WEINER v. McGRAW-HILL, INC.
57 N.Y.2d 458, 443 N.E.2d 441, 457 N.Y.S.2d 193
Court of Appeals of New York, 1982

FUCHSBERG, Judge.

In a matter raising an issue of wide concern to employers and employees, we must decide whether, in the circumstances of this case, the plaintiff, though not engaged for a fixed term of employment, pleaded a good cause of action for breach of contract against his employer because, allegedly, he was discharged without the "just and sufficient cause" or the rehabilitative efforts specified in the employer's personnel handbook and allegedly promised at the time he accepted the employment.

The operative facts deserve emphasis. Taken most favorably to the plaintiff, as they must in the context of an appeal . . . they show that, in 1969, the plaintiff, Walton Lewis Weiner, a young man who four years earlier had entered upon a career in book publishing with another employer, Prentice-Hall, was invited to engage in discussions looking towards his joining the staff of the defendant, McGraw-Hill, Inc. In the course of these talks, McGraw's representative, aware of Weiner's position with Prentice-Hall, assured his prospect that, since his company's firm policy was not to terminate employees without "just cause", employment by it would, among other things, bring him the advantage of job security. Concomitantly, the application Weiner thereafter signed and submitted, on a printed McGraw form, specified that his employment would be subject to the provisions of McGraw's "handbook on personnel policies and procedures". This reference as relevant here, represented that "[t]he company will resort to dismissal for just and sufficient cause only, and only after all practical steps toward rehabilitation or salvage of the employee have been taken and failed. However, if the welfare of the company indicates that dismissal is necessary, then that decision is arrived at and is carried out forthrightly".

These undertakings were important to Weiner, who alleges not only that he placed "good faith reliance" on them in leaving his existing employer, but in the process forfeited all his accrued fringe benefits and a salary increase proffered by Prentice-Hall to induce him to remain in its employ.

Following written approval, affixed at the foot of the application form by two members of the defendant's staff, one the interviewer and the other a supervisor, McGraw engaged Weiner's services. For the next eight years, so far as escalation in rank (to director of promotion services) and periodic raises in his level of compensation would seem to indicate, Weiner had every reason to believe he had, if anything, more than met the reasonable requirements of his new post. Other offers of employment he routinely rejected. Nevertheless, in February, 1977, he suddenly found himself discharged for "lack of

application".

There ensued this litigation, by which, in a complaint speaking broadly in the language of breach of contract, the plaintiff seeks damages for his wrongful termination. To support its motion to dismiss, defendant's argument was, and is, that there existed no contract of employment under which McGraw-Hill's evaluation of Weiner's job performance could be challenged in a court of law. In its view, the form signed by the parties was just an application for employment and nothing more. Defendant further contends that its oral promise of job security was in no way binding on it.

In upholding the complaint, Special Term [the trial court] merely made a point of distinguishing this case from ones . . . where the employee, unlike here, had not bound himself to the contents of a handbook. On appeal from this decision, a divided Appellate Division reversed, on the law, and granted the motion. In effect, the majority reasoned that, because Weiner's employment was one at will, his employer could release him arbitrarily and with impunity. Dissenting, Justice Kupferman would not agree, as he put it, that "an employee handbook on personnel policies and procedures is a corporate illusion, 'full of sound . . . signifying nothing' ".

For the reasons which follow, we believe the plaintiff stated a cause of action.

Concentrating then on plaintiff's breach of contract approach alone, initially we dispose of any Statute of Frauds point. Though not raised by the defendant, Special Term thought it pertinent. Suffice it to say that the agreement between Weiner and McGraw-Hill, whether terminable at will or only for just cause, is not one which, "by its terms", could not be performed within one year and, therefore, is not one which is barred.

Turning now to substance, it is also clear that the fact that plaintiff was free to quit his employment at will, standing by itself, was not entitled to conclusory effect. Such a position proceeds on the oversimplified premise that, since the plaintiff was not bound to stay on, the agreement for his employment lacked "mutuality", thus leaving the defendant free to terminate at its pleasure. But this would lead to the not uncommon analytical error of engaging in a search for "mutuality", which is not always essential to a binding contract, rather than of seeking to determine the presence of consideration, which is a fundamental requisite. For, while coextensive promises may constitute consideration for each other, "mutuality", in the sense of requiring such reciprocity, is not necessary when a promisor receives other valid consideration.

As to consideration, any basic contemporary definition would include the idea that it consists of either a benefit to the

promisor or a detriment to the promisee. . . .

. . . we find in the record, inclusive of plaintiff's own affidavit, sufficient evidence of a contract and a breach to sustain a cause of action. First, plaintiff was induced to leave Prentice-Hall with the assurance that McGraw-Hill would not discharge him without cause. Second, this assurance was incorporated into the employment application. Third, plaintiff rejected other offers of employment in reliance on the assurance. Fourth, appellant alleged that, on several occasions when he had recommended that certain of his subordinates be dismissed, he was instructed by his supervisors to proceed in strict compliance with the handbook and policy manuals because employees could be discharged only for just cause. He also claims that he was told that, if he did not proceed in accordance with the strict procedures set forth in the handbook, McGraw-Hill would be liable for legal action. In our view, these factors combine to present a question for trial: Was defendant bound to a promise not to discharge plaintiff without just and sufficient cause and an opportunity for rehabilitation?

Finally, on the trial, it should, of course, be remembered that Martin itself, when, in 1895, it adopted New York's at-will rule, afforded it no greater status than that of a rebuttable presumption [if no definite term is fixed by contract, a hiring at will is deemed to have resulted only "in the absence of circumstances showing a different intention"]. In determining whether such a presumption is overcome here, the trier of the facts will have to consider the "course of conduct" of the parties, "including their writings" and their antecedent negotiations. Moreover, . . . it is not McGraw's subjective intent, nor "any single act, phrase or other expression", but "the totality of all of these, given the attendant circumstances, the situation of the parties, and the objectives they were striving to attain", which will control.

Consequently, the order of the Appellate Division should be reversed and the order of Special Term reinstated.

WACHTLER, Judge (dissenting).

For almost a century, the common law of New York has provided that absent some form of contractual agreement between an employee and employer establishing a durational period, the employment is presumed terminable at the will of either party and the employee states no cause of action or breach of contract by alleging that he or she has been discharged (Martin v. New York Life Ins. Co., 148 N.Y. 117, 42 N.E. 416). Plaintiff seeks to avoid the effect of this rule by alleging that a statement in defendant's personnel manual, entitled "McGraw-Hill and You", that employees would be dismissed "for just and sufficient cause only", together with a reference to the manual in a printed application form he signed when he applied to defendant for employment, constitutes an agreement by defendant to employ him

"for the remainder of his working life".

In my view, as a matter of law, neither document alone nor in combination contains any language indicating that defendant intended to be bound by their contents. Thus no question of fact was presented for jury consideration and the court below properly dismissed the first cause of action for breach of contract. The employment in question was terminable at the will of either party and plaintiff has no cause of action against defendant for breach of contract simply because he was discharged.

The printed application form, entitled "employment application", spells out none of the critical terms of plaintiff's employment. No reference is made to the type of work plaintiff was being considered for, salary, or the duration of the hiring. In fact, nothing either explicitly or implicitly suggests that defendant has offered plaintiff a position or that plaintiff has accepted an offer of employment. . . . It is evident from the layout of the form . . . that the signatures of the company officials were not part of the application and represent no contractual exchange between plaintiff and defendant. Those signatures and the statement that plaintiff has been employed are, rather, nothing more than a memorialization of the hiring event for internal record-keeping purposes.

Similarly, defendant's personnel manual expresses no intent that defendant be immutably bound by the document. Nor would one expect the manual to contain any strict promissory language, given that, as the court below noted, defendant could unilaterally amend or withdraw any of the provisions found there. Nothing in either the manual or the employment application form prohibited defendant from so modifying the manual in its sole discretion. "McGraw-Hill and You" is nothing more than a conglomerate of broad internal policy guidelines generally followed, none of which even slightly portend to enumerate the essential elements of a contract of employment between defendant and an employee. No language expressing an intent to be bound appears in the personnel manual, and no such intent can fairly be construed from any of the policy guidelines espoused.

Considerations of public policy also dictate against broad judicial construction of the documents in question to present a triable issue as to whether they constitute an employment contract. It has been suggested that restricting an employer's ability to discharge an employee for unsatisfactory performance will create additional inefficiency in the workplace in that the employer will forego dismissing an incapable employee in order to avoid the time and expense of litigation (Report of Committee on Labor and Employment Law, At-Will Employment and the Problem of Unjust Dismissal, 36 Record of Assn. of Bar of the City of New York 170, 188). A less savory result of imposing additional restrictions on the ability to discharge an employee, at least as far as the residents of this State are concerned, is that

businesses and industry, the major employers in New York will simply move elsewhere. . . . I cannot join the majority's bestowal of contractual rights based upon documents which make it all too clear that no contractual rights were ever intended.

Accordingly, I respectfully dissent and vote to affirm.

COOKE, C.J., and JASEN, JONES and MEYER, JJ., concur with FUCHSBERG, J.

WACHTLER, J., dissents and votes to affirm in a separate opinion in which GABRIELLI, J., concurs.