STATE OF MICHIGAN

COURT OF APPEALS

CHAD WATERMAN, Plaintiff-Appellee,	UNPUBLISHED April 13, 2004
V	No. 244213 Wayne Circuit Court
GREEKTOWN CASINO, Defendant-Appellant.	LC No. 01-123414-CK

Before: Wilder, P.J., and Hoekstra and Kelly, JJ.

PER CURIAM.

In this employment case arising out of plaintiff's claims of wrongful termination, defendant was granted leave to appeal the order denying defendant summary disposition under MCR 2.116(C)(10). We reverse.

Defendant first argued on appeal that the trial court erred in denying summary disposition to defendant because this Court has held that when a handbook contains conflicting language, but also contains a contractual disclaimer, an employee cannot, as a matter of law, reasonably and legitimately expect that a just-cause contract has been created. We agree.

We review de novo a trial court's ruling on a motion for summary disposition brought under MCR 2.116(C)(10). *UAW-GM Human Resources Center v KSL Recreation Corp*, 228 Mich App 486, 490; 579 NW2d 411 (1998). Under MCR 2.116(C)(10), a party may move for dismissal of all or part of a claim based on the assertion that there is no genuine issue with respect to any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. *Universal Underwriters Group v Allstate Ins Co*, 246 Mich App 713, 720; 635 NW2d 52 (2001). When reviewing the motion, the court must consider the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party. *Id.*

"At will" is the presumed employment relationship in Michigan. *Lynas v Maxwell Farms*, 279 Mich 684, 687; 273 NW 315 (1937). However, a just-cause employment relationship can be found "as a result of an employee's legitimate expectations grounded in an employer's policy statements." *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 598; 292 NW2d 880 (1980). The proper inquiry is whether the employer, through its employment manual or otherwise, made representations or promises that termination would be only for just cause. *Biggs v Hilton Hotel Corp*, 194 Mich App 239, 241; 486 NW2d 61 (1992).

Plaintiff argued that conflicting provisions in defendant's handbook created ambiguity regarding his employment status. To support this contention, plaintiff relied on this Court's decision in *Dalton v Herbruck Egg Sales Corp*, 164 Mich App 543, 547; 417 NW2d 496 (1987), where this Court found that when an employee handbook contains language providing for both just-cause and at-will termination, the question whether a just-cause contract has been formed is a question of fact for a jury.

However, the controlling case in these circumstances is our Supreme Court's decision, *Lytle v Malady (On Rehearing)*, 458 Mich 153, 162; 579 NW2d 906 (1998), where the employee manual at issue contained both at-will and just-cause employment language, and it also contained language stating that it was not intended to create any contractual obligations. The Court held that the plaintiff could not assert a legitimate expectation of just-cause employment based on the employer's policy to terminate only for cause where the handbook specifically disclaimed any intent to create contractual or binding obligations to employees. *Id.* at 157, 170-171.

Moreover, although not specifically overruling *Dalton*, the *Lytle* Court expressly rejected the suggestion that it create a new rule that would apply whenever a handbook contained conflicting policies and found instead that a legitimate-expectation claim does not automatically arise whenever a handbook contains mixed messages. *Id.* at 170 n 16. "[T]he plaintiff must still provide sufficient evidence to raise a triable question that the policy arguably instilled a legitimate expectation that superseded the express contractual disclaimer." *Id.*

Additionally, we reject plaintiff's argument that *Lytle* is distinguishable because *Lytle* was based on claims of discrimination and the manual at issue in that case contained the words "proper cause" instead of "just cause." With regard to the claims presented, although the plaintiff in *Lytle*, *supra* at 157, did allege age and gender discrimination, it was a distinct claim from the plaintiff's breach of contract claims. Regarding the terminology of "proper" versus "just," we disagree that there is any difference between proper cause and just cause in this context. See *Scholz v Montgomery Ward & Co, Inc*, 437 Mich 83, 107; 468 NW2d 845 (1991). Regardless which adjective is used, the meaning is the same – there is a contractual limitation on the employer's right to terminate employment, and the employer cannot fire the employee without some sort of reasonable justification or cause. See *Lytle*, *supra* at 164.

Here, defendant's employee handbook contains a contractual disclaimer, which clarifies that only the chief operating officer of the company has the authority to enter into contracts with employees. Plaintiff confirmed that he read and signed an acknowledgment setting forth a similar disclaimer, and he stated that he had never met the chief operating officer, let alone entered into a contract with him. Thus, consistent with our Supreme Court's holding in *Lytle*, *supra* at 157, 170-171, we find that the trial court erred in denying defendant's motion for summary disposition because plaintiff could not as a matter of law have had a legitimate expectation of just-cause employment.

Defendant also argues that the trial court erred in denying summary disposition to defendant because plaintiff has not offered any evidence to suggest that he either discussed or entered into a just-cause employment contract with defendant or it agents. We agree.

In addition to legitimate expectations based on an employer's policy statements, a just-cause employment relationship can be found "by express agreement, oral or written." *Toussaint*,

supra at 598. Accordingly, plaintiff argued that Greektown's chief operating officer (COO) admitted that Greektown employees have a just-cause employment relationship.

"The starting point in analyzing oral statements for contractual implications is to determine the meaning that reasonable persons might have attached to the language, given the circumstances presented." *Rowe v Montgomery Ward & Co*, 437 Mich 627, 640; 473 NW2d 268 (1991). The statements must be "specific statements with regard to duration of employment or grounds for termination," and show "indication of an actual negotiation or an intent to contract for permanent or just-cause employment." *Lytle*, *supra* at 172. Further, oral statements of job security must be clear and unequivocal to overcome the presumption of employment at will. *Biggs*, *supra* at 242.

The COO's statements do not reasonably rise to the level of clear and unequivocal statements of job security for two reasons. First, when asked about the language in the handbook, the COO only confirmed that the handbook stated that there would have to be a valid business-related reason to terminate an employee. Second, as defendant points out, both the acknowledgment and the handbook state that only the COO has the authority to enter into contracts with employees. As discussed, plaintiff never met the COO, let alone entered into a contract with him. Thus, even if the COO believed that defendant's employees had just-cause employment relationships, plaintiff could not have relied on this belief when plaintiff was not aware of it until after his cause of action had been initiated and the deposition testimony was taken.

Moreover, plaintiff testified that instead of a traditional interview, he had an audition, during which he demonstrated his dice dealing skills. After the audition, he was immediately offered a job, but no one talked to him about the terms and conditions of employment or reasons for termination at that time, and the only question he asked was about the rate of pay. He stated that no one ever told him that he was an at-will employee, but no one ever told him that he could only be terminated for cause either. Thus, by plaintiff's own admission, he never entered into an actual negotiation or an had any conversations regarding the intent to contract for permanent or just-cause employment. See *Lytle*, *supra* at 172. Therefore, we find that the trial court erred in denying summary disposition to defendant.

Defendant also argued that even if plaintiff had a just-cause contract, the trial court erred in denying summary disposition to defendant because it had a valid, business-related reason to terminate plaintiff based on its uniformly applied policy to terminate employees who fail to catch cheaters on numerous occasions. However, we need not address this issue in light of our holding that a just-cause contract did not exist.

Reversed and remanded for entry of summary disposition in defendant's favor. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly