IN THE SUPREME COURT OF THE STATE OF NEVADA

KURT CARLSON,
Appellant,
vs.
THOMAS SORENSEN, AN INDIVIDUAL; AND INTERIORS VIA EUROPEAN DESIGN TEAM, INC.,
Respondents.

No. 37584

FILED

DEC 11 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from the district court's order granting summary judgment in favor of respondents Thomas Sorensen and VIA European Design Team, Inc. (VIA). Appellant Kurt Carlson contends that summary judgment was improper because issues of fact remain as to whether he had a fixed-term employment contract and whether he could only be fired for good cause. Carlson also contends that the district court erred in granting summary judgment before resolving the discovery dispute between the parties. Our review of the summary judgment order is de novo.[1]

In granting VIA's motion for summary judgment, the district court determined that Carlson did not produce evidence that could overcome the presumption that he was an at-will employee and that he failed to produce evidence that he could be terminated only for good cause. We disagree.

We have stated that an employee alleging a contract of employment must produce corroborating evidence to support his claim of a

[1]Tore, Ltd. v. Church, 105 Nev. 183, 185, 772 P.2d 1281, 1282 (1989).

contract.[2] Here, Carlson stated under oath that "we had agreed to my employment with VIA at a certain rate for at least six years." In addition, Carlson produced corroborating evidence: 1) a draft contract, which he claimed was the contract agreed to; 2) a letter written by Sorensen on VIA stationary, confirming that Carlson was employed for a term of six years at $60,000 a year; and 3) settlement negotiations concerning the termination of Carlson's employment. We conclude that this evidence, along with VIA's employment policies, was sufficient to present an issue of fact concerning whether VIA and Carlson did indeed have an employment contract, thus precluding summary judgment.

Provided there was an employment contract for a term of years, the next question involves the proper standard for terminating Carlson. VIA's employment policies refer to a 180-day probation period, at which time the employee's status is determined. Because Carlson was retained after the probationary period, it is reasonable to infer that his termination status became "for cause." Moreover, a "for cause" termination clause will be implied in an employment contract for a term of years if no contrary statement appears in the contract.[3] We thus conclude

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[2]See Yeager v. Harrah's Club, Inc., 111 Nev. 830, 836, 897 P.2d 1093, 1097 (1995).

[3]See Toussaint v. Blue Cross & Blue Shield of Mich., 292 N.W.2d 880, 891 (Mich. 1980) (stating that where the employment contract is for a definite term, it is implied, if not expressed, that the employee can be discharged only for cause); see also Eales v. Tanana Valley Medical-Surgical, 663 P.2d 958, 959 (Alaska 1983) (noting that employment contracts for a definite period can be terminated only for good cause); Shapiro v. Massengill, 661 A.2d 202, 208 (Md. 1994) (observing that when an employment contract specifies a definite term, it may only be terminated prior to the end of the term for just cause).

that Carlson presented sufficient evidence to permit him to present this issue to a jury.

Additionally, Sorensen claims that summary judgement was proper because he is merely a corporate officer of VIA and cannot be held liable for the corporation's obligations. Generally, a corporate officer or director is not liable for the corporation's debts if the corporation is in good standing,[4] the officer or director acted within the course and scope of employment,[5] and the officer or director did not commit an ultra vires act.[6] However, a corporate officer can be held liable for corporate acts if the officer is, in effect, the alter ego of the corporation or independently undertakes to guarantee or ensure a corporate obligation.[7] Because

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[4]See Trident Construction v. West Electric, 105 Nev. 423, 428-429, 776 P.2d 1239, 1242 (1989) (concluding that a finding of personal liability was improper when, among other things, there was no evidence presented that the corporation was not valid).

[5]See Indiana Dept. of Transp. v. McEnery, 737 N.E.2d 799, 803 (Ind. Ct. App. 2000) (observing that an officer or director of a corporation will not be held personally liable for inducing the corporation's breach of its contract if the officer's or director's action is within the scope of employment).

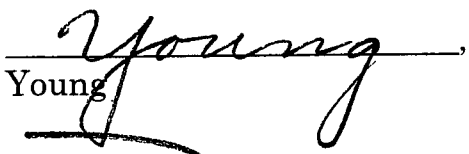
[6]See Camacho v. Rhode Island Ave. Corp., 620 A.2d 242, 248 (D.C. 1993) (noting that if an officer's actions are ultra vires, the officer, instead of the corporation, may be personally liable).

[7]See Carson Meadows Inc. v. Pease, 91 Nev. 187, 190-191, 533 P.2d 458, 460 (1975) (noting that the corporate entity may be disregarded and individual liability imposed when the corporation is influenced and governed by the person or persons asserted to be its alter ego; there is such unity of interest and ownership that one is inseparable from the other; and adherence to the fiction of a separate entity would sanction a fraud or promote injustice).

discovery was not complete with regard to the corporate records, we conclude that the district court prematurely addressed this issue. Further, an argument might be made that as the majority shareholder and moving force of the corporation, Sorensen individually guaranteed the acts of the corporation.[8] For these reasons, we conclude that the district court prematurely entered summary judgment in Sorensen's favor before resolving the discovery dispute.

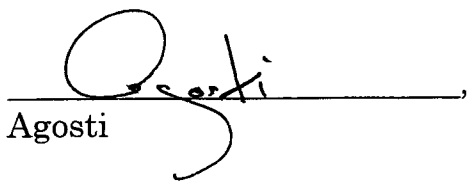
Accordingly we,

ORDER the district court's judgment REVERSED and REMAND this matter to the district court for proceedings consistent with this order.



_____, C.J.
Young

_____, J.
Rose



_____, J.
Agosti

cc: Hon. Brent T. Adams, District Judge
Steve E. Wenzel
McDonald Carano Wilson McCune Bergin Frankovich & Hicks LLP/Reno
Washoe District Court Clerk

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[8]See Caple v. Raynel Campers, Inc., 90 Nev. 341, 343-344, 526 P.2d 334, 336 (1974) (concluding that the principal corporate officer can be individually liable when the officer exerts such control that the corporation has no apparent independence).