STATE OF MICHIGAN

COURT OF APPEALS

RUSSELL EFTINK, Plaintiff-Appellee,	UNPUBLISHED September 16, 2008
v	No. 274281 Berrien Circuit Court
HERMAN MILLER, INC., Defendant-Appellant.	LC No. 05-012550-GC

Before: Jansen, P.J., and Zahra and Gleicher, JJ.

PER CURIAM.

In this dispute regarding severance pay, defendant appeals as of right a judgment entered for plaintiff after a bench trial. We reverse and remand.

I. Facts and Proceedings

Plaintiff commenced employment with defendant in May 2000. Defendant assigned plaintiff to its subsidiary, Global Customer Solutions (GCS), which provides "on-site furniture and space management services" to defendant's largest customers. Plaintiff worked for GCS at the Whirlpool Corporation's headquarters in Benton Harbor.

On February 14, 2005, Whirlpool terminated its furniture management contract with defendant, effective February 28, 2005, and entered into a new furniture management agreement with Jones Lange LaSalle (JLL), one of defendant's competitors. Defendant promptly notified plaintiff that his job with GCS had been eliminated, and that it would not offer him another position within the company.

Defendant's policy regarding severance pay, contained in an employee handbook entitled the *Working Together Guide*, provides in pertinent part:

> *As long as business conditions permit, severance is provided for an employee at separation as the result of job elimination* to assist him/her with the transition between employment and reemployment. Providing severance is intended to reduce the financial concerns so an employee can focus on his/her search for another job. [Emphasis in original.]

On February 22, 2005, plaintiff sent an email to Jane Rohlck, defendant's human resources manager, requesting severance pay:

> While I have had discussions with [JLL], we have not been able to reach an agreement concerning employment opportunities to join their team. I do not anticipate an agreement prior to March 01, therefore I will be unemployed as of March 01 and will need the temporary protection of the severance package.

Rohlck responded with an email stating, "Yes, you will be eligible for 12 weeks of severance. . . ."

On March 1, 2005, plaintiff accepted an offer of comparable employment with JLL, to begin March 7, 2005. Defendant extended plaintiff's employment through March 4, 2005, and plaintiff did not go without pay for a single day of work. Rohlck subsequently informed plaintiff that because he had accepted employment with JLL, he would not receive severance pay.

In November 2005, plaintiff sued defendant seeking severance and notification pay. On July 19, 2006, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). Defendant argued that it had no contractual obligation to afford plaintiff with severance pay, and that it had previously provided plaintiff with notification pay. Plaintiff withdrew his claim for notification pay, and the circuit court denied the motion for summary disposition regarding plaintiff's severance pay claim.

After a bench trial, the circuit court entered a judgment for plaintiff, concluding that "there was an implied contract between [plaintiff] and [defendant] to pay severance." Defendant contends on appeal that the circuit court erred as a matter of law by ruling that plaintiff had a contractual right to severance pay, and that summary disposition should have been granted in its favor.

II. Analysis

Defendant challenges both the circuit court's denial of summary disposition, and its bench trial determination that an implied contract obligated defendant to provide plaintiff with severance pay. We review de novo a circuit court's summary disposition ruling. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant trial." *Id*. We also review de novo a circuit court's construction and interpretation of contractual provisions. *Citizens Ins Co v Pro-Seal Service Group Inc*, 477 Mich 75, 80; 730 NW2d 682 (2007).

Under certain circumstances, an employer's policy statements may give rise to an employee's contractual rights. *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 614-615; 292 NW2d 880 (1980). In *Toussaint*, the Supreme Court held that a jury question existed regarding whether the defendant's employee manual contained statements of policy applicable to the plaintiff:

> We hold that employer statements of policy, such as the Blue Cross Supervisory Manual and Guidelines, can give rise to contractual rights in employees without evidence that the parties mutually agreed that the policy statements would create contractual rights in the employee, and, hence, although the statement of policy is signed by neither party, can be unilaterally amended by the employer without notice to the employee, and contains no reference to a specific employee, his job description or compensation, and although no reference was made to the policy statement in pre-employment interviews and the employee does not learn of its existence until after his hiring. [*Id*.]

In reaching this decision, the Supreme Court specifically referenced and discussed its prior opinion in *Cain v Allen Electric & Equip Co*, 346 Mich 568; 78 NW2d 296 (1956). In *Cain*, "the employer adopted a 'supervisory and office personnel policy' declaring[,]"

> "The keynote of our policy as herein related is an endeavor to achieve fairness with due consideration for the feelings of the employees to whom this is directed, and will be of particular assistance to new or temporary employees."
>
> "When it becomes necessary to terminate the services of an office employee on a permanent basis, such individual will be paid separation pay (in?) lieu of notice as stated in table given to each employee." [*Toussaint*, *supra* at 615, quoting *Cain*, *supra* at 570.]

The *Toussaint* Court cited with approval the conclusion reached in *Cain*:

> "We cannot agree that all we have here is a mere gratuity, to be given, or to be withheld, as whim or caprice might move the employer. An offer was made, not merely a hope of intention expressed. The words on their face looked to an agreement, an assent. The cooperation desired was to be mutual. . . . The essence of the announcement was precisely that the company would conduct itself in a certain way with the stated objective of achieving fairness, and we would be reluctant to hold under such circumstances that an employee might not reasonably rely on the expression made and conduct himself accordingly. As for consideration, that element setting apart the enforceable from the unenforceable, we hazard no definition. Suffice in this respect, . . . to point out that not only were there rewards to the employee, but, in addition, substantial rewards to the employer, arising, in part, out of the accomplishment of 'the daily work of the organization in a spirit of cooperation and friendliness.' *In short, the adoption of the described policies by the company constituted an offer of a contract. This offer, as the trial court correctly held, 'the plaintiff accepted . . . by continuing in its employment beyond the 5- year period . . . .*'" [*Id*. at 616, quoting *Cain*, *supra* at 579-580 (emphasis supplied).]

Subsequently, in *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 529 (opinion by Riley, J.); 473 NW2d 652 (1991), a plurality of our Supreme Court cited *Cain* as an example of case law holding "that written policy statements could give rise to contractual obligations outside the discharge context." The Supreme Court plurality in *Dumas* further explained that "a change in a compensation policy which affects vested rights already accrued may give rise to a cause of action in contract." *Id*. at 530.

"[A]n employment contract is just a contract." *Thomas v John Deere Corp*, 205 Mich App 91, 93; 517 NW2d 265 (1994). The primary goal of contractual interpretation is to determine and enforce the parties' intent. *Rasheed v Chrysler Corp*, 445 Mich 109, 127 n 28; 517 NW2d 19 (1994). In so doing, this Court reads the contract as a whole and attempts to apply its plain language. *Michigan Twp Participating Plan v Pavolich*, 232 Mich App 378, 383; 591 NW2d 325 (1998). We review de novo whether contractual language is ambiguous. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). "It is axiomatic that if a word or phrase is unambiguous and no reasonable person could differ with respect to application of the term or phrase to undisputed material facts, then the court should grant summary disposition to the proper party pursuant to MCR 2.116(C)(10)." *Id*.

The policy here at issue provided with respect to severance pay:

> As long as business conditions permit, severance is provided for an employee at separation *as the result of job elimination to assist him/her with the transition between employment and reemployment. Providing severance is intended to reduce the financial concerns so an employee can focus on his/her search for another job*. [Emphasis supplied.]

Regarding the first italicized portion of the severance provision, which provides for severance pay at an employee's separation "as the result of job elimination to assist him/her with the transition between employment and reemployment," this language unambiguously reflects defendant's intent that severance payments would "assist" an employee engaged in a "transition" between jobs. The next italicized sentence further clarifies the severance policy's intent: "Providing severance is intended to reduce the financial concerns so an employee can focus on his/her search for another job." The plainly expressed purpose of defendant's severance pay policy is to afford a financial cushion to employees whose jobs have been eliminated and who endure a period of unemployment.

As Rohlck described during her testimony, defendant's severance policy gives employees a "bridge" to another job. Plaintiff's February 22, 2005 email reinforces the "bridge" aspect of the policy language; plaintiff prefaced his email request for the severance benefit with the explanation that although he had spoken with JLL, they had not "been able to reach an agreement concerning employment opportunities to join their team."

By its clear terms, the Working Together Guide extends severance pay only to those employees whose jobs have been eliminated *and* who have not directly transitioned into alternative employment. Because plaintiff never missed a single day of work, and continued to perform precisely the same duties in the same location, he had no right to severance pay. Accordingly, we conclude that the circuit court erred in denying defendant's motion for summary disposition under MCR 2.116(C)(10).

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Brian K. Zahra
/s/ Elizabeth L. Gleicher