

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

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JOE WADE FORMICOLA,

Plaintiff-Appellant,

V

CBS CORPORATION, d/b/a WYCD “YOUNG  
COUNTRY” 99.5 FM,

Defendant-Appellee.

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UNPUBLISHED

August 23, 2002

No. 227881

Oakland Circuit Court

LC No. 98-004279

Before: Whitbeck, C.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiff brought this action against defendant, alleging breach of contract, promissory estoppel, fraud and misrepresentation, and intentional interference with a prospective economic advantage. The trial court granted defendant’s motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff appeals as of right. We affirm.

Plaintiff entered into a two-year contract with defendant on November 20, 1995, as a morning personality on defendant’s radio station. In August 1997, a competitor radio station began looking for a morning radio personality. Plaintiff maintains that the competitor expressed an interest in hiring him, though no one from the competitor radio station contacted plaintiff. In any event, the competitor filled the spot on August 24, 1997. Plaintiff further alleges that because defendant’s general manager was aware that the competitor was searching for a new morning radio personality, the general manager engaged plaintiff in “several weeks of conversation” about his contract. According to plaintiff, the result of those conversations was an oral modification to plaintiff’s written contract, extending the contract by a period of thirteen months and increasing plaintiff’s salary and vacation time. Plaintiff subsequently contacted the competitor radio station to express an interest in employment, but was told that there were no longer any positions available. Defendant discharged plaintiff two days after he had contacted the competitor station.

Defendant’s motion for summary disposition argued that plaintiff’s claim for an alleged oral contract is barred by the statute of frauds because the contract could not be completed within one year. Defendant also asserted that plaintiff’s remaining claims should fail because the alleged job opportunity interfered with had ceased to exist before defendant’s alleged promise, so that even if the alleged promise had been made, there was no detrimental reliance by the plaintiff.

We review de novo a trial court's grant of summary disposition under MCR 2.116(C)(10). *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). In reviewing such a decision, we consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Summary disposition under MCR 2.116(C)(10) is appropriately granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

Plaintiff contends the trial court erred by dismissing his breach of contract claim. We disagree and hold that the trial court properly concluded that the alleged oral thirteen-month contract was barred by the statute of frauds, MCL 566.132(a). The statute of frauds requires that any agreement that "by its terms, is not to be performed within one year from the making thereof," must be in writing and signed by the party to be charged if it is to be enforced. *Marrero v McDonnell Douglas*, 200 Mich App 438, 441; 505 NW2d 275 (1993). An employment contract that cannot be performed within one year is within the statute of frauds. *Id.* The one-year rule is construed strictly. *Hill v GMAC*, 207 Mich App 504, 509; 525 NW2d 905 (1994). In this case, the alleged 13 month oral contract was incapable of being performed within one year. *Marrero, supra*. Accordingly, the trial court did not err in granting defendant summary disposition of plaintiff's breach of contract claim. The fact that plaintiff claims the oral agreement allowed him to be fired within the first year and that defendant would have been liable for 90-days pay if the termination was without cause, does not avoid the strict construction of the one year rule.

Plaintiff also argues that the trial court erred in finding that there was no evidence of detrimental reliance to support plaintiff's claims of promissory estoppel, fraud and misrepresentation, and intentional interference with a prospective economic advantage. Again, we disagree.

Among the necessary elements to establish promissory estoppel are a definite and clear promise that produced detrimental reliance on the part of the plaintiff. *Marrero, supra* at 442-443. To establish that plaintiff relied on the purported promise, the alleged reliance cannot precede the promise. As an element of fraudulent misrepresentation, plaintiff must show that he acted in reliance upon a material misrepresentation. *Phinney v Perlmutter*, 222 Mich App 513, 534;564 NW2d 532 (1997). "An action for fraudulent misrepresentation must be predicated upon a statement of past or existing fact." *Marrero, supra* at 444. An alleged contract that is voided under the statute of frauds cannot form the basis for an action in fraud. *Cassidy v Kraft-Phenix Cheese Corp*, 285 Mich 426, 434-437; 280 NW 814 (1938). A mere broken promise does not constitute fraud, nor is it evidence of fraud. *Marrero, supra* at 444. Future promises also cannot form the basis of an action for fraud. *Id.* A claim of tortious interference with prospective economic advantage requires a reasonable likelihood or probability that is impeded by the defendant. *Trepel v Pontiac Osteopathic Hosp*, 135 Mich App 361, 377; 354 NW2d 341 (1984).

Plaintiff's actions for promissory estoppel, fraudulent misrepresentation and economic interference are all premised on the theory that defendant knew about a job possibility for plaintiff at the competitor radio station and stalled negotiations until the job had been filled. Plaintiff asserts that he was seduced into a sense of job security while employment at the competitor station was available. The evidence does not support plaintiff's theories of liability.

Plaintiff's written contract with defendant did not expire until November 20, 1997. Although the competitor station may have been interested in hiring plaintiff in August 1997, the evidence does not show that plaintiff was contacted by the competitor at that time. Furthermore, the prospective employment position was filled by the competitor on August 24, 1997. Thus, even if plaintiff and defendant engaged in "several weeks of conversation," about his contract, plaintiff does not contend that any agreement was reached until September 1997, after the competitor had filled its position and during a period still covered by plaintiff's written contract. The evidence is insufficient to establish that defendant impeded plaintiff's job opportunities, that defendant relied on a material misrepresentation, or that there was any definite and clear promise producing detrimental reliance by the plaintiff while the position was still available at the competitor station. Accordingly, the trial court did not err in granting summary disposition.

Affirmed.

/s/ William C. Whitbeck

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra