

STATE OF MICHIGAN
COURT OF APPEALS

RONALD PULERA,

Plaintiff-Appellant,

v

STC BROADCASTING, INC., d/b/a WEYI-TV,

Defendant-Appellee.

UNPUBLISHED

February 8, 2005

No. 250409

Genesee Circuit Court

LC No. 2002-074394-CK

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We reverse and remand. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sued defendant, his former employer, for breach of an employment contract. The parties entered into an employment contract in March 1998, whereby defendant agreed to pay plaintiff a salary and bonuses from April 13, 1998, to December 31, 2000, for serving as the general manager of WEYI, a television station in the Flint, Saginaw, and Bay City area. The contract provided that severance pay was available to plaintiff if his employment was terminated without cause under certain circumstances:

In the event STC Broadcasting, Inc. terminates your employment prior to December 31, 1999 for any reason except cause (See Addendum A) you will be entitled to one year severance or the balance of the agreement commencing April 13, 1998 through December 31, 1999, whichever is greater. In the event your employment is terminated at anytime from January 1, 2000 through December 31, 2000 for any reason except cause you will be entitled to one years severance. Should you terminate your employment for any reason, you will not be entitled to any severance.

Both parties will have the option to cancel this agreement effective May 1, 2000, with no obligations or severance due either party. This option must be exercised by March 1, 2000.

On March 28, 2000, defendant's executive vice president and chief operating officer, Sandy DiPasquale, informed plaintiff that his contract would not be renewed beyond the year

2000. Defendant's decision not to renew plaintiff's contract was confirmed in a letter sent to plaintiff on May 3, 2000. Plaintiff commenced this action alleging that he was terminated without good cause and that defendant breached the employment agreement by failing to pay the one year severance.

Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiff's employment was not terminated during 2000. Rather, plaintiff remained employed throughout the 2000 calendar year and, therefore, was not entitled to any severance pay. The trial court concluded that there was no genuine issue of material fact that plaintiff remained employed throughout the 2000 calendar year and, therefore, was not terminated from his employment and, accordingly, was not entitled to a severance. It therefore granted defendant's motion.

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. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995).

Defendant's liability to pay plaintiff a severance is governed by the parties' contract. If a contract's language is clear, construction of the contract is a question of law for the trial court. *Meagher v Wayne State University*, 222 Mich App 700, 721; 565 NW2d 401 (1997). "If the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous." *Id.* at 722.

Hence, in the context of a summary disposition motion, a trial court may determine the meaning of the contract only when the terms are *not* ambiguous. *SSC Associates Ltd Partnership v General Retirement System of City of Detroit*, 192 Mich App 360, 363; 480 NW2d 275 (1991). A contract is ambiguous if the language is susceptible to two or more reasonable interpretations. *Petovello v Murray*, 139 Mich App 639, 642; 362 NW2d 857 (1984). In an instance of contractual ambiguity, factual development is necessary to determine the intent of the parties and summary disposition is inappropriate. *SSC Associates, supra*, p 363. [*D'Avanzo v Wise & Marsac, PC*, 223 Mich App 314, 319; 565 NW2d 915 (1997).]

See also *BPS Clinical Laboratories v Blue Cross and Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 700; 552 NW2d 919 (1996) ("A trial court may grant summary disposition of a breach of contract claim only if the terms of the contract are not subject to two or more reasonable interpretations.")

We conclude that the parties' contract is ambiguous with regard to defendant's liability to pay a severance in the circumstances presented. The contract is susceptible to the interpretation given it by the trial court, i.e., that a severance was not intended where plaintiff remained employed through December 31, 2000. But the contract also contains the following clause, which the trial court did not address:

Both parties will have the option to cancel this agreement effective May 1, 2000, with no obligations or severance due either party. This option must be exercised by March 1, 2000.

Viewing this language in the context of the contract as a whole, the contract is susceptible to the interpretation, advanced by plaintiff, that defendant was not obligated to retain plaintiff beyond the 2000 year, but in order to avoid paying plaintiff a severance, it was required to notify plaintiff of this option by March 1, 2000. Further, in response to defendant's motion for summary disposition, plaintiff submitted an affidavit explaining the purpose of the foregoing clause as follows:

8. During my conversations with Mr. DiPasquale, he said the one year's severance package was agreeable because it limited the amount of money STC Broadcasting would be responsible for paying me, to one year, should they decide to terminate my employment without cause. Otherwise they could have to pay my salary until I retired.

9. Mr. DiPasquale did request that an option be included to terminate my employment in the year 2000 without cause and without an obligation to pay a year's severance. We agreed to this provision, if, but only if, I was notified in writing no later than March 1, 2000.

Because the employment contract is ambiguous with regard to the circumstances under which a severance must be paid, factual development is necessary to determine the intent of the parties. Because plaintiff's affidavit establishes factual support for plaintiff's interpretation, summary disposition was improper. *D'Avanzo, supra*.

Reversed and remanded. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello