

IN THE COURT OF APPEALS

FILED
August 21, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

GAYLEY HESTER,)

Pl a i n t i f f - A p p e l l e e)

vs .)

TI TAN WHEEL INTERNATI ONAL, I NC . ,)
DYNEER CORPORATI ON, and DI CO)
TI RE, I NC . ,)
Defendant - Appellants)

ANDERSON CIRCUIT)
C. A. NO. 03A01-9601-CV-00028

HON. JAMES B. SCOTT, JR.)
JUDGE

AFFIRMED AND REMANDED

DONALDSON M LEAKE and JAMES E. WINTERS, Kramer, Rayson, Leake,
Rodgers & Morgan, Knoxville, for the appellants.

WILLIAM S. LOCKETT, JR., and NATASHA K. METCALF, Kennerly,
Montgomery & Finley, P.C., Knoxville, for the appellee.

O P I N I O N

Murray, J.

This is a contract action based upon an alleged breach of a termination of employment contract by the defendants. The case was tried before a jury and a verdict was rendered in favor of the plaintiff awarding damages in the amount of \$25,840.00. Judgment was duly entered thereon. The defendants appeal. We affirm the judgment of the trial court.

The plaintiff was an employee of the defendants as the "human resources director." Sometime in 1992, the plaintiff was informed that there were problems with his job performance and that he was to be terminated. The defendants had a corporate policy whereby terminated, salaried employees were entitled to a severance package. Mr. Hines, president of Dico Tire and Mr. Hester negotiated a rather generous severance agreement. The agreement was reduced to writing. It was signed by both Mr. Hines and Mr. Hester. Apparently both signed the document before a notary public. The last provision in the agreement provided as follows:

You may accept this offer by signing this letter and the enclosed release before a Notary Public and returning the enclosed release to me in the envelope provided.

The letter was signed as "Accepted this 7th day of September, 1993." Apparently the release referred to in the letter was not signed by Mr. Hester nor demanded by Mr. Hines. Mr. Hester testified that he, Mr. Hines and the notary publics were all

present when the letter was signed. Mr. Hester further testified that he was never presented a release to be signed. Mr. Hines, in his testimony, confirmed that he had never presented a release to Mr. Hester for execution.

Mr. Hines testified that he negotiated the agreement with Mr. Hester. He stated that Mr. Hester kept the original and he a copy which he secreted in his desk drawer files. He explained that his purpose in keeping the agreement a secret was because it was beyond the normal employment policy of the company and that he didn't want other people, subordinates, to have access to it.

The defendants performed under the agreement as signed until late 1993. Thereafter, they refused to honor the agreement. This action resulted.

The existence and terms of the agreement were subsequently discovered by Mr. Harlan Smith, acting president of Dico Inc. Mr. Hines testified that Mr. Smith instructed him to have a new agreement drafted. A new agreement was drafted after the original had been signed but the new agreement was not executed by Mr. Hester.

The defendants defended the action, generally stated, on the grounds that no valid contract existed between them and Mr. Hester.

At the close of the plaintiff's proof and again at the close of the defendants' proof, the defendants moved for a directed verdict on the ground that there was no consideration to support the contract. The motion was denied and, as noted above, the jury resolved the issues in favor of the plaintiff.

The defendants seasonably filed a motion for a new trial. One of the grounds recited in the motion for new trial was that there was a lack of consideration between the parties to the separation agreement executed by Robert Hines and Gayley Hester.

It is this issue that is presented to this court for review, i.e., "Did the trial court err in denying defendants/appellants' motion for a directed verdict because there were no disputed issues relating to the fact that M. Hester failed to supply the requisite consideration embodied in the purported September 7, 1993 letter agreement?"

We review this case under the following well-established standards: In ruling on a motion for directed verdict, the court must take the strongest legitimate view of the evidence in favor of the non-moving party. In other words, the court must remove any conflict in the evidence by construing it in the light most favorable to the non-movant and discarding all countervailing evidence. The court may grant the motion only if, after assessing

the evidence according to the foregoing standards, it determines that reasonable minds could not differ as to the conclusions to be drawn from the evidence. If there is any doubt as to the proper conclusions to be drawn from the evidence, the motion must be denied. See Holmes v. Wilson, 551 S.W2d 682, 685 (Tenn. 1977) and Gann v. International Harvester Co. of Canada, Ltd., 712 S.W2d 100, 105 (Tenn. 1986).

The trial court was of the opinion that there was sufficient proof to submit the case to the jury. In a colloquy between the court and counsel at the time of the defendants' renewal of their motion for directed verdict at the close of all the proof the court stated: "The court is going to rule that consideration is not the question, as I stated. The question is whether or not there was a fulfillment of the total meeting of the minds when signing a release and sending it in at the same time. ..."

Upon review of the evidence, we agree with the court's observations. There is sufficient evidence to infer that the defendants' agent, Mr. Hines, acquiesced in the failure of the plaintiff to execute and deliver a release to the defendants. We further find that there is sufficient evidence in the record to support a finding that the defendants themselves acquiesced in the agreement as written by performing a substantial part of the

contract. Thus, we find that there is material evidence to support the verdict of the jury.

Accordingly, the case is affirmed in all respects. Costs are taxed to the appellants and this cause is remanded to the trial court for the collection thereof.

Don T. McMurray, J.

CONCUR:

Herschel P. Franks, J.

Clifford E. Sanders, Sp. Judge

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vs.)	HON. JAMES B. SCOTT, JR.
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TITAN WHEEL INTERNATIONAL, INC.,)	AFFIRMED AND REMANDED
DYNEER CORPORATION, and DICO)	
TIRE, INC.,)	
)	
Defendant - Appellants)	

ORDER

This appeal came on to be heard upon the record from the Circuit Court of Anderson County, briefs and argument of counsel. Upon consideration thereof, this Court is of the opinion that there was no reversible error in the trial court.

Accordingly, the case is affirmed in all respects. Costs are taxed to the appellants and this cause is remanded to the trial court for the collection thereof.

PER CURIAM

