# STATE OF MICHIGAN

# COURT OF APPEALS

R. ALAN MURDOCH,

Plaintiff-Appellant,

v

STROH BREWERY COMPANY and STROH COMPANIES,

Defendant-Appellees.

UNPUBLISHED
February 21, 1997

No. 182840
Wayne Circuit Court
LC No. 93-317432-CK

Before: Reilly, P.J., and Sawyer and W.E. Collette,* JJ.

PER CURIAM.

Plaintiff appeals as of right a circuit court order dismissing certain of plaintiff's claims against his former employer, Stroh Brewery, which is owned by the Stroh Companies. We affirm in part, reverse in part and remand for further proceedings.

Plaintiff's first amended complaint contained three counts relating to Stroh's failure to offer plaintiff the severance package plaintiff contends he should have received. On appeal, plaintiff argues that the trial court's dismissal of each of the three claims was erroneous. We disagree. The February 20, 1990 letter[1] written by Stroh Senior Vice President Joseph J. Franzem cannot reasonably be construed as a promise that Stroh would give plaintiff an "appropriate" severance package. Inasmuch as there was no promise that plaintiff would be given an appropriate severance package, plaintiff's breach of contract and promissory estoppel claims were properly dismissed. With respect to plaintiff's fraud claim, plaintiff has not established a genuine issue of material fact regarding a material misrepresentation, a necessary element of the claim. *Clement-Rowe v Michigan Health Care Corp*, 212 Mich App 503, 507; 538 NW2d 20 (1995). The letter represents that Peter Stroh had some discussion with the Board of Directors concerning plaintiff's employment situation. Peter Stroh's deposition testimony reflects that such a discussion occurred. Contrary to plaintiff's assertions, the letter does not represent that Peter Stroh had discussed plaintiff's severance with the Board and that the Board had considered plaintiff's position in light of the future sale of the Spanish investments.

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

Accordingly, we affirm the trial court's granting of summary disposition pursuant to MCR 2.116(C)(10) as to Counts I (breach of contract), II (fraud) and V (promissory estoppel).

Count IV of plaintiff's first amended complaint alleged that Stroh breached a May 28, 1982 agreement that was executed to protect plaintiff from the devaluation of the Spanish peseta as it affected the sale price of his residence in Seville, Spain. The original complaint, which contained this claim, was filed June 18, 1993. Stroh argued, and the trial court agreed that the claim accrued when the residence was sold on April 17, 1985, and was barred by the six-year statute of limitations applicable to actions for breach of contract. MCL 600.5807(8); MSA 27.5807(8).

We agree with plaintiff that the trial court erred in determining that plaintiff's claim accrued on the date that the residence was sold. A claim of breach of contract accrues when the promisor fails to perform under the contract. *Cordova Chemical Co v Dep't of Natural Resources*, 212 Mich App 144, 153; 536 NW2d 860 (1995). Where a contract provides that the promisor's performance will take place on the fulfillment of a certain condition, the cause of action accrues when the condition is fulfilled and the promise is not performed, not before that time. 54 CJS, Limitations of Actions, §136, p 180. The sale of the residence occurred on April 17, 1985. However, Stroh did not become obligated to pay plaintiff until sometime after it received the requisite documentation to process the devaluation claim. Although the record is unclear regarding when the necessary documentation was submitted, plaintiff's deposition testimony indicated that he did not submit a claim for the devaluation guarantee until "late in 1990 or in 1991." Thus, the breach of contract claim based on Stroh's failure to pay the claim did not accrue on April 17, 1985, as determined by the trial court. Because the record does not establish with certainty when the documentation was submitted, we cannot state as a matter of law when the claim accrued. However, because the trial court erroneously determined that the claim accrued on the date the residence was sold, summary disposition of Count IV in favor of Stroh must be reversed.

Counts VI and VII of the first amended complaint concern director fees arising from plaintiff's service as an executive director in the Cruzcampo Group. Count VI sought declaratory judgment as to the ownership of certain fees, and Count VII is characterized by plaintiff as "a Count as to Money Had and Received" relating to $602,867 in 1990 director fees, including a substantial fee for loss of office, all of which plaintiff turned over to Stroh at Stroh's request. Initially, we conclude that Michigan, rather than Spanish, law applies to these claims. The record reflects that the parties have treated the employment contract as if Michigan law applies, plaintiff admits that his duties for Stroh were not limited to Spain, and plaintiff has not shown that Spain's interest in the parties' agreement outweighs Michigan's interest in the parties' agreement and the parties' expectations. To hold otherwise would frustrate a primary objective of contract law, e.g. that parties be able to accurately foretell their rights and liabilities under a contract. *Chrysler Corp v Skyline Industrial Services Inc*, 448 Mich 113, 125; 528 NW2d 698 (1995). Moreover, considering the evidence, in particular plaintiff's deposition testimony, in the light most favorable to plaintiff, we agree with the trial court that Stroh was entitled to summary disposition. The evidence demonstrates that the parties agreed that Stroh owned the beneficial interest in the director fees, including the special fees referred to as loss of office fees and the director fees that were waived by Stroh during 1991.

Count VIII of the first amended complaint was labeled as an action for declaratory relief, but actually sought reimbursement for $457,327 for expenses disallowed by Stroh. We agree with the trial court that had there been evidence that reasonably implied an agreement that plaintiff would be reimbursed for all reasonable business expenses, then there would arguably be factual issues for a trier of fact to decide. However, the proofs reasonably suggest only that Stroh had the right to exercise its business judgment in determining allowable business expenses and determining whether the claimed expenses were supported by adequate documentation. Accordingly, we agree with the court that Stroh was entitled to summary disposition on plaintiff's claim seeking reimbursement for disallowed expenses.

Summary disposition in favor of Stroh on Counts I, II, V, VI,VII and VIII is affirmed. Summary disposition as to Count IV is reversed and the case is remanded for further proceedings. We do not retain jurisdiction.

/s/ Maureen Pulte Reilly
/s/ David H. Sawyer
/s/ William E. Collette

[1] The pertinent language of the letter was as follows:

> I have discussed this with Peter. He believes, and I agree, that the proper way to address your concern is to assure you that if and when the Company's Spanish investments are sold, the Board of Directors will consider your past contribution to the Company and your subsequent employment status. The Board may then take appropriate action as regards your situation, regardless of your subsequent employment status. Peter has already discussed this with the Board and I think I can state that Peter's intention is to appropriately recognize your contribution to the Company in respect to the increases in value of the Spanish investments and the benefit that a sale of these investments will be to The Stroh Brewery Company and its shareholders.