

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

NAM-HUAN THAI-TANG,

Plaintiff/Counter-Defendant,

v

Case No. 2013-137904-CK
Hon. Wendy Potts

ALTe POWERTRAIN TECHNOLOGIES,
INC,

Defendant/Counter-Plaintiff.

OPINION AND ORDER RE: ALTe'S MOTION FOR PARTIAL SUMMARY
DISPOSITION PURSUANT TO MCR 2.116(C)(7)

At a session of Court
Held in Pontiac, Michigan

On
DEC 04 2014

In January 2009, Plaintiff Nam-Huan Thai-Tang and nonparties John Thomas and Jeffrey DeFrank founded ALTe, LLC, which was the predecessor to Defendant ALTe Powertrain Technologies, Inc. In January 2012, Thai-Tang and ALTe, through its CEO Thomas, entered into an employment agreement setting his salary, bonus, and severance terms. In September 2012, Thai-Tang signed a form attached to an employee handbook titled Receipt and Acknowledgment stating that Thai-Tang agreed to a 180-day limitation period for bringing claims against ALTe. In January 2013, Thai-Tang signed a new employment agreement that also governed his salary, bonus, and severance, and had an integration clause that superseded "any and all other prior agreements and understandings (whether written or oral), between the Executive and the Company (and its Affiliates), relating to such subject matter."

ALTe terminated Thai-Tang's employment on May 13, 2013. On December 16, 2013, he filed this action against ALTe alleging it breached the January 2013 employment agreement by failing to pay his base salary, bonus, and severance pay. On June 12, 2014, Thai-Tang filed an amended complaint alleging similar claims regarding the 2012 employment agreement and adding the AccessPoint Defendants. On October 22, 2014, the Court granted the AccessPoint Defendants summary disposition and dismissed Thai-Tang's claims against them.

ALTe now moves for summary under MCR 2.116(C)(7), which tests whether a claim is barred as a matter of law. A motion under (C)(7) is decided on the pleadings, unless the parties submit evidence contradicting the allegations in the pleadings. *Turner v Mercy Hosp & Health Services*, 210 Mich App 345, 349; 533 NW2d 365 (1995). If there are no material factual disputes, whether a claim is barred is a question of law. *Id.*

ALTe asserts that Thai-Tang's claims are barred by the contractual limitation periods in the Acknowledgment form. In deciding the AccessPoint Defendants' motion, the Court concluded that the 180-day limitation period is unenforceable because it was incorporated in an employee handbook that was not intended to be an enforceable agreement. See *Stewart v Fairlane Community Mental Health Centre*, 225 Mich App 410, 420; 571 NW2d 542 (1997). However, on further review and reconsideration, the Court withdraws that conclusion. The Court in *Stewart* addressed an arbitration provision that was incorporated within the body of an employee handbook. By contrast, the 180-day limitation period here was in an acknowledgment form that was attached to, but not necessarily incorporated in the handbook. Although the form was numbered page 61 of the handbook, it is not part of the policies stated in the handbook. The language of the form suggests that it could have been a stand-alone agreement, like the form in the unpublished *Posselius* case cited by ALTe. Because the acknowledgment form was not

incorporated in the employee handbook, the Court cannot conclude as a matter of law that the acknowledgment form and 180-day limitation period are unenforceable.

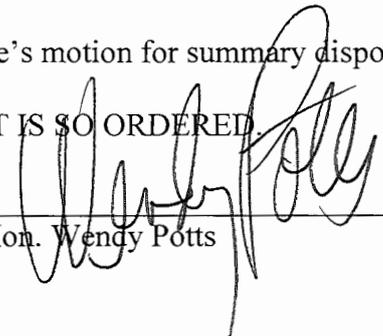
However, even if the Court were to conclude that Thai-Tang agreed to a shortened contractual limitation period in the September 2012 acknowledgment form, the integration clause of the January 2013 employment agreement rendered the contractual limitation period unenforceable. Paragraph 21 of that agreement states that it “constitutes the entire agreement and understanding between the Company and the Executive with respect to the subject matter hereof and supersedes any and all other prior agreements and understandings (whether written or oral), between the Executive and the Company (and its Affiliates), relating to such subject matter.” ALTe asserts that the integration clause does not apply to the acknowledgment form because the agreements cover different subject matter. However, the January 2013 agreement was a broad recitation of the terms and conditions of Thai-Tang’s employment, and included discussion of the rights and remedies for breach of the agreement. Indeed, as Thai-Tang notes, one of the prefatory “whereas” clauses of the agreement states that it was intended to be “an agreement embodying the terms and conditions of [Thai-Tang’s] employment.” ALTe points to no language in the January 2013 agreement limiting its application to specific employment terms or conditions. Because the integration clause of the January 2013 and the September 2012 acknowledgment form both addressed the subject matter of Thai-Tang’s employment, the January 2013 agreement superseded the September 2012 form. Further, because the January 2013 agreement has no contractually shortened limitation period, Thai-Tang’s claims for breach of the January 2012 and January 2013 employment agreements are subject to the six-year limitation period of MCL 600.5807(8). There is no question of fact that Thai-Tang filed his

complaint and amended complaint within six years of the alleged breaches, and thus the claims are not barred as a matter of law.

For all of these reasons, the Court denies ALTe's motion for summary disposition.

IT IS SO ORDERED

Dated: DEC 04 2014



Hon. Wendy Potts