

STATE OF MICHIGAN
COURT OF APPEALS

MARIA MENDOZA,

Plaintiff-Appellant,

v

GORNO FORD ELC, L.L.C.,

Defendant-Appellee.

UNPUBLISHED

May 14, 2013

No. 309663

Wayne Circuit Court

LC No. 11-012887-CD

Before: BORRELLO, P.J., and K.F. KELLY and MURRAY, JJ.

MEMORANDUM.

In this wrongful discharge action, plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) (claim barred by a six-month contractual limitations period). We affirm.

Summary disposition may be granted pursuant to MCR 2.116(C)(7) when a claim is barred "because of . . . [a] statute of limitations[.]" Summary disposition under MCR 2.116(C)(7) is also appropriate when a claim is time-barred by a contractual provision. See *Clark v DaimlerChrysler Corp*, 268 Mich App 138, 140-141; 706 NW2d 471 (2005). This Court reviews the grant or denial of summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Plaintiff filed this action almost three years after she was discharged from her employment with defendant. Plaintiff does not dispute that she signed an employment application that provided, in pertinent part:

In consideration of the dealership's review of my application, I agree that any claim or lawsuit arising out of my employment with the dealership, or my application for employment with the dealership, must be filed no more than six (6) months after the date of the employment action that is the subject of the claim or lawsuit. While I understand that the statute of limitations for claims arising out of an employment action may be longer than six (6) months, I agree to be bound by the six (6) month period of limitations set forth herein, and I WAIVE ANY STATUTE OF LIMITATION TO THE CONTRARY, unless state, federal or local law prohibits a waiver of said statute of limitations.

This Court has upheld similar six-month limitation periods in employment applications. *Clark*, 268 Mich App at 142-145; *Timko v Oakwood Custom Coating, Inc.*, 244 Mich App 234; 625 NW2d 101 (2001). We disagree with plaintiff's argument that the limitations period in her employment application is unenforceable because the application did not oblige defendant to any action. This Court addressed and rejected a similar argument in *Timko*, stating:

Plaintiff next argues that the 180-day period of limitation cannot be enforced because defendant is "attempting to enforce the provisions contained in the employment application as if it is a contract, a contract where the Defendants have absolutely no obligation." "The enforceability of a contract depends, however, on consideration and not mutuality of obligation." *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 600; 292 NW2d 880 (1980); 1 Restatement Contracts, 2d, § 79, p 200. This Court previously has recognized that the terms of an employment application constituted part of an employee's and employer's contract of employment. *Butzer v Camelot Hall Convalescent Centre, Inc.*, 183 Mich App 194, 200; 454 NW2d 122 (1989); *Eliel v Sears, Roebuck & Co.*, 150 Mich App 137, 140; 387 NW2d 842 (1985). Here, defendant clearly provided plaintiff consideration to support enforcement of the terms of the application, specifically employment and wages. 1 Restatement Contracts, 2d, § 71, p 172 (consideration may constitute a return promise or a performance, including an act, a forbearance, or "the creation, modification, or destruction of a legal relation"); Black's Law Dictionary (7th ed), p 300 (defining consideration as "[s]omething of value [such as an act, a forbearance, or a return promise] received by a promisor from a promisee"). [*Timko*, 244 Mich App at 244.]

Plaintiff does not suggest any grounds for distinguishing *Timko*. In light of that decision, the trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kirsten Frank Kelly
/s/ Christopher M. Murray