IN THE UTAH COURT OF APPEALS

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Donald J. Carvelas, Plaintiff and Appellant, v. Summit Financial Resources, L.P., Defendant and Appellee.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20051111-CA F I L E D (October 26, 2006) 2006 UT App 436

Third District, Salt Lake Department, 050909568
The Honorable Sandra N. Peuler

Attorneys: Gregory W. Stevens, Salt Lake City, for Appellant
John A. Beckstead and David P. Williams, Salt Lake City, for Appellee

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Before Judges Bench, Billings, and Orme.

BILLINGS, Judge:

Plaintiff Donald J. Carvelas appeals the trial court's order granting summary judgment in favor of Defendant Summit Financial Resources L.P. (Summit). Carvelas argues that the trial court erred in determining that the employment agreement (the Agreement) between Carvelas and Summit was unambiguous and that Summit stated sufficient grounds for Carvelas's termination. We affirm.

First, Carvelas contends that the trial court erred in concluding that the Agreement did not require payment of the claimed bonuses for 2000 and 2001. He argues that summary judgment is improper because, based on his "reasonable interpretation" of Exhibit B to the Agreement, the language of the Agreement is ambiguous as to the payment of bonuses.

A contract provision is ambiguous "'if it is capable of more than one reasonable interpretation because of uncertain meanings of terms, missing terms, or other facial deficiencies.'" Uintah Basin Med. Ctr. v. Hardy, 2005 UT App 92,¶13, 110 P.3d 168 (quoting Fairbourn Commercial, Inc. v. Am. Housing Partners, 2004

UT 54,¶10, 94 P.3d 292). Carvelas does not dispute the chief executive officer's (the CEO) exclusive authority to determine bonuses. Rather, Carvelas argues that Exhibit B limits that authority by requiring the CEO to state employment goals and objectives and to provide formal reviews annually. This, however, is not a reasonable interpretation of the Agreement. According to "the usual and natural meaning of the language used," Saleh v. Farmers Ins. Exch., 2006 UT 20,¶17, 133 P.3d 428 (quotations and citation omitted), Exhibit B is limited to describing the terms and conditions related to the 1999 bonus. The bonuses for 2000 and 2001 are governed by sections 3 and 4.2 of the Agreement. Those sections give sole discretionary power to the CEO to both revise and modify Carvelas's employment goals and objectives and to determine whether Carvelas has sufficiently satisfied those goals and objectives to allow for a bonus.[1] Carvelas's assertion that he never received any information regarding the stated goals and objections is also not enough to expose an ambiguity in the contract terms. The trial court determined, and we agree, that Carvelas's assertion that he was never advised of any goals or objectives was immaterial given the unambiguous language of the Agreement.

Carvelas also argues that the Agreement is ambiguous because it is completely silent on the question of whether Summit has an obligation to provide for bonuses past 2002. He asserts that these "missing terms" create ambiguity. A contract need not, however, "negate every possible construction of its terms in order to be unambiguous." Blackie v. Maine, 75 F.3d 716, 721 (1st Cir. 1996) (quotations and citation omitted). In the present case, the Agreement specifically provides for bonuses through 2002 if Carvelas meets his goals and objectives as determined by Summit's CEO. The Agreement also clearly details the amount of those bonuses. The availability of post-2002 bonuses should not be construed as a "missing term" of the contract. The addition of post-2002 bonuses would be rewriting the Agreement to create significant new obligations. Thus, the

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[1]Carvelas argues that there is a genuine issue of material fact as to whether the CEO ever established any asserted goals and objectives. In resisting a motion for summary judgment, the non-moving party has the burden to set forth specific facts showing a genuine issue for trial. See Utah R. Civ. P. 56(e) ("When a motion for summary judgment is made and supported . . . , an adverse party may not rest upon the mere allegations or denials of the pleadings, but the response . . . must set forth specific facts showing that there is a genuine issue for trial."). Carvelas failed to provide any evidence to refute the CEO's sworn affidavit.

district court correctly decided that "quite specifically, the agreement provides for no bonuses after December 2002, and there is no ambiguity in that language."

In a final attempt to find ambiguity in the Agreement and introduce parol evidence, Carvelas argues for the first time on appeal that parol evidence should be allowed to determine whether the contract is fully or only partially integrated.[2] This Court does not consider issues raised for the first time on appeal.[3] See Carrier v. Salt Lake County, 2004 UT 98,¶43, 104 P.3d 1208.

Second, Carvelas asserts the trial court erred in concluding that the written notice from the CEO stating termination "without cause" was sufficient to end his employment. Carvelas argues that the Agreement required Summit to adhere to certain "procedural requirements," namely to state the specific grounds for his termination.

Sections 2 and 6.3 of the Agreement provide that Carvelas's employment with Summit was "at-will." As Carvelas admits, at-will employment "allows an employer to discharge an employee for any, or no, reason." Uintah Basin Med. Ctr. v. Hardy, 2005 UT App 92,¶16, 110 P.3d 168. Thus, under the at-will status of the Agreement, Summit could terminate Carvelas without having or providing reasons for the termination.

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[2]Carvelas asserts that he raised the issue of integration below when he asked that parol evidence be introduced to determine the intent of the parties. However, Carvelas did not ask the court to consider whether the Agreement was fully or partially integrated. Asking for the introduction of extrinsic evidence to determine the intent of the parties is not the same as asserting that the agreement is not a "final and complete expression of their bargain." Bullfrog Marina, Inc. v. Lentz, 28 Utah 2d 261, 501 P.2d 266, 270 (1972).

[3]Likewise, Carvelas's complaint did not plead the creation of an implied-in-fact contract for the post-2002 bonuses, but rather proceeded solely under the theory that Summit breached the Agreement. Therefore, we do not reach the issue of the implied-in-fact contract. See Utah R. Civ. P. 8(a)(1) (requiring that pleadings setting forth claims of relief "contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief"); see also Skanchy v. Calcados Ortope SA, 952 P.2d 1071, 1077-78 (Utah 1998) (reversing the trial court's award of damages based on a theory of promissory estoppel because it was not properly pleaded as such in the complaint).

As Summit points out, a statement of the "grounds" merely requires notice as to the "foundation or basis." Black's Law Dictionary 633 (5th ed. 1979). Thus, in giving Carvelas notice that the "company [was] . . . exercising its right to terminate [him] without cause," Summit adhered fully to the terms of the Agreement.

Accordingly, we affirm.

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Judith M. Billings, Judge

WE CONCUR:

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Russell W. Bench,
Presiding Judge

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Gregory K. Orme, Judge