

STATE OF MICHIGAN
COURT OF APPEALS

MARC S. McKELLAR,

Plaintiff-Appellee,

v

BERGEN BRUNSWIG DRUG COMPANY, a
California corporation, PAUL KOOP, DENNIS
JIROUS and BRIAN BAARS, as individuals,

Defendants-Appellants.

UNPUBLISHED

January 21, 1997

No. 181946

Ingham Circuit Court

LC No. 93-76047-NZ

Before: McDonald, P.J., and White and P. J. Conlin*, JJ.

PER CURIAM.

Defendants appeal by leave granted from a December 30, 1994, order denying in part their motion for summary disposition on plaintiff's claims of breach of employment contract/wrongful discharge, tortious interference with a contract, intentional infliction of emotional distress, false imprisonment and exemplary damages. We reverse.

The trial court improperly denied summary disposition to defendants on plaintiff's count alleging he was wrongfully discharged after concluding defendants' personnel made general statements to plaintiff that constituted an unequivocal promise of a just-cause employment policy.

Plaintiff failed to come forward with evidentiary proof to establish a genuine issue of material fact with regard to this issue. *Skinner v Square D Co*, 445 Mich 153; 516 NW2d 475 (1994). Employment contracts for an indefinite term are terminable at the will of either party. *Rood v General Dynamics Corp*, 444 Mich 107; 507 NW2d 591 (1993). "Contracts for 'permanent' or 'lifetime' employment are considered contracts for an indefinite duration and therefore presumptively terminable at the will of either party." *Rood, supra*, at 117 n 14. To overcome this presumption a party must present proof of a contractual provision for a definite term or a provision barring discharge absent just

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

cause. *Id* at 117. For oral statements of job security to overcome the presumption, they must be clear and unequivocal. *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627; 473 NW2d 268 (1991).

Plaintiff failed to present sufficient proof showing the parties manifested an intent to be bound by a just-cause employment contract. Plaintiff's deposition testimony and affidavit are not sufficient to rebut the presumption that his employment was terminable at will. Plaintiff acknowledged the employment application he signed contained an "at-will" employment provision. Further, defendant attached to their motion defendant's written termination and discipline policies, which plaintiff admitted receiving, both of which contained at-will language. A reasonable person could not conclude the parties intended to enter into a just-cause employment contract. *Rowe, supra*. The trial court erred in failing to grant defendants summary disposition as to this claim.

Defendants next claim the court erred in failing to dismiss plaintiff's claims of tortious interference. We agree. To establish a claim for tortious interference with a contractual or business relationship, a plaintiff must allege the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another. *Formall v Community National Bank*, 166 Mich App 772; 421 NW2d 289 (1988). The plaintiff must demonstrate "with specificity" proof of the defendants' "affirmative acts which corroborate the unlawful purpose of the interference." *Feaheny v Caldwell*, 175 Mich App 291; 437 NW2d 358 (1989). Defendants motivated by legitimate personal and business reasons are shielded from liability. *Formall, supra*.

Plaintiff has failed to demonstrate with specificity evidence to corroborate defendants' unlawful purposes. Although plaintiff claims the individual defendants fabricated reasons for terminating their employment relationship, plaintiff did no more than deny the allegations. Plaintiff failed to present any proof of fabrication. Plaintiff may not rest upon mere allegations or denials in the pleadings but must set forth specific facts showing there is a genuine issue for trial. *McCart v J Walter Thompson USA, Inc*, 437 Mich 109; 469 NW2d 284 (1991). Since plaintiff's method of calculating points allegedly gave him monetary rewards to which he was not entitled, the individual defendants held a proper concern for the welfare of BBDC. Plaintiff has failed to articulate or demonstrate that his method of determining bonus points either was or approximated the method followed by BBDC.

With regard to plaintiff's claim defendants prevented him from finding other employment, plaintiff again failed to present specific facts showing particular employers turned him down for employment. Plaintiff rests his case on nothing more than his own subjective belief. Speculation and conjecture are insufficient to establish a question of fact. *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482; 502 NW2d 742 (1993). The trial court erred in failing to grant summary disposition in defendants' favor on these claims.

Next Defendants contend the court erred in denying their motion for summary disposition with regard to plaintiffs claims of intentional infliction of emotional distress. We find the trial court should have granted defendants' motion.

To establish a claim of intentional infliction of emotional distress, the plaintiff must show (1) extreme or outrageous conduct, (2) which intentionally and recklessly, (3) causes extreme emotional distress. *Taylor v Blue Cross & Blue Shield of Michigan*, 205 Mich App 644; 517 NW2d 864 (1994). Plaintiff was terminated for the stated reason he falsified records and took credit for points to which he was not entitled. This is a breach of employment contract action. It is well settled damages for intentional infliction of emotional distress are not available in an action for breach of employment contract. *Valentine v General American Credit, Inc*, 420 Mich 256; 362 NW2d 628 (1994); *Mourad v Automobile Club Insurance Association*, 186 Mich App 715; 465 NW2d 395 (1991). Moreover, the record does not disclose the extreme and outrageous conduct necessary to establish possible tort liability. *Roberts v Auto-Owners Ins Co*, 422 Mich 594; 374 NW2d 905 (1985).

The trial court also erred in failing to grant defendants' motion for summary disposition with regard to plaintiff's claim of false imprisonment. Plaintiff failed to show either manual seizure or its equivalent. *Clarke v Kmart Corp*, 197 Mich App 541; 495 NW2d 820 (1992).

Finally because the trial court erred in failing to dismiss plaintiffs' tort claims and exemplary damages may not be awarded in an action for breach of contract, *Valentine, supra.*, plaintiff's claim for exemplary damages must be dismissed.

Reversed. Costs to defendants.

/s/ Gary R. McDonald

/s/ Patrick J. Conlin