IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

FILED

February 19, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

GORDON L. BIRGE,	)	C/A NO. 03A01-9609-CH-00295
	)	
Plaintiff-Appellee,	)	KNOX CHANCERY
	)	
v.	)	HON. FREDERICK D. McDONALD,
	)	CHANCELLOR
THE BOEING COMPANY,	)	
	)	AFFIRMED
Defendant-Appellant.	)	AS MODIFIED

JENNIFER B. MORTON and CAROL S. NICKLE, NICKLE & MORTON, LLC, Knoxville, for Plaintiff-Appellee.

THOMAS M HALE, KRAMER, RAYSON, LEAKE, RODGERS & MORGAN, Knoxville, for Defendant-Appellant.

O P I N I O N

Franks. J.

In this action for breach of contract, the Chancellor determined that plaintiff was not entitled to recover damages, but declared the contract could possibly be enforced in a subsequent action. The defendant has appealed from this judgment.

The complaint alleged that plaintiff, an employee of defendant was transferred from Seattle, Washington to Oak Ridge, Tennessee on January 15, 1988, and that the parties

entered into a relocation agreement effective on completion of plaintiff's Oak Ridge assignment, and averred:

> Plaintiff has offered and tendered full performance of all the terms of the contract on his part to be performed, but defendant has wrongfully refused the same, and has notified plaintiff that defendant would not accept this offer and tender.

The complaint further alleged that the defendant breached the contract ?by failing to provide to plaintiff the promised relocation benefits?. Subsequently, the complaint was amended to ask for specific performance of the contract.

Following trial, the Chancellor filed a memorandum opinion which stated that Boeing had a contractually binding obligation ?to pay the costs of Mr. Birge's relocation back to Seattle upon the completion of his Oak Ridge assignments. . . .? But the Court rejected plaintiff's argument that defendant unreasonably refused to approve relocation benefits when he moved to a farm in Roane County some 30 miles or so from his Hardin Valley property residence in Tennessee. In ruling on the issue of damages, the Trial Court said:

> The Boeing Company acted reasonably in saying it was not agreeing that Plaintiff was entitled to benefits for relocation to Seattle in view of Plaintiff's attempt to do such an absolute minimum so as to be entitled to be paid benefits that the question was left shrouded in confusion and doubt, and especially in light of his suggestion that if Defendant would pay him for the relocation costs arising from the sale of his Hardin Valley Road home he would forgo the expenses of moving to Seattle, which rather strongly indicated that he had no intent of moving back to Seattle. When everything is considered, the minimum requirement to establish a relocation, is that Mr. Birge make Seattle his principal, primary residence. He has not done this yet, and so as has been already ruled is not now entitled to any costs reimbursement. Accordingly, his claim for money damages and specific performance must be, and is dismissed.

The Court further declared that if plaintiff relocated to

Seattle within a reasonable time, he would be entitled to be paid relocation benefits, and suggested that six months following the trial date or possibly less, would constitute a reasonable time.

Defendant's appeal essentially argues that plaintiff is not entitled to recover under the terms of the contract, after plaintiff's self-imposed deadline for relocating.

Plaintiff retired in August 1992, and determined that property values had increased in Seattle since his move, and was also aware that Boeing had recently laid off 7,000 employees. Because his wife hoped to remain with Boeing until her retirement, she wished to continue working at the Oak Ridge location for a few years. Given the circumstances, plaintiff asked Boeing's Human Resources department whether his relocation agreement could instead be used to cover the expenses of moving from Knox County to Roane County, Tennessee. Plaintiff believed this plan would be approved, because it would cost less than a move to Seattle, and because he had known Boeing employees who had been relocated to a region other than their original location. Plaintiff was told that his relocation agreement would not cover a move to Roane County because it was a move within the same geographical area or local labor market.

Plaintiff then advised Boeing that he planned to move to Seattle. However, he also indicated that if the company agreed to pay the cost for the move to Roane County, he would waive his right to return to Seattle. Boeing consistently informed plaintiff that it would only pay for the move to Seattle, and that the company would disapprove his

relocation benefits if his move to Seattle entailed the purchase of a recreation vehicle or vacation property. He was told that his relocation would qualify for reimbursement only if he returned to the original location, along with his household goods and vehicles.

Plaintiff requested a yearlong extension to locate property in Seattle. He advised he would ?forfeit? his ?relocation rights? after August 1, 1993 if he had not relocated. A dispute promptly arose when plaintiff attempted to determine how minimal a commitment he could make to return to Seattle and still have the company pay his costs of relocation.

Subsequently, plaintiff filed this action on August 1, 1994, two years to the day following his retirement.

The interpretation of an unambiguous contract is a question of law. *Petty v. Sloan*, 197 Tenn. 630, 277 S.W.2d 355 (1955); *Rainey v. Stansell*, 836 S.W.2d 117 (Tenn.App. 1992). The standard of review is *de novo* with no presumption of correctness. T.R.A.P. 13(d); *Estate of Haynes v. Braden*, 835 S.W.2d 19 (Tenn.App. 1992).

The Relocation Authorization and Agreement (hereinafter ?RAA?) includes a ?Commitment to Reimburse an Employee for Cost of Relocation on Return to Original Location.? It states that Plaintiff:

> will be reimbursed for cost of relocation upon completion of the work assignment and his location to Seattle, Washington (original location) unless an alternative arrangement is subsequently agreed upon in writing. The anticipated duration of his work assignment will be approximately two years (time). Such reimbursement will be in accordance with the specific plan of reimbursement in the

> Administrative Procedure previously named in this Relocation Authorization and Agreement - R form, subject to any revisions of that plan in effect at the time of return . . . If you retire, die, or become permanently disabled while on the work assignment, the Company will honor this commitment. This commitment will be nullified if you
>
> 1. voluntarily resign,
> 2. are dismissed for cause,
> 3. decline to accept assignment at your original location, or
> 4. are unable to return to your original location due to reasons not acceptable to the Company.

RAA, p. 6, Ex.3.

The letter relied upon heavily by defendant on appeal, written to defendant by plaintiff states in pertinent part:

> Due to the real estate boom in Seattle since my departure in 1988, it is impossible for me to return and purchase an equivalent home at the current Seattle values. A one year extension on the home search and relocation is requested which will give me time to see if the Seattle real estate market comes down from the present high to something reasonable.
>
> I plan to sell my home here, either by Realtor or through the company home purchase plan. If I cannot find reasonably priced property in the Seattle area within the one year extension (from August 1, 1992 to August 1, 1993) I will forfeit my relocation rights.

A handwritten note at the bottom of the letter indicates that the extension was approved by defendant.

Plaintiff met his self-imposed deadline by filing for relocation within that one year, when he submitted a request for approval to relocate in June of 1993.

However, plaintiff then sent an August, 1993 letter asking Boeing to hold off on the relocation process until the company clarified questions he had regarding the ?minimum

household goods, vehicles, etc.? that could qualify his move for reimbursement of expenses. He had been told that Boeing would disapprove his relocation benefits if his move to Seattle entailed the purchase of a recreational vehicle or vacation property and that his relocation would qualify only if he returned to the original location with his spouse, household goods and vehicles. Plaintiff's letter reiterated his belief that a move to somewhere besides Seattle would qualify him for reimbursement of the costs. Boeing responded that they could not give him a deviation from the policy of being returned to Seattle because other long-term employees with similar circumstances had retired from the Oak Ridge facility and were not provided with such relocation benefits, and the relocation policy did not apply because plaintiff had no plans to relocate anywhere outside his current geographical area.[1]

Implicit in Boeing's commitment to return an employee to their original location is the purpose of making the transfer to a new location less painful. It assures the employee that he or she will not have to remain in the region where they have been transferred. An outline of the situations and costs for which Boeing would reimburse the employee is set forth in the policy documents. These documents note that reimbursement is not awarded for an employee reassigned from one Boeing location to another within a locality. The costs covered when an employee is relocated

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[1]The original RAA stipulated a return to Seattle, unless the parties initially agreed to another location. No alternative agreement was made, therefore Seattle was the only location to which plaintiff was entitled to relocate.

include the kinds of items which a court might consider in assessing whether someone had actually moved their primary residence to another state, such as the transport of an employee and his/her dependents, the shipment of vehicles, personal possessions, and household goods, and the search for a residence before making the move. The record reveals that plaintiff has exercised little effort in searching for a Seattle residence. This fact, combined with Plaintiff's consistent efforts to find out the minimum amount he could take to Seattle and still receive the company benefits for his move do not establish equities in his favor.

The contract entered by the parties in 1988 contained no provision as to the time for performance, and under these circumstances the familiar rule that a reasonable time is implied is applicable here. Equity abhors a forfeiture, and we agree with the Trial Court that the terms of plaintiff's letter imposing a deadline on performance should not create a forfeiture. However, this letter is evidence of what plaintiff considered to be a reasonable time for performance of the contract. In determining what constitutes a reasonable time, the court is required to take into account the subject matter of the contract, the circumstances of the parties, their intentions, and what they contemplated at the time the contract was made. *See Calcasieu Paper Co. v. Memphis Paper Co.*, 32 Tenn. App. 293 (1949).

We believe plaintiff had a reasonable time to relocate to the Seattle area by the time this action was filed, and he may not later seek future benefits under the contract. The judgment of the Trial Court is affirmed, as

modified, and the costs are assessed to the plaintiff.

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Herschel P. Franks, J.

CONCUR:

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Houston M. Goddard, P.J.

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Charles D. Susano, Jr., J.