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DISTRICT III

December 17, 2019

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You are hereby notified that the Court has entered the following opinion and order:

2019AP176

Michael P. Brooks v. Assemblers, Inc. (L. C. No. 2018CV46)

Before Stark, P.J., Hruz and Seidl, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Michael Brooks appeals a judgment dismissing his complaint against Assemblers, Inc. Brooks, invoking promissory estoppel, seeks damages for what he perceives as the premature termination of his employment contract with Assemblers. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition and we summarily affirm the judgment of dismissal. *See* WIS. STAT. RULE 809.21 (2017-18).¹

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

According to the complaint, Brooks was hired as a security guard by the Forest County Potawatomi Community on February 14, 2017, and he started work shortly thereafter. Meanwhile, Assemblers, for which Brooks had previously worked, advertised an open management position, and Brooks applied. Brooks was offered employment with Assemblers in late February following two phone conversations with Larry Armand.

During the phone conversations, Brooks (who lives in Crandon, Wisconsin) was advised that the position with Assemblers required his relocation to central Wisconsin. Brooks alleged that he and Armand agreed that the relocation requirement “was to be deferred until [Brooks’ son] graduated from high school” on June 2, 2018. Brooks agreed to take the job, and the parties executed a written employment contract. It appears the contract was executed on February 28, 2017.²

The employment contract is a one-page document that identifies the position, salary, benefits, start date and other requirements. There is no duration or end date for Brooks’ employment stated in the contract. The relocation requirement is absent, as is any indication of the parties’ agreement to defer that requirement. Nonetheless, Brooks alleged that he “expected to be employed by Assemblers[,] Inc.[,] at least until June 2, 2018[,] for the reason [that] the requirement to relocate to central Wisconsin was deferred until June 2, 2018.”

Brooks’ employment with Assemblers was terminated on August 31, 2017, after his position was eliminated. Brooks filed suit, alleging the breach of an oral promise to hire him “up

² The record contains an undated, unsigned copy of the employment agreement. Brooks alleges he signed the agreement on February 28, 2017, and notified the Forest County Potawatomi Community of his job change that same date.

through June 2, 2018.” The complaint, however, nowhere alleged that Armand—or anyone at Assemblers—promised that Brooks would remain employed through June 2, 2018. Assemblers filed a motion to dismiss, asserting that Brooks was an at-will employee because neither the employment contract nor the oral deferral of the relocation requirement guaranteed employment through a certain date. Following a hearing, the circuit court determined that the allegations in the complaint did not demonstrate a “guarantee of employment,” and it dismissed the complaint.

A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint. *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶19, 356 Wis. 2d 665, 849 N.W.2d 693. “When determining whether a complaint states a claim upon which relief may be granted, courts must ‘accept as true all facts well-pleaded in the complaint and reasonable inferences therefrom.’” *Cattau v. National Ins. Servs. of Wis., Inc.*, 2019 WI 46, ¶4, 386 Wis. 2d 515, 926 N.W.2d 756 (per curiam) (quoting *Data Key Partners*, 356 Wis. 2d 665, ¶19), *reconsideration denied*, 2019 WI 84, 388 Wis. 2d 652, 931 N.W.2d 538. The sufficiency of the complaint depends on the substantive law governing the claim because the substantive law dictates what facts must be pled. *Id.*, ¶6. In the process of construing the complaint, a court cannot add facts, and any legal conclusions pled are not accepted as true. *Data Key Partners*, 356 Wis. 2d 665, ¶19.

Before the circuit court, Brooks made very clear that “[t]his is not a breach of contract case.” Brooks conceded there was no contractual provision that required his employment through a certain date or for a specified duration. When an employment contract is for an indefinite term and does not limit the grounds for termination, the parties’ silence indicates the contract can be terminated at will by either party and without cause. *Goff v. Massachusetts Protective Ass’n, Inc. of Worcester, Mass.*, 46 Wis. 2d 712, 715, 176 N.W.2d 576 (1970).

Instead, Brooks contends on appeal there was an oral promise of continued employment that was not reflected in the contract. The only oral promise arguably stated in the complaint, however, is a promise by Assemblers not to enforce the relocation requirement until June 2, 2018. Brooks attempts to transform this particular promise into a promise not to terminate him before that date, reasoning “[t]he only way Brooks can promise to relocate after [his son’s] graduation is if he remains hired until June 2, 2018.” The employment agreement does not contain a merger clause, so Brooks contends that the terms of a prior oral agreement can be used to supplement the terms set forth in the written contract. See *Town Bank v. City Real Estate Dev., LLC*, 2010 WI 134, ¶¶36-37 & n.3, 330 Wis. 2d 340, 793 N.W.2d 476.

The circuit court properly dismissed Brooks’ complaint for failure to state a claim. The complaint’s factual allegations, even when considered in the light most favorable to Brooks, cannot be reasonably construed to provide a guarantee of employment through June 2, 2018. The complaint clearly states Assemblers promised only that it would not enforce the relocation requirement prior to that date. There is no reasonable inference from the facts set forth that this statement constituted a promise to employ Brooks until that date, or that Brooks would remain in Assemblers’ employ until his deferred promise to relocate triggered.³ Brooks’ assertion of an

³ Brooks argues there was a corresponding promise by him to remain employed by Assemblers until June 2, 2018. No such promise is evident on the face of the complaint. Construing all reasonable inferences in Brooks’ favor, it seems clear as a factual matter that Armand informed Brooks of the relocation requirement, Brooks requested that he not be required to relocate until after his son’s graduation, and Armand assented to that request. For the reasons stated herein, the parties’ statements cannot be construed as any exchange of promises to continue the employment relationship for a particular period of time.

(continued)

oral promise of continued employment does not comport with the terms of the oral “agreement” regarding the relocation issue, as set forth in the complaint. The foregoing analysis alone defeats Brooks’ appeal.

Additionally, Brooks relies on a flawed legal theory in asserting that any extra-contractual promises may be enforced. Even assuming there was an oral agreement not to terminate Brooks before June 2, 2018, any such agreement would be void unless written because it falls outside the one-year period for oral promises set by the statute of frauds. *See* WIS. STAT. § 241.02(1)(a). As a result, Brooks relies on a promissory estoppel theory to support his claim. Where the elements of promissory estoppel are met, the statute of frauds is not an absolute bar to recovery; the “equities of the situation take the transaction out of the statute of frauds, and the contract is enforceable according to its terms.” *U.S. Oil Co. v. Midwest Auto Care Servs., Inc.*, 150 Wis. 2d 80, 90, 440 N.W.2d 825 (Ct. App. 1989).

Promissory estoppel, though, “only arises when there is no contract.” *Scott v. Savers Prop. & Cas. Ins. Co.*, 2003 WI 60, ¶53, 262 Wis. 2d 127, 663 N.W.2d 715. In recognizing the doctrine, our supreme court stated that “increased moral consciousness of honesty and fair representations in all business dealings” required the creation of a remedy for fraudulent or deceitful representations that induce reliance on the part of the promisee without a meeting of the minds. *Hoffman v. Red Owl Stores, Inc.*, 26 Wis. 2d 683, 694-95, 133 N.W.2d 267 (1965).

In this regard, we note that when contracts do not specify a specific period of time, there is a “strong presumption in favor of a contract terminable at will unless the terms of the contract or other circumstances clearly manifest the parties’ intent to bind each other.” *Forrer v. Sears, Roebuck & Co.*, 36 Wis. 2d 388, 393, 153 N.W.2d 587 (1967). The alleged statement here falls far short of clearly manifesting the parties’ desire to create an employment relationship of a specific duration, and no reasonable fact finder could conclude otherwise.

Here, the employment agreement Brooks signed established the terms of the parties' relationship, and Brooks had the opportunity to include any additional terms he felt were necessary or should be included as a result of the parties' negotiation. The existence of the employment contract forms a complete defense to Brooks' cause of action based on promissory estoppel. *See Goff*, 46 Wis. 2d at 717.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals