

ARBITRATION BETWEEN
LAWRENCE TERRY
AND
CARMAX AUTO SUPERSTORES, INC.

NAM ID# 218738

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MAY 15 2019
SC Court of Appeals

ORDER GRANTING SUMMARY JUDGMENT TO RESPONDENT CARMAX

The parties have filed cross-motions for summary judgment. For the reasons set forth below, Claimant Terry's motion for partial summary judgment is denied, and Respondent CarMax's motion for summary judgment is granted.

Factual Background

In July 2017, Respondent ("CarMax") hired Claimant ("Terry") to work at its facility in Columbia, South Carolina. As part of the application and hiring process, Terry signed statements confirming that his employment would be terminable at-will, and that his at-will status could not be modified by an oral or implied agreement, but only by a specific, express written employment contract signed by an officer of CarMax and Terry.

Terry initially worked part-time in the evenings while working days as a school administrator. In October 2017, CarMax promoted Terry, and Terry quit his school administrator job. Terry's supervisor, Adam Warner, offered Terry a schedule working mornings and early afternoons to accommodate his late afternoon and evening track coaching job. In April 2018, Terry raised a concern with management that his team lead, Layla Cunningham, had scheduled him to work evenings, which conflicted with his coaching job. The matter was soon resolved, and Terry never worked the evening schedule.

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In April 2018, CarMax Regional Human Resources Manager Jeff Pendergrass visited the Columbia store and talked with Terry and other associates. Terry expressed concerns to Pendergrass about some issues at work. In a subsequent text exchange, Terry thanked Pendergrass for having listened to his concerns, and wrote that he was looking for other employment and did not want to pursue any issues further with CarMax. A few days later, however, Terry texted Pendergrass that he wanted to file a formal complaint. Thereafter, Pendergrass visited the Columbia store, talked with Terry, and interviewed numerous witnesses.

On May 2, 2017, Terry was hospitalized after suffering cardiac arrest while at his home. CarMax granted him a medical leave of absence until September 2018, when Terry returned to work with a limited schedule and other medical restrictions. After working part-time light duty for approximately two weeks, Terry requested additional medical leave. Terry has remained out of work since September 2018.

Terry's medical incident and medical leave delayed the conclusion of Pendergrass's investigation. Pendergrass completed a written investigative report on May 31, 2018. Terry filed a second complaint alleging misconduct by Pendergrass and Director of Human Resources Couthians Williams for failure to provide him information and records regarding the first investigation while he was on medical leave. Associate Relations Manager Susan Caldwell investigated Terry's second complaint and completed her report on August 1, 2018.

Part of Terry's complaint to Pendergrass was that management was not following CarMax procedures. During his investigation, Pendergrass discovered that some members of management were not following policies and procedures, partially validating some of Terry's concerns. As a result of information discovered during Pendergrass's investigation, CarMax terminated two

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individuals about whom Terry complained: Adam Warner and Layla Cunningham. Pendergrass made other findings that addressed Terry's concerns.

Legal Reasoning

In his motion for partial summary judgment, Terry asserts the evidence, including Pendergrass's investigative report, confirms that Terry and other employees were not properly trained, that management did not follow CarMax policies and procedures, that promises made to Terry were broken, and that Terry was singled out for belittling duties and mistreatment. Terry asserts he is entitled to summary judgment on claims of fraud, constructive fraud, intentional misrepresentation, intentional infliction of emotional distress, and gross negligence. I find Terry has not established the essential elements of his claims. Moreover, Terry's claims fail for the reasons set forth in CarMax's motion for summary judgment.

As an at-will employee, Terry had no right to rely on promises regarding future employment benefits. As a matter of law, Terry had no right to rely on oral or implied promises. Nor can CarMax's internal policies and procedures serve as a basis for the claims Terry has asserted. Under South Carolina law, at-will employment is presumed. CarMax made clear to Terry during the application and hiring process that his employment would be at-will, and Terry acknowledged his understanding of that status with his signature.

Moreover, as CarMax argues, Terry's claims in this case are preempted by the exclusivity provision of the South Carolina Workers' Compensation Act. Terry seems to acknowledge that the exception to the exclusivity provision is where an employer himself, or his alter ego, commits a tortious act against an employee. The actions of which Terry complains are those of members of management and a team lead, none of whom can be considered the alter ego of CarMax.

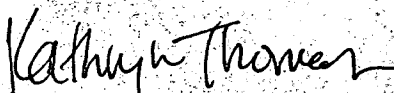
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Accordingly, all of Terry's claims, with their allegations of physical and emotional injuries, are preempted by the exclusivity provision of the South Carolina Workers' Compensation Act.

This order does not offer an opinion on the viability of Terry's claims before the Workers' Compensation Commission. Those claims are to be determined by that body and are not subject to determination in this arbitration.

It is so ordered.

Columbia, South Carolina
April 30, 2019


Kathryn Thomas, Arbitrator