STATE OF MICHIGAN

COURT OF APPEALS

RONALD W. PRIES, KATHLEEN R. PRIES, and EDWARD J. WATERMAN,

Plaintiffs-Appellants,

v

TRW VEHICLE SAFETY SYSTEM and TRW INCORPORATED,

Defendants-Appellees.

UNPUBLISHED
April 22, 1997

No. 168102
Wayne Circuit Court
LC No. 90-021418-NO

Before: Corrigan, C.J., and Doctoroff and R.R. Lamb,* JJ.

PER CURIAM.

Plaintiffs appeal by right the order granting defendants' motion for summary disposition under MCR 2.116(C)(10) regarding plaintiffs' wrongful discharge claims.[1] We affirm.

A motion for summary disposition under MCR 2.116(C)(10) tests whether factual support exists for a claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence available to it. *Id.* Giving the benefit of reasonable doubt to the nonmovant, the court must determine whether a record might be developed that will leave open an issue upon which reasonable minds could differ. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617-618; 537 NW2d 185 (1995); *Farm Bureau Mutual Ins of Michigan v Stark*, 437 Mich 175, 184-185; 468 NW2d 498 (1991). This Court reviews de novo a trial court's grant or denial of summary disposition. *Michigan Mutual Ins Co v Dowell*, 204 Mich App 81, 86; 514 NW2d 185 (1994).

In 1973, Firestone Tire Company hired plaintiffs, who worked in sales and sales management. In 1984, defendant TRW acquired the seat belt division of Firestone. Plaintiffs claimed that they decided to stay with the seat belt division because Firestone employees assured them that TRW's

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

employment policy required just cause for termination. In 1987, however, an employee information packet given to plaintiffs stated that they were at will employees.

TRW supplied General Motors with seat belt and other safety systems, a multi-billion dollar relationship. GM's entertainment policy prohibited a supplier from entertaining a GM employee more than four times per year. In 1989, GM investigated the entertainment practices of two of its suppliers, including TRW. GM examined the entertainment expense reports of nine TRW employees, plaintiffs among them. Plaintiffs admitted that they had submitted inaccurate expense records to GM. In 1990, GM informed TRW that plaintiffs would not be welcome to call on GM in the future because they had violated GM's entertainment policy. One month later, TRW terminated plaintiffs.

Plaintiffs argue that they have established a genuine issue of material fact that TRW was permitted to discharge them only with just cause. We disagree. Plaintiffs did not establish a genuine issue of material fact regarding the existence of express oral contracts permitting termination for just cause only.

Employment contracts for an indefinite term are presumptively terminable at the will of either party for any reason or no reason. *Lynas v Maxwell Farms*, 279 Mich 684, 687; 273 NW2d 315 (1937). Contracts for permanent or lifetime employment are considered to be contracts for an indefinite term and therefore presumptively are terminable at the will of either party. *Rood v General Dynamics Corp*, 444 Mich 107, 117 n 14; 507 NW2d 591 (1993); *Rice v ISI Mfg Inc*, 207 Mich App 634, 636; 525 NW2d 533 (1994). To overcome the presumption of employment at will, a plaintiff must present sufficient proof of either a contractual provision for a definite term of employment or a provision forbidding discharge absent just cause. *Rood, supra* at 117.

A claim of wrongful discharge may be supported by two different theories. The first theory, based on contract principles, is established by the existence of an express agreement, oral or written. *Manning v Hazel Park*, 202 Mich App 685, 692; 509 NW2d 874 (1993). The second theory, the "legitimate expectations theory," is based on the employee's legitimate expectation of continued employment absent just cause for termination arising out of the employer's policies and procedures. *Id.*

In this case, plaintiffs' claims are based on the alleged existence of express oral agreements. Our Supreme Court has stated that "oral statements of job security must be clear and unequivocal to overcome the presumption of employment at will." *Rood, supra* at 119 (citing *Rowe, infra* at 645). To determine whether the parties mutually assented to a contract, courts employ an objective test, looking to the parties' expressed words and visible acts and asking whether a reasonable person could have interpreted the words or conduct in the manner that is alleged. Accordingly, the court must look to all the relevant circumstances surrounding the transaction, including all writings, oral statements, and other conduct by which the parties manifested their intent. *Id.; Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 640-641, 645; 473 NW2d 268 (1991).

Contrary to defendants' claim, sufficient evidence existed to raise a question of fact whether Messrs. Zimmerman and Marshall had apparent authority to bind TRW with their alleged representations to plaintiffs concerning job security before TRW acquired the seat belt division of Firestone. Questions relating to the existence and scope of an agency relationship are questions of fact. *Hertz Corp v Volvo Truck Corp*, 210 Mich App 243, 246; 533 NW2d 15 (1995). The authority to bind a principal may be either actual or apparent. Apparent authority arises where acts and appearances lead a third person reasonably to believe that an agency relationship exists. Apparent authority, however, must be traceable to the principal and cannot be established only by the agent's acts and conduct. *Alar v Mercy Mem Hosp*, 208 Mich App 518, 528; 529 NW2d 318 (1995). In this case, a question of fact arose whether Messrs. Zimmerman and Marshall, then also Firestone employees, were acting within the scope of apparent authority when they allegedly made oral representations to plaintiffs about continued employment with TRW in the pre-acquisition phase.

Even so, plaintiffs raised no issue of genuine material fact regarding defendants' oral assurances of job security to plaintiffs in response to concerns that they be terminated for just cause only. Although plaintiffs contend that they engaged in pre-employment negotiations regarding job security, the evidence does not reflect that plaintiffs expressed concerns about job security in the context of just-cause employment. In this respect, plaintiffs were similar to the plaintiff in *Rowe, supra* (who was assured that she would have a job "as long as she achieved her sales quota"), in *Schippers* v *SPX Corp*, the companion case to *Rood, supra* at 124-125 (who was assured that he would have a job as a truck driver "as long as [his employer] had a truck"), and in *Barber v SMH (US), Inc*, 202 Mich App 366, 369; 509 NW2d 791 (1993) (who was promised that he would be the defendant's exclusive sales representative as long as he was "profitable" and "doing the job").

Plaintiffs failed to establish express oral contracts permitting just-cause termination solely on the basis of their deposition testimony. Plaintiff Ronald Pries[2] claimed that before the acquisition, TRW's acquisition group repeatedly said that "you guys are the greatest, you know, we're not buying this business for fifty million dollars just because it's this product group, and you guys are successful in doing a good job, it's because of the strong management in this group. You know, that's what they kept beating into us; we're buying the people, we're buying the people." More specifically, Pries testified in his deposition that Messrs. Marshall and Zimmerman told him that "as far as [we're] concerned, you know, you've got a job as long as you want a job . . . as long as you keep performing and doing the things you're doing."

As the trial court properly recognized, however, the oral assurances made to Pries before the acquisition were not made in connection with a "negotiated situation." Rather, the oral assurances were given to Pries to allay his fear that once he joined TRW, the company would "bring in their own people." Under the circumstances, these oral representations in the pre-acquisition period represent "an expression of an optimistic hope of a long relationship," *Rowe*, *supra* at 640, and not clear and unequivocal promises of job security in response to his articulated concern that he be terminated for just cause only, *Barber*, *supra* at 371. Although Pries worried whether he would have continued employment if he opted to go with TRW, Pries' deposition testimony does not show that before the

acquisition defendants' agents promised him employment with TRW that forbade discharge absent just cause.

Likewise, nothing in the deposition testimony of plaintiff Edward Waterman indicates that he relied on any oral representations of continued employment made to him before the acquisition. While Waterman claimed that he received oral representations of continued employment from Messrs. Pries,[3] Marshall, Miller and Zimmerman in management meetings on unspecified dates, these assurances were apparently given *after* TRW acquired Firestone's seat belt division. Moreover, as with Pries, these assurances represented merely "an expression of an optimistic hope of a long relationship," *Rowe, supra*, not clear and unequivocal promises of job security in response to his articulated concern that he be terminated for just cause only, *Barber, supra*.

Thus, contrary to plaintiffs' claims, the facts of the instant case are distinguishable from *Barnell v Taubman Co, Inc*, 203 Mich App 110; 512 NW2d 13 (1993). Unlike *Barnell*, where the plaintiff engaged in pre-employment negotiations regarding job security and received specific assurances of just-cause employment from top executives at the company while "applying for the singular executive position of vice president of financial services," plaintiffs here did not provide sufficient facts showing that they received specific assurances of just-cause employment contracts while they were engaged in pre-employment negotiations or that they were hired by TRW for "unique" positions. Rather, as sales managers, plaintiffs were like the sales representative in *Barber, supra*.

Notwithstanding, plaintiffs claim that they established an express oral contract permitting termination only for just cause based on their deposition testimony and their affidavits in response to defendants' motion for summary disposition. We disagree.

Pries' affidavit is not admissible because he failed to sign it. Although MCR 2.119(B) does not state that a signature is required for an affidavit to support a motion for summary disposition, MCR 2.113(A) provides that "[t]he rules on the signing of pleadings apply to all . . . affidavits . . . . [A]n affidavit must be verified by oath or affirmation." See *Bechtold v Morris*, 443 Mich 105, 106; 503 NW2d 654 (1993). Also, MCR 2.114(C)(2) provides that "[i]f a document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party." Defense counsel opposed the admission of Pries' affidavit before the trial court. Apparently, defendants first called attention to Pries' failure to sign the affidavit in their appeal brief to this Court. Given that Pries has never submitted a signed affidavit, the proffered unsigned affidavit must be stricken from the record.

Waterman's affidavit is rejected to the extent that it contradicted his sworn deposition testimony. *Barlow v Crane-Houdaille, Inc*, 191 Mich App 244, 250-251; 477 NW2d 133 (1991); *Hazelton v Lustig*, 164 Mich App 164, 168-169; 416 NW2d 373 (1987). Waterman did not testify in his deposition about representations regarding job security made to him by Messrs. Pries, Marshall, Miller and Zimmerman before he joined TRW. He stated in ¶¶ 3-5 of his affidavit, however, that Miller and Zimmerman made representations to him regarding job security before he joined TRW and that he was persuaded to join TRW on the basis of those assurances. Those statements in Waterman's

affidavit are inconsistent with his sworn deposition testimony. On the other hand, we do not believe that Waterman's deposition testimony clearly and unequivocally established facts contrary to those set forth in the remainder of his affidavit.

Nevertheless, Waterman failed to raise a genuine issue of material fact establishing a just-cause employment contract even when the record was supplemented by the unexcluded portion of his affidavit. Although Waterman stated in his affidavit that Miller told him in 1984 that TRW had a just-cause termination policy, that statement cannot be used to establish that plaintiffs engaged in pre-employment negotiations regarding job security because it occurred after the acquisition. While both plaintiffs asserted that their claim of just-cause employment was based on TRW's progressive discipline policy, the TRW policy document does not support this contention. Moreover, as defendants point out, even if a just-cause policy existed in 1984, it was modified in 1987 when TRW implemented an at-will employment policy.

Affirmed.

/s/ Maura D. Corrigan
/s/ Martin M. Doctoroff
/s/ Richard Ryan Lamb

[1] In orders of April 9, 1997, this Court dismissed two of the three consolidated cases -- docket no. 179134 and docket no. 179165. The Court dismissed only defendants General Motors Corporation and Raymond Campbell in docket no. 168102.

[2] Plaintiff Kathleen Pries' claims for loss of consortium are derivative upon Ronald Pries' claims.

[3] Pries supervised Waterman at TRW.