STATE OF MICHIGAN

COURT OF APPEALS

THOMAS PEACOCK,

Plaintiff-Appellant,

v

ONAWAY COMMUNITY FEDERAL CREDIT UNION, BRIAN JANECZEK, APRIL PEACOCK, and RON HORROCKS,

Defendants-Appellees.

UNPUBLISHED
May 27, 2004

No. 243460
Presque Isle Circuit Court
LC No. 01-002442-CZ

Before: Murray, P.J., and Neff and Donofrio, JJ.

NEFF, J. *(dissenting).*

I respectfully dissent and would reverse the order granting defendants' motion for partial summary disposition and remand for trial.

Plaintiff was not looking for a job when he was approached by the Credit Union's manager who offered him the position of assistant manager with the understanding that he was to be groomed for the manager's job. The two men knew each other through their contacts at church.

Plaintiff was working in a union job and inquired about job security at the Credit Union. According to plaintiff's deposition testimony, there was no at-will employment policy as to any Credit Union employees when he was hired and he was assured by the manager that it would take cause to fire him. He was further assured that when he became manager his performance would be reviewed and any problems would be conveyed to him by the Credit Union board so that he could correct them. Taking these allegations of fact in a light most favorable to plaintiff, it is clear that there was at least a genuine issue of material fact that a just-cause employment contract existed.

The question then becomes whether the later change in policy and the fact that plaintiff signed acknowledgements of the change served to nullify the contract as a matter of law. I hold that the circumstances after the arguable creation of the just cause employment contract do not nullify it.

I cannot see how acknowledging a document that specifically disclaims that it is not a contract can possibly nullify an earlier contractual relationship, and I question whether a contract

analysis is even appropriate. The majority relies on "well-established contract law" as set out in *Nieves v Bell Industries, Inc*, 204 Mich App 459; 517 NW2d 235 (1994), to support its conclusion that the acknowledgement nullified the oral contract of employment. However, the Court in *Nieves* was not dealing with a document that specifically *disclaimed* that it was a contract.

The Court in *Nieves* as relied on by the majority also refers to the "subjective expectation" of a just cause employment contract.[1] In my view, there is a genuine issue of material fact regarding whether plaintiff placed actual reliance on representations that the non-contractual policy document did not apply to him.

In short, I find that the majority opinion does not comply with the rule that the evidence be viewed in a light most favorable to the non-moving party, plaintiff, in finding that there is no genuine issue of material fact. Moreover, the majority opinion lets defendants have it both ways in the mixed messages it sent to plaintiff; they were free to recruit plaintiff into their employ with representations of a just-cause employment which representations plaintiff testified were later reaffirmed, and then to unilaterally modify the terms of the contract with a document which by its own terms is not a contract. I would reverse.

/s/ Janet T. Neff

[1] But see *Phinney v Perlmutter*, 222 Mich App 513, 535-537; 564 NW2d 532 (1997), for a discussion of whether *Nieves* is still good law as to this issue.