

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RENARD SLOMKA,

Plaintiff/Counterdefendant-  
Appellant,

v

HAMTRAMCK HOUSING COMMISSION,

Defendant/Counterplaintiff-  
Appellee.

UNPUBLISHED

June 22, 2006

Nos. 258699; 260015

Wayne Circuit Court

LC No. 02-219550-CK

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Before: Smolenski, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

In Docket No. 258699, plaintiff appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). In Docket No. 260015, plaintiff appeals as of right from an order awarding defendant case evaluation sanctions in the amount of \$55,300. We affirm in part, reverse in part, and remand.

I. Facts and Proceedings

Plaintiff brought this action against defendant Hamtramck Housing Commission (Commission), his former employer, alleging breach of an employment contract. The contract began on January 1, 1997, and was to continue for six consecutive years. The contract provided that plaintiff was to receive a specified number of paid vacation, sick, and personal days each year, in addition to his compensation. The contract further provided that any vacation, sick, and personal days that were not used during a year "shall be accumulated and paid for in full by the Commission based on [plaintiff's] final hourly/yearly rate of pay, and shall be paid to him within fifteen calendar days upon his retirement and/or leaving the employment of the Commission."

Paragraph 18 of the contract provided that the Commission could unilaterally terminate the contract, but only if it compensated plaintiff for certain accumulated benefits and any remaining salary due:

Termination: This employment contract may be terminated upon the written mutual agreement of both [plaintiff] and the Commission. This employment contract may be terminated unilaterally by the Commission at any time, upon compensating [plaintiff] for all sick, personal, and vacation time which

he has accumulated, in addition to, compensating him for his full salary amount for all remaining time/years which are still remaining in his six year employment contract, and it is agreed to, that money owed will be assessed at an annual interest rate of nine percent (9%), compounded monthly, until full payment is realized.

Plaintiff was terminated from his position as defendant's executive director on April 19, 2002. He subsequently filed this lawsuit for recovery of his remaining salary from the date of his termination to the end of the contract (December 31, 2002), as well as payment for accrued sick, personal, and vacation time he had accumulated during his entire tenure as defendant's executive director, beginning in 1976, together with interest as allowed by the contract.

Defendant moved for summary disposition of plaintiff's claims. The trial court partially granted defendant's motion, agreeing that summary disposition was warranted with respect to any claim involving unused vacation, sick, and personal days that accrued before the effective date of the contract, January 1, 1997. The court concluded that there was nothing in the language of the contract indicating that it applied retroactively to accruals arising before January 1, 1997. The court denied defendant's motion with respect to plaintiff's claims arising after January 1, 1997, concluding that issues of fact precluded summary disposition.

Defendant subsequently filed a second motion for summary disposition, which the trial court ultimately granted. The trial court concluded that plaintiff's employment contract was unenforceable because (1) it had not been approved by the United States Department of Housing & Urban Development (HUD), and (2) records of plaintiff's work attendance and leave accruals were not properly kept and maintained, both in violation of applicable HUD regulations.

## II. Analysis

As set forth in *O'Donnell v Garasic*, 259 Mich App 569, 572-573; 676 NW2d 213 (2003):

A trial court's grant or denial of summary disposition under MCR 2.116(C)(10) is reviewed de novo on appeal. A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. Affidavits, pleadings, depositions, admissions, and documentary evidence are considered in reviewing a motion for summary disposition pursuant to MCR 2.116(C)(10), and the evidence is viewed in the light most favorable to the party opposing the motion. Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. [Internal quotations and citations omitted.]

The trial court's decision in this case was based on its determination that plaintiff's employment contract was unenforceable. Whether the contract is enforceable is an issue of law, which this Court reviews de novo. *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 721; 706 NW2d 426 (2005).

As a general proposition, parties are free to enter any contract at their will; however, a contract that violates the law is unenforceable. *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005); *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 51; 664 NW2d 776 (2003). In this case, the trial court concluded that plaintiff's employment contract was unenforceable, accepting defendant's argument that it violated HUD regulations. Specifically, the court concluded that the contract was unenforceable because it was for a six-year term and had not been approved by HUD. As support for this conclusion, the trial court relied on HUD's *Procurement Handbook for Public and Indian Housing Authorities*, which provides:

3. Executive Directors. Executive Directors may be hired as HA employees or may be retained under an employment contract. *For Executive Directors hired under an employment contract, any contract which is in excess of two years requires prior written approval by the local HUD office.* [Emphasis added.]

It is undisputed that HUD did not give prior written approval for plaintiff's six-year employment contract, and plaintiff does not argue on appeal that the handbook is not a regulation.<sup>1</sup> The trial court also concluded that the employment contract was unenforceable because of inadequate record keeping of plaintiff's attendance and leave accruals.

Plaintiff's principal argument is that the HUD handbook is not relevant to the enforceability of the contract because the contract was only between plaintiff and the Commission. There is no dispute that the contract is only between plaintiff and defendant, and there are also no provisions in the contract relating to HUD approval of the contract or its terms, or that incorporate any HUD rules or regulations. Thus, while a contract provision that violates the law is unenforceable, *Rory, supra* at 261, the contract in this case does not address the allegedly unlawful subjects. The contract does provide that plaintiff is entitled to be paid for accrued vacation, sick, and personal days, but it does not specify the manner in which records of accrued leave time are to be kept.<sup>2</sup> Thus, even if HUD regulations require that time and attendance records be kept and maintained in a specified manner, and require a more than two year contract to be approved by HUD, because no provision in the contract itself violates the regulations, the contract itself is not unenforceable as being contrary to law.

Additionally, the testimony presented to the trial court established that there was no HUD regulation or other provision that precluded enforcement of contracts of more than two years;

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<sup>1</sup> Whether a HUD handbook may be considered a regulation depends on whether HUD intended its provisions to be generally binding on it. For a discussion on the legal impact of handbooks or circulars, see *Thorpe v Housing Authority of City of Durham*, 393 US 268, 275-278; 89 S Ct 518; 21 L Ed 2d 474 (1969); *Williams v Hanover Housing Auth*, 871 F Supp 527, 531-532 (D Mass, 1994), vacated and remanded on other grounds in 113 F3d 1294 (CA 1, 1997); *Northern Indian Housing & Dev Council v United States*, 12 Cl Ct 417 (1987); and *Fairington Apartments of Lafayette v United States*, 7 Cl Ct 647, 650 (1985).

<sup>2</sup> The contract obviously also does not preclude a six year length, since that is the precise length agreed to by the parties.

indeed, the HUD representative never identified what regulatory provision she believed was violated, or what contract provision she believed was unlawful. That same witness also testified that HUD did not have a rule disallowing contracts of more than two years. For these reasons, the trial court never identified a particular contract provision that it believed violated HUD's record-keeping requirements. The trial court therefore erred in setting aside the contract based on HUD regulations that were neither part of the contract nor which precluded the contract or its terms.

However, we reject plaintiff's argument that summary disposition was improper because there is an issue of fact regarding his vacation, sick, and personal days that accrued before January 1, 1997. Contrary to plaintiff's argument, the trial court did not decide this issue on the basis that there was no evidence of plaintiff's accrued vacation, sick, and personal days. Instead, the court ruled that plaintiff could not recover for accrued days arising before January 1, 1997, the effective date of the contract, because the contract did not allow it. On appeal, plaintiff does not address this basis of the trial court's decision. Because plaintiff does not address the question whether the contract governs accruals arising before its effective date, an issue that must necessarily be reached with respect to leave accruals arising before January 1, 1997, appellate relief is not warranted with respect to pre-contract accruals. *Roberts & Son Contracting, Inc v North Oakland Dev Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987). Thus, because plaintiff has not presented a cognizable challenge to the trial court's order granting summary disposition with respect to accrued vacation, sick, and personal days arising before January 1, 1997, the effective date of the employment contract, we affirm that portion of the trial court's decision.<sup>3</sup>

Finally, in Docket No. 260015, plaintiff challenges the trial court's award of case evaluation sanctions. In light of our decision reversing the trial court's determination that the employment contract is unenforceable, defendant is no longer entitled on this record to case evaluation sanctions under MCR 2.403(O)(1). Accordingly, we reverse the award of case evaluation sanctions.<sup>4</sup>

Affirmed in part, reversed in part, and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski  
/s/ Joel P. Hoekstra  
/s/ Christopher M. Murray

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<sup>3</sup> Even if plaintiff had preserved the issue, we would hold that the contract unambiguously applies to benefits accrued during the term of the contract, not to any benefits that may have accrued before then. Nothing in the contract can be read as granting plaintiff such pre-contract benefits, and we will not imply any.

<sup>4</sup> During the proceedings on remand the issue of whether defendant breached the contract, and if so the extent of any possible damages, will be decided. After those matters are determined, the court can decide anew the issue of case evaluation sanctions.