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NO. COA10-529
NORTH CAROLINA COURT OF APPEALS

Filed: 21 June 2011

INDERJEET S. RAJPAL,
Plaintiff-Appellant,

v.

Rowan County
No. 08 CVS 2559

LIVINGSTONE COLLEGE, INC.,
Defendant-Appellee.

Appeal by Plaintiff from order entered 22 January 2009 by Judge John L. Holshouser, Jr. in Superior Court, Rowan County. Heard in the Court of Appeals 1 December 2010.

James, McElroy & Diehl, P.A., by Preston O. Odom, III and John R. Buric, for Plaintiff-Appellant.

Erwin and Eleazer, P.A., by L. Holmes Eleazer, Jr. and Ronald L. Gibson, for Defendant-Appellee.

McGEE, Judge.

Inderjeet S. Rajpal (Plaintiff) filed a complaint against Livingstone College (Defendant) on 1 August 2008, asserting claims for breach of contract and unjust enrichment. Plaintiff alleged that Defendant breached a contract of employment between the parties by failing to follow a procedure for termination of

employment set forth in a faculty handbook issued by Defendant. Plaintiff alleged in his complaint that he was employed as a professor by Defendant from 2003 until 2008. Plaintiff received a letter from Defendant in February 2008, informing him that Defendant was "exercising its right to terminate Plaintiff's employment at the end of the 2007-2008 academic year." Plaintiff alleged that his employment was subject to the following provision set forth in a faculty handbook issued to him by Defendant: "Written notice must be received no later than May 1, after the third or subsequent academic years of service, thereby notifying that the next year will be the final year of service." Because Plaintiff had been Defendant's employee for more than three years when his employment was terminated, Plaintiff alleged that Defendant breached the employment agreement by failing to provide notice to him pursuant to the faculty handbook.

Defendant filed an answer on 5 September 2008. Defendant admitted to having not provided Plaintiff with notice as set forth in the faculty handbook. However, Defendant argued that the faculty handbook was not a part of the employment agreement and, therefore, any failure to follow the provisions of the faculty handbook was not a breach of contract. Defendant filed a motion for summary judgment on 3 December 2008. In an order

entered 22 January 2009, the trial court granted Defendant's motion for summary judgment as to Plaintiff's breach of contract claim, but denied Defendant's motion as to Plaintiff's unjust enrichment claim. Plaintiff filed a voluntary dismissal without prejudice of his unjust enrichment claim on 29 October 2009. Thereafter, Plaintiff filed notice of appeal of the trial court's order granting summary judgment in favor of Defendant as to Plaintiff's breach of contract claim.

We review a trial court's ruling on a motion for summary judgment *de novo*. *Forbis v. Neal*, 361 N.C. 519, 524, 649 S.E.2d 382, 385 (2007) (citation omitted).

Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." The trial court may not resolve issues of fact and must deny the motion if there is a genuine issue as to any material fact. Moreover, "all inferences of fact . . . must be drawn against the movant and in favor of the party opposing the motion."

Id. at 523-24, 649 S.E.2d at 385 (citations omitted).

On appeal, Plaintiff's sole argument concerns whether the faculty handbook was incorporated into the employment agreement between the parties. The record contains a "Memorandum of

Employment" signed by Defendant on 27 June 2007 and by Plaintiff on 10 July 2007, containing the following provision:

4. RESPONSIBILITIES: The faculty member agrees to fulfill the following responsibilities:

. . . .

b. The faculty member will abide by the policies and procedures as outlined in the Faculty Handbook and administrative memoranda.

Plaintiff contends that section 4.b. of the memorandum of employment was an express incorporation of the terms of the faculty handbook into his employment contract. We disagree.

"With all contracts, the goal of construction is to arrive at the intent of the parties when the contract was issued." *Mayo v. N.C. State Univ.*, 168 N.C. App. 503, 508, 608 S.E.2d 116, 120, *aff'd*, 360 N.C. 52, 619 S.E.2d 502 (2005). "The intent of the parties may be derived from the language in the contract." *Id.* (citation omitted). If the language in the contract is clear and unambiguous, "our courts have a duty to construe and enforce the contract as written, without disregarding the express language used. However, if a contract contains language which is ambiguous, a factual question exists, which must be resolved by the trier of fact." *Id.* (citation omitted). "We are . . . aware that there are strong equitable and social policy reasons militating against allowing employers

to promulgate for their employees potentially misleading personnel manuals while reserving the right to deviate from them at their own caprice." *Walker v. Westinghouse Electric Corp.*, 77 N.C. App. 253, 259, 335 S.E.2d 79, 83 (1985). "Nevertheless, the law of North Carolina is clear that unilaterally promulgated employment manuals or policies do not become part of the employment contract unless expressly included in it." *Id.* at 259, 335 S.E.2d at 83-84 (citations omitted).

In arguing that the memorandum of employment in the present case does expressly incorporate the faculty handbook, Plaintiff relies on *Mayo* and *Black v. Western Carolina University*, 109 N.C. App. 209, 426 S.E.2d 733 (1993). In *Black*, our Court reviewed an employment contract containing the following provision: "'4. This appointment is subject to the WCU Tenure Policies and Regulations as found in the Faculty Handbook, dated 1988-89, including any future amendments thereto. You agree to observe and promote WCU's rules, regulations, and ideals.'" *Black*, 109 N.C. App. at 210, 426 S.E.2d at 734. In *Black*, the plaintiff argued that two provisions of the WCU Tenure Policies and Regulations did not control her employment agreement. *Id.* at 214, 426 S.E.2d at 736. We stated the following: "Paragraph 4. expressly incorporates all the provisions of the WCU Tenure Policies and Regulations." *Id.* Our Court ultimately held that

the challenged provisions were incorporated and the only remaining issue to decide was which of the two was applicable. *Id.*

Likewise, in *Mayo*, we reviewed the series of appointment letters which constituted the employment agreement between the plaintiff and his employer. *Mayo*, 168 N.C. App. at 508-09, 608 S.E.2d at 121. In determining what policies controlled the dispute in *Mayo*, we were required to analyze which materials were included in the employment agreement. We noted that several of the appointment letters contained the following language:

"Your employment is subject to all policies adopted and amended by the UNC Board of Governors and by the NCSU Board of Trustees. Pertinent sections of the UNC Code are printed in the *Faculty Handbook* along with the text of or reference to other University policies[;]" . . . [or] "Your appointment is subject to all policies adopted and amended by the UNC Board of Governors and by the N.C. State University Board of Trustees."

Id. at 509 n.2, 608 S.E.2d at 121 n.2. Our Court concluded that "the written policies adopted and amended by the UNC Board of Governors and the NCSU Board of Trustees were adopted by reference into the employment agreement; and these documents in addition to the appointment letter constituted a full integration of the employment agreement." *Id.*

Thus, each of the employment agreements in *Black* and *Mayo* specifically stated that the "employment" or "appointment" was governed by the pertinent employment manuals. In contrast, Plaintiff's memorandum of employment only lists compliance with the terms of the faculty handbook as a *responsibility* of Plaintiff, and states clearly that the "*faculty member* will abide by the policies and procedures" set forth therein. (Emphasis added). We do not read this provision as either an express incorporation of the faculty handbook's procedures into the employment agreement between Plaintiff and Defendant, nor as an intent on the part of Defendant to be bound by the terms of the faculty handbook.

Because we find the language of the memorandum of employment to be clear and unambiguous, we "have a duty to construe and enforce the contract as written[.]" *Mayo*, 168 N.C. App. at 508, 608 S.E.2d at 120 (citation omitted). Because the faculty handbook was not incorporated by reference into the employment agreement between Plaintiff and Defendant, Plaintiff's claim for breach of contract, based on the provisions of the faculty handbook, is untenable. Therefore, the trial court did not err in granting Defendant's summary judgment motion.

Affirmed.

Chief Judge MARTIN and Judge ERVIN concur.

Report per Rule 30(e).