

Court of Appeals, State of Michigan

ORDER

Steffan Gaydos v City of Allen Park

Docket No. 312275

LC No. 10-013834-CK

Michael J. Riordan
Presiding Judge

Kirsten Frank Kelly

Karen M. Fort Hood
Judges

The Court orders that the motion to file a reply to the answer is GRANTED.

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the August 21, 2012, order of the Wayne Circuit Court granting partial summary disposition to defendant hereby is REVERSED IN PART as to the breach of contract claim.

In considering a motion pursuant to MCR 2.116(C)(10), a court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in a light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). The record before this Court reflects that plaintiff raised a genuine issue of material fact regarding the mutuality of his separation. Where the proffered evidence establishes a genuine issue of material fact, the moving party is not entitled to judgment as a matter of law. See *id.* at 120. Defendant did not demonstrate in the circuit court that it was entitled to summary disposition as a matter of law, as genuine issues of material fact exist regarding the conditions for a mutual separation, which the parties' contract does not define, and regarding the effect, if any, of defendant's actions between the time plaintiff gave notice of his intent to retire and the City Council resolution.

The case is remanded for further proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

MAY 16 2013

Date


Chief Clerk