

STATE OF MICHIGAN  
COURT OF APPEALS

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MARY MASSENGALE,

Plaintiff-Appellant,

v

MOTOR CITY CASINO, a/k/a DETROIT  
ENTERTAINMENT, LLC, a/k/a CIRCUS  
CIRCUS ENTERPRIZES, INC.,

Defendant-Appellee.

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UNPUBLISHED

April 25, 2006

No. 259405

Wayne Circuit Court

LC No. 03-334870-CZ

Before: Markey, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendant. We affirm.

This case arises from plaintiff's suit against defendant for wrongful discharge. Plaintiff was a member of the union so her employment rights were covered by the collective bargaining agreement (CBA). Under the CBA, an employee cannot be discharged except for just cause. Further, the CBA provides for progressive discipline unless certain circumstances arise that allow defendant to immediately discharge an employee. Plaintiff contends that prior to ratification of the CBA, she received a written policy regarding cash discrepancies (policy) and oral assurances that she would not be fired except for just cause. In that regard, plaintiff argues that the policy coupled with the alleged oral assurances created a just cause contract independent of the CBA. The trial court reasoned, however, that the plaintiff's claim was preempted because the CBA had superseded the alleged earlier contract between the parties. We agree.

Whether a state law claim is sufficiently independent of a collective bargaining agreement to avoid preemption is a question of federal law. *Allis-Chalmers Corp v Lueck*, 471 US 202, 214; 105 S Ct 1904; 85 L Ed 2d 206 (1985). However, in this case, to determine whether plaintiff's state law claim is preempted requires interpretation of an alleged independent contract, which is a question of state law. *Caterpillar Inc v Williams*, 482 US 386, 396; 107 S Ct 2425; 96 L Ed 2d 318 (1987). This Court reviews issues of contract interpretation de novo. *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004).

The trial court dismissed plaintiff's wrongful discharge claim pursuant to MCR 2.116(C)(8). But because the trial court considered documentary evidence outside the pleadings,

review under MCR 2.116(C)(10) is proper. *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997). This Court also reviews de novo a trial court's decision on a motion for summary disposition. *Corley v Detroit Bd of Ed*, 470 Mich 274, 277; 681 NW2d 342 (2004). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Id.* at 278. Summary disposition should be granted under MCR 2.116(C)(10) if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Roberson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). A genuine issue of material fact exists when, giving the benefit of reasonable doubt to the opposing party, the record leaves open an issue upon which reasonable minds could differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

Plaintiff argues that the trial court erred in concluding that federal law preempted her wrongful discharge claim. We disagree. Under § 301 of the Labor Management Relations Act (LMRA), 29 USC 185(a), if the resolution of a state law claim necessarily depends on interpreting a collective bargaining agreement, the application of state law is preempted and federal labor law principles apply. *Lingle v Norge Div of Magic Chef, Inc*, 486 US 399, 413; 108 S Ct 1877; 100 L Ed 2d 410 (1988). Regarding individual contracts created prior to a collective bargaining agreement, they

are not inevitably superseded by any subsequent collective agreement covering an individual employee, and claims based upon them may arise under state law. . . . [A] plaintiff covered by a collective-bargaining agreement is permitted to assert legal rights *independent* of that agreement, including state-law contract rights, so long as the contract relied upon is *not* a collective-bargaining agreement. [*Caterpillar, supra* at 396 (emphasis in original).]

But an individual contract cannot subtract from a collective bargaining agreement. *Id.* And whether an individual contract may add to provisions covered by a collective bargaining agreement is governed by state law principles of contract interpretation. *Id.* Generally, the purpose of contract interpretation is to enforce the parties' intent, and if a contract's language is unambiguous, interpretation is limited to the actual words used. *Burkhardt, supra* at 656. If provisions of a contract irreconcilably conflict, the contractual language is ambiguous, and the ambiguous contractual language then presents a question of fact to be decided by a jury. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467, 469; 663 NW2d 447 (2003). But, "if [a] later contract covers the same subject matter as the earlier contract and contains terms that are inconsistent with the terms of the earlier contract, the later contract may supersede the earlier contract, unless it appears that this is not what the parties intended." *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 414 n 16; 646 NW2d 170 (2002).

Plaintiff contends that the CBA applicable to the circumstances of this case did not supersede the alleged just cause contract arising from the policy and oral assurances she received. In that regard, plaintiff alleges that defendant did not breach the CBA, but indeed breached the provisions of the alleged contract. We conclude, however, that the CBA superseded the alleged independent just cause contract because provisions within the two documents are inconsistent. *Archambo, supra* at 414 n 16.

Specifically, Article 22, Section 22.01(a) of the CBA provides, in pertinent part, as follows:

No Associate, after having completed the introductory period, shall be disciplined and/or discharged except for just cause. The Employer shall follow a system of progressive discipline. The parties agree that progressive discipline normally requires, prior to suspension or discharge, that an Associate be given a written opportunity to correct the deficiency, but that *within the principle of progressive discipline, the Employer may impose immediate suspension or discharge for just cause* for dishonesty, incompetence, misconduct, insubordination, serious discourteous conduct toward a guest, failure to report to work without just cause, walking off the job during a shift, or drinking alcohol or use of controlled substance, or being under the influence thereof, during the Associates [sic] shift. [Emphasis added.]

The emphasized language in the CBA provides an added right, which the policy does not contain, for defendant to forego progressive discipline and discharge an employee for just cause for certain grounds, including incompetence. Therefore, assuming the earlier policy amounted to a contractual obligation as claimed by plaintiff, the added right under the CBA is clearly inconsistent with the earlier policy that required defendant to follow the progressive discipline as outlined in the policy, without exception. To the extent that the alleged oral assurances rose to the level of an independent contract, that contract would also have been inconsistent with the CBA for the same reason. Moreover, an individual contract cannot subtract from a provision within a collective bargaining agreement, which is what the alleged independent contracts would have done. *Caterpillar, supra* at 396. For these reasons, the CBA superseded the alleged earlier contract arising from the policy. *Archambo, supra* at 414 n 16. Thus, plaintiff's wrongful discharge claim required interpretation of the CBA, and the trial court properly concluded that her claim was preempted by § 301 of the LMRA. *Lingle, supra* at 413.

We affirm.

/s/ Jane E. Markey

/s/ Bill Schuette

/s/ Stephen L. Borrello