COURT OF APPEALS
DECISION
DATED AND FILED

June 21, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP2491-FT **Cir. Ct. No. 2009CV681**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STEVEN P. HANSON,

PLAINTIFF-APPELLANT,

V.

CARTER SMITH, INDIVIDUALLY AND D/B/A COMMUNITY ENTERTAINMENT CENTERS AND EAU CLAIRE BOWLING CENTER, INC.,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Eau Claire County: WILLIAM M. GABLER, SR., Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Steven Hanson appeals a summary judgment dismissing his claims against Carter Smith, individually and d/b/a Community Entertainment Centers and Eau Claire Bowling Center, Inc. (collectively "Bowling

Center").[1] Hanson contends summary judgment was precluded by a factual issue as to whether he worked the requisite five continuous years as the Bowling Center's manager under a verbal agreement that would allegedly entitle him to a twenty percent business ownership interest. We conclude the agreement was indefinite regarding essential terms and therefore affirm.[2]

¶2 This case arises out of an oral agreement whereby Hanson was hired as manager of the Bowling Center on September 21, 2003. The parties agreed on a salary, but also discussed that if Hanson remained employed as manager for a continuous five years, he would be eligible to receive a twenty percent ownership interest in the Bowling Center. On August 14, 2008, Hanson was informed that he would no longer work for the Bowling Center after October 31, 2008. The Bowling Center later changed Hanson's last day of employment to September 30, 2008. After Hanson's last day of work on September 30, the Bowling Center refused to grant Hanson the twenty percent ownership interest in the business, claiming he had not satisfied the prerequisite of five years' continuous employment.

[1] This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

[2] The appendix to Hanson's brief falsely certifies that it complies with WIS. STAT. RULE 809.19(2)(a). The appendix represents it contains, among other things, "the findings or opinion of the trial court," and "portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues." However, the appendix contains only a final judgment which does not show the circuit court's reasoning, and a memorandum decision dated September 28, 2010. The memorandum decision involved the dismissal of a counterclaim seeking recovery of post-termination severance payments. This issue is not raised on appeal and therefore this decision does not aid this court. Counsel is admonished that future violations of the rules of appellate procedure may result in sanctions.

¶3 The circuit court concluded that there was no issue of material fact as to the date of Hanson's termination as manager on August 14, 2008, although he "was permitted to stay on … to help a transition to a new manager." The court further concluded "the so-called promise of a business interest in and to the defendants' business was so vague, so unquantifiable and so [a]morphous, that courts and juries can't supply missing terms of an agreement that never existed in writing." The court therefore granted summary judgment dismissing Hanson's complaint.[3] Hanson now appeals.

¶4 We review the circuit court's grant of summary judgment using the same methodology as the circuit court. ***City of Beaver Dam v. Cromheecke***, 222 Wis. 2d 608, 613, 587 N.W.2d 923 (Ct. App. 1998). That methodology is well-known and need not be repeated here, except to observe that summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).

¶5 Hanson argues that an issue of fact exists as to whether he was terminated as manager on August 14.[4] We need not reach this issue because we

[3] The circuit court also concluded the alleged agreement violated the statute of frauds. The Bowling Center does not address the statute of frauds on appeal, and we will therefore not address the issue.

[4] Hanson argues that he continued working for the Bowling Center with the same duties, title and pay until September 30, 2008. The Bowling Center responds that undisputed facts show Hanson was terminated as manager on August 14, before the five years had elapsed. The Bowling Center relies upon deposition testimony where Hanson himself purportedly acknowledged he was terminated as manager on August 14, as well as statements Hanson made to third parties. Our review of the record reveals that Hanson's statements at his deposition concerning his date of termination as manager are less than clear and, if anything, tend to belie the Bowling Center's characterization. In any event, we need not reach the issue of whether Hanson was employed for a continuous five-year period.

conclude the agreement was indefinite regarding essential terms, precluding an enforceable contract.

¶6 Vagueness or indefiniteness as to an essential term of an agreement prevents the creation of a contract because a contract must be definite as to the parties' basic commitments and obligations. ***Management Comp. Servs. v. Hawkins, Ash, Baptie & Co.***, 206 Wis. 2d 158, 178, 557 N.W.2d 67 (1996). Here, the circuit court correctly dismissed Hanson's claim for an equity interest in the business on the grounds that the discussion was vague and indefinite, such that no agreement on that issue had been reached. By way of example, the parties never discussed whether the Bowling Center would issue new stock in such an amount as to leave Hanson with a twenty percent interest, thereby diluting the interests of the current three owners, or whether twenty percent of the stock would come from one or more of the existing stockholders. Furthermore, if the equity interest came from the existing owners, who would contribute and to what degree? With questions such as the source of the equity interest or how it would be transferred being unaddressed, fundamental terms of the agreement between the parties were missing, rendering any alleged agreement in that regard unenforceable. The record fails to demonstrate subsequent conduct or practical interpretation by the parties that would ameliorate the deficiency. *See* ***id.*** at 179.

¶7 Hanson insists that the Bowling Center, in its answer to his complaint, conceded the existence of an agreement by which Hanson would receive a twenty percent business interest after working for a continuous five-year period. Hanson also contends that the doctrine of promissory estoppel requires reversal of summary judgment. However, as the circuit court correctly observed, the Bowling Center acknowledged there was an agreement, "but disagree[d] as to the nature and extent of the employment agreement." Moreover, we have

concluded the agreement was indefinite as to the parties' essential commitments and obligations, and therefore unenforceable. Finally, Hanson provides no citation to case law establishing that promissory estoppel may render an alleged agreement enforceable notwithstanding indefiniteness. We therefore will not address the issue further. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.