

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH J. MUNOZ,

Plaintiff–Appellant,

v

MEYER JEWELRY CO., JAMES McTEVIA, and
BERNARD SIEGEL,

Defendants–Appellees.

UNPUBLISHED

June 25, 1996

No. 177136

LC No. 94-403796-CZ

Before: Michael J. Kelly, P.J., and Young and N.O. Holowka,* JJ.

MEMORANDUM.

Plaintiff appeals as of right from the circuit court order granting summary disposition to defendants under MCR 2.116(C)(7). We affirm.

Plaintiff was discharged from defendant Meyer Jewelry Company. Defendant tendered a proposed release and a check reflecting the first payment under the proposed release. Plaintiff declined to sign the release, but he signed the check and cashed it. Plaintiff then filed this lawsuit for claims relating to his termination. He did not tender back the payment.

Defendants moved for summary disposition on the basis of “release.” Plaintiff argued that he had not entered into a release because he did not sign the release. He further argued that his conduct in cashing the check did not show his acceptance of the release because he maintained he was already owed the money as “severance pay.”

Despite plaintiff’s protests to the contrary, his conduct in cashing the first payment check showed that he acquiesced in the conditions of the release even if he did not sign the written agreement. *Ludowici-Celadon Co v McKinley*, 307 Mich App 149; 11 NW2d 839 (1943) (acceptance of contract may be shown by conduct). He was required to tender back the prior payment before filing a

* Circuit Judge, sitting on the Court of Appeals by Assignment

new lawsuit in contravention of the terms of the release. *Stefanac v Cranbrook Educational Community (After Remand)*, 435 Mich 155, 176; 458 NW2d 56 (1990).

Affirmed.

/s/Michael J. Kelly
/s/ Robert P. Young, Jr.
/s/ Nick O. Holowka