

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

**GOURAV AGRAWAL,
Plaintiff,**

v.

**Case No. 14-144408-CZ
Hon. James M. Alexander**

**NEUMERIC TECHNOLOGIES, CORP, ET AL,
Defendants.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendants' motion for summary disposition. In his Complaint, Plaintiff claims that he was a former employee of Defendant Neumeric Technologies, whose registered agent is Defendant Sudheer Gaddam.

Plaintiff claims that Neumeric was formed in 1999, and he began helping Gaddam and Neumeric while living in India in 2003. In July 2004, Plaintiff claims that he came to the United States and joined Neumeric – working out of its Bloomfield location. Plaintiff claims that, in exchange for his efforts and management of Neumeric and its subsidiaries and affiliates, he was to receive a small salary and a 50% ownership interest. Plaintiff admits, however, that this agreement was never reduced to a writing.

Plaintiff alleges that, in April 2014, the parties began to have disagreements about Neumeric's operation. As a result, Plaintiff claims that he and Gaddam agreed that splitting the company or a buyout of Plaintiff's interest was in everyone's best interests. Plaintiff claims that the parties met to prepare the formal agreement, but this was never done. Instead, Gaddam terminated

Plaintiff's employment. Plaintiff claims that Defendants have failed or refused to make him a 50% owner of the Neumeric or compensate him for said interest.

Plaintiff then filed the present suit in an effort to obtain his claimed 50% ownership interest or its value under a variety of claims.

Defendants, on the other hand, deny that Plaintiff was ever supposed to be a 50% owner in Neumeric. Rather, they claim, Plaintiff was simply an employee of the company. Defendants claim that this assertion is supported by several undisputed facts: (1) the parties never entered into any written agreement for Plaintiff to receive any shares of Neumeric, (2) they never discussed the number of shares that Plaintiff would receive or the price he would pay, and (3) Plaintiff never paid any money to Defendants for his claimed interest.

Despite the parties' wildly differing accounts of this case, Defendant filed the present motion for summary disposition – seeking the same under MCR 2.116(C)(8) or (C)(10).

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. 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. *Wade v Dept of Corrections*, 439 Mich 158; 483 NW2d 26 (1992).

A motion under (C)(10) tests the factual support for Plaintiff's claims. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Under (C)(10), "In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420;

522 NW2d 335 (1994).

The crux of Defendants' argument in support of their motion for summary disposition is that it's undisputed that there is no written agreement purporting to give Plaintiff an ownership interest in Neumeric.

In order to prove breach of contract, a plaintiff must establish: (1) the existence of a contract; (2) a breach of that contract; and (3) damages resulting from that breach. *Stoken v JET Electronics & Technology, Inc*, 174 Mich App 457, 463; 436 NW2d 389 (1988).

"The essential elements of a valid contract are the following: '(1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation.'" *Hess v Cannon Twp*, 265 Mich App 582, 592; 696 NW2d 742 (2005); quoting *Thomas v Leja*, 187 Mich App 418, 422; 468 N.2d 58 (1991).

It is also well settled that unless a statute of frauds applies, an oral contract is enforceable. *GRP, Ltd v United States Aviation Underwriters, Inc*, 402 Mich 107, 113; 261 NW2d 707 (1978); and *Rood v Gen Dynamics Corp*, 444 Mich 107; 507 NW2d 591 (1993).

With respect to Plaintiff's breach of contract and quasi-contract claims, the Court finds that the parties completely disagree about whether Plaintiff was promised a 50% share in Neumeric or whether he was a regular employee. And each party presents deposition testimony, affidavits, emails, and other documentary evidence in support of their positions. Simply, this is not a case that can be resolved on summary disposition.

In addition to presenting substantial competing evidence, both parties appear to challenge the other's credibility. It is well settled, however, that credibility is an issue that must be submitted to the trier of fact. *White v Taylor Distributing Company, Inc*, 275 Mich App 615; 739 NW2d 132

(2007). The *White* Court reasoned that, “courts may not resolve factual disputes or determine credibility in ruling on a summary disposition motion” *White, supra* at 625, citing *Burkhardt v Bailey*, 260 Mich App 636, 646-647; 680 NW2d 453 (2004); and *Foreman v Foreman*, 266 Mich App 132, 135-136; 701 NW2d 167 (2005).

Additionally, in *Vanguard Ins Co v Bolt*, 204 Mich App 271; 514 NW2d 525 (1994), the Court of Appeals held:

The granting of a motion for summary disposition is especially suspect where motive and intent are at issue or where a witness or deponent’s credibility is crucial. Accordingly, where the truth of a material factual assertion of a moving party depends upon a deponent’s credibility, there exists a genuine issue for the trier of fact and a motion for summary disposition should not be granted. *Vanguard Ins, supra* at 276 (internal citations omitted).

The Court finds that resolution of Plaintiff’s claims based on an ownership interest in Neumeric is so substantially intertwined with fact-finding and credibility determinations as to render summary disposition on said claims wholly inappropriate. As a result, Defendants’ motions for summary on these claims are DENIED.¹

Defendant next claims that Plaintiff’s Count V for Retaliatory Discharge fails because the Whistleblowers’ Protection Act provides the exclusive remedy for an employee in a case like this. In support, Defendant cites *Shuttleworth v Riverside Osteopathic Hosp*, 191 Mich App 25; 477 NW2d 453 (1991). Indeed, *Shuttleworth* stands for the proposition that “The WPA provides a remedy to an employee terminated **for reporting to any public body** a violation of any law or regulation of this state, a political subdivision, or the United States.” *Shuttleworth*, 191 Mich App at 27 (emphasis added).

¹ This ruling applies to Plaintiff’s Counts I, II, III, IV, and VI – all of which are predicated on the existence of an enforceable oral agreement, which must be decided by the trier of fact. With respect to Plaintiff’s Count V (Unpaid Wages and Benefits), the Court finds that the parties present competing evidence that precludes summary

In response, Plaintiff argues that the WPA does not apply in this case because he did not report any violation of the law to a public body.² As a result, the WPA and *Shuttleworth* do not apply.

Rather, Plaintiff argues that he is bringing his claim as a wrongful termination claim based on Plaintiff's failure to violate the law. In support, Plaintiff cites *Silberstein v Pro-Golf of Am, Inc*, 278 Mich App 446, 451-452; 750 NW2d 615 (2008) for the proposition that:

Generally, employment relationships are terminable at will, with or without cause, "at any time for any, or no, reason." There is, however, an exception to the at-will employment doctrine "based on the principle that some grounds for discharging an employee are so contrary to public policy as to be actionable." A cause of action for wrongful discharge may be implied "where the alleged reason for the discharge of the employee was the failure or refusal to violate a law in the course of employment." *Silberstein*, 278 Mich App at 451-452; quoting *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692, 695; 316 NW2d 710 (1982).

In his Complaint, Plaintiff claims that Defendants terminated his employment because he refused "to violate the public policy of the State of Michigan and federal laws, regulations, and/or immigration policies" with respect to hiring an individual that did not have a proper work authorization and other questionable business practices related to IT staffing and services.

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disposition.

² Under the Whistleblowers' Protection Act, "[a]n employer shall not discharge . . . an employee . . . because the employee . . . reports or is about to report . . . a violation or a suspected violation of a law or regulation or rule

And, under *Silverstein*, in order to succeed on this claim, a plaintiff need only establish that a failure or refusal to violate the law was **one of the reasons** for the employee's discharge. *Silverstein*, 278 Mich App at 452-455.

Based on the foregoing authority, the Court finds that Plaintiff may appropriately bring a claim for wrongful termination based on his failure to violate the law, and said claim is not preempted by the WPA.

For all of the foregoing reasons, the Court DENIES Defendants' motion for summary disposition in its entirety.

IT IS SO ORDERED.

July 29, 2015
Date

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