

STATE OF MICHIGAN
COURT OF APPEALS

M.G. MARTY LAWRENCE,

Plaintiff-Appellee,

v

HARRY MAJOR MACHINE & TOOL
COMPANY and H. CURTIS MAJOR,

Defendants-Appellants.

UNPUBLISHED

April 20, 2001

No. 220958

Macomb Circuit Court

LC No. 98-005390-CZ

Before: Talbot, P.J., and Sawyer and F. L. Borchard*, JJ.

PER CURIAM.

Defendants appeal by leave granted from a circuit court order denying their motion for partial summary disposition pursuant to MCR 2.116(C)(7) and (10). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review the trial court's ruling on a motion for summary disposition de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). It appears that defendants' motion was decided under subrule (C)(10) only. Such a motion tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

Defendants' motion sought judgment on plaintiff's claim for wrongful discharge. That claim was based on two theories: breach of an express contract for a definite term of employment and breach of an express or implied agreement that plaintiff's employment was terminable only for just cause.

The elements of a valid contract are (1) parties competent to contract, (2) proper subject matter, (3) legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation. *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991). Mutual agreement or mutual

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

assent refers to a meeting of the minds on all material terms of the contract. *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 548-549; 487 NW2d 499 (1992). The parties' mutual assent may be expressed orally or in writing or by other acts or conduct. *Ludowici-Celadon Co v McKinley*, 307 Mich 149, 153; 11 NW2d 839 (1943). The plaintiff bears the burden of proving the existence of the contract sought to be enforced. *Kamalnath, supra* at 549.

The evidence showed that Harry Major made an offer to enter into an employment contract. However, an offer is not a contract. *Id.* Plaintiff stated in his affidavit that he accepted the offer, thereby creating a binding contract, but did not explain the basis for that conclusion. An affidavit must set forth with particularity specific facts admissible in evidence to establish or deny the grounds stated in the motion. *SSC Associates Ltd Partnership v General Retirement Sys of Detroit*, 192 Mich App 360, 364; 480 NW2d 275 (1991). Conclusionary language is insufficient to meet that requirement. *Durant v Stahlin*, 375 Mich 628, 657; 135 NW2d 392 (1965) (Souris, J., concurring). While the existence of a contract of employment can be inferred from the fact that plaintiff did go to work for Harry Major, there is no evidence that defendants expressly agreed, either verbally or in writing, to employ plaintiff under the terms expressed in the offer as opposed to some other arrangement, and plaintiff later signed a written acknowledgment that his employment was at will. Therefore, plaintiff failed to meet his burden of proving the existence of an express contract embodying the terms of the offer and the trial court erred in denying that aspect of defendants' motion.

Next we consider plaintiff's claim that his employment was terminable only for just cause.

Generally, and under Michigan law by presumption, employment relationships are terminable at the will of either party. However, the presumption of employment at will can be rebutted so that contractual obligations and limitations are imposed on an employer's right to terminate employment. The presumption of employment at will is overcome with proof of either a contract provision for a definite term of employment, or one that forbids discharge absent just cause. Courts have recognized the following three ways by which a plaintiff can prove such contractual terms: (1) proof of 'a contractual provision for a definite term of employment or a provision forbidding discharge absent just cause'; (2) an express agreement, either written or oral, regarding job security that is clear and unequivocal; or (3) a contractual provision, implied at law, where an employer's policies and procedures instill a 'legitimate expectation' of job security in the employee. [*Lytle v Malady (On Rehearing)*, 458 Mich 153, 163-164; 579 NW2d 906 (1998) (Weaver, J.)]

As discussed above, plaintiff failed to present any evidence to show the existence of a written or oral contract that provided for a definite term of employment. The employment offer did not contain a just cause provision and plaintiff presented no evidence of any oral promise of termination only for just cause or anything to that effect in the company's policies and procedures. Even assuming Major had made an oral promise of termination only for just cause, it was modified or superseded by the subsequent acknowledgment plaintiff signed agreeing that his employment was terminable at will. *Novak v Nationwide Mut Ins Co*, 235 Mich App 675,

682; 599 NW2d 546 (1999); *Barnell v Taubman Co, Inc*, 203 Mich App 110, 118-119; 512 NW2d 13 (1993). Plaintiff having signed that disclaimer, his employment was terminable at will absent a subsequent modification thereof, *Clement-Rowe v Michigan Health Care Corp*, 212 Mich App 503, 506; 538 NW2d 20 (1995), which plaintiff did not allege or prove. Therefore, the trial court erred in denying defendants' motion.

Reversed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Fred L. Borchard