

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

MICHIGAN NEUROLOGY
ASSOCIATES, P.C.,

Plaintiff,

Case No. 2014-3648-CB

vs.

MARIANNE E.
MAJKOWSKI, D.O.,

Defendant.

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OPINION AND ORDER

Defendant has filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff has filed responses to the motion and requests that the motion be denied.

I. Factual and Procedural History

Plaintiff is a multi-specialty physician practice which provides specialized medical services. Defendant is a board certified physician specializing in adult and pediatric neurology. On or about August 1, 2010, the parties executed an employment agreement governing Defendant's employment with Plaintiff ("Agreement"). On December 23, 2010, Defendant, through her counsel, sent Plaintiff a termination letter. Defendant then accepted a position with another employer in Saginaw, MI.

On September 18, 2014, Plaintiff filed its complaint in this matter. Plaintiff's complaint contains a single breach of contract claim based on Defendant's alleged breach of the Agreement. On May 29, 2015, Defendant filed her instant motion for

summary disposition. On July 23, 2015, Plaintiff filed its response to the motion. On July 27, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard of Review

A motion under MCR 2.116(C)(10), on the other hand, tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

III. Arguments and Analysis

Plaintiff's claim is based on its assertion that Defendant failed to provide six months noticed prior to resigning as required by the Agreement. Plaintiff's claim is based on paragraph 7 of the Agreement, which provides:

Termination. The parties specifically acknowledge that the employment contemplated hereby is "at will" and that either [Plaintiff] or [Defendant] may terminate this Agreement at any time upon six (6) months' advanced written notice to the other. In the case of an "at will" termination, [Defendant], if requested by [Plaintiff], shall continue in good faith to render her services under this Agreement in strict accordance with the terms hereof and must be otherwise deemed cooperating with the day-to-day functioning of the practice of [Plaintiff] in a constructive and professional manner. Upon compliance with the foregoing, [Plaintiff] shall be paid her regular salary and Base Compensation draw up to the date of termination, otherwise [Defendant] shall not be entitled to any compensation during said six (6) month period.

While Defendant concedes that she did not provide six months notice to Plaintiff as required by the first sentence of paragraph 7, she contends that paragraph 7 is invalid in its entirety. Specifically, Defendant contends that the last sentence of paragraph 7 requires her to work for six months without receiving any compensation until the six month term is completed, and that such a provision violates the Michigan Wage and Fringe Benefits Act ("MWFBA"), MCL 408.472(1). However, even if Defendant's contention is correct that the last sentence of paragraph 7 violates the Act and is unenforceable on public policy grounds that fact would not act to invalidate the remainder of paragraph 7 which required her to provide six months written notice. Section 12 of the Agreement provides:

12. Effect of Invalidity. [Plaintiff] and [Defendant] recognize that the laws and public policies of the various States of the United States may differ as to the validity and enforceability of provisions contained in this Agreement, including but not limited to those contained in Paragraphs 9, 10 and 11 hereof. It is the intention of [Plaintiff] and [Defendant] that the provisions shall be enforced to the fullest extent permissible under the applicable laws and public policies, but that the enforceability (or the modification to conform with such laws and public policies) of any provisions hereof shall not render unenforceable or impair the remainder of the Agreement. Accordingly, if any provision of this Agreement shall be determined to be invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provisions and to alter the balance of the Agreement in order to render the same valid and enforceable to the fullest extent permissible as aforesaid.

The Court's duty in construing a contract is to give effect to the parties' intent, and where a contract's language is unambiguous, the plain and ordinary meaning of its words reflects the parties' intent as a matter of law. *In re Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008). In this case, paragraph 12 unambiguously provides that if any provision of the Agreement is against public policy, the parties agreed that the offending

provision should be deleted or modified, but that such deletions or modifications should be done in a manner that would preserve the remainder of the Agreement to the fullest extent possible. Consequently, even if Defendant is correct that the last sentence of paragraph 7 violates public policy, the proper remedy would either be to amend that sentence to provide that Defendant would be paid in a manner that comports with the MWFBA or to delete the last sentence of paragraph 7 altogether. While Defendant asserts that all of paragraph 7 should be deleted if the last sentence of that paragraph is void, the Court is convinced that deleting the entire paragraph in those circumstances would be an overly broad change to the Agreement's terms, and would fly in the face of paragraph 12 which requires any changes to the Agreement based on public policy grounds to be made in the narrowest way possible. For these reasons, Defendant's contention that she was not required to give 6 months notice to Plaintiff based on the invalidity of the last sentence of paragraph 7 is without merit. Moreover, because the validity of the last sentence of paragraph 7 does not affect Defendant's duty to provide 6 months written notice, the Court need not address whether the last sentence of the Agreement comports with the MWFBA.

IV. Conclusion

For the reasons set forth above, Defendant's motion for summary disposition is DENIED. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last pending claim nor closes the case.

IT IS SO ORDERED.

Date: SEP 28 2015

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge