

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

BRENDA SANDERS,

Plaintiff,

v.

No. 04-2267 B

WELLS FARGO HOME MORTGAGE, INC.,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Before the Court is the motion of the Defendant, Wells Fargo Home Mortgage, Inc. ("Wells Fargo"), for judgment on the pleadings or, in the alternative, for summary judgment, pursuant to Rules 12(c) and 56 of the Federal Rules of Civil Procedure. This action was originally filed on March 8, 2004 in the Circuit Court of Tennessee for breach of an employment contract. Removal to this Court was effected on April 14, 2004 on the grounds of diversity jurisdiction under 28 U.S.C. § 1332.

The Plaintiff, Brenda Sanders, alleged in her complaint that for a period ending on September 5, 2003 she was employed by Wells Fargo as a mortgage consultant. (Compl. for Breach of Employment Contract ("Compl.") at ¶ 3.) In August of 2003, a customer of the Defendant advised company representatives that she had shared confidential information from his file with third parties. (Compl. at ¶ 4.) On September 4, Sanders was advised by her supervisor, David Crockett, that an investigation of the complaint was complete and that there was no proof to support the allegations of improper use of customer information. Sanders and Crockett then arranged to meet the following day at the public library in Germantown, Tennessee. (Compl. at ¶ 5.) At the meeting,

Crockett presented the Plaintiff with a termination letter stating in part that "[b]ased on the information we have received we believe that you have violated the Code of Ethics and we need to terminate your employment with Wells Fargo Home Mortgage. You will be terminated for violation of company policy." (Compl. at ¶ 6 & Ex. A.) Sanders contacted the human resources department and requested, pursuant to the employee handbook, a review of the termination decision. Thereafter, she was advised by letter that the review had taken place and the termination had been sustained. (Compl. at ¶¶ 7-8.) The Plaintiff complains that, in terminating her "for cause" pursuant to the "immediate termination of employment" section of the employee handbook, the Defendant violated the Tennessee common law duty of good faith in the performance of a contract.

Fed. R. Civ. P. 12(c) provides that "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as" one for summary judgment under Rule 56. Fed. R. Civ. P. 12(c). As the Court has considered documents submitted by the parties in support of their positions, the motion will be analyzed under Rule 56, which provides that a

. . . judgment . . . shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c); see Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986); Canderm Pharmacal, Ltd. v. Elder Pharmaceuticals, Inc., 862 F.2d 597, 601 (6th Cir. 1988). In reviewing a motion for summary judgment, the evidence must be viewed in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986). When

the motion is supported by documentary proof such as depositions and affidavits, the nonmoving party may not rest on her pleadings but, rather, must present some "specific facts showing that there is a genuine issue for trial." Celotex, 477 U.S. at 324, 106 S.Ct. at 2553. It is not sufficient "simply [to] show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co., 475 U.S. at 586, 106 S.Ct. at 1356. These facts must be more than a scintilla of evidence and must meet the standard of whether a reasonable juror could find by a preponderance of the evidence that the nonmoving party is entitled to a verdict. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S.Ct. 2505, 2512, 91 L.Ed.2d 202 (1986). The "judge may not make credibility determinations or weigh the evidence." Adams v. Metiva, 31 F.3d 375, 379 (6th Cir. 1994).

The Defendant argues that summary judgment is appropriate on the grounds of the Plaintiff's undisputed status as an "at-will" employee. Tennessee has long embraced the doctrine of employment-at-will which permits employers and employees to discontinue their relationship "without breach of contract given good cause, bad cause, or no cause." Yates v. Hertz Corp., 285 F.Supp.2d 1104, 1111 (M.D. Tenn. 2003) (citing Crews v. Buckman Labs. Int'l, Inc., 78 S.W.3d 852, 857 (Tenn. 2002)) (internal quotation marks omitted). It is undisputed in this case that there was no formal contract of employment. Rather, the Plaintiff executed a "New Hire Team Member Acknowledgment" in which she agreed she had received the employee handbook and that the handbook had application to her employment. In response, Sanders maintains that she, even as an at-will employee, has a right to expect good faith on the part of her employer with regard to the employment relationship. Specifically, she insists she had a right pursuant to Wells Fargo's employee handbook to a review of the employer's decision to terminate her. While the review was

in fact conducted, she complains that the "'review' was conducted not in good faith and with no effort, whatsoever, to determine the truth or falsity of the defamatory and unsupported allegations which led to [her] involuntary discharge." (Pl.'s Mem. in Opp'n to Def.'s Mot. for J. on the Pleadings, or in the Alternative for Summ. J. at 2.)

Whether an employee handbook can create an implied contract right upon which the employee may bring an action for breach thereof is to be determined under state law. See Gregory v. Hunt, 24 F.3d 781, 785 (6th Cir. 1994). An employee handbook, by itself, does not constitute an employment contract. Fontaine v. Weekly Homes, L.P., No. M2002-01651-COA-R3-CV, 2003 WL 21946721, at *1 (Tenn. Ct. App. Aug. 13, 2003). However, courts in Tennessee have recognized that an employee handbook may grant a contractual right to an employee under certain circumstances. Shelby v. Delta Air Lines, Inc., 842 F.Supp. 999, 1006 (M.D. Tenn. 1993), aff'd 19 F.3d 1434 (6th Cir. 1994). Whether a handbook may be deemed an employment contract depends on its specific language. Id. "In Tennessee, the language of an employee handbook or manual does not create a guaranteed contract right unless the language manifests contractual intent on the employer's part or expressly states that the policy included therein is guaranteed." Id.

The Wells Fargo handbook in force at the time of Sanders's termination provided in pertinent part as follows:

Your *Handbook* . . . [is] meant as an outline of policies and procedures covering Wells Fargo and its subsidiaries -- it is not a contract of employee "rights" or supervisor "absolutes," . . .

* * *

This *Handbook* is not a contract of employment. Your employment with Wells Fargo has no specified term or length; both you and Wells Fargo have the right to terminate your employment at any time, with or without advance notice and with or

without cause.¹

* * *

Employment may be terminated immediately if the problem involves illegal conduct on Wells Fargo premises, or if the team member's performance or conduct is such that continued employment would no longer be in the best interest of Wells Fargo.

Examples of this kind of conduct include, but aren't limited to:

- violation of the Wells Fargo Code of Ethics . . .

* * *

If your employment is terminated involuntarily and you want to have that decision reviewed, call your HR consultant or Employee Relations consultant. . . . They'll determine whether a review is appropriate based on the circumstances -- and if so, they'll conduct one.

(Supplemental Decl. of Denise Dennis, Exs. A-G, attached to Def.'s Reply Mem. to Pl.'s Mem. in Opp'n to Def.'s Mot. for J. on the Pleadings or, in the Alternative for Summ. J.)

A review of these provisions of Wells Fargo's employee handbook makes it clear the Defendant went to great pains to ensure that the language of the handbook did not convey any contractual intent on its part or expressly state that the policies set forth therein were guaranteed. Moreover, the Plaintiff does not point to any language in the handbook which she claims creates such a contract right. Rather, Sanders cites only to Williams v. Maremont Corp., 776 S.W.2d 78 (Tenn. Ct. App. 1988) as supportive to her position.

In Williams, the question before the court was whether the employee handbook afforded laid-off workers a contractual right to be reinstated based on seniority. Williams, 776 S.W.2d at 80. The handbook specifically stated that "employees will be recalled in the order of seniority." The court found as follows:

¹This particular language appears in at least three different provisions of the handbook.

The terms of the employee handbook here are clear. It states that "employees *will* be recalled in the order of seniority." Maremont asserts that because it is free under the doctrine of employment at will to terminate any of its employees at any time, its promise in the employee handbook is mere *nudum pactum* -- a naked agreement unenforceable at law. We do not agree.

Maremont contractually bound itself to lay off and rehire Plaintiffs in order of seniority. Maremont's promise of seniority-based job recall, together with increased benefits after ten years of employment, was clothed in the consideration of improved stability of the work force and better cooperation between management and the employees. Maremont was not obligated to create its seniority policy, but having done so to the detriment of those relying on the policy, it may not now treat its promise as an empty one.

Id. at 80-81 (emphasis in original). In Shelby, the court distinguished Williams, observing that "Williams does not hold that handbook statements may limit the right of an employer to terminate an employee at will, but rather that an employer is contractually bound by statements which amount to unequivocal guarantees of conditions of employment 'other' than those which relate to the right of either party to terminate their relationship -- in that case, an employee's right to be recalled after layoff in order of seniority." Shelby, 842 F.Supp. at 1010-11.

Williams was also distinguished by the court in McCarthy v. UT-Battle, LLC, No. E2003-02052-COA-R3-CV, 2004 WL 350665 (Tenn. Ct. App. Feb. 25, 2004), a case factually similar to that at bar. In McCarthy, the plaintiff, an at-will employee, was terminated for cause. After his termination, he requested a peer review of the decision, which was denied as untimely. A subsequent appeal was also denied. McCarthy, 2004 WL 350665, at *1. The plaintiff sued, contending that the employee handbook afforded him a contractual right to peer review. Id. The handbook specifically articulated that it "neither implie[d] nor establishe[d] an employment contract" and that employment was "on an at-will basis." Id. The court distinguished Williams on the grounds that, while the handbook in that case, by its language, "indicated an intention on the part

of the employer to create a binding commitment," the handbook in the case before it did not. Id. at *2.

In this case, the provisions of the Wells Fargo handbook supplied to the Court contain no language remotely similar to that in Williams. Even if the handbook could be construed as creating a contractual right to a review of Sanders's termination decision, she received the review. It cannot be seriously argued, and indeed the Plaintiff does not suggest, that it also created a contractual right to an outcome favorable to the employee. Accordingly, the Court finds that the Wells Fargo handbook did not create a contract of employment upon which the Plaintiff's complaint for breach can be based.

In addition, the Plaintiff cannot sustain a claim on the grounds of breach of a covenant of good faith and fair dealing. "Tennessee . . . recognizes an implied covenant of good faith and fair dealing in employment-at-will contracts only in very narrow circumstances." Bone v. CSX Intermodal, Inc., No. 01-2245V, 2001 WL 1906279, at *6 (W.D. Tenn. Oct. 11, 2001) (citing Shelby, 842 F.Supp. at 1013). Of greater import in this case is that such a claim may not stand alone. Id. at *7. It "is not a cause of action in and of itself but as a part of a breach of contract cause of action." Id. (quoting Lyons v. Farmers Ins. Exch., 26 S.W.3d 888, 894 (Tenn. Ct. App. 2000)). If the plaintiff's breach of contract claim is dismissed, there can be no surviving claim for breach of the covenant of good faith and fair dealing. Id.

For the reasons articulated herein, the Defendant's motion for summary judgment is GRANTED. The Clerk of Court is hereby directed to enter judgment for the Defendant.

IT IS SO ORDERED this 13th day of December, 2004.

J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE