

COURT OF APPEALS OF NORTH CAROLINA

Buffaloe v. United Carolina Bank, 89 N.C. App. 693

366 S.E.2d 918 (1988) · No. No. 8716SC1124 · Decided April 19, 1988

OPINION

HEDRICK, J.

366 S.E.2d 918 (1988) David E. BUFFALOE, Plaintiff, v. UNITED CAROLINA BANK, Defendant. No. 8716SC1124. Court of Appeals of North Carolina. April 19, 1988. *920 Susan D. Crooks and G. Eugene Boyce, Womble, Carlyle, Sandridge & Rice, Raleigh, for plaintiff. Haynsworth, Baldwin, Miles, Johnson, Greaves and Edwards, P.A. by Robert S. Phifer and Gregory P. McGuire, Greensboro, for defendant.

HEDRICK, Chief Judge. Plaintiff contends the trial court erred by granting summary judgment in favor of defendant because genuine issues of material fact existed. Generally, where a contract of employment does not fix a definite term, it is terminable at the will of either party, with or without cause, except in those instances where the employee is protected from discharge by statute.

Still v. Lance, 279 N.C. 254, 182 S.E.2d 403 (1971). It is undisputed in this case that plaintiff had no written contract, and plaintiff testified that his employment term was "indefinite." He argues, however, that his employment was terminated in violation of G.S. 55-34(d), which provides: (d) Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Since plaintiff's employment was not terminated by the board of directors, he argues he was wrongfully discharged. We disagree. G.S. 55-34(d) states that "[a]ny officer or agent elected or appointed by the board of directors may be removed by the board of directors...." [Emphasis added.] Chapter 55, the Business Corporation Act, uses the terms "shall" and "may."

The term "shall" indicates intent to make a provision mandatory while "may" is used when the intent is to make a provision permissive. Therefore, the board of directors may remove an officer, but there is no indication it is mandatory that the board do so.

For this reason, this case is not outside of the scope of the employment-at-will doctrine. Plaintiff also argues the corporate by-laws mimic G.S. 55-34(d) and therefore make the employment-at-will doctrine inapplicable.

We disagree for the same reasons as in our discussion of G.S. 55-34(d) and because plaintiff has alleged nothing that would indicate standing to compel performance of by-laws. See G.S. 55-18. Plaintiff next argues he provided additional consideration for his employment and this makes the employment-at-will doctrine inapplicable. He contends he moved from a branch of defendant's bank in Charlotte to one in Lumberton because he was induced by defendant's employment manual and by Michael Uzzell to believe that he would be fired only for "illegal, immoral or unethical conduct."

Even though defendant's employment manual does state this policy, it is not a part of the contract between plaintiff and defendant. It is undisputed that the policy was unilaterally promulgated by defendant. It is well-settled law in North Carolina that unilaterally promulgated employment manuals or policies do not become part of the employment contract unless expressly included in it.

Harris v. Duke Power Co., 319 N.C. 627, 356 S.E.2d 357 (1987); Walker v. Westinghouse Electric Corp., 77 N.C. App. 253, 335 S.E.2d 79 (1985), disc. rev. denied, 315 N.C. 597, 341 S.E.2d 39 (1986). No evidence was presented by plaintiff that the manual was included in the contract between plaintiff and defendant. Plaintiff argues further, however, that Michael Uzzell induced him to believe he would be fired only for "illegal, immoral or unethical conduct," and that these promises became part of his contract with defendant because they were made in consideration for his promise to move to Lumberton.

Plaintiff contends this additional consideration *921 removes the employment from the scope of the at-will doctrine. Without a finding that plaintiff's move constituted additional consideration, Uzzell's alleged promise would be nothing more than gratuitous. Tuttle v. Lumber Co., 263 N.C. 216, 139 S.E.2d 249 (1964). Plaintiff cites Sides v. Duke University, 74 N.C.App.

331, 328 S.E.2d 818, disc. rev. denied, 314 N.C. 331, 333 S.E.2d 490 (1985), to show that his move to Lumberton was additional consideration. In Sides, the plaintiff left a job in Michigan to take a job in North Carolina, thus foregoing career opportunities.

In this case, plaintiff testified that he did not forego any other employment opportunities, and he merely moved in order to receive a promotion within the same bank. In Burkheimer v. Gealy, 39 N.C.App. 450, 454, 250 S.E.2d 678, 682, disc. rev. denied, 297 N.C. 298, 254 S.E.2d 918 (1979), this Court held that there was additional consideration when an employee "remov[ed] his residence from one place to another in order to accept employment...."

Plaintiff moved in order to get a promotion and not to accept a new job. We hold this was not sufficient additional consideration to remove this case from the employment-at-will doctrine. Finally, plaintiff argues he "was not an employee at will because his election to a one year term fulfills the requirement of employment for a specified duration."

We disagree. The election of officers to a one-year term is not a part of plaintiff's bargained-for contract. The record indicates plaintiff did not even know officers were elected annually. The election of officers was clearly a timetable adopted unilaterally by defendant and does not represent a contractual agreement as to a specific term of employment. This argument is without merit.

The judgment appealed from is Affirmed. PHILLIPS and ORR, JJ., concur.