

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM LUKIANOFF,

Plaintiff-Appellant,

v

RELIABLE GLASS COMPANY,

Defendant-Appellee.

UNPUBLISHED

July 19, 1996

No. 173536

LC No. 92-229922-CK

Before: Griffin, P.J. and Bandstra and M. Warshawsky,* JJ.

PER CURIAM.

In this action for breach of employment contract, plaintiff, William Lukianoff, appeals as of right an order granting summary disposition for defendant, Reliable Glass Company, pursuant to MCR 2.116(C)(10). We reverse and remand.

Defendant hired plaintiff in 1990 as vice-president in charge of marketing and sales. Plaintiff alleges that he and defendant entered into an oral at-will employment contract that promised plaintiff a base salary, expenses, a car allowance, and 1 ½ percent commission on Weyerhaeuser architectural panel sales exceeding \$10,000.

On May 22, 1992, Douglas Tarrance, defendant's president and controlling stockholder, informed plaintiff that due to an uncertain financial outlook, payment of plaintiff's commissions would terminate "until further notice." In a letter dated June 9, 1992, Tarrance informed plaintiff that:

Per our conversation of May 22nd, there will be no commissions paid due to the severe financial position which we are facing until further notice.

I am confident that we can pull thru [sic] with your help and understanding.

* Circuit judge, sitting on the Court of Appeals by assignment.

On August 11, 1992, plaintiff submitted a written proposal to defendant asking that only a percentage of his commissions be deferred. Plaintiff's offer was rejected by defendant. On October 21, 1992, plaintiff quit.

On October 27, 1992, plaintiff filed suit, alleging that defendant breached its contractual obligation to pay plaintiff sales commissions between May 22, 1992, and October 25, 1992. Defendant brought a motion for summary disposition. Originally, defendant's motion was denied. However, after the case was reassigned to a different circuit judge, defendant's renewed motion for summary disposition was granted in full on the ground that the June 9, 1992, memorandum Tarrance sent to plaintiff, "was an unambiguous lawful change in the employment contract relationship and that the plaintiff was not entitled to and cannot sue here for any commissions after June 9th of '92." The order granting summary disposition did not address plaintiff's claim for the commissions he earned between May 22, 1992, and June 9, 1992.

On appeal, plaintiff contends that summary disposition was erroneously granted. We agree. We review the trial court's ruling on a motion for summary disposition de novo to determine whether the pleadings or the uncontroverted documentary evidence establish that defendant is entitled to judgment as a matter of law. MCR 2.116(I)(1); *Kennedy v Auto Club of Michigan*, 215 Mich App 264, 266; 544 NW2d 750 (1996). The existence of either circumstance merits a grant of summary disposition. *Kennedy, supra* at 266.

A trial court may determine the meaning of a contract as a matter of law only if the contractual terms are unambiguous. *G & A Inc v Nahra*, 204 Mich App 329; 514 NW2d 255 (1994); *SSC Associates Ltd Partnership v General Retirement System of the City of Detroit*, 192 Mich App 360, 363; 480 NW2d 275 (1991). If the contractual terms are reasonably susceptible to different interpretations, factual development is necessary to determine the parties' intent and, hence, summary disposition is inappropriate. *SSC Associates, supra*.

In the present case, we agree with the trial court that plaintiff failed to present a factual question that could lead a reasonable factfinder to conclude that the original contractual terms remained in effect after the issuance of the June 9, 1992, memorandum. The memorandum stating that "there will be no commissions paid . . . until further notice" was, at least, notice that the original contract (that included the payment of commissions) had been modified. However, we find that reasonable jurors could reach different conclusions as to the intended scope of the contractual alteration. We conclude that the text of the memorandum stating that "there will be no commissions paid . . . until further notice" could reasonably be interpreted to mean that commissions, though accruing continuously, would not be dispersed until some future time. This interpretation is substantiated by plaintiff's affidavit which states that, during discussions between plaintiff and Tarrance, each party understood that commission payments would be suspended, not eliminated entirely. Therefore, although an employer may unilaterally alter an at-will employment contract, see *In re Certified Question*, 432 Mich 438, 441; 443 NW2d 112 (1989), in the present case there exists a factual question as to the reasonable interpretation of defendant's unilateral change in plaintiff's employment contract. Accordingly, factual

development is needed to determine the parties' intent and, hence, summary disposition is improper. *SSC Associates, supra*. Moreover, based on both the contractual ambiguity and previous conversations between plaintiff and Tarrance, there is a factual question as to whether plaintiff received "reasonable notice" of the alleged cancellation of all commissions. See *Farrell v Auto Club (On Remand)*, 187 Mich App 220, 225; 466 NW2d 298 (1991). Finally, even under the trial court's rationale for granting summary disposition, it was erroneous to grant summary disposition on plaintiff's claim for the commissions he earned before Tarrance informed plaintiff of the change in the commission structure.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Richard A. Bandstra

/s/ Meyer Warshawsky