

BEST PRACTICES

Michigan Supreme Court supports assurance of just-cause employment doctrine

BY LEE HORNBERGER

In *Paremsky v. Ingham Co.*,¹ the Michigan Supreme Court, in lieu of granting leave to appeal, partially reversed the judgment in *Paremsky v. Ingham Co.*² In the six-to-one Order, Chief Justice Clement stated,

... we reverse the Court of Appeals' holding that, as a matter of law, [former administrator SS]'s statement that the plaintiff **"was not to be terminated other than for a proper cause"** fell short of describing an unequivocal and enforceable institutional commitment to guaranteeing the plaintiff employment but for just cause. To the contrary, we conclude that **a reasonable jury could find that [SS]'s statement constituted a clear and unequivocal assurance of just-cause employment.** See *Rood v Gen Dynamics Corp.*, 444 Mich 107, 119 (1993). ... [Emphasis added]³

Justice Zahra would have denied leave to appeal.

On the "just-cause" issue, the now reversed Court of Appeals language said,

Plaintiff suggests that these sworn statements create an evidentiary conflict, which the trial court erroneously resolved while failing to view the evidence in the light

most favorable to plaintiff, as the nonmoving party. We conclude, however, that the trial court correctly held, as a matter of law, that [SS]'s first statement fell short of describing an unequivocal and enforceable institutional commitment to guaranteeing plaintiff employment but for just cause. We also disagree that [SS]'s two affidavits created an evidentiary conflict, but rather cannot reasonably be interpreted other than as the trial court did.⁴

CIRCUIT COURT

Plaintiff was employed by the employer from 1997 to October 5, 2020, when he was discharged. He then sued the employer alleging, in part, a breach of plaintiff's employment agreement with the employer on the grounds that he was terminated without cause, despite having for-cause status. He alleged that the employer's former administrator SS stated in an affidavit that, when plaintiff was hired, she told him that he would not be treated unfairly or terminated without cause but that his discharge was without just cause. Plaintiff sought lost pay from when he was discharged until his planned retirement in 2032.

In response to the employer's motion for summary disposition, the Circuit Court dismissed plaintiff's wrongful discharge claim. The Circuit Court concluded, as a matter of law, that plaintiff's allega-

tions did not establish an enforceable promise that he would be terminated only for just-cause. The Circuit Court held that SS's alleged representation that plaintiff would be treated "fairly" did not establish a just cause employment contract, especially in light of an affidavit that defendants obtained from SS "clarifying" that she did not tell plaintiff that he was other than an at-will employee.

The Circuit Court stated,

The motion was based on ... alleged representation by former employee [SS] as to saying that [plaintiff] would be fairly treated.

I think under the case law that does not establish a just-cause contract and, in fact, the . . . clarification affidavit by [SS] indicates that her statements went no further than to say fair treatment as any other employee would be fairly treated. So she did not distinguish a particular agreement between the Defendant and the Plaintiff.⁵

COURT OF APPEALS

Plaintiff appealed the Circuit Court's order granting summary disposition to the employer to the Court of Appeals. The Court of Appeals affirmed in a per curiam opinion (Letica, P.J., Cavanagh, and Swartzle).

Plaintiff argued to the Court of Appeals that the Circuit Court erred by dismissing his claims based on an alleged violation of a guarantee of job security but for just cause. Plaintiff contended that the evidence established the existence of an oral and implied agreement for just-cause status. The Court of Appeals disagreed with the plaintiff and affirmed the Circuit Court dismissal.

The Court of Appeals indicated the following:

Generally, and under Michigan law by presumption, employment relationships are terminable at the will of either party." *Lytle v Malady* (On Rehearing), 458 Mich 153, 163; 579 NW2d 906 (1998). To rebut the presumption, an employee must show "a contract provision for a definite term of employment, or one that forbids discharge absent just cause," which requires:

- (1) proof of a contractual provision for a definite term of employment or a provision forbidding discharge absent just cause; (2) an express agreement, either written or oral, regarding job security that is clear and unequivocal; or (3) a contractual provision, implied at law, where an employer's policies and procedures instill a legitimate expectation of job security in the employee. [*Id.* at 164 (quotation marks and citations omitted).]

Plaintiff attached to his amended complaint a sworn statement from former administrator [SS], dated September 2, 2021, which said,

14. I assured [plaintiff] that no one at the facility would unfairly treat him or unfairly terminate his employment, as long as he continued to provide maintenance services and oversee the facility's building and equipment.

* * *

16. The employment of [plaintiff], a key management employee, on whom the facility's proper operation depended, and whom I requested to head the Maintenance Department, **was not to be terminated other than for a proper cause.**

Based on [plaintiff's] skills, character, and dedication, this was highly unlikely. This understanding was made clear during our meetings. [Emphasis added] ⁶

The employer filed its own affidavit from SS, dated October 13, 2021, which included the following:

8. [Plaintiff] remained an at-will employee at all times after leaving the bargaining unit and becoming Lead Maintenance Technician and later Director of Maintenance — including after 2007 and up to the time of my retirement.
9. I did not promise [plaintiff] that he would only be terminated "for cause," which was the employment status of our bargaining unit members. Rather, I reminded him that he would be treated fairly, just as I treated all other employees.
10. My promises of fair treatment are what I was referring to in paragraph 16 of my sworn statement drafted by [plaintiff's wife], and at no time did I make any promises to change the legal status of [plaintiff's] at-will employment.⁷

Plaintiff argued to the Court of Appeals that these affidavits created an evidentiary issue, which the Circuit Court erroneously resolved while not viewing the evidence in the light most favorable to plaintiff. The Court of Appeals concluded that the Circuit Court correctly held, as a matter of law, that SS's first affidavit did not articulate an unequivocal and enforceable institutional commitment to guaranteeing plaintiff employment but for just cause. The Court of Appeals stated that the two affidavits did not create an evidentiary issue.

The Court of Appeals held that the Circuit Court did not err by dismissing plaintiff's claims predicated on a violation of a guarantee that he would be subject to termination only for just cause.

MICHIGAN SUPREME COURT

Based on *Rood v General Dynamics Corp.*,⁸ the Supreme Court reversed the Court of Appeals on the legitimate expectation of just-cause employment issue.

Rood examined employer oral representations and written policy statements to determine the existence of alleged employment agreements terminable only for cause. *Rood* held that the employer's written policy statements were sufficiently clear and definite to create a jury question regarding the existence of a just-cause employment relationship. The rationale for enforcement of employer policies and procedures relating to employee discharge is the intuitive recognition that such policies and procedures tend to enhance the employment relationship and encourage an orderly, cooperative, and loyal workforce. *Toussaint v Blue Cross & Blue Shield of Michigan*.⁹

Rood held that a reasonable jury could find that the employer's written policies and procedures could have instilled a legitimate expectation of just-cause employment in plaintiff *Rood*.

Rood stated,

... [W]hen all of the [Employer] policies are considered together ..., ... a reasonable juror could find that the overall employee policies could **reasonably instill a legitimate expectation of just-cause employment** in

SP 2-415 clearly states that its purpose is "[t]o establish a uniform method of coordinating and effecting the lay-off or involuntary termination of Management and Management Support employees." The phrase "involuntary termination" is specifically defined, as "[d]ischarge for reasons of misconduct or unacceptable performance." Further, SP 2-415 purports to require "[t]he highest level review of events leading to a Management or Management Support involuntary termination ... before taking action." These statements are sufficiently clear to warrant a reasonable employee to expect that the company had elected, at least temporarily, to limit its involuntary termination discretion with respect to management and management support personnel to misconduct or unacceptable performance. [Emphasis added]¹⁰

Rood found that a reasonable jury could find that employer's written policies and procedures could have instilled a legitimate expecta-

tion of just-cause employment in the plaintiff. *Rood* was followed by the Supreme Court in *Paremsky*.

BEST PRACTICES

The foregoing suggests several best practices for counsel working with employment-related issues.

- Counsel should exercise care when interviewing former management employees.¹¹ Counsel should review *Smith v Kalamazoo Ophthalmology* for guidelines on how to appropriately do this.¹² This includes making sure that counsel is not talking with a former employee who is already represented concerning the situation.
- Counsel representing employers may wish to consider having pre-dispute mandatory arbitration provisions in their job applications, employee handbooks, and related documents.¹³
- Employer counsel should also educate management and human resource employees of the ramifications and risks of making employment-related promises to prospective employees.
- Since many employment-related matters at the Supreme Court are disposed of in orders and without a full court opinion, counsel on both sides should be familiar with this shadow docket of orders to get as full a sense of the Court's position on such promises of employment and other attendant issues.¹⁴
- From the counsel for the employee perspective, *Paremsky* shows what persistence, professionalism, and competence can do. This includes getting appropriate affidavits and being prepared to go all the way to the Michigan Supreme Court.¹⁵

CONCLUSION

As evidenced by *Paremsky*, *Rood's* legitimate expectation of just-cause employment exception to the employment-at-will doctrine is alive and well in Michigan. Counsel working with such issues would be well to implement best practices in keeping with the doctrine.



Lee Hornberger is an arbitrator based in Traverse City. He is a member of the National Academy of Arbitrators, former chair of the SBM Alternative Dispute Resolution Section and the Traverse City Human Rights Commission, editor emeritus of the Michigan Dispute Resolution Journal, and former president of the Grand Traverse-Leelanau-Antrim Bar Association. He is a member of Professional Resolution Experts of Michigan and a diplomate member of the National Academy of Distinguished Neutrals.

ENDNOTES

1. ___ Mich ___; ___ NW2d ___ (MSC 167057)(March 26, 2025). https://www.courts.michigan.gov/495e36/siteassets/case-documents/uploads/sct/public/orders/167057_51_01.pdf

2. Unpublished per curiam opinion of the Court of Appeals, issued February 15, 2024, Docket No. 364046. Justice Zahra would have denied leave to appeal. https://www.courts.michigan.gov/495e35/siteassets/case-documents/uploads/opinions/final/coa/20240215_c364046_38_364046.opn.pdf

3. *Id.*

4. *Id.* at 13.

5. *Id.*

6. *Id.*

7. *Id.*

8. 444 Mich. 107; 507 NW2d 591 (1993).

9. 579 Mich. 570, 613; 292 NW2d 880 (1980).

10. 444 Mich. 107 at 143.

11. Spitzer, "Interviewing Former Corporate Employees: How to Avoid Risking Disqualification or Sanctions," *Michigan Bar Journal* (July 2005), p 40 (" [First,] Attorneys representing employees should take the initiative in seeking court approval before interviewing former employees who possess confidential information. Second, at the very least, the employee's attorney should give opposing counsel written notification that he or she plans to conduct ex parte interviews of former employees. Lastly, before interviewing former employees, counsel must determine whether those employees are subject to any confidentiality, nondisparagement, nondisclosure, or other employment agreements." *Id.* at 42.)

12. *Smith v Kalamazoo Ophthalmology*, 322 F Supp 2d 883 (WD Mich 2004), *US v Beiersdorf-Jobst*, 980 F Supp 257 (ND Ohio 1997), *Kitchen v Aristech Chemical*, 769 F Supp 254 (SD Ohio 1991), and *Upjohn Co v Aetna Casualty and Surety Co*, 768 F Supp 1186 (WD Mich 1991).

13. Howlett and McDonald, "Mandatory Arbitration of Employment Claims: An Update," *Michigan Bar Journal* (September 2013), p 38.

https://www.michbar.org/file/journal/pdf/pdf4article2261.pdf?_gl=1*Iqawx3*_ga*MTUyMDE4NjA3OC4xNjA0NjE0ODY2*_ga_JVJ5HJZB9V*czE3NDY4Nzg5NzgkbzE4ODMkZzEkdDE3NDY4NzkwMDQkajAkbDAkaDA.

14. Justice Welch concurring in denial of leave to appeal, ___ Mich ___, MSC 164435 and 164436 (May 3, 2024), from *Michigan AFSCME Council 25 v. Wayne Co*, unpublished opinion of the Court of Appeals, issued April 21, 2022, Docket Nos 356320 and 356322, concerning applicability of Michigan Uniform Arbitration Act, MCL 691.1681 *et seq*; the *Steelworkers' Trilogy* [*United Steelworkers of America v American Mfg Co*, 363 US 564 (1960); *United Steelworkers v Warrior & Gulf Navigation Co*, 363 US 574 (1960); and *United Steelworkers v Enterprise Wheel & Car Corp*, 363 US 593 (1960)]; and *Detroit Auto Inter-Ins Exch v Gavin*, 416 Mich 407 (1982), in reviewing public sector labor arbitration awards.

15. Runyan, "Summary Judgment: Defeating the Employer's Inevitable Motion (Part I), *Labor and Employment Lawnotes* (Summer 2016), p 1.

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