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STATE OF MICHIGAN

COURT OF APPEALS

CHRISTOPHER MCGHEE, CRAIG BROWN, JAMES WASHINGTON, JUNIUS PERRY, and ORLANDO POTTS,

Plaintiffs,

and

NORMAN BROWN and SHANNON FERGUSON,

Plaintiffs-Appellees,

v

CITY OF DETROIT, ERIC JONES, REGINALD JENKINS, ROBERT DISTELRATH, and KEMIA CROSSON,

Defendants,

and

DETROIT FIRE FIGHTERS ASSOCIATION LOCAL 344, MICHAEL NEVIN, THOMAS GEHART, WILLIAM HARP, JOHN A. CANGIALOSI, and CHRISTOPHER A. SMITH,

Defendants-Appellants.

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September 11, 2026
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No. 371453
Wayne Circuit Court
LC No. 20-006272-CD

CHRISTOPHER MCGHEE, CRAIG BROWN, JAMES WASHINGTON, JUNIUS PERRY, and ORLANDO POTTS,

Plaintiffs,

and

NORMAN BROWN and SHANNON FERGUSON,

Plaintiffs-Appellees,

v

No. 371516
Wayne Circuit Court
LC No. 20-006272-CD

CITY OF DETROIT, ERIC JONES, REGINALD JENKINS, ROBERT DISTELRATH, and KEMIA CROSSON,

Defendants-Appellants,

and

DETROIT FIRE FIGHTERS ASSOCIATION LOCAL 344, MICHAEL NEVIN, THOMAS GEHART, WILLIAM HARP, JOHN A. CANGIALOSI, and CHRISTOPHER A. SMITH,

Defendants.

Before: LETICA, P.J., and RICK and GARRETT, JJ.

PER CURIAM.

Plaintiffs Norman Brown[1] and Shannon Ferguson were employed as firefighters for defendant city of Detroit (the City) and were members of defendant Detroit Fire Fighters Association Local 344 (DFFA). Both Brown and Ferguson went on "duty disability retirement" because of injuries. While on duty disability retirement, the 2014 collective bargaining agreement (CBA) between the City and the DFFA became operative, which affected the seniority status of firefighters who had taken duty disability retirement. The 2014 CBA was incorporated into the City's plan of adjustment (POA) entered in the City's bankruptcy proceeding. Thereafter, Brown and Ferguson, along with other plaintiffs,[2] filed this action against the City and the DFFA alleging numerous claims primarily related to their loss of seniority. The trial court granted in part and denied in part the City's and the DFFA's motions for summary disposition.

In Docket No. 371453, the DFFA, and defendants Michael Nevin, Thomas Gehart, William Harp, John A. Cangialosi, and Christopher A. Smith (the union defendants) appeal the trial court's

[1] References to "Brown" refer to plaintiff Norman Brown because plaintiff Craig Brown is not participating in these appeals.

[2] Because the other plaintiffs are not participating in these appeals, references to "plaintiffs" refer collectively to Brown and Ferguson.

order by leave granted,[3] challenging the court's denial of summary disposition regarding Brown's claims alleging violation of the duty of fair representation (DFR), promissory estoppel, and tortious interference with a business relationship. In Docket No. 371516, the City and defendants Eric Jones, Reginald Jenkins, Robert Distelrath, and Kemia Crosson (the City defendants) appeal by leave granted[4] the trial court's order, challenging the court's denial of plaintiffs' claims alleging breach of contract and promissory estoppel. We reverse the trial court's orders in both appeals to the extent that the court denied defendants' motions and remand for entry of an order granting summary disposition in favor of the union defendants in Docket No. 371453 and in favor of the City defendants in Docket No. 371516.

I. FACTUAL BACKGROUND

This case arises from plaintiffs' dispute with the DFFA, the City, and the individual defendants because of the 2014 CBA's seniority provisions. Before 2014, firefighters who went on duty disability could return to work when able to do so and not only retain their previous seniority but also accumulate seniority for the years they spent on duty disability. After the City filed for bankruptcy protection in 2013, the DFFA and the City renegotiated the CBA and revised the seniority provisions. Under the 2014 CBA, if firefighters on duty disability returned to work within two years, they were able to retain their previous seniority. However, if they returned to work after two years, they returned with zero seniority. The seniority provisions of the 2014 CBA were less generous to firefighters than those of previous CBAs. The instant dispute arose after the City failed to apply the new provisions universally, and some firefighters were granted seniority according to the previous CBA, while others were granted seniority under the less generous provisions of the 2014 CBA.

The 2014 CBA was incorporated into the City's POA in the bankruptcy proceeding, and the bankruptcy court retained jurisdiction to resolve controversies pertaining to enforcement of the POA. *In re Detroit*, 653 BR 874, 883-886 (Bankr ED Mich, 2023). During the pendency of the instant litigation, the DFFA moved in the bankruptcy court to hold plaintiffs in civil contempt. The DFFA argued that plaintiffs, by seeking relief inconsistent with the 2014 CBA, violated the POA, injunctions within the POA, and the bankruptcy court's order confirming the POA. *Id*. at 877. The bankruptcy court determined that plaintiffs went on duty disability retirement before the City filed its bankruptcy petition and before the 2014 CBA was adopted. *Id*. at 880. The court also determined that because plaintiffs were on duty disability retirement for more than three years, they could only return to active duty with zero seniority. *Id*.

Regarding plaintiffs' claims in the instant case, the bankruptcy court noted plaintiffs' admission in their amended complaint that they were subject to the seniority provisions in the 2014 CBA, which meant they lost their seniority. *Id*. at 881-882. However, the court acknowledged plaintiffs' allegations that some firefighters were initially allowed to retain their previous seniority

[3] *McGhee v Detroit*, unpublished order of the Court of Appeals, entered December 2, 2024 (Docket No. 371453).

[4] *McGhee v Detroit*, unpublished order of the Court of Appeals, entered December 2, 2024 (Docket No. 371516).

when they returned to work and that defendants conspired to selectively enforce the seniority provisions *Id*. at 882. The court ultimately determined that all of plaintiffs' claims were "barred and enjoined by the POA, with two possible exceptions." *Id*. at 891. The court found that Brown's claim that he was improperly demoted from his Lieutenant rank for reasons unrelated to his seniority and the 2014 CBA survived. *Id*. The court also determined that the POA did not preclude Ferguson's claim that he was wrongly denied his right to return to work for reasons unrelated to his seniority and the seniority provisions of the 2014 CBA. *Id*. at 892. The court declined to express its view of the merits of Brown's and Ferguson's surviving claims. *Id*. at 891-892.

In the trial court in the instant case, defendants moved for summary disposition on Brown's and Ferguson's remaining claims. Defendants appeal the trial court's orders denying summary disposition with respect to plaintiffs' claims alleging violation of the DFR, breach of contract, promissory estoppel, and tortious interference with a business relationship.

II. DOCKET NO. 371453

The union defendants argue that the trial court erred by denying their motion for summary disposition as to Brown's claims alleging violation of the DFR, promissory estoppel, and tortious interference with a business relationship. We review a trial court's decision on a motion for summary disposition de novo. *Bailey v Antrim Co*, 341 Mich App 411, 421; 990 NW2d 372 (2022). Summary disposition under MCR 2.116(C)(10) is appropriate if "there is no genuine issue as to any material fact and the moving party is . . . entitled to judgment as a matter of law." *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5; 890 NW2d 344 (2016). A trial court deciding a motion under subrule (C)(10) reviews the affidavits and other documentary evidence in the light most favorable to the nonmoving party. *Id*. A genuine issue of material fact exists when the evidence "leave[s] open an issue upon which reasonable minds might differ." *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013) (quotation marks and citation omitted).

The union defendants first assert that the statute of limitations barred Brown's claims. An appellate court "reviews de novo questions involving the interpretation and application of a statute of limitations." *Dorko v Dorko*, 504 Mich 68, 74; 934 NW2d 644 (2019). This Court has acknowledged that a six-month statute of limitations applies to a DFR claim. *McCluskey v Womack*, 188 Mich App 465, 469; 470 NW2d 443 (1991). "The six-month limitation period begins to run from the time a final decision regarding the employees' grievance has been made or from the time the employees discovered, or in the exercise of reasonable care should have discovered, that no further action would be taken with respect to their grievance." *Id*.

In February 2020, the DFFA filed a grievance with the City on Brown's behalf because of his demotion. On March 11, 2020, defendant Harp, on behalf of the DFFA, informed Brown that the Department had denied the grievance, and the DFFA declined to pursue the matter to arbitration. Plaintiffs filed their complaint in the trial court on May 12, 2020. Therefore, Brown filed his DFR claim well within the six-month limitations period, and the claim was timely. Because the DFR claim was timely, the union defendants' argument that Brown's other claims were untimely because he recast his DFR claim as tort claims to avoid the statute of limitations lacks merit.

The union defendants next argue that the trial court erred by finding that there existed a genuine issue of material fact regarding Brown's DFR claim. "To prevail on a claim of unfair representation, a charging party must establish a breach of the union's duty of fair representation and also a breach of the collective bargaining agreement." *Goolsby v Detroit*, 211 Mich App 214, 223; 535 NW2d 568 (1995) (*Goolsby II*). The DFR is imposed on unions to prevent them from acting wrongfully or arbitrarily against an individual employee. *Technical, Professional, and Officeworkers Ass'n of Mich v Renner*, 513 Mich 57, 80; 15 NW3d 524 (2024). A union's responsibility of fair representation "is comprised of three distinct responsibilities: (1) to serve the interests of all members without hostility or discrimination toward any, (2) to exercise its discretion with complete good faith and honesty, and (3) to avoid arbitrary conduct." *Goolsby v Detroit*, 419 Mich 651, 664; 358 NW2d 856 (1984) (*Goolsby I*) (quotation marks and citation omitted). A union breaches its DFR if it fails to comply with any one of these responsibilities. *Id*.

When contractual language is unambiguous, courts must interpret and enforce the language as written. *Harper Woods Retirees Ass'n v Harper Woods*, 312 Mich App 500, 508; 879 NW2d 897 (2015). "A contract is unambiguous, even if inartfully worded or clumsily arranged, when it fairly admits of but one interpretation." *McCoig Materials, LLC v Galui Constr Inc*, 295 Mich App 684, 694; 818 NW2d 410 (2012). Conversely, a contractual provision is ambiguous if it irreconcilably conflicts with another provision, or when it is equally susceptible to more than a single meaning. *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 715; 706 NW2d 426 (2005). Every word, phrase, and clause in a contract must be given effect, and any interpretation that would render any part of the contract surplusage or nugatory must be avoided. *McCoig Materials*, 295 Mich App at 694. "Only when contractual language is ambiguous does its meaning become a question of fact." *Coates v Bastian Brothers, Inc*, 276 Mich App 498, 504; 741 NW2d 539 (2007).

The 2014 CBA provides for a firefighter's promotion to Lieutenant in the fire prevention division:

> b. To be eligible for transfer or promotion to a classification outside of the Firefighting Division, an Employee must satisfy the following prerequisites:
>
> * * *
>
> ii. For promotions to Lieutenant classifications (arson, fire prevention, community relations): Sixty (60) months experience in the Detroit Fire Department.
>
> * * *
>
> vi. No Employee may be promoted to a position covered by this section H.3 unless he or she has completed at least thirty (30) months in the classification immediately below the vacancy, except for promotion to the Communications Division.
>
> * * *

> d. Selection. In filling vacancies outside the Firefighting Division that are subject to this Section H.3, the Executive Fire Commissioner, or his or her designee, will make a selection based upon performance upon an Administered Examination. The weights assigned to the four (4) criteria that compose the Administered Examination shall be as follows:
>
> i. Seniority: 45%
>
> ii. Written Examination: 25%
>
> iii. Evaluation and Discipline History: 15%
>
> iv. Oral/Proficiency Interview: 15%

The 2014 CBA defines seniority as

> the length of continuous service within the Department without interruption or breaks. Seniority, as defined above, is established to serve as a basis for determining Employee seniority rights provided for in this Agreement including the order of demotion or lay off in the event of a reduction in force and the reemployment rights of Employees.

Brown correctly asserts that he met the prerequisite for his promotion by having 60 months of experience in the firefighting division. However, contrary to his argument that seniority was not a component of his particular promotion, seniority accounted for 45% of the selection criteria for a promotion to Lieutenant in the fire prevention division, in addition to the written examination, disciplinary history, and an interview. As previously discussed, Brown did not have any seniority when he returned to work after his 18-year absence. Consequently, Brown's demotion did not breach the CBA because seniority was a part of the selection process for the promotion, and Brown had no seniority. Moreover, because Brown's DFR claim involved the seniority provisions of the 2014 CBA, it should have been dismissed pursuant to the bankruptcy court's ruling. While the bankruptcy court did not preclude Brown's claim based on his allegations that his demotion was unrelated to his seniority or the seniority provisions of the 2014 CBA, the bankruptcy court expressed no view regarding the merits of the claim. *In re Detroit*, 653 BR at 891. The DFFA's motion for summary disposition went beyond the pleadings reviewed by the bankruptcy court, and an examination of Brown's promotion pursuant to the 2014 CBA reveals that seniority was a component of the promotion. The trial court erred by denying summary disposition with respect to Brown's DFR claim.

The union defendants next argue that the trial court erred by denying their motion for summary disposition regarding Brown's promissory estoppel claim. To establish a claim of promissory estoppel, a party must demonstrate "(1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promise, and (3) that in fact produced reliance or forbearance of that nature in circumstances such that the promise must be enforced if injustice is to be avoided." *Cove Creek Condo Ass'n v Vistal Land & Home Dev, LLC*, 330 Mich App 679, 713; 950 NW2d 502 (2019) (quotations marks and citation omitted).

In plaintiffs' amended complaint, Brown alleged that the union defendants promised that when he returned to work he would keep his accumulated seniority. However, the bankruptcy court barred and enjoined any claims that included plaintiffs' seniority rights after returning to work from duty disability retirement. *In re Detroit*, 653 BR at 891-892. The modification of seniority rights provision was binding on Brown. *Id*. at 891. Brown also asserts that defendants promised that he would not be disciplined without just cause. The trial court dismissed Brown's just cause claim, and Brown did not appeal the dismissal of that claim. Brown is not entitled to relief by recasting his just cause claim as a promissory estoppel claim. The trial court erred by failing to dismiss Brown's promissory estoppel claims.

The union defendants next argue that the trial court erred by denying summary disposition regarding Brown's tortious interference with a business relationship claim. Brown alleged that he had a business relationship and expectancy with the City, of which the union defendants had knowledge. Brown asserted that the union defendants intentionally and improperly interfered with that business relationship. He alleged that the union defendants committed per se wrongful acts and acted with malice, causing a breach of the relationship between Brown and the City. Brown maintained that he lost seniority, earnings and other benefits of employment because of the union defendants' actions.

"The elements of tortious interference with a contract are (1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by defendant." *Knight Enterprises v RPF Oil Co*, 299 Mich App 275, 280; 829 NW2d 345 (2013) (quotation marks and citations omitted). To prove a breach to establish a tortious interference claim, a plaintiff must demonstrate that "the defendant induced or otherwise caused nonperformance of the contract." *Int'l Outdoor, Inc v SS Mitx, LLC*, 349 Mich App 212, 237; 27 NW3d 365 (2023) (quotation marks and citations omitted). A plaintiff "must allege the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purposes of invading the contractual rights or business relationship of another." *Id*. (quotation marks and citation omitted). "A wrongful act per se is an act that is inherently wrongful or an act that can never be justified under any circumstances." *Badiee v Brighton Area Sch*, 265 Mich App 343, 367; 695 NW2d 521 (2005). "If the defendant's conduct was not wrongful per se, the plaintiff must demonstrate specific, affirmative acts that corroborate the unlawful purpose of the interference." *CMI Int'l, Inc v Intermet Int'l Corp*, 251 Mich App 125, 131; 649 NW2d 808 (2002). "Where the defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference." *Hope Network Rehab Servs v Mich Catastrophic Claims Ass'n*, 342 Mich App 236, 246; 994 NW2d 873 (2022) (quotation marks and citation omitted). Accordingly, in such circumstances, the actions "cannot be wrongful per se." *Id*. at 246-247.

Although Brown had 60 months of experience in the firefighting division, as previously discussed seniority made up 45% of the selection criteria for a promotion to Lieutenant in the fire prevention division, in addition to the written examination, discipline history, and an interview. Because Brown had no seniority when he returned to work after 18 years, his tortious interference claim should have been dismissed. Moreover, Brown failed to present any evidence that the union defendants' actions were not motivated by legitimate business reasons, were improperly motivated, or caused a nonperformance of a contract. Consequently, he failed to establish that the union defendants' conduct was wrongful per se. See *Hope Network Rehab Servs*, 342 Mich App

at 246. The trial court erred by denying the union defendants' motion for summary disposition as to Brown's tortious interference claim.

III. DOCKET NO. 371516

The City defendants argue that the trial court erred by denying their motion for summary disposition with respect to Brown's and Ferguson's breach of contract claims. To establish a breach of contract claim, a party must show by a preponderance of evidence that there was a contract, the contract was breached, and the breach resulted in damages. *Miller-Davis Co v Ahrens Constr Inc*, 495 Mich 161, 178; 848 NW2d 95 (2014).

As discussed above, Brown did not establish a breach of the 2014 CBA because the criteria for his promotion included seniority. Therefore, the trial court should have dismissed Brown's breach of contract claim as well.

Ferguson argues that defendants' refusal to return him to work violated the disciplinary procedures set forth in the 2014 CBA, which provides the Department with "the right to discipline, discharge, demote, and/or suspend Employees for just cause." The CBA also affords employees the right to contest disciplinary action with the procedure provided in Article 10 of the 2014 CBA. Under that provision, if it is determined that disciplinary action is warranted, the Department must provide the employee with written notice of any potential action. The employee may then appeal the matter within seven days of the notice. Ferguson has failed to provide any support for his contention that defendants' failure to return him to work within 25 years of his anniversary date was disciplinary. And although Ferguson asserts the letter he received from defendant Crosson regarding the voluntary quit was a disciplinary action, he did not appeal the action within seven days of the notice. Accordingly, he has failed to establish a breach of contract, and the trial court erred by failing to dismiss his breach of contract claim.

Finally, the City defendants argue that the trial court erred by denying their motion for summary disposition as to Brown's and Ferguson's promissory estoppel claims. We agree. Brown's promissory estoppel claim against the City defendants fails for the same reason that his promissory estoppel claim against the union defendants fails. Ferguson claims that he was promised he would not be disciplined without just cause, but that was the substance of his just cause claim pleaded in the amended complaint, and he did not appeal the trial court's dismissal of his just cause claim. Accordingly, the trial court erred by denying the City defendants' motion for summary disposition with respect to Brown's and Ferguson's promissory estoppel claims.

We reverse and remand for entry of an order granting summary disposition in favor of the union defendants in Docket No. 371453 and the City defendants in Docket No. 371516. We do not retain jurisdiction.

/s/ Anica Letica
/s/ Michelle M. Rick
/s/ Kristina Robinson Garrett