# STATE OF MICHIGAN

# COURT OF APPEALS

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| JACKSON SERVICE COMPANY, INC.,<br><br>Plaintiff-Appellant, | UNPUBLISHED<br>March 9, 2004 |
| v | No. 243680<br>Oakland Circuit Court |
| UNITED MARKETING ASSOCIATES, INC.,<br><br>Defendant-Appellee. | LC No. 2001-032682-CK |

Before: Smolenski, P.J., and Saad and Kelly, JJ.

PER CURIAM.

Plaintiff, Jackson Service Company, Inc. (JSC), appeals the trial court's grant of summary disposition to defendant, United Marketing Associates, Inc. (UMA). We reverse and remand for further proceedings consistent with this opinion.

## I. Facts and Procedural History

JSC says UMA breached its oral contract with JSC. According to JSC, in 1978, it was the exclusive service agent and distributor of Henny Penny Corporation new commercial kitchen equipment, replacement parts, and flour-based chicken breading. JSC maintains that, in 1978, James Milleville and Alan Neustadtl also sold new commercial kitchen equipment and, in the interest of combining their customers and services, Milleville and Neustadtl approached JSC shareholders, Elden Hubbard and Keith Johnson, Sr., and formed a new company, UMA. JSC says that it entered an oral agreement with UMA whereby UMA would sell new Henny Penny commercial kitchen equipment and JSC would service the equipment and sell Henny Penny parts and breading. According to JSC, Hubbard, Johnson, Milleville and Neustadtl agreed that UMA would not charge JSC a fee or percentage for sales or service and that the contract would continue so long as UMA represented Henny Penny in the sale of Henny Penny equipment. This relationship continued for decades.

Many years later, in a letter dated April 13, 2001, UMA informed JSC that all future orders by JSC for Henny Penny parts and breading must go through UMA and that UMA would

charge thirty-five percent below list price.[1] The new arrangement was confirmed in a letter from Henny Penny to JSC dated April 18, 2001. According to Henny Penny division sales manager, Don Brewer, Henny Penny decided to cease direct sales of parts and supplies to JSC "at the request of UMA," the exclusive Henny Penny distributor for the state of Michigan.

JSC filed its complaint on June 20, 2001, and alleged that UMA breached the 1978 oral contract by charging a fee for JSC to buy Henny Penny parts and breading. JSC also alleged that, by entering an exclusive distribution agreement with Henny Penny, UMA intentionally interfered with JSC's contractual relationship or expectancy with Henny Penny. JSC moved for a preliminary injunction to compel UMA to abide by the terms of the oral contract, and the trial court denied the motion on July 25, 2001.

Thereafter, UMA filed a motion for summary disposition under MCR 2.116(C)(10) and argued that (1) the parties did not enter an oral contract in 1978, (2) if a contract was formed, it is terminable at will because it did not specify the duration of the agreement or manner of termination, and (3) any loose business arrangements between JSC and UMA were subject to modification based on changes in business circumstances and the best interests of the parties. In response, JSC submitted the affidavits of Keith Johnson, Sr., Elden Hubbard, and James Milleville, one of the original founders of UMA and a UMA employee or officer through May 2, 1996. The affiants testified that the parties formed UMA with the understanding that JSC would perform service on Henny Penny equipment and would sell parts and breading without UMA charging any fees. The affiants further stated that they agreed that the arrangement would last for as long as UMA represented Henny Penny.

The trial court denied UMA's motion without prejudice because UMA failed to submit documentary evidence to support its motion. Thereafter, UMA submitted the affidavits of UMA officers Marty Crowe and Leon "Link" Hubbard, who stated that they never knew about a contract between UMA and JSC. Both affiants stated that many changes between the companies occurred over the years, but that continuing problems resulted in the termination of their business relationship. The trial court granted UMA's motion in a written order entered on August 20, 2002, "[f]or the reasons stated on the record . . . ." At the motion hearing, the trial court explained:

> It was an oral contract. There was no definite termination date for the contract, other than the amorphous quote, " … so long as defendant represented Henny-Penny." The contract began in 1978. Defendant had indicated to plaintiff the relationship would be terminated because circumstances changed. Obviously, circumstances, based on what we have before us, changed during this period of time, if nothing more than the passage of time, and therefore, will [sic] grant the motion.

## II. Analysis

[1] JSC asserts that it bought parts and supplies from Henny Penny at fifty percent below list price.

As this Court explained in *VanStelle v Macaskill*, 255 Mich App 1, 8; 662 NW2d 41 (2003):

> A motion brought under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). The trial court must consider the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the nonmoving party. *Maiden, supra* at 120. The moving party is entitled to judgment as a matter of law when the proffered evidence fails to establish a genuine issue concerning any material fact. *Id*. We review de novo the trial court's decision regarding the motion for summary disposition. *Travelers Ins Co v Detroit Edison Co*, 465 Mich 185, 205; 631 NW2d 733 (2001).

Here, as noted above, the trial court ruled that the oral agreement was terminable at will because it did not contain a duration provision. We hold that the trial court incorrectly granted summary disposition to UMA.

The trial court accepted JSC's assertion that the parties agreed that the contract would last as long as UMA represents Henny Penny. According to JSC, while a precise date of termination cannot be determined, the agreement nonetheless shows an intent that the contract will last until UMA stops selling Henny Penny equipment. Therefore, according to JSC, the trial court erred by supplying a "terminable at will" or "reasonable length" provision because the parties already agreed to the contract duration and manner of termination – when UMA stops representing Henny Penny, the contract is terminated. In contrast, UMA argues that the alleged contract is terminable at will because there is no provision regarding the manner of termination. UMA urges us to reject JSC's interpretation because, under JSC's reasoning, the contract could never be terminated by either party to the agreement, notwithstanding changes in market conditions or the circumstances of the parties.

Both parties rely on *Lichnovsky v Ziebart International Corp*, 414 Mich 228; 324 NW2d 732 (1982), in which our Supreme Court ruled that "where the parties have not agreed upon the term, duration, or manner of termination of such an agreement it is generally deemed to be terminable at the will of either party because they have not agreed otherwise." *Id*. at 240. JSC is correct that, as *Lichnovsky* states, a contract may last many years and its duration need not be calculated with mathematical certainty in order to be enforceable. *Id*. at 242. Under *Lichnovsky*, the parties could have validly agreed that the contract could continue for as long as UMA represented Henny Penny. Accordingly, the trial court erred by holding that the contract is "at will" merely because of a failure to state a specific duration.

Further, while the contract does not contain a *detailed* manner of termination, it nonetheless provides that it shall terminate when UMA no longer represents Henny Penny. As JSC correctly asserts, while the provision "as long as UMA represents Henny Penny" sets forth the *duration* of the agreement, it also sets forth the *manner of termination*. While this case differs from *Lichnovsky*, because there is no "elaborate procedure" for termination, viewing JSC's factual assertions as true, there was an agreement between JSC and UMA on how and on what basis the agreement would end. Again, though the duration of the contract cannot be precisely calculated, the contract is not void for indefiniteness because the conditions under which it will be terminated are clear.

Under *Lichnovsky*, the contract between JSC and UMA is similar to an employment contract terminable only "for cause." Though generally employment contracts for an indefinite term are terminable at will by either party, our Courts have held that a contract that provides that an employee may not be terminated except for cause is enforceable, though the contract is for an indefinite term. *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 596, 598; 292 NW2d 880 (1980). In the employment arena, if the parties negotiate and agree that the contract will continue until there is "good reason" for terminating the agreement, a contract is enforceable, notwithstanding its indefinite term. See *Bracco v Michigan Technological University*, 231 Mich App 578, 589-590; 588 NW2d 467 (1998). Here, as noted, the precise grounds for termination were specified because the contract validly provided for the "manner of termination" by stating that it would continue as long as UMA represents Henny Penny. Accordingly, the trial court erred by granting summary disposition to UMA because, from the evidence presented, the contract contains the essential terms of duration and manner of termination.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Kirsten Frank Kelly