[Cite as *Taylor v. J.A.G. Black Gold Mgt. Co.*, 2009-Ohio-4848.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

William A. Taylor,	:	
Plaintiff-Appellant,	:	
		No. 09AP-209
v.	:	(C.P.C. 06CVH08-11211)
J.A.G. Black Gold Management Company,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on September 15, 2009

William J. O'Malley, for appellant.

Hrabcak & Co., L.P.A., *Michael Hrabcak* and *Heidi A. Smith*, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

KLATT, J.

{¶1} Plaintiff-appellant, William A. Taylor, appeals from a judgment of the Franklin County Court of Common Pleas granting summary judgment to defendant-appellee, J.A.G. Black Gold Management Company ("Black Gold"). For the following reasons, we affirm.

{¶2} In the mid-1990's, Black Gold owned approximately one dozen gas station/convenience stores in Ohio. Black Gold hired Taylor to manage its downtown store in August 1995. As a manager, Taylor received a base salary plus a monthly

commission based upon the profitability of his store. Following two promotions to larger, more profitable stores, Taylor began managing Black Gold's Rickenbacker store.

{¶3} In July 2001, Richard Aumann, the president of Black Gold, told Taylor that he planned to construct a new gas station/convenience store in the Rickenbacker area. According to Taylor, Aumann wanted the new store to be "first class," and he asked Taylor to draw a plan of "the kind of station you visualize you want, you want to run, you want to be part of * * *." Taylor deposition, at 117. Taylor submitted his plan, which Aumann praised. At Black Gold's 2001 Christmas party, Aumann talked with Taylor about possibly including a McDonald's or Burger King franchise in the new store. Aumann and Taylor again discussed Aumann's plan for the new store in February 2002. As Taylor later testified in his deposition:

> [Aumann] wanted two food courts there. He wanted enough diversity and enough profit centers in that location to take me into old age. He wanted to be able to generate enough revenue, profit, [to] make it attractive as far as a long-term situation there. He didn't say retirement. He said well into old age.

Taylor deposition, at 120-21.

{¶4} Taylor asked Aumann what amount of profit Aumann expected the new store to produce and what kind of commission he could realize as manager of the new store. In response, Aumann faxed Taylor a document entitled "Rickenbacker Citgo Projections," in which Aumann estimated the monthly net profit he anticipated the new store would generate.

{¶5} For the next two years, both Kevin McClure, Taylor's supervisor, and John Chapan, the vice president of Black Gold, continued to apprise Taylor of the project's status. Given the lengthy delay, Taylor began to suspect that Black Gold management

only updated him to retain him at the existing Rickenbacker store, which, in Taylor's estimation, had maximized its profitability in December 2000.

{¶6} On April 4, 2004, McClure heard a rumor that Taylor had engaged in inappropriate behavior at the Rickenbacker store. McClure visited the store and spoke to the employees after Taylor had left for the day. Apparently, some of the female employees alleged that Taylor had sexually harassed them and viewed internet pornography on his office computer.

{¶7} McClure did not speak with Taylor about the women's accusations. Instead, McClure contacted Aumann and explained his findings. Two days later, Aumann terminated Taylor's employment without giving him a chance to rebut the accusations against him.

{¶8} On August 28, 2006, Taylor filed suit against Black Gold, alleging claims for promissory estoppel, breach of contract, unjust enrichment, and a violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. 621, et seq. After the parties completed discovery, Black Gold moved for summary judgment. In relevant part, Black Gold contended that Taylor had been an employee at will and, consequently, it could discharge Taylor for any reason. Black Gold argued that Taylor could not establish either the type of promises necessary to prove promissory estoppel or an express or implied contract that altered the at-will-employment relationship.

{¶9} Agreeing with this argument, the trial court granted Black Gold summary judgment on Taylor's promissory estoppel and breach of contract claims. The trial court also granted Black Gold summary judgment on Taylor's ADEA claim. However, finding that the existence of a question of fact precluded summary judgment on Taylor's unjust

enrichment claim, the trial court referred that claim to a magistrate for trial. A trial and decision in Taylor's favor ensued. On February 5, 2009, the trial court entered final judgment in Taylor's favor on his unjust enrichment claim and in Black Gold's favor on Taylor's promissory estoppel, breach of contract, and ADEA claims.

{¶10} Taylor now appeals from the February 5, 2009 judgment, and he assigns the following error:

> The trial court committed reversible error when it determined that a reasonable jury could not find that a contractual relationship was created, either by implication or by estoppel, whereby Mr. Taylor could only be terminated [for] good cause.

{¶11} Appellate review of summary judgment motions is de novo. *Andersen v. Highland House Co.*, 93 Ohio St.3d 547, 548, 2001-Ohio-1607. " 'When reviewing a trial court's ruling on summary judgment, the court of appeals conducts an independent review of the record and stands in the shoes of the trial court.' " *Abrams v. Worthington*, 169 Ohio App.3d 94, 2006-Ohio-5516, ¶11, quoting *Mergenthal v. Star Banc Corp.* (1997), 122 Ohio App.3d 100, 103. Civ.R. 56(C) provides that a trial court must grant summary judgment when the moving party demonstrates that: (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made. *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, ¶6.

{¶12} Generally, in an at-will-employment relationship, the employer may discharge the employee at any time, even without cause, so long as the reason for the discharge is not contrary to law. *Wright v. Honda of Am. Mfg., Inc.*, 73 Ohio St.3d 571, 574, 1995-Ohio-114. See also *Mers v. Dispatch Printing Co.* (1985), 19 Ohio St.3d 100,

paragraph one of the syllabus ("[E]ither party to an oral employment-at-will agreement may terminate the employment relationship for any reason which is not contrary to law."). However, there are two exceptions to the employment-at-will doctrine: (1) where the employer has made a promise from which the employee can prove promissory estoppel, and (2) where the facts and circumstances surrounding the employment demonstrate the existence of explicit or implicit contractual terms concerning discharge. *Wright* at 574; *Kelly v. Georgia-Pacific Corp.* (1989), 46 Ohio St.3d 134, paragraphs two and three of the syllabus; *Mers*, paragraphs two and three of the syllabus.

{¶13} In the case at bar, Taylor signed two acknowledgement forms that stated:

> **I understand that my employment may be terminated, with or without cause, and with or without notice, at any time at the option of either Black Gold Management or myself.** I acknowledge that I do not have a contract of employment with Black Gold Management and that, in the future, I will not have any contractual rights of employment unless such rights are made part of a written agreement executed by me and by management or higher level officer of Black Gold Management.

(Emphasis sic.) Taylor never entered into a written employment agreement with Black Gold. Thus, consistent with his avowed understanding, Taylor admitted in his deposition that he thought that he was an at-will employee. Nevertheless, throughout this litigation, Taylor has argued that both exceptions to the at-will-employment doctrine apply, thus preventing Black Gold from discharging him without good cause.[1]

{¶14} We will first address Taylor's argument that the trial court erred in granting Black Gold summary judgment on his promissory estoppel claim. An employee may

[1] Taylor contends that Black Gold lacked good cause to terminate his employment. Taylor denies that he ever sexually harassed his female employees or viewed internet pornography on his office computer.

recover under the theory of promissory estoppel if he proves that the employer made a promise that it should have reasonably expected the employee to rely upon, the employee relied upon the promise, and the employee suffered injury as a result of his reliance. *Kelly*, paragraph three of the syllabus; *Mers*, paragraph three of the syllabus. The promise at the heart of a promissory estoppel claim must consist of more than a commitment to the employee's future career development or a vague assurance of job security. *Hoyt v. Nationwide Mut. Ins. Co.*, 10th Dist. No. 04AP-941, 2005-Ohio-6367, ¶45; *Buren v. Karrington Health, Inc.*, 10th Dist. No. 00AP-1414, 2002-Ohio-206. Rather, in order to prove promissory estoppel, a promise of future benefits or opportunities must include a specific promise of continued employment. *Wing v. Anchor Media, Ltd.* (1991), 59 Ohio St.3d 108, paragraph two of the syllabus; *Fennessey v. Mt. Carmel Health Sys., Inc.*, 10th Dist. No. 08AP-983, 2009-Ohio-3750, ¶14; *Mazzitti v. Garden City Group, Inc.*, 10th Dist. No. 06AP-850, 2007-Ohio-3285, ¶30; *Kirksey v. Automotive Cosmetics Corp.*, 10th Dist. No. 03AP-239, 2004-Ohio-1060, ¶20.

{¶15} Here, the oral representations in the record are not even explicit promises, much less specific promises of continued employment. At best, Aumann's statement that he wanted the new store to be profitable enough to "take [Taylor] into old age" is an implied promise of future, long-term benefits to Taylor. It does not include a specific promise of continued employment. Likewise, Aumann may have forwarded his profit projections for the new store to Taylor, but he did not concurrently make a specific promise of continued employment. Finally, although Black Gold management regularly apprised Taylor of the status of the new store, none of these updates included a specific promise that Taylor's employment would continue until, or even after, the store opened.

{¶16} Moreover, contrary to Taylor's assertion, Black Gold's employee discipline policy does not constitute or include a promise that Black Gold would only terminate his employment for good cause or that he was entitled to progressive discipline. In fact, the "Employee Discipline" section of Black Gold's "Employee Information and Safety Guide" explicitly states that, "Black Gold Management reserves the right to terminate an employee's employment at any time without notice and *without cause*." (Emphasis added.) Additionally, the "Employee Discipline" section warns that Black Gold "reserves the right to determine appropriate levels of discipline," and thus, it will not always engage in progressive discipline. Consequently, in its employee discipline policy, Black Gold overtly informed its employees that nothing in or about the policy was a promise of termination for cause only or progressive discipline.

{¶17} In sum, Taylor failed to adduce any evidence of a promise that could support his promissory estoppel claim. Therefore, we conclude that the trial court did not err in granting summary judgment on that claim.

{¶18} Next, we turn to Taylor's breach of contract claim. Whether explicit or implicit contractual terms have altered an at-will-employment agreement depends upon the history of the relations between the employer and employee, as well as the facts and circumstances surrounding the employment relationship. *Wright* at 574. The relevant facts and circumstances include "the character of the employment, custom, the course of dealing between the parties, company policy, or any other fact which may illuminate the question * * *." *Mers*, paragraph two of the syllabus. See also *Kelly*, paragraph two of the syllabus.

{¶19} In the case at bar, Taylor first points to the various representations about the new store as evidence of an implied contract that precluded Black Gold from terminating his employment without good cause. "Clear and unambiguous promises of continued employment for a specific period of time can create an implied or express contract of employment altering the at-will relationship." *Kirksey* at ¶17. On the other hand, statements regarding career development or future opportunities are insufficient to establish an express or implied contract that varies the employment-at-will agreement. *Daup v. Tower Cellular, Inc.* (2000), 136 Ohio App.3d 555, 562-63. As we discussed above, the representations at issue here are not specific promises of continued employment. At most, the statements of Black Gold's management indicated that Taylor would share in the benefits and opportunities occasioned by the opening of the new store. None of the statements clearly and unambiguously promised that Taylor would remain manager of the Rickenbacker store for a definite time period. These statements, therefore, do not evince a contract that altered the terms of Taylor's at-will employment.

{¶20} Taylor also points to the employee discipline policy contained in the "Employee Information and Safety Guide," and Black Gold's general adherence to that policy, as evidence of an implied contract. Although an employee handbook is not in and of itself a contract of employment, it can be evidence of the employment contract. *Wright* at 575. However, "[a]bsent fraud in the inducement, a disclaimer in an employee handbook stating that employment is at will precludes an employment contract other than at will based upon the terms of the employee handbook." *Wing*, paragraph one of the syllabus. Similarly, a handbook that expressly disclaims any intent to create a contractual relationship cannot constitute an employment contract. *Karnes v. Doctors Hosp.* (1990),

51 Ohio St.3d 139, 141. See also *Fennessey* at ¶23 (disclaimers that the policies in the handbook did not constitute a written contract of employment "preclude the use of a written employee handbook to demonstrate an implied contract of employment"); *Rigby v. Fallsway Equip. Co.*, 150 Ohio App.3d 155, 2002-Ohio-6120, ¶20 (disclaimer and acknowledgement that the handbook was not a contract of employment prevented an employment contract based upon the handbook from arising).

{¶21} Here, the "Employee Information and Safety Guide" contains two disclaimers. On the first page, the handbook states:

> The statements contained in the Employee Information and Safety Guide are not to be binding on Black Gold Management Company, but may be revised from time to time by Black Gold Management at its discretion without prior notice. (THIS PAMPHLET DOES NOT CONSTITUTE AN EMPLOYEE CONTRACT.)

Again, after listing the general work rules, the handbook states:

> These rules do not constitute a contract. * * * Black Gold Management reserves the right to make employment or disciplinary decisions at its sole discretion.

(Emphasis sic.) Given the disclaimers in the "Employee Information and Safety Guide" and the absence of any allegation or proof of fraud in the inducement, we conclude that Taylor could not rely upon the handbook's employee discipline policy to establish an implied contract.

{¶22} Moreover, both the disclaimers and Black Gold's reservation of the right to unilaterally disregard the employee discipline policy manifest the absence of mutual assent to create a contract. *Fennessey* at ¶23-24; *Smiddy v. Kinko's, Inc.*, 1st Dist. No. C-020222, 2003-Ohio-446, ¶20-21; *Hill v. Christ Hosp.* (1998), 131 Ohio App.3d 660, 667. To prove that the disciplinary policy contained in an employee handbook constitutes

a contract, an employee must demonstrate each element necessary for the formation of a contract, including mutual assent. *Fennessey* at ¶18; *Daup* at 561. Without mutual assent, a handbook is merely a unilateral statement of rules and policies which creates no obligations or rights. *Fennessey* at ¶22; *Napier v. Centerville City Schools*, 157 Ohio App.3d 503, 2004-Ohio-3089, ¶15. Here, Black Gold expressly renounced any intent to create a contract and, additionally, retained the discretion to ignore the disciplinary policy outlined in the handbook. Therefore, Taylor cannot prove the mutual assent required for the creation of an implied contract.

{¶23} In sum, none of the evidence Taylor relies upon proves the existence of an implied contract that altered the terms of his at-will employment. The trial court, therefore, did not err in granting summary judgment to Black Gold on Taylor's promissory estoppel and breach of contract claims.

{¶24} For the foregoing reasons, we overrule Taylor's sole assignment of error, and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

FRENCH, P.J., and BROWN, J., concur.