S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

CHINONYE MADU,

Plaintiff-Appellant,

v

L & L WINE & LIQUOR CORPORATION and GOGO OLUMBA,

Defendants-Appellees.

UNPUBLISHED
July 27, 2004

No. 245803
Oakland Circuit Court
LC No. 02-042062-CD

Before: Bandstra, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Plaintiff brought this wrongful discharge action against his former employer, L & L Wine & Liquor Corporation (L & L), and his former supervisor, Gogo Olumba, alleging that he was discharged without just cause.[1] The trial court granted defendants' motion for summary disposition under MCR 2.116(C)(10). Plaintiff appeals as of right. We affirm.

This Court reviews a trial court's decision on summary disposition de novo. *Spiek v Dep't of Transportation,* 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support for a claim. Summary disposition should be granted if, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455, 455-456 n 2; 597 NW2d 28 (1999); *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995).

Plaintiff's complaint alleges two separate counts for wrongful discharge, one based on an implied contract theory and the other on a legitimate expectations theory. In support of their motion for summary disposition, defendants submitted a copy of plaintiff's signed employment application, wherein plaintiff acknowledged that he was being hired as an at-will employee. Plaintiff also signed a separate acknowledgment form when he received a copy of L & L's

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[1] An additional claim for racial discrimination was dismissed with prejudice pursuant to the parties' stipulation.

handbook, wherein he again acknowledged his understanding that it was L & L's policy that the relationship is one of "'at will' employment."

Nonetheless, plaintiff argues that he was assured by L & L's management that he would have a job so long as did his job and did not violate company policy. He argues that these assurances gave rise to a just-cause employment contract under either an implied contract or legitimate expectations theory. We disagree.

In *Nieves v Bell Industries, Inc,* 204 Mich App 459, 462-463; 517 NW2d 235 (1994), this Court stated:

> In *Rood v General Dynamics Corp,* 444 Mich 107; 507 NW2d 591 (1993), our Supreme Court reiterated that a just-cause employment relationship can arise either by contract or by an employee's legitimate expectations in reliance on company policies.
>
> Under a contractual theory, a party must present sufficient proof either of a contractual provision for a definite term of employment or of a provision forbidding discharge absent just cause. *Rood, supra*, p 117. Such provisions may become part of an employment contract as a result of explicit promises or promises implied in fact. *Id*. Oral statements of job security must be clear and unequivocal to overcome the presumption of employment at will. *Id*., p 119, quoting *Rowe v Montgomery Ward & Co, Inc,* 437 Mich 627, 645; 473 NW2d 268 (1991).
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> Under the legitimate expectations theory, a party may overcome the presumption of employment at will by establishing that the employer's policies and procedures have become a legally enforceable part of an employment relationship if such policies and procedures instill legitimate expectations of discharge for just cause only. *Rood, supra*, pp 117-118. The courts must determine whether a promise has been made and whether the promise is reasonably capable of instilling in employees a legitimate expectation of just-cause employment. *Rood, supra*, p 140.

We agree with the trial court that no reasonable juror could find a just-cause employment relationship based on an implied contract theory. The evidence establishes that it was made clear to plaintiff at the time he was hired that his employment was at will, unless changed by the chairman or secretary/treasurer of the company and reduced to writing. The statements on which plaintiff relies to show that he had an implied contract for just-cause termination were allegedly made by L & L's management personnel, not its chairman or secretary/treasurer. Moreover, only oral statements allegedly were made. Plaintiff could not have legitimately believed that such oral statements could modify the original terms of his employment. The oral statements were not sufficiently clear and unequivocal to prove that plaintiff could only be fired for just cause. See *Novak v Nationwide Mut Ins Co,* 235 Mich App 675, 682; 599 NW2d 546 (1999).

The oral statements on which plaintiff relies are also insufficient to support a claim for wrongful discharge based upon a legitimate expectations theory. In *Novak, supra* at 682-683, this Court held that a legitimate expectations theory rests upon an employer's promises to the

workforce in general, not promises to an individual employee. In this case, plaintiff claims that he was personally told by some members of management that *he* would not be fired if he did his job and *he* did not violate company policy. Plaintiff does not allege that any of these statements were made to the entire workforce or included in any of L & L's publications. For this reason, the trial court properly granted summary disposition on plaintiff's wrongful discharge claim based upon legitimate expectations. *Novak, supra.*

Because the trial court properly concluded that there was no genuine issue of material fact that plaintiff was an at-will employee, we need not address plaintiff's argument that he was terminated without just cause.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra