

No. 1-11-3299

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KAREN MUCHOWICZ,)	APPEAL FROM THE
Plaintiff-Appellant,)	CIRCUIT COURT OF
)	COOK COUNTY
)	
v.)	No. 08 L 243
)	
)	
HOLY CROSS HOSPITAL, an Illinois Not-For-Profit)	HONORABLE
Corporation,)	SANJAY TAILOR,
Defendant-Appellee.)	JUDGE PRESIDING.

JUSTICE STEELE delivered the judgment of the court.
Presiding Justice Salone and Justice Neville concurred in the judgment.

ORDER

¶ 1 *HELD:* The circuit court granted summary judgment to the defendant employer on the plaintiff former employee's claims of breach of contract and promissory estoppel based on the employer's policy manual. The appellate court ruled that the introduction to the employee manual clearly states that the policy statements therein were neither a contractual offer nor an unambiguous promise to employees. The judgment of the circuit court is affirmed.

¶ 2 Plaintiff, Karen Muchowicz, appeals from orders of the circuit court of Cook County granting summary judgment to defendant, Holy Cross Hospital (Holy Cross), on the second and

third counts of her amended complaint. On appeal, Muchowicz argues that the circuit court erred in ruling that Holy Cross's 1978 employee manual did not create an enforceable contract or an unambiguous promise to hospital employees. For the following reasons, we disagree and affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 The record on appeal discloses the following facts. On September 2, 1975, Holy Cross hired Muchowicz as a receptionist/clerk in the hospital's personnel department. In deposition testimony, Muchowicz stated that she received an employee manual. Muchowicz testified that the manual explained transfers, possible benefits, and mentioned a "contract" that employees would have with Holy Cross. Muchowicz added that she no longer had a copy of the manual. During her deposition, Muchowicz was also shown an exhibit, which appears to be a Holy Cross employee manual revised as of April 1973. Muchowicz acknowledged the manual contained no language regarding transfers or layoffs, but she stated that she was unsure whether the exhibit was the manual she received in 1975.

¶ 5 In 1978, Holy Cross issued another personnel policy manual to Muchowicz. The introduction to the 1978 manual states in part:

"These Policies are not tablets of stone and can and will be updated as the need arises as we work together in the Holy Cross Hospital family."

Additionally, the 1978 manual also includes policy 7-G, which states:

"In the event of lay-off due to lack of work, job displacement, or other conditions beyond the control of Holy Cross Hospital, an attempt will be made, whenever possible,

to find a suitable opening elsewhere within the Hospital's organization. If a transfer is not possible and the probationary period has been served, two weeks' prior notice before lay-off will be granted. Lay-offs and recalls will be based on seniority within the job classification in which lay-offs are to be made to the extent possible as the situation warrants."

The 1978 manual indicates that the effective date of policy 7-G was July 1, 1971.

¶ 6 In 1982, Muchowicz was promoted to the position of employment assistant in the personnel department. In 1987, Muchowicz was transferred to the accounting department, in the position of time and attendance coordinator. On July 31, 1997, her position was reclassified to accounting associate. On the same date, two other employees were reclassified as accounting associates – Sharon Waskow, who was hired in 1985, and Grayce Kuris, who was hired in 1993. In this position, Muchowicz reported to disbursement supervisor Maria Manolis, who in turn reported to chief financial officer Renee Suntay.

¶ 7 In 2002, due to a financial crisis, Holy Cross found itself unable to timely pay its bills. Accounting associates shifted from primarily data entry to fielding telephone calls from vendors regarding past-due invoices. In October or November 2002, Manolis received complaints about Muchowicz's demeanor and tone from vendors and accounting department employees. Waskow and Kuris gave deposition testimony that Muchowicz did her job and knew it well. However, in addition to the complaints about demeanor, Muchowicz referred certain vendors' telephone calls and emails to Manolis. On December 31, 2002, Manolis met with Muchowicz to discuss the complaints and to advise her on handling vendor calls.

¶ 8 On January 6, 2003, Manolis and Suntay met with Muchowicz and placed her on a 30-day probation, for the reasons stated in the prior complaints against her. Manolis testified at a deposition that she met with Muchowicz weekly thereafter, but she continued to receive vendor calls about Muchowicz and complaints from Muchowicz's coworkers. On February 7, 2003, Manolis and Suntay again met with Muchowicz and told her she was not meeting her job expectations. Following that meeting, Muchowicz met with Holy Cross's human resources director, Karen Mitrenga, who informed her that her employment was terminated. Mitrenga offered Muchowicz a severance package, which Muchowicz declined. Mitrenga also informed Muchowicz she would have the opportunity to interview for other open positions at the hospital. A few weeks later, Mitrenga telephoned Muchowicz to ask whether she was interested in interviewing for open positions; Muchowicz declined.

¶ 9 In January 2003, Holy Cross also implemented an organizational restructuring of its workforce. Affected employees were offered severance packages. Muchowicz testified that the 2003 layoff did not affect other employees in her department. Mitrenga testified that Muchowicz was discharged for failing to meet job expectations, but she was offered a severance package because she was a long-term employee who made an effort to meet the job expectations.

¶ 10 On January 9, 2008, Muchowicz filed a complaint against Holy Cross in the circuit court of Cook County, which she later amended on May 23, 2008. The amended complaint alleged: (1) breach of contract, alleging Muchowicz accepted her employment in 1975 based on the promulgation of policy 7-G in 1971; (2) breach of contract, alleging in the alternative that policy 7-G was first promulgated in the 1978 manual; (3) promissory estoppel, alleging Muchowicz

relied on policy 7-G during her employment; and (4) breach of an oral settlement agreement regarding entries in her personnel file.

¶ 11 On June 20, 2008, Holy Cross moved to dismiss the first third and fourth counts of the amended complaint pursuant to section 2-619 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2008)). Holy Cross argued that Muchowicz's first claim for breach of contract and her claim of promissory estoppel should be dismissed because it was undisputed that the 1971 and 1973 employee manuals did not contain policy 7-G. Holy Cross also argued that the claim for breach of an oral settlement agreement was untimely. Holy Cross further argued that the first, third and fourth counts of the amended complaint should be dismissed pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2008)), for failing to state legally cognizable claims. On November 19, 2008, the circuit court entered an order dismissing the first count of the amended complaint pursuant to section 2-619 of the Code and the fourth count in the amended pleadings pursuant to section 2-615 of the Code, and granted 28 days to replead the latter count. On December 17, 2008, after Muchowicz failed to replead, the circuit court entered a status order dismissing the fourth count with prejudice.

¶ 12 On January 27, 2011, Holy Cross filed a motion for summary judgment on the remaining counts of the amended complaint. On May 9, 2011, Muchowicz filed her response in opposition to summary judgment. On May 27, 2011, Holy Cross filed its reply in support of the motion.

¶ 13 On July 25, 2011, following a hearing, the circuit court granted the motion for summary judgment, ruling that the employee manual carried a disclaimer and had language that left Holy Cross discretion in implementing workforce reduction. On August 24, 2011, Muchowicz filed a

motion to reconsider summary judgment on her claim of promissory estoppel, suggesting that the court had not clearly rejected it. On October 13, 2011, the circuit court denied the motion to reconsider. On November 7, 2011, Muchowicz filed her timely notice of appeal to this court.

¶ 14

DISCUSSION

¶ 15 On appeal, Muchowicz argues that the circuit court erred in granting summary judgment on the second and third counts of her amended complaint. Summary judgment is appropriate when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2010). The purpose of summary judgment is not to try a question of fact, but to determine whether a genuine issue of triable fact exists. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). In determining whether a question of fact exists, "a court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent." *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). Summary judgment is "a drastic means of disposing of litigation" and thus should only be awarded when the moving party's right to judgment as a matter of law is "clear and free from doubt." *Id.* We review grants of summary judgment *de novo*. *Id.*

¶ 16

Breach of Contract

¶ 17 Under Illinois law, an employee hired without a fixed term is presumed to be an at-will employee whose employment may be terminated for any cause or reason, provided the employer does not violate clearly mandated public policy. *Duldulao v. Saint Mary of Nazareth Hospital*

Center, 115 Ill. 2d 482, 489 (1987). Our supreme court crafted an exception to this rule where "an employee handbook or other policy statement creates enforceable contractual rights if the traditional requirements for contract formation are present." See *id.* Three requirements must be met for an employee handbook or policy statement to form an employee contract:

"First, the language of the policy statement must contain a promise clear enough that an employee would reasonably believe that an offer has been made. Second, the statement must be disseminated to the employee in such a manner that the employee is aware of its contents and reasonably believes it to be an offer. Third, the employee must accept the offer by commencing or continuing to work after learning of the policy statement." *Id.*

When these requirements are met, "then the employee's continued work constitutes consideration for the promises contained in the statement, and under traditional principles a valid contract is formed." *Id.* However, where the employee manual contains a disclaimer indicating that the manual promises nothing and does not act as a contract, no enforceable contractual rights generally will be conferred on the employee based on that manual. *E.g., Ivory v. Specialized Assistance Services, Inc.*, 365 Ill. App. 3d 544, 546 (2006) (and cases cited therein).

¶ 18 Muchowicz heavily relies upon the Illinois Supreme Court's decision in *Doyle v. Holy Cross Hospital*, 186 Ill. 2d 104, 110 (1999), in support of her argument that the purported disclaimer is not effective in this case. In *Doyle*, the plaintiffs were hired by Holy Cross in 1960, 1968, and 1972, and discharged in 1991. *Id.* at 106. The plaintiffs sued, based on a version of policy 7-G (entitled "Economic Separation"), which differs from the language of policy 7-G in this case. *Id.* at 107. Holy Cross asserted that the 1971 handbook actually contained a different

policy regarding terminations, but for purposes of the *Doyle* appeal, Holy Cross assumed (and the supreme court accepted) that the policy quoted in the opinion was the one in force in 1971. *Id.* Holy Cross relied on policy 5-I, an express disclaimer of contract added to the handbook in 1983. *Id.* at 107-08.

¶ 19 The *Doyle* court stated that the issue on appeal was "a narrow one, involving an employer's power to make unilateral changes to provisions in an employee handbook, in the absence of a previous reservation of the right to do so, that would operate to the disadvantage of existing employees." *Id.* at 110. The court concluded that the employer had no such power:

"[A]fter an employer is contractually bound to the provisions of an employee handbook, unilateral modification of its terms by the employer to an employee's disadvantage fails for lack of consideration. This was the view adopted by the appellate court below, and a number of other courts have also relied on this reasoning in rejecting efforts by employers to unilaterally modify handbook terms or other personnel policies to the disadvantage of existing employees and in the absence of a reservation of the right to do so. Applying well-established principles of contract law, these courts have held that modifications to terms and provisions of employee handbooks cannot apply to existing employees in the absence of consideration. Moreover, these cases have held that the requisite consideration for a modification that would operate to an employee's disadvantage is not supplied simply by the employee's continued work for the employer. That is to say, in addition to an offer and acceptance, consideration must be found elsewhere, whether in

the form of a new benefit to the employee or a new detriment to the employer, or as the product of mutual agreement. [Citations.]" *Id.* at 112-13 (and cases cited therein).

However, the court later ruled that continued employment can constitute consideration for benefits conferred on existing employees by later versions of a handbook. *Id.* at 115-16.

¶ 20 This case is factually distinguishable from *Doyle*. Here, the record on appeal shows – contrary to the assumption the *Doyle* court made – that the language of policy 7-G as promulgated in 1971 differed from the language of policy 7-G in *Doyle*. *Id.* at 107. More significantly, the record before us indicates that the 1971 version of policy 7-G was not contained in the employee manual Muchowicz received when she was hired by Holy Cross. Indeed, here, the circuit court dismissed the first count of Muchowicz's complaint, which alleged breach of contract based on the 1971 policy, for this reason. Muchowicz does not challenge that dismissal in this appeal. The second count of the amended complaint in the instant case is based on the 1978 employee manual. With these understandings, we turn to address this appeal within the framework of *Duldulao* and its progeny.

¶ 21 As a threshold matter, the language of the 1978 employee manual or policy statement must contain a promise clear enough that an employee would reasonably believe that an offer has been made. *Duldulao*, 115 Ill. 2d at 490. The introduction to the 1978 manual states in part that the policies therein "are not tablets of stone and can and will be updated as the need arises ***." Such language clearly indicates that the policies in the manual are subject to modification or deletion at any time and are not promises an employee should construe as an offer. Thus, the 1978 employee manual does not meet the first *Duldulao* requirement for a contract.

Accordingly, we conclude that the circuit court did not err in granting summary judgment to Holy Cross on this issue.

¶ 22 Promissory Estoppel

¶ 23 Alternatively, Muchowicz argues that the circuit court erred in granting summary judgment on the third count of her amended complaint, which alleged promissory estoppel. Illinois law provides for an affirmative cause of action under the doctrine of promissory estoppel. *Newton Tractor Sales, Inc. v. Kubota Tractor Corp.*, 233 Ill. 2d 46, 60 (2009). In order to establish a claim based on promissory estoppel, a plaintiff must allege and prove: (1) the defendant made an unambiguous promise to the plaintiff; (2) the plaintiff relied on that promise; (3) the plaintiff's reliance was expected and foreseeable by the defendant; and (4) the plaintiff relied on the promise to his or her detriment. *Quake Construction, Inc. v. American Airlines, Inc.*, 141 Ill. 2d 281, 309-10 (1990).

¶ 24 In this case, for the reasons already mentioned, we conclude that Holy Cross did not make an unambiguous promise to Muchowicz in the 1978 employee manual. Muchowicz again relies on the rejection of the disclaimer in *Doyle*, but Holy Cross relies on the language in the introduction to the 1978 employee manual, which was not cited or discussed in *Doyle*.

Accordingly, we conclude that the circuit court did not err in granting summary judgment to Holy Cross on the third count of the amended complaint.

¶ 25 CONCLUSION

¶ 26 In sum, we conclude that the circuit court did not err in finding no genuine issue of material fact existed regarding the second and third counts of Muchowicz's amended complaint,

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thereby entitling Holy Cross to judgment as a matter of law. The introduction to Holy Cross's 1978 employee manual clearly states that the policy statements therein were neither a contractual offer nor an unambiguous promise to employees. Thus, Muchowicz's claims of breach of contract and promissory estoppel necessarily fail. For all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 27 Affirmed.