STATE OF MICHIGAN

COURT OF APPEALS

JACQUELYN CONSIDINE,

Plaintiff-Appellant,

v

ALWAYS CHRISTMAS and BOYD STANDART ALDRIGE,

Defendants-Appellees.

UNPUBLISHED

No. 184801
Oakland Circuit Court
LC No. 93-467695

Before: Hoekstra, P.J., and Marilyn Kelly and J.B. Sullivan,* J.J.

SULLIVAN, J. (concurring in part and dissenting in part).

I

I agree that the trial court erred in dismissing plaintiff's breach of contract claim, but would hold that the error was the trial court's failure to find as a matter of law that the contract was for an indefinite term thereby precluding the application of the statute of frauds and thereby making it a jury question whether plaintiff had overcome the presumption that her contract for employment was terminable at will. *Rood v General Dynamics Corp*, 444 Mich 107, 117, n 14; 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"); *Barnell v Taubman Co, Inc*, 203 Mich App 110, 115-116; 512 NW2d 13 (1993) (the plaintiff must allege sufficient objective evidence to permit a reasonable juror to find that the defendant's statements would be interpreted by a reasonable promisee as a promise of termination only for just cause).

While the majority finds that the term "retirement" is ambiguous, is subject to two or more reasonable interpretations and requires a factual development to reach the intent of the parties, I would find as a matter of law that, in this context, the term "retirement" is synonymous with "permanent" and "lifetime," and therefore presumptively terminable at the will of either party. *Rood, supra.*

Moreover, as to the statute of frauds, MCL 566.132(a); MSA 26.922(a), the Supreme Court has stated not only that "the proper inquiry is whether the contract is capable of performance within one

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

year of the agreement," *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 533 (1991) (Opinion by Riley, J.), but also "[t]he rule is that if, *by any possibility*, it is capable of being completed within a year, it is not within the statute . . ." *Id.*, quoting *Smalley v Mitchell*, 110 Mich 650, 652; 68 NW 978 (1986) [emphasis added].

II

Further, based on the record before us, I would find that there was a genuine issue of material fact whether plaintiff had proven "the existence of an express agreement based mainly on the oral assurances given . . during the preemployment stages." *Barnell, supra*, 115-116; MCR 2.116(C)(10). In *Barnell*, the plaintiff presented evidence that he was contacted by an employment search agency while still employed with another company, that he specifically inquired about job security because the position was new and inquired about the stability of the defendant's company, that he was assured that he need not be concerned about "summary dismissals" nor would he be dismissed without cause, that he was applying for a singular executive position, and that there was a lack of any handbooks, documents or other material given to the plaintiff suggesting employment at will. *Id.*, 117-118. Looking at the evidence in a light most favorable to the plaintiff, this Court determined that there was sufficient evidence from which a reasonable juror could find a promise of termination only for just cause. *Id.* See also, *Meerman v Murco, Inc*, 205 Mich App 610; 517 NW2d 832 (1994).

In this case, plaintiff presented evidence that she was already employed as an office manager when defendants made an offer of employment guaranteeing her employment until she decided to retire, and that initially she turned it down. Only after repeated offers with the same assurances including a promise that plaintiff could buy the flower shop, did plaintiff accept defendants' offer. Indeed, defendants acknowledge in their brief that "all negotiations regarding terms of employment were oral," and "[t]he only promise allegedly made by [defendants] to [plaintiff] was a promise of future employment until [plaintiff's] retirement." Moreover, defendants concede that the circumstances under which plaintiff's employment ceased "are in dispute." On this record, I would find that plaintiff "alleged sufficient evidence from which reasonable minds could find that a reasonable promisee would interpret the statements as a promise forbidding termination absent just cause." *Barnell, supra.*, 118.

III

Finally, as to plaintiff's age discrimination claim, I concur in the result of the lead opinion.

/s/ Joseph B. Sullivan