

STATE OF MICHIGAN
COURT OF APPEALS

JEFFREY CLEMENTS and CAROL CLEMENTS,

Plaintiffs-Appellants,

v

WOLVERINE TRACTOR & EQUIPMENT
COMPANY, INC.,

Defendant-Appellee.

UNPUBLISHED

October 2, 1998

No. 204664

Kent Circuit Court

LC No. 96-004031 NO

Before: Bandstra, P.J., and Griffin and Young, Jr., JJ.

PER CURIAM.

Plaintiff Jeffrey Clements filed a two-count complaint against defendant Wolverine Tractor & Equipment Company, Inc. for retaliatory discharge and wrongful termination, and his wife Carol joined as a plaintiff in the retaliatory discharge count, claiming loss of consortium.¹ Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10). Plaintiffs conceded to the trial court that their claim for retaliatory discharge was barred by the statute of limitations. The trial court granted defendant's motion for summary disposition as to the wrongful termination count on the ground that § 301 of the federal Labor Management Relations Act, 29 USC 185 (hereinafter § 301), preempted plaintiff's state law claim. Plaintiffs appeal as of right. We affirm.

Plaintiff argues that § 301 does not preempt his oral employment contract with defendant because his contract is independent of the collective bargaining agreement. We disagree. Whether a state claim is preempted by a federal statute is a question of federal law. *Betty v Brooks & Perkins*, 446 Mich 270, 276; 521 NW2d 518 (1994). Where federal questions are involved, Michigan courts are bound to follow the prevailing opinions of the United States Supreme Court. *Id.* In *Allis-Chalmers Corp v Lueck*, 471 US 202, 213; 105 S Ct 1904; 85 L Ed 2d 206 (1985), the United States Supreme Court held that preemption under § 301 occurs when a decision on a state claim is "inextricably intertwined with consideration of the terms of the labor contract." In *Caterpillar, Inc v Williams*, 482 US 386, 394; 107 S Ct 2425; 96 L Ed 2d 318 (1987), the Court stated that § 301 governs claims dealing directly with rights created by a collective bargaining agreement and claims that

are substantially dependent on an examination of a collective bargaining agreement. However, § 301 preemption does not apply to a state law claim that is independent of the collective bargaining agreement, such as a claim for discrimination or retaliatory discharge. *Lingle v Norge Div of Magic Chef, Inc*, 486 US 399, 409-410, 413; 108 S Ct 1877; 100 L Ed 2d 410 (1988).

Under the reasoning in *Lingle*, our Supreme Court held that a plaintiff's state law claim of employer race and sex discrimination based upon the Michigan Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, is independent and not preempted by federal law because resolution of the claim does not require interpretation of the collective bargaining agreement. *Betty, supra* at 272, 290. However, this Court has held that employment contract theories articulated in *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579; 292 NW2d 880 (1980), do not apply when the conduct of the parties is governed by a collective bargaining agreement. *Reisman v Regents of Wayne State Univ*, 188 Mich App 526, 530; 470 NW2d 678 (1991); *Sankar v Detroit Bd of Education*, 160 Mich App 470, 478-479; 409 NW2d 213 (1987). "*Toussaint* was not addressed to the collective bargaining context and . . . to hold otherwise would exert a disruptive influence on both the administration and negotiation of collective bargaining agreements." *Sankar, supra* at 478-479, citing *Fifield v International Union, UAW Local 137*, 570 F Supp 562, 566 (WD Mich, 1983).

Plaintiff's state law claim is preempted by § 301 because his employment situation from May 1987 to September 1988 was inextricably intertwined with the collective bargaining agreements between defendant and both unions. Defendant could not hire plaintiff to work in the service department without the approval of the Operating Engineers. Plaintiff, as a member of the Operating Engineers, was subject to the collective bargaining agreement between the Operating Engineers and defendant when he worked in the service department. Defendant could not transfer plaintiff to the parts department without a special agreement with the Teamsters. Furthermore, the Teamsters and Operating Engineers met to determine whether plaintiff could work in the parts department and agreed that plaintiff could use his time in the parts department to vest his Operating Engineers' pension. The collective bargaining process prohibited plaintiff from engaging in separate negotiations with defendant and precludes any action to enforce such an agreement. *Maushund v Earl C Smith, Inc*, 795 F2d 589, 590 (CA 6, 1986).

Plaintiff incorrectly relies on *Caterpillar, supra*, to support his claim. *Caterpillar* involved salaried employees and managers, positions outside the coverage of the collective bargaining agreement, who were allegedly assured that Caterpillar would provide employment opportunities if their facility closed. *Id.* at 388-389. The employees and managers were downgraded to hourly positions covered by the collective bargaining agreement and notified that they would be laid off without regard to the assurances of continued employment. *Id.* at 388-390. *Caterpillar* is distinguishable from the present case, because unlike the salaried employees and managers in *Caterpillar* who received assurances while they were not covered by a collective bargaining agreement, plaintiff was hired as a union member to work in a facility subject to the union's collective bargaining agreement. Similarly, in *McDaniel v GMC*, 765 F Supp 407 (WD Mich, 1991), upon which plaintiff also relies, the trial court's finding that

the plaintiff's *Toussaint* claim was not preempted was based on the fact that the circumstances that gave rise to the claim arose before she became a union employee and subject to the collective bargaining agreement.

The trial court correctly ruled that § 301 preempts plaintiff's state law claim.

We affirm.

/s/ Richard A. Bandstra

/s/ Richard Allen Griffin

/s/ Robert P. Young, Jr.

¹ Because Carol Clements' claim is derivative of her husband's claim, the term "plaintiff" will hereinafter refer to Jeffrey Clements.