

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

**ANDREW GORDON,
Plaintiff,**

v.

**Case No. 14-138669-CK
Hon. James M. Alexander**

**ST. JOSEPH MERCY OAKLAND,
Defendant.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant’s Motion for Summary Disposition. Plaintiff is a physician who was employed in Defendant’s residency program. Shortly after starting the program in July 2012, Plaintiff asked to take a leave of absence to address medical issues. In his Complaint, Plaintiff claims that Defendant granted his leave request. Then in August 2012, Defendant terminated Plaintiff because it determined that he “[f]ailed to meet scheduling needs of the program.”

Plaintiff filed the present suit on a single claim of breach of contract – generally alleging that he was wrongfully terminated from his position under the parties’ written agreement. The parties’ central dispute is whether Plaintiff’s written employment agreement established at-will or just-cause employment. Defendant argues that Plaintiff’s employment was at will, and therefore, his suit is barred. Plaintiff, on the other hand, argues that his employment was only terminable for just cause.

To its end, Defendant now moves for summary disposition under MCR 2.116(C)(8), which tests the legal sufficiency of the complaint. When analyzing such a motion, all well-pled factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Wade v Dept of Corrections*, 439 Mich 158 (1992). A motion under this subrule may be granted only where

the claims alleged are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Id.* When deciding such a motion, the court considers only the pleadings. MCR 2.116(C)(G)(5).

Our Supreme Court has held that, generally, there is a presumption that “employment relationships are terminable at the will of either party.” *Lytle v Malady*, 458 Mich 153, 163; 579 NW2d 906 (1998). This presumption, however, can be rebutted “so that contractual obligations and limitations are imposed on an employer’s right to terminate employment.” *Lytle, supra* at 164, citing *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579; 292 NW2d 880 (1980). The *Lytle* Court continued that:

Courts have recognized the following three ways by which a plaintiff can prove such contractual terms: (1) proof of “a contractual provision for a definite term of employment or a provision forbidding discharge absent just cause”; (2) an express agreement, either written or oral, regarding job security that is clear and unequivocal; or (3) a contractual provision, implied at law, where an employer’s policies and procedures instill a “legitimate expectation” of job security in the employee. *Lytle, supra* at 164 (internal citation omitted).

Plaintiff makes much of the duration provision (paragraph 15) of the Agreement, which provides: “This Agreement shall, unless terminated as provided in Paragraph 16, be for the period beginning on the June 18, 2012 (“Effective Date”) and terminating June 30, 2013.”

The termination provision (paragraph 16) of the Employment Agreement provides, in relevant part:

This Agreement may be terminated upon the following terms and conditions:

...

a. The parties mutually agree to terminate at any time.

...

c. The Hospital may terminate this Agreement at any time by reason of the Resident Physician’s refusal to meet the standards and criteria of the residency program in

which the Resident Physician is enrolled or for the failure to discharge the professional responsibilities required hereunder in an appropriate manner. All compensation shall cease as of the effective date of the termination.

In support of its motion, Defendant argues that our Court of Appeals has consistently held that Employment Agreements that contain mutual right-to-terminate clauses (such as above) are indicative of an at will employment relationship. *See, e.g. Kocenda v Archdiocese of Detroit*, 204 Mich App 659, 665-666; 516 NW2d 132 (1994); *Barber v SMH (US), Inc*, 202 Mich App 366, 371-372; 509 NW2d 791 (1993); and *Patillo v Equitable Life Assurance Society of the United States*, 199 Mich App 450, 454; 502 NW2d 696 (1993).

Further, Defendant argues that “even where an employment agreement is equally consistent with just cause and at will employment, it is legally deemed to be at will,” citing *Ford v Blue Cross & Blue Shield*, 150 Mich App 462, 467; 389 NW2d 114 (1986) (holding that the contract was “as consistent with one as with the other, and is, therefore, not evidence to justify a legitimate expectation in employees that they had a ‘just cause’ termination provision”).

Finally, Defendant argues that “Michigan courts have consistently held that at will acknowledgments in employment applications are part of the employee’s employment contract and preclude claims for a breach of a just cause employment contract,” citing *Toussaint*, 408 Mich at 612. In *Toussaint*, our Supreme Court held that employers could preserve an at will relationship by issuing a written statement “requiring prospective employees to acknowledge that they served at the will or the pleasure of the company.” *Id.*

And in this case, Plaintiff’s signed employment application provided “[i]f employed, I understand that I will be an employee ‘at will’ and either SJMO or I may terminate my employment relationship at any time with or without notice for any reason not violative of the law.” Because

Plaintiff acknowledged that his employment was “at will,” Defendant argues that Plaintiff’s claim of a just cause employment relationship must be dismissed.

In response, Plaintiff argues that the Agreement’s one-year duration term created an implied promise of employment for a particular period of time, which is sufficient evidence of a just cause employment relationship. In support, Plaintiff cites *Toussaint* for the notion that “Where the employment is for a definite term—a year, five years, ten years—it is implied, if not expressed, that the employee can be discharged only for good cause.” *Toussaint*, 408 Mich at 611.

In its Reply Brief, Defendant argues that this sentence from *Toussaint* is “pure dictum” because *Toussaint* did not involve a definite term contract. Further, multiple post-*Toussaint* panels of the Court of Appeals have held that the mere inclusion of a durational term does not convert an otherwise at-will relationship into a just cause one. See *Steiger v Montmorency Rural Comm Housing*, an unpublished opinion per curiam of the Court of Appeals, issued February 14, 2006 (Docket No. 264836); and *Peoples-Peterson v Henry Ford Health Sys*, an unpublished opinion per curiam of the Court of Appeals, issued January 18, 2011 (Docket No. 293866).

Consistent with *Toussaint*, both *Steiger* and *Peoples-Peterson* concentrated on the language surrounding the durational term of the employment agreements. The *Steiger* Court held that “[a]lthough this document provides that it is effective for a definite term, it does not provide for *employment* of any particular term.” (emphasis added). The *Peoples-Peterson* Court similarly held that “the conditions and bylaws do not provide for a definite term of employment for two years. Instead, they only state that any appointment is probational for the first two years.” As a result, both panels found at-will relationships.

In our case, as stated, the durational term provides that “This Agreement shall, unless

terminated as provided in Paragraph 16, be for the period beginning on the June 18, 2012 (“Effective Date”) and terminating June 30, 2013.” According to its plain terms, this provision merely provides that the Agreement is effective for one year. It does not, however, provide in clear and unequivocal terms that Plaintiff is guaranteed *employment* for one year. Rather, Plaintiff agreed that he could be dismissed from employment for several reasons – including his “refusal to meet the standards and criteria of the residency program” or “failure to discharge the professional responsibilities required hereunder in an appropriate manner.”¹

As a result, considering only the pleadings and accepting all well-pled factual allegations as true, the Court concludes that Plaintiff’s claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.

There is simply nothing in the Employment Agreement whereby any reasonable trier-of-fact could conclude that Plaintiff’s employment relationship with Defendant was one terminable only for just cause. For all of the foregoing reasons, Defendant’s motion for summary disposition is GRANTED, and Plaintiff’s Complaint is DISMISSED in its entirety.

This Order is a Final Order that resolves the last pending claim and closes the case.

IT IS SO ORDERED.

May 14, 2014
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge

¹ The Court is also persuaded by Plaintiff’s application acknowledgment that his employment was at will. Although Plaintiff argues that his application states that it is not a contract, the Court rejects this argument because a contract is unnecessary for at will employment. Further, an employer’s statement that employment is at will is sufficient under *Toussaint*. 408 Mich at 612.