STATE OF MICHIGAN

COURT OF APPEALS

CHERYL GRIFFIN, Plaintiff-Appellant,	UNPUBLISHED December 4, 2012
v	No. 305618 Oakland Circuit Court
BOTSFORD HOSPITAL, Defendant-Appellee.	LC No. 2010-115740-CD

Before: SAWYER, P.J., and SAAD and METER, JJ.

PER CURIAM.

In this lawsuit alleging wrongful termination, plaintiff appeals as of right from an order granting summary disposition to defendant under MCR 2.117(C)(7). We affirm.

In November 2006, plaintiff applied for employment with defendant by filling out an online form. The form contained a section labeled "Applicant's Certification and Agreement" ("the certification"), which plaintiff ratified.[1] The certification stated, in part:

> If hired, I agree that my employment with the organization is at-will . . . . I further agree that any action or suit against Botsford Health Care Continuum or any of its subsidiaries, affiliates, employees, or agents, arising out of the application process, employment, or separation from employment, including but not limited to, claims arising under State or federal civil rights statutes, must be brought within 180 days of the event giving rise to the claims or be forever barred. I waive any limitations periods to the contrary. [Underlining in original.]

Defendant did hire plaintiff, and she began work on January 29, 2007. Defendant discharged plaintiff on August 5, 2009, and she filed this lawsuit on December 20, 2010, missing the 180-day limitations period by over ten months. Defendant thus filed a motion for summary disposition based on the limitations period. Plaintiff argued that the 180-limitations period should not apply because the certification contained the following sentence: "I also understand

[1] Plaintiff typed her name on the document. The document stated that "[m]y typed name below shall have the same force and effect as my written signature."

that nothing contained in this application may be construed as a contract between the Botsford Health Care Continuum or its affiliates and myself, for either employment or the provision of any benefits." She also argued that the certification was superseded by the later employment-offer letter, which stated: "This letter contains the entire offer to you and supersedes any other discussions you may have had with us. If you believe that there were any other promises made to you that are not outlined in this letter please advise [defendant's Human Resources Coordinator], in writing, prior to signing this letter."

The trial court granted defendant's motion, finding that (1) a shortened limitations period contained in a contract generally must be enforced as written; (2) the certification clearly stated that it was a binding contract between the parties, even though it also stated that it was not a contract *for employment or benefits*; and (3) the employment-offer letter stated merely that it superseded other "discussions," not prior contracts. Thus, the court enforced the contractual 180-day limitations period and dismissed the lawsuit.

We review de novo a trial court's ruling regarding a motion for summary disposition. *Timko v Oakwood Custom Coating, Inc*, 244 Mich App 234, 238; 625 NW2d 101 (2001).

> When reviewing a motion for summary disposition under MCR 2.116(C)(7), a court must accept as true a plaintiff's well-pleaded factual allegations, affidavits, or other documentary evidence and construe them in the plaintiff's favor. If no facts are in dispute and reasonable minds could not differ concerning the legal effect of those facts, whether a plaintiff's claim is barred by the statute of limitations is a question for the court as a matter of law. [*Timko*, 244 Mich App at 238 (internal citations and quotation marks omitted).

As noted in *Rory v Continental Ins Co*, 473 Mich 457, 470; 703 NW2d 23 (2005):[2]

> [A]n unambiguous contractual provision providing for a shortened period of limitations is to be enforced as written unless the provision would violate law or public policy. A mere judicial assessment of "reasonableness" is an invalid basis upon which to refuse to enforce contractual provisions. Only recognized traditional contract defenses may be used to avoid the enforcement of the contract provision.

Plaintiff does not argue that the limitations period violated law or public policy but instead states that the period should not be enforced because of the language in the certification and the employment-offer letter.

However, the documents at issue were unambiguous and clearly supported the trial court's ruling. As noted in *Rasheed v Chrysler Corp*, 445 Mich 109, 127 n 28; 517 NW2d 19

[2] Plaintiff cites *Herweyer v Clark Hwy Services, Inc*, 455 Mich 14, 19-21; 564 NW2d 857 (1997), in her appellate brief. We note that *Rory* overruled *Herweyer*. See *Rory*, 473 Mich at 488-489.

(1994), "[t]he primary goal in the construction or interpretation of any contract is to honor the intent of the parties." Contractual language must be construed according to its plain and ordinary meaning. *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). "The initial question whether contract language is ambiguous is a question of law." *Id*. (internal citation and quotation marks omitted).

The certification clearly and unambiguously set forth a 180-day limitations period. It also stated:

> I understand that this "Applicant's Certification and Agreement" only is [a] valid and binding contract between myself and Botsford Health Care Continuum. In consideration for my agreement to the terms contained in this Agreement, Botsford Health Care Continuum will consider me for employment with the organization, and possibly hire and compensate me.

As correctly noted by the trial court, the certification "clearly states that the Employment Application is a binding contract between [plaintiff] and [defendant] whereby she would be considered for employment in exchange for the terms contained in the agreement including the shortened limitations period for civil rights claims."[3]

Plaintiff contends that the certification was inherently ambiguous because of the following sentence: "I also understand that nothing contained in this application may be construed as a contract between the Botsford Health Care Continuum or its affiliates and myself, for either employment or the provision of any benefits." Plaintiff states, "Where, as here, Defendant's application declared first that its terms were not a contract, and then afterwards appeared to assert terms that were contractual, Plaintiff could not be held to know the precise meaning and legal effect of the conflicting clauses." This contention is disingenuous. The sentence from the certification that is cited by plaintiff merely stated that the certification was not a contract *for employment or the provision of any benefits*. The sentence did not speak to the limitations-period issue and, in fact, another section of the certification identified the certification as a binding contract. The certification was not ambiguous and thus must be enforced as written. *Id*.[4]

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[3] In this way, the contract differs materially from the contract at issue in the nonbinding, unpublished case cited by plaintiff. See *Bowens v Columbus Metropolitan Library Bd of Trustees*, 2011 WL 1238367 (SD Ohio, 2011) ("nothing on the form indicates that the waiver of rights is given as consideration for the Library's promise [sic] review or actual review of Plaintiff's application").

[4] Plaintiff briefly suggests that the certification should be deemed non-binding because it contained language indicating that plaintiff could use an email-and-password combination to access her application "to make . . . changes, updates or to apply for additional positions." We decline to entertain this argument because plaintiff did not raise it below. See *Walters v Nadell*, 481 Mich 377, 387-388; 751 NW2d 431 (2008). At any rate, we agree with defendant's contention that because plaintiff electronically signed the certification and because there is no

Plaintiff also contends that the certification was superseded by the language in the employment-offer letter stating that "[t]his letter contains the entire offer to you and supersedes any other discussions you may have had with us."[5] Contrary to plaintiff's implication, the employment-offer letter did not purport to supersede any prior *contracts*, such as the pre-employment contract setting forth the 180-day limitations period. It referred to the superseding of "other discussions." "Discussion" is defined by Random House Webster's College Dictionary (1997) as "an act or instance of discussing; consideration or examination by argument, comment, etc.; informal debate." The signed certification was more than a "discussion."

Plaintiff mentions the phrase "entire offer" from the above sentence and also emphasizes the following sentence from the employment-offer letter: "Please sign one copy of this letter to acknowledge your understanding and acceptance of the terms of your employment offer." Plaintiff refers to this sentence as "encompassing"; evidently, she is implying that this sentence should be construed to mean that the employment-offer letter encompassed the parties' entire relationship. However, the *employment offer* differed from the pre-employment contract. Indeed, the certification specifically contemplated that a later employment offer could potentially be forthcoming. That such an offer did in fact materialize does not somehow negate the binding effect of the certification. The words employed in the employment-offer letter were clear, and we must enforce them as written. *UAW-GM Human Resource Center*, 228 Mich App at 491. The employment-offer letter, by its unambiguous terms, did not negate the earlier pre-employment contract.

The trial court's opinion in this case was detailed and well-reasoned, and we find no basis for reversal.

Affirmed.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Patrick M. Meter

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evidence that she had any authority to change the terms set forth by defendant (as opposed to changing her personal information relating to job qualifications), she is bound by them.

[5] On appeal, plaintiff does not make an argument with regard to the following sentence in the employment-offer letter: "If you believe that there were any other promises made to you that are not outlined in this letter please advise [defendant's Human Resources Coordinator], in writing, prior to signing this letter."