# STATE OF MICHIGAN

# COURT OF APPEALS

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BENNY SEVILLA,

Plaintiff-Appellant,

v

ENVOTECH MANAGEMENT SERVICES, INC., d/b/a E.Q., THE ENVIRONMENTAL QUALITY COMPANY, a/k/a MICHIGAN DISPOSAL, INC.,

Defendant-Appellee.

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UNPUBLISHED
February 17, 1998

No. 197331
Wayne Circuit Court
LC No. 95-521447 NO

Before: Michael J. Kelly, P.J., and Fitzgerald and M.G. Harrison*, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition in favor of defendant in this wrongful discharge action. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Plaintiff relies on indications in the employment manual which he received as an employee of defendant, indicating that defendant would utilize progressive disciplinary policies. However, the manual explicitly asserted, first, that plaintiff's employment was at will, and, second, that the manual itself did not constitute an employment contract or modify any preexisting employment contract between plaintiff and defendant. Plaintiff relies on the legal principle, recognized in a number of decisions of this Court, that where a policy manual provides both a for cause termination policy and a terminable at will policy, the question whether the employment contract is subject to a just cause termination policy is one of fact to be resolved at trial. *Dalton v Herbruck Egg Sales Corp*, 164 Mich App 543, 547; 417 NW2d 496 (1987); *Langeland v Bronson Methodist Hospital*, 178 Mich App 612, 615; 444 NW2d 146 (1989); *Schippers v SPX Corp*, 186 Mich App 595; 465 NW2d 34 (1990), vacated and remanded 439 Mich 891 (1991), on remand 194 Mich App 52; 486 NW2d 89 (1992).

However, *Schippers* was reversed by the Michigan Supreme Court on precisely this point. The Court held that mere indications of just cause in an employment manual that expressly declares that

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

employment is at will and that the manual does not constitute or establish an employment contract or modify the terms of any preexisting employment contract establishes nothing inconsistent with at will employment, and thus fails to overcome the presumption of at will employment absent additional evidence, such as express discussions, prior to hire, concerning the subject. *Rood v General Dynamics Corp (Schippers v SPX Corp)*, 444 Mich 107, 127; 507 NW2d 591 (1993). *Accord*: *Rowe v Montgomery Ward & Co*, 437 Mich 627, 650; 473 NW2d 268 (1991). Accordingly, the circuit court correctly concluded that, even viewing the facts in a light most favorable to plaintiff, there is no competent evidence from which a reasonable trier of fact could conclude that plaintiff's employment was anything but at will.

Affirmed.

/s/ Michael J. Kelly
/s/ E. Thomas Fitzgerald
/s/ Michael G. Harrison