STATE OF MICHIGAN

COURT OF APPEALS

RICHARD A. SHEATS,

Plaintiff–Appellant,

v

AKZO COATINGS, INC., STEVEN S. SADLAK, and GLENN D. THORNLEY,

Defendants–Appellees.

UNPUBLISHED
March 4, 1997

No. 180171
Oakland Circuit Court
LC No. 93-460893

Before: Marilyn Kelly, P.J., and MacKenzie and Gribbs, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order denying his motion for rehearing of an order that granted summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm.

In 1990, defendant Akzo Coatings recruited plaintiff for the position of automotive paint specialist. According to plaintiff, he told Akzo manager Charles Mayne that he did not want to be involved in industrial sales and did not want to report to Steven Sadlak, and Mayne told him "no[,] you're coming to work for the automotive group reporting directly to Martin Havlin." When plaintiff inquired about job security, he was told that he could expect job security "as long as he did his job."

In September 1992, Glenn Thornley replaced Havlin and became plaintiff's supervisor. As part of a corporate reorganization, Thornley informed plaintiff that he would be reporting to Sadlak. Plaintiff threatened to quit, and Thornley and Mayne "tr[ied] to find an accommodation that would keep Rick on board." Plaintiff was then assigned to work for James White. After one of plaintiff's customers complained about lack of service and it became apparent that White was not functioning well in his role as supervisor, however, Thornley informed plaintiff that he would have to report to Sadlak. Plaintiff walked out and then turned in his resignation.

Plaintiff's complaint alleged that defendants breached their employment contract by constructively discharging plaintiff and by assigning him to work under Sadlak. The complaint also contained a count against Thornley for tortious interference with contractual relations. Additionally,

plaintiff claimed that Thornley defamed him by publishing false statements concerning the quality of his job performance. Finally, plaintiff alleged that defendants were liable on a promissory fraud theory. The trial court granted summary disposition on all claims.

On appeal, plaintiff first argues that the trial court improperly granted defendants' motion for summary disposition on his claim of breach of employment contract. Specifically, plaintiff contends that there was a genuine issue of material fact with regard to the existence of a just-cause employment contract and that defendants breached that contract by demoting him or constructively discharging him.

Even assuming the existence of a just cause contract, the record fails to establish a question as to whether plaintiff was constructively discharged contrary to the parties' contract. A constructive discharge occurs when an employer deliberately makes an employee's working conditions so intolerable that a reasonable person would feel compelled to resign. *Fischhaber v General Motors Corp*, 174 Mich App 450, 454-444; 436 NW2d 386 (1988). In this case, no reasonable juror could find that plaintiff was demoted or constructively discharged. There was no evidence that he incurred a cut in salary, that he lost any job responsibilities, or that his conditions of employment would have drastically changed once he reported to Sadlak. Moreover, although plaintiff disliked Sadlak, there is no evidence that Sadlak made plaintiff's working conditions intolerable. Compare *Mourad v Automobile Club Ins Ass'n*, 186 Mich App 715, 721; 465 NW2d 395 (1991); *Wolff v Automobile Club of Michigan*, 194 Mich App 6, 15-16; 486 NW2d 75 (1992). Accordingly, the trial court properly granted summary disposition on plaintiff's claim of breach of employment contract.

Next, plaintiff argues that the trial court erred in dismissing his claim that defendants breached the employment contract when plaintiff was assigned to work for Sadlak. Again, we disagree. Plaintiff is correct that the parties to an employment contract are free to bind themselves however they wish. *Thomas v John Deere Corp*, 205 Mich App 91, 93; 517 NW2d 265 (1994). However, upon a review of the record, we are satisfied that there was no genuine issue of fact concerning the existence of an enforceable agreement that plaintiff would not be required to work under Sadlak. Havlin indicated that he could not recall any discussion regarding Sadlak when he and Mayne were recruiting plaintiff. Mayne also stated that Sadlak, who was a salesman at the time, was never discussed, and that no promises were made. According to Mayne, he did not intend that plaintiff would never have to work for Sadlak; his intention was that plaintiff report to Havlin for no predetermined period of time. Similarly, Thornley indicated that plaintiff at no time indicated that there was "a deal" that he would never have to work for Sadlak. While the record contains a memorandum indicating that plaintiff agreed to start working for Akzo in April, 1990, there is nothing in writing to support a binding promise that he would never report to Sadlak. Under these circumstances, the trial court did not err in granting summary disposition in favor of defendants.

Plaintiff also contends that there was a genuine issue of fact whether Thornley interfered with plaintiff's employment for the purpose of advancing his own financial interests. Again, we disagree. A plaintiff may maintain an action for tortious interference with either a "for cause" or an "at will" employment contract. *Patillo v Equity Life Assurance Society*, 199 Mich App 450, 457; 502 NW2d 696 (1993). Where, as here, the defendant is a corporate agent, there is no liability unless the

plaintiff can establish that the defendant acted solely for his personal benefit with no benefit to the corporation. *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10, 13; 506 NW2d 231 (1993). In this case, giving plaintiff the benefit of all reasonable doubt, there is no evidence beyond plaintiff's subjective belief that the motivation for his transfer was Thornley's hope of gaining financially by thwarting plaintiff's efforts to win the Corvette contract. Speculation and conjecture are insufficient to establish the existence of a material fact. *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993). As a supervisor entrusted with making personnel decisions for Akzo, Thornley had a right to transfer plaintiff, and purportedly did so for the company's benefit. See *Feaheny v Caldwell*, 175 Mich App 291, 305-306; 437 NW2d 358 (1989). In the absence of evidence that Thornley's action was per se wrongful or done with malice, the trial court properly granted summary disposition on plaintiff's claim for tortious interference with contractual relations.

Plaintiff next claims that the trial court erred in granting defendants' motion for summary disposition as to his defamation claim. This argument is also without merit. Although plaintiff alleges that Thornley told other employees that one of plaintiff's former business accounts was "disappointed in him," the only evidence plaintiff submits to support this allegation is hearsay. For the purposes of opposing an MCR 2.116(C)(10) motion, a party must present admissible evidence to establish the existence of a disputed fact. *Cox v Dearborn Heights*, 210 Mich App 389, 398; 534 NW2d 135 (1995). Since plaintiff produced no admissible evidence connecting Thornley to the publication of the alleged defamatory statement, we find no error in the trial court's grant of summary disposition in defendants' favor of as to plaintiff's claim for defamation.

Finally, plaintiff contends that the trial court erred in granting summary disposition on his promissory fraud claim. We disagree. Generally, an action for fraud must be predicated upon a statement relating to a past or an existing fact. *Kassab v Michigan Basic Property Ins Corp*, 441 Mich 433, 489; 491 NW2d 545 (1992) (Boyle, J, dissenting). However, where a defendant makes a promise with fraudulent intent, having no present intention of fulfilling the promise, a plaintiff may bring a claim for promissory fraud. *Hi-Way Motor Co v International Harvester Co*, 398 Mich 330, 338-339; 247 NW2d 813 (1976). A plaintiff can demonstrate the defendant's lack of present intention to fulfill its promise only by showing that at the very time of making the representation, or almost immediately thereafter, statements or acts of the defendant indicated that there was no intention on its part to carry out the representation. *Id.*

Here, plaintiff failed to produce evidence of defendants' conduct that demonstrates that defendants had no intention of fulfilling their "promise" that he would never be forced to work with Sadlak. Plaintiff attempts to make this showing by reference to Mayne's statement that he did not intend that plaintiff would never have to work with Sadlak. Although plaintiff argues that this demonstrates a present lack of intention to carry out the representation, the testimony is taken out of context. Instead, Mayne denied the very existence of a promise. It stands to reason thatMayne would have no intention of fulfilling a promise he claimed to have never made. Accordingly, we affirm the trial court's grant of summary disposition as to plaintiff's claim for promissory fraud.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Roman S. Gribbs