

DIANE L. CHURCHILL

v.

PARAGON COMMERCIAL REAL ESTATE, LLC, et al.

Argued February 14, 2018
Decided February 27, 2018

Panel: ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Diane L. Churchill appeals from a judgment denying her motion for summary judgment and granting the cross-motion for summary judgment of Paragon Commercial Real Estate, LLC, et al. (Paragon), entered in the Superior Court (Cumberland County, *L. Walker, J.*) on Churchill's complaint alleging breach of contract, anticipatory breach of contract, and unpaid wages in violation of 26 M.R.S. § 626 (2016).¹ Churchill sought damages in the amount of her salary for the remainder of the contract term, as well as damages pursuant to 26 M.R.S. § 626, after Paragon terminated her employment approximately six months prior to the end date identified in her contract.

In its motion for summary judgment, Paragon conceded that it had breached the employment contract but argued that Churchill was only entitled to \$865.38—representing one week of lost wages—because Churchill

¹ Title 26 M.R.S. § 626 has since been amended. P.L. 2017, ch. 219, §§ 11-12 (effective Nov. 1, 2017). In addition, Churchill alleged fraudulent transfer of money in violation of 14 M.R.S. §§ 3571-3582 (2017) in her complaint, but agreed to dismiss that count at the summary judgment stage.

obtained and began similar employment at the same salary one week after her termination from Paragon. The court granted Paragon's motion and denied Churchill's motion, entering judgment in favor of Churchill in the amount of \$865.38 on the breach of contract and anticipatory breach of contract claims and in favor of Paragon on the unpaid wages claim.

Contrary to Churchill's contentions, the court correctly determined that (1) the common law duty to mitigate damages applied in this case because the unambiguous terms of the employment contract did not relieve her of that duty and (2) Churchill mitigated her damages by finding similar employment that commenced one week after her termination from Paragon. *See Sargent v. Tomhegan Camps Owners Ass'n*, 2000 ME 58, ¶ 6, 749 A.2d 143; *Libby v. Calais Reg'l Hosp.*, 554 A.2d 1181, 1182-83 (Me. 1989). Nor did the court err in its conclusion that 26 M.R.S. § 626 "clearly does not apply under these circumstances."

The entry is:

Judgment affirmed.

Stephean C. Chute, Esq. (orally), South Casco, for appellant Diane L. Churchill

Graydon G. Stevens, Esq. (orally), Kelly, Remmel & Zimmerman, Portland, for appellees Paragon Commercial Real Estate, LLC, et al.