

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-60783

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SAM B. GULLATT,

Plaintiff-Appellee-Cross-Appellant,

versus

WAL-MART STORES, INC.  
d/b/a/ SAM'S WHOLESALE CLUB,

Defendants-Appellants-Cross-Appellee.

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Appeal from the United States District Court  
For the Southern District of Mississippi  
(92-CV-188)

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December 8, 1995

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

A Mississippi jury found that Defendant-Appellant Sam's Wholesale Club (Sam's) had entered into an implied employment contract with Plaintiff-Appellee Sam B. Gullatt and then breached that contract. As we conclude Gullatt was, as a matter of law, an at-will employee, he has no cause of action for wrongful discharge. Accordingly, we reverse and render.

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

I

FACTS AND PROCEEDINGS

The relevant facts are few and will be recited in the light most favorable to Gullatt.<sup>1</sup> In 1986, Sam's hired Gullatt as an associate in the tire section of its Shreveport, Louisiana location. Gullatt was not hired pursuant to a written employment contract; he was hired as an hourly employee for an indefinite term. When hired, Gullatt received a copy of Sam's Associate Handbook (Handbook) which advised him that he was an at-will employee. After reviewing the Handbook, Gullatt signed the Acknowledgement (Original Acknowledgment) at the end of the Handbook, which contains the following provision:

The Company reserves the right to terminate any associate's employment at Sam's discretion. Furthermore, nothing stated in the handbook or by any member of management is intended to create any guarantees of any certain disciplinary procedures. Your continued employment depends on the satisfactory performance of your job within Company guidelines contained in this handbook and those communicated to you by management and/or the Company's need for your service. Likewise, since you are not under contract, you are free to resign from the company at any time.

Over the next few years, Gullatt transferred several times to various Sam's locations. Each time he transferred, he executed a Transfer Associate's Consent Form (Consent). The last sentence of the Consent contains the following statement:

I understand that this is not a contract for employment and that even if employed, I will remain terminable-at-will and free to resign at any time I wish.

In July of 1990, he transferred once again, this time to Gulfport,

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<sup>1</sup> In evaluating a motion for a judgment as a matter of law, we view the entire record in the light most favorable to the non-movant and draw all inferences in his favor. Omnitech Int'l, Inc. v. Clorox, Co., 11 F.3d 1316, 1323, (5th Cir.), cert. denied, 115 S.Ct. 71 (1994).

Mississippi, and once again he executed a Consent. In addition to the Consent in 1990, on September 25, 1991, Gullatt again signed an Acknowledgment (Second Acknowledgment), identical to the Original Acknowledgment.

Approximately seven weeks later, on November 15, 1991, Tom Snow, one of Gullatt's supervisors in Gulfport, learned that, while "on the clock," Gullatt had changed a tire on his personal vehicle using Sam's equipment. After Snow confirmed this report, he fired Gullatt.

Alleging several causes of action arising out of his termination, Gullatt brought suit in federal district court. Only two of these causes of actions survived the dispositive motion stage and were tried to a jury: (1) a claim under the ADEA, and (2) a claim for breach of an implied employment contract. After hearing all the evidence, the jury found that, although Sam's had not violated the ADEA, it had entered into an implied contract with Gullatt<sup>2</sup> and had breached that contract. Sam's timely appealed.

## II

### DISCUSSION

#### A. ARGUMENTS ON APPEAL

Before the jury, Gullatt urged that the following sentence (Satisfaction Sentence) in the Acknowledgment gave rise to an implied employment contract:

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<sup>2</sup> The interrogatories reveal that the jury found that an implied employment contract existed between Gullatt and Sam's; however, the jury made no determination on the term or terms of this implied contract.

Your continued employment depends on the satisfactory performance of your job within Company guidelines contained in this handbook and those communicated to you by management and/or the Company's need for your service.

He then argues that changing his own tire constitutes a minor infraction under the Handbook and, for minor infractions, the Handbook prescribes only minor disciplinary action and counseling. As Sam's terminated him after a minor infraction and in violation of the Handbook, concludes Gullatt, Sam's breached its implied contract with him.

On the other hand, Sam's, in several motions for judgment as a matter of law and now on appeal, contends that Gullatt relies on the Satisfaction Sentence out of context. The language immediately preceding the Satisfaction Sentence reads as follows:

The Company reserves the right to terminate any associate's employment at Sam's discretion. Furthermore, nothing stated in the handbook or by any member of management is intended to create any guarantees of any certain disciplinary procedures.

And the language immediately following the Satisfaction Sentence reads as follows:

Likewise, since you are not under contract, you are free to resign from the company at any time.

Sam's contends that when the Satisfaction Sentence is read in context, it reveals that Gullatt was, as a matter of law, an at-will employee without guarantees of any certain disciplinary procedures. In short, Sam's argues that the question never should have gone to the jury.

#### B. AT-WILL EMPLOYMENT IN MISSISSIPPI

Since at least 1858, Mississippi has rigidly adhered to the

common law rule that "where there is no employment contract (or where there is a contract which does not specify the term of the worker's employment), the relation[ship] may be terminated at will by either party."<sup>3</sup> The employment-at-will doctrine creates a reciprocal employment agreement: The employee can quit at will; and the employer can terminate at will.<sup>4</sup> The terminating party may have a valid reason, an invalid reason, or no reason for terminating the employment contract.<sup>5</sup>

Mississippi has recognized but a single exception to this rule: contractual obligations may arise through an employee handbook which expressly intends to modify the terms of an existing employment contract.<sup>6</sup> Language to the contrary in the employment contract or handbook (i.e., language expressly stating that, notwithstanding anything contained in the handbook, the employee remains an at-will employee), however, precludes the application of this exception.<sup>7</sup> Moreover, in the absence of a formal written

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<sup>3</sup> Solomon v. Walgreen Co., 975 F.2d 1086, 1089 (5th Cir. 1992)(per curiam)(citing Perry v. Sears, Roebuck, & Co., 508 So.2d 1086, 1088 (Miss.1987); Butler v. Smith & Tharp, 35 Miss. 457, 464 (1858)).

<sup>4</sup> Kelly v. Mississippi Valley Gas Co., 397 So.2d 874, 874-75 (Miss.1981)

<sup>5</sup> Id.

<sup>6</sup> See Coleman v. Chevron Pascagoula Federal Credit Union, 616 So.2d 310, 311 (Miss. 1993); see also Perry, 508 So.2d at 1088.

<sup>7</sup> Hartle v. Packard Elec., 626 So.2d 106, 109 (Miss. 1993)("[A]n employee handbook cannot be considered a contract between the employee and the employer where the handbook explicitly states that the employee can be terminated at will."); Bobbit v. Orchard, Ltd., 603 So.2d 356, (Miss. 1992)(specific disciplinary

employment contract, "[n]o Mississippi court has held that a policy book or manual, standing alone, suffices as an express or implied written contract of employment."<sup>8</sup>

Even assuming arguendo that under Mississippi law an employment contract could arise from language contained in a handbook given to an employee with no written or formal contract, we conclude, as a matter of law, that the facts, the identical Acknowledgments, and the Consent provisions, in this case, would lead to one conclusion: As a matter of law, Gullatt was an at-will-employee with no rights to "any certain disciplinary procedures." It follows that no facts would be found by the jury that could "imply" the existence of a contract. As such, Gullatt could be terminated at will by Sam's for a good reason, a bad reason, or no reason at all.

After the jury found no liability under the ADEA, Gullatt's claim for wrongful discharge should have been dismissed. As this was not done by the district court, we do so now. Consequently, Gullatt's cross-appeal on the issue of damages should be, and is, dismissed as moot. The judgment of the district court is REVERSED, a judgment dismissing Gullatt's action is RENDERED, and his cross-appeal is DISMISSED.

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procedures guaranteed in employee manual can modify employment contract in the absence of contrary language); see also Samples v. Hall of Miss., Inc., 673 F.Supp. 1413, 1418 (N.D. Miss.)(disclaimer in employment guidebook precluded finding of implied contract and did not change employee from at will to just cause employment status).

<sup>8</sup> Watkins v. United Parcel Service, Inc., 797 F.Supp. 1349 (S.D. Miss.), aff'd, 979 F.2d 1535 (5th Cir. 1992)