgoing president's idea. The executives cited what they perceived as the outgoing president's lack of unqualified enthusiasm for plaintiff's candidacy, along with the president's sharing of their own assessments of various skills plaintiff needed to excel professionally, as factors among many in the hiring decision. Because, contrary to plaintiff's argument, we detect no "mendacious[]" testimony by the company's executives, we find that their testimony does not provide a basis for characterizing the company's proffered nondiscriminatory reasons as pretextual. Because no evidence of pretext exists, we conclude that the trial court correctly granted summary disposition of plaintiff's gender discrimination claim pursuant to MCR 2.116(C)(10). *Hazle, supra* at 465-466.

Affirmed.

/s/ Harold Hood
/s/ Hilda R. Gage
/s/ Christopher M. Murray