

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

**EDWARD CHADWICK,
Plaintiff,**

v.

**Case No. 15-145065-CK
Hon. James M. Alexander**

**TRINITY HEALTH CORP,
Defendant.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant’s motion for partial summary disposition. In its motion, Defendant seeks dismissal of Plaintiff’s claims for extended severance pay and Plaintiff’s Count I for Breach of Contract – Termination by Employer without Cause.¹

Plaintiff is Defendant’s former Chief Financial Officer. This case generally arises from Plaintiff’s claim that Defendant unilaterally and substantially diminished his duties such that he decided to resign his position as CFO with “good reason.” Plaintiff claims that, rather than accept his “good reason” resignation, Defendant unilaterally terminated him to prevent him from receiving an extended severance. According to his Complaint, Plaintiff claims that Defendant breached the parties’ Employment Agreement by terminating him without cause and failing to pay him contractual severance and benefits.

Whether Plaintiff resigned “for good reason” or Defendant terminated him “without cause,” Plaintiff alleges that he is entitled to 78-weeks of severance pay, but Defendant has blocked all efforts to obtain the same.

¹ Defendant’s motion does not seek dismissal of Plaintiff’s remaining claim for Breach of Contract – Termination by Executive for Good Reason (Count II).

Defendant now moves for summary disposition under MCR 2.116(C)(8), which tests the legal sufficiency of the complaint. When considering 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, 162-163; 483 NW2d 26 (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.* at 163. When deciding such a motion, **the court considers only the pleadings.** MCR 2.116(G)(5).²

But “[w]hen an action is based on a written contract, it is generally necessary to attach a copy of the contract to the complaint. Accordingly, the written contract becomes part of the pleadings themselves, even for purposes of review under MCR 2.116(C)(8).” *Laurel Woods Apts v Roumayah*, 274 Mich App 631, 635; 734 NW2d 217 (2007); citing MCR 2.113(F) and *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003).

In its motion, Defendant (apparently confused about the (C)(8) standard) disputes Plaintiff’s factual allegations and requests summary disposition based on its view of the parties’ interaction – rather than the allegations pled in Plaintiff’s Complaint. And also despite the (C)(8) standard, both parties attach evidence outside of the pleadings. The Court will not consider such exhibits.

While this isn’t even a close call because Defendant bases its entire motion on its own factual allegations, the Court will note that Defendant claims that it is entitled to summary disposition of Plaintiff’s Count I and any claims for extended severance pay for two reasons. First, Defendant claims that Plaintiff failed to state a claim for extended severance pay because he did not plead that he met a condition precedent to such payment – the execution of a general

² For purposes of the cited Court Rule, under MCR 2.110 (emphasis added), “The term “pleading” **includes only:** (1) a complaint, (2) a cross-claim, (3) a counterclaim, (4) a third-party complaint, (5) an answer to a complaint, cross-claim, counterclaim, or third-party complaint, and (6) a reply to an answer.”

release within 60 days of his termination. Second, Defendant claims that Plaintiff's Count I fails because Plaintiff resigned – rather than being terminated.

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).

Defendant first argues that it is entitled to summary of Plaintiff's claims for extended severance based on Plaintiff's failure to plead a necessary condition precedent – his execution of a general release. But Defendant's argument ignores well-established Michigan law and Plaintiff's pleadings.

The Michigan Court of Appeals has held “[w]here a party prevents the occurrence of a condition, the party, in effect, waives the performance of the condition.” *Harbor Park Mkt, Inc v Gronda*, 277 Mich App 126, 131-132; 743 NW2d 585 (2007). Plaintiff's Complaint alleges that after Defendant terminated him, it failed to present him with a general release (Complaint at paras. 24, 30, 44, 48, 49). Additionally, the Executive Agreement provides that a “specimen copy” of such a release “shall be attached” to the Agreement, but this was apparently not done.

When the Court accepts these allegations as true and construes them in a light most favorable to Plaintiff, the Court cannot possibly conclude that Plaintiff's claim for extended severance is “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Wade*, 439 Mich at 163.

Next, Defendant claims that it is entitled to summary disposition of Plaintiff's Count I for Breach of Contract – Termination by Employer without Cause. Defendant argues that it is entitled to summary of this claim because it did not terminate him. Rather, Defendant claims that

Plaintiff resigned. But Defendant, again, ignores the allegations contained in Plaintiff's Complaint.

In his Complaint, Plaintiff alleges that "on Friday, January 23, 2009, Trinity Health summarily terminated [him], stating that he did not have 'good reason' to terminate his employment." (Complaint, at para. 24). While Plaintiff alleges in several more paragraphs that Defendant terminated him, it is unnecessary for this Court to look beyond Plaintiff's paragraph 24. Plaintiff alleges that Defendant terminated him.

When the Court accepts this allegation as true and construes in a light most favorable to Plaintiff, the Court cannot possibly conclude that Plaintiff's Count I is "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Wade*, 439 Mich at 163.

For all of the above reasons, Defendant's motion for summary disposition under MCR 2.116(C)(8) is DENIED.

Sanctions

Further, MCR 2.114(D) (emphasis added) provides that:

The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that . . . **the document** is well grounded in fact and **is warranted by existing law** or a good faith argument for the extension, modification, or reversal of existing law; and . . . **the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.**

Under MCR 2.114(E) (emphasis added):

If a document is signed in violation of this rule, the court, on the motion of a party **or on its own initiative**, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred

because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

The Court finds that Defendant filed a (C)(8) motion based on its own allegations – rather than those pled in Plaintiff’s Complaint – contrary to well-established law and for a solely for the improper purpose to delay, harass or needlessly increase the cost of litigation. Defendant could not have reasonably believed it proper to file a (C)(8) motion in the manner that it did.

As a result, Plaintiff may bring an appropriate motion for reasonable expenses incurred as the result of Defendant’s improper motion.

IT IS SO ORDERED.

May 13, 2015
Date

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