STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA HACHT, PAMELA ABSHIER, KENNETH FAUST, DENNIS WYLIN, KATHRYN A. KIDDER DAHN, LORRAINE JAMES, GEORGE DEBRUYN, TOM EDWARDS, PATRICIA A. DEEHR, RAYMOND L. EVANS, HERB WAHLS, FRED LECLUYSE, DIANA S. ANDRESKI, SANDRA CORK, LOYD W. STORY, JAMES LOGAN, THOMAS E. LOUWSMA, GARY G. DAHN, DALE E. BEGLEY, DALLAS L. HILTON, JR. ADAM D. HENRY, PAUL LINDSEY, BEV JOSLIN, STAN WALKER, GEORGE SALO, GARRY D. MCDONALD, PHYLLIS WHITE, and EDWARD RIGGS,

Plaintiff-Appellants,

v

FORD MOTOR COMPANY,

Defendant-Appellee.

UNPUBLISHED
December 13, 1996

No. 177673; 177996
Wayne County
LC No. 84-416849

Before: Jansen, P. J., and Reilly, and M.E. Kobza,* JJ.

PER CURIAM.

Plaintiffs appeal as of right circuit court orders granting defendant's motion for summary disposition and denying plaintiffs' motion for class certification. This is the fourth opinion issued by this Court in this case. See *Hacht v Ford Motor Co* [*Hacht I*] unpublished opinion per curiam of the Court of Appeals, issued June 23, 1986 (Docket No. 82235), remanded 433 Mich 913 (1989); *Hacht*

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

v Ford Motor Co (On Remand) [*Hacht II*], 186 Mich App 519; 465 NW2d 331 (1990), vacated and remanded, 439 Mich 963 (1992); *Hacht v Ford Motor Co (On Second Remand) [Hacht III]*, unpublished opinion per curiam of the Court of Appeals, issued January 7, 1993, (Docket No. 150316). The facts and procedural history are set forth in each of the three earlier opinions. It is unnecessary to repeat them fully here. It is sufficient to note that in our earlier decisions, we considered whether, based on various arguments raised by defendant and cases issued by the Supreme Court after *Hacht I* was issued[1], defendant was entitled to summary disposition on plaintiffs' claims. Following *Hacht III*, plaintiffs' count I (breach of contract on both express contract and *Toussaint* theories) and count IV (promissory estoppel) remained viable. Following completion of discovery, defendant again moved for summary disposition as to these claims. The trial court granted defendant's motion, and this appeal followed. We affirm.

We agree with the trial court that plaintiff's breach of contract claim on an express contract theory is barred by the statute of frauds. MCL 566.132(1)(a); MSA 26.922(1)(a). The 1978 Capalbo letter, upon which plaintiffs primarily rely, does not indicate that the parties had an agreement regarding automatic salary increases. It merely compares the salary progression schedule of Chrysler test drivers under the Chrysler-UAW contract with the salary progression schedule of the Ford drivers. Similarly, the other documents offered by plaintiffs do not indicate that defendant had an agreement with plaintiffs that the six-and-a half-year salary progression plan was not subject to change. Thus, the trial court properly granted defendant's motion for summary disposition with respect to the breach of express contract claim.

We also agree with the trial court, that in light of *Rood v General Dynamics Corp*, 444 Mich 107; 507 NW2d 591 (1993), defendant was entitled to summary disposition with respect to plaintiffs' *Toussaint*-type claim. For plaintiffs' claim to be successful, the scope of the "legitimate expectations theory" of *Toussaint* would have to extend beyond policies and procedures relating to employee discharge. In *Dumas v Auto Club Ins Ass'n*, 437 Mich 521; 473 NW2d 652 (1991), an opinion by Justice Riley, joined by Justices Brickley and Cavanagh, stated that they would decline the opportunity to extend the legitimate expectations theory to compensation terms. *Id.* at 531-532. When this Court reconsidered *Hacht II* in light of *Dumas*, this Court noted that *Dumas* was a plurality decision, and therefore, it lacked precedential value. *Hacht III*, slip op, at 3. However, in *Rood*, the Supreme Court's clarified analysis of *Toussaint* indicates that the legitimate expectations theory is limited to policies and procedures related to employee discharge. *Id.* at 137-144. In accordance with *Rood*, we agree with the trial court that defendant was entitled to summary disposition on plaintiffs' breach of contract claim based on the legitimate expectations theory of *Toussaint*.

Finally, we also agree with the trial court that defendant was entitled to summary disposition on plaintiffs' claim of promissory estoppel. Defendant argued that discovery showed that plaintiffs could not establish that there was a promise made by defendant regarding the automatic salary increase schedule. The trial court apparently agreed with this argument when it ruled that there could be no promissory estoppel because there was never a promise made not to change "it," apparently referring to the automatic salary increase schedule.[2] We agree. After completion of discovery, the record indicates that defendant did not make a promise to any of the individual plaintiffs regarding the automatic

salary increase schedule. "A promise is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made." *State Bank v Standish*, 442 Mich 76, 85; 500 NW2d 104 (1993), quoting 1 Restatement Contracts, 2d, § 2, p 8. A policy is "commonly understood to be a flexible framework for operational guidance, not a perpetually binding contractual obligation." *In re Certified Question*, 432 Mich 438, 456; 443 NW2d 112 (1989). The evidence presented by plaintiffs indicates that they were given information about a policy, not that defendant promised plaintiffs that the compensation would continue in this manner. In other words, defendant's description of the system that was in force at that time does not amount to a promise that the system would remain in effect forever. Because plaintiffs' evidence does not raise a genuine issue of material fact with respect to defendant's making a promise, we agree with the trial court that defendant was entitled to summary disposition.

Plaintiffs' final argument concerns the trial court's denial of plaintiffs' motion for class certification. Because we have concluded that the trial court properly granted defendant summary disposition as to all of the remaining claims raised by plaintiffs, the propriety of the court's denial of class certification is moot.

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen P. Reilly
/s/ Michael E. Kobza

[1] *Hacht I* was remanded by the Supreme Court for this Court to reconsider the decision in light of *In re Certified Question*, 432 Mich 438; 443 NW2d 112 (1989) and *Bullock v Automobile Club*, 432 Mich 472;444 NW2d 114 (1989). *Hacht II* was vacated and remanded for reconsideration in light of *Dumas v Auto Club Ins Ass'n*, 437 Mich 521; 473 NW2d 652 (1991) and *Rowe v Montgomery Ward*, 437 Mich 627; 473 NW2d 268 (1991).

[2] To the extent that plaintiffs argue that the trial court's holding conflicts with this Court's holding in *Hacht II*, we note that *Hacht II* was vacated by the Supreme Court, and therefore, the holdings in *Hacht II* are not the law of the case. See *Johnson v White*, 430 Mich 47, 53; 420 NW2d 87 (1988).