# STATE OF MICHIGAN

# COURT OF APPEALS

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YVONNE BRADY,

Plaintiff-Appellee,

v

MARIO MICHELI,

Defendant-Appellant.

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UNPUBLISHED
March 18, 1997

No. 190559
Wayne Circuit
LC No. 94-405759

Before: Wahls, P.J., and Gage and W.J. Nykamp,* JJ.

PER CURIAM.

Plaintiff sued defendant for breach of an employment contract and other claims arising out of her business association with defendant. During a bench trial, defendant moved for a directed verdict after plaintiff presented her proofs, which the trial court denied. The trial court found for plaintiff on her breach of contract claim and awarded her $12,879 plus interest. Defendant appeals as of right the denial of his motion for directed verdict and the entry of judgment in favor of plaintiff. We affirm.

In July and August 1992, defendant orally offered plaintiff employment in telemarketing and customer service with a voice mail business defendant planned to incorporate out of state. According to plaintiff, defendant promised to pay her an annual salary of $36,000 plus a twenty-five cent commission for each sale that she made. Plaintiff decided to participate in the business. She provided defendant with names of potential investors, attended business meetings, and was listed as part of the key business personnel in an August 1992 revised business plan. Plaintiff prepared to move out of state. She placed her house for sale, sold much of her furniture, gave her employer notice of her resignation, and rejected her employer's offer to match defendant's proposal.

On September 15, 1992, defendant incorporated the new business in Missouri as Southwest Voice Telecommunications, Inc. (hereinafter Southwest). Plaintiff moved to Missouri in October 1992 and began working for the corporation. She was never paid her full salary. As a result, plaintiff resigned in March or April 1993 and moved back to Michigan. The corporation is now defunct.

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

Plaintiff filed this action, seeking to hold defendant personally liable for the breach of her employment contract.

Defendant first argues that the trial court erred in denying his motion for directed verdict at the close of plaintiff's proofs. Defendant contends that the trial court's denial was clearly erroneous because the preponderance of the premotion evidence demonstrated that defendant contracted with plaintiff as an agent of Southwest and not in his personal capacity. Defendant further argues that the preponderance of the premotion evidence demonstrated that the employment contract was formed after the incorporation of Southwest, when plaintiff moved to Missouri and began to perform services for the corporation. We disagree.

This Court treats a motion for a directed verdict in a civil bench trial as a motion for involuntary dismissal brought pursuant to MCR 2.504(B)(2). *Samuel D Begola Services, Inc v Wild Bros,* 210 Mich App 636, 639; 534 NW2d 217 (1995). A motion for involuntary dismissal is properly granted where the trial court, when sitting as the finder of fact, is satisfied at the close of the plaintiff's evidence that "on the facts and the law the plaintiff has shown no right to relief." MCR 2.504(B)(2). A trial court's decision to deny a motion for involuntary dismissal will be reversed only where the findings of fact in support of the determination were clearly erroneous. *Begola, supra* at 639. A trial court's findings are clearly erroneous when the reviewing court is "left with a definite and firm conviction that a mistake has been made." *Id.* This standard does not authorize the substitution of our judgment for that of the trial court. If the trial court's view of the evidence is plausible, we may not reverse. *Beason v Beason,* 435 Mich 791, 805; 460 NW2d 207 (1990).

In denying defendant's motion for directed verdict, the trial court noted that defendant promised plaintiff employment before the corporation existed. A defendant may be held personally liable on a contract made for the benefit of a proposed corporation prior to the actual incorporation. *LeZontier v Shock,* 78 Mich App 324, 331-332; 260 NW2d 85 (1977). A valid contract exists when parties competent to agree to a proper subject matter enter into a mutual agreement with mutual obligations. *Thomas v Leja,* 187 Mich App 418, 422; 468 NW2d 58 (1991). Whether a contract was formed is judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective states of mind. *Groulx v Carlson,* 176 Mich App 484, 491; 440 NW2d 644 (1989).

Employment contracts are generally described as unilateral contracts. *Cunningham v 4-D Tool Co,* 182 Mich App 99, 106; 451 NW2d 514 (1990).

> In simplest terms, a typical employment contract can be described as a unilateral contract in which the employer promises to pay an employee wages in return for the employee's work. In essence, the employer's promise constitutes the terms of the employment agreement; the employee's action or forbearance in reliance upon the employer's promise constitutes sufficient consideration to make the promise legally binding. [*In re Certified Question (Bankey v Storer Broadcasting Co),* 432 Mich 438, 446; 443 NW2d 112 (1989).]

Therefore, the employment contract in the case at bar became binding when plaintiff acted in reliance upon defendant's promise.

We are not left with a definite and firm conviction that the trial court erred in denying defendant's motion for directed verdict. The premotion evidence indicated that defendant specifically sought out plaintiff in July 1992. The two met a number of times between July and September. At some point, plaintiff decided to accept defendant's offer of employment. Sometime between July and September, 1992, plaintiff placed her house up for sale, gave her employer informal notice that she would be leaving, and declined her employer's offer to match the salary and commission offered by defendant. The premotion evidence presented by plaintiff showed that she had acted in reliance upon defendant's offer before Southwest was incorporated and before she moved to Missouri to work for defendant. Thus, evidence had been presented that a contract between plaintiff and defendant had been formed before the incorporation of Southwest, and defendant could be held liable on that contract.

Defendant next argues that the findings of fact made by the trial court when orally rendering its decision were clearly erroneous. The trial court found that plaintiff and defendant entered into an employment contract at some point in July or August 1992, when defendant offered plaintiff a salary and sales commissions. Both parties, according to the court's findings, began acting in reliance upon the contract. Because the trial court found that a contract was formed prior to the formation of the corporation in mid-September, it concluded that the contract was a personal one between plaintiff and defendant. The court also found as a matter of law that defendant could not have been acting as an agent of a corporation that was not yet in existence, and thus he was personally liable to plaintiff for the breach of their contract. Responding to a question from defendant's attorney, the court noted that the contract was bilateral and was formed in July or August of 1992.

Defendant now argues that the trial court erred when it found that the parties entered into a valid contract in July or August 1992. We disagree. As we discussed above, there was ample evidence in plaintiff's proofs to indicate that defendant had promised plaintiff employment in July or August 1992, and both parties had relied on that promise.

The trial court's conclusion that the contract was bilateral was given only in response to defendant's specific question. Whether the contract was bilateral or unilateral is not important because we find that there was ample evidence to support the trial court's finding that a contract had been formed in July or August of 1992, before Southwest was incorporated, and that both parties relied on the contract before the incorporation.

Affirmed

/s/ Myron H. Wahls
/s/ Hilda R. Gage
/s/ Wesley J. Nykamp