

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

APRIL 14, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**No. 97-2867-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**JACK PERKO,**

**PLAINTIFF-APPELLANT,**

**V.**

**W.H. BRADY Co.,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
CHRISTOPHER R. FOLEY, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Jack Perko appeals from the trial court's order dismissing his complaint for failure to state a claim. Perko argues that he has properly pled an action against W.H. Brady Company (Brady) for breach of contract. We conclude that Perko has failed to state a claim. Accordingly, we affirm.

When Brady hired Perko as an engineer in 1987, Perko signed a “Disclosure and Assignment Agreement.” The document provided that “[t]he compensation ... paid by W.H. Brady ... shall constitute full consideration for any invention, discovery or conception of any idea made by me during the term of or as the result of employment by the Company ....” The agreement further required Perko to disclose to Brady any inventions he made, to assist in making patent applications, to refrain from disclosing inventions or ideas to others unless requested to do so by the company, and to assign his rights to inventions to Brady.

In 1996, Perko developed a CD label applicator during non-working hours. Perko believed that Brady did not have any interest in the CD label market. He contacted an attorney to obtain a preliminary opinion about whether the invention could be patented. He then reported the invention to Brady, along with a request for Brady to release its rights to the invention. Brady insisted that Perko turn the invention over to the company. Shortly thereafter, Brady terminated Perko because he did not comply with the disclosure/assignment agreement.

Perko commenced an action alleging that Brady breached the disclosure/assignment agreement’s terms outright and breached a covenant of good faith and fair dealing implicit in the contract by terminating him despite his substantial compliance with the agreement’s terms. The trial court granted Brady’s motion to dismiss for failure to state a claim, concluding that Perko could not bring a wrongful termination claim against Brady because he was an at-will employee.

Whether a complaint states a cause of action is a question of law which we review independently of the trial court. *Heinritz v. Lawrence Univ.*, 194 Wis.2d 606, 610, 535 N.W.2d 81, 83 (Ct. App. 1995). In determining

whether a complaint states a claim upon which relief may be granted, “the facts pled are taken as admitted and inferences are drawn in favor of the party against whom the motion is brought.” *Id.* The court liberally construes the pleadings and will only dismiss if the plaintiff cannot recover under any circumstances. *Id.* at 610-611, 535 N.W.2d at 83.

We conclude that Perko has failed to state a claim for breach of contract. Although all parties to a contract must perform the terms of the contract in good faith, Perko did not have an employment contract with Brady. The agreement provided that Perko’s salary was the sole consideration for making all of his inventions Brady’s property. The agreement did not provide employment protection. Brady still had the right to fire Perko for any reason or for no reason, just as Perko had the right to quit for any reason or for no reason. *See Brockmeyer v. Dun & Bradstreet*, 113 Wis.2d 561, 567, 335 N.W.2d 834, 837 (1983). Because he was an at-will employee, Perko’s discharge did not, as a matter of law, constitute an explicit breach of the disclosure/assignment agreement’s terms or a breach of the covenant of good faith and fair dealing implicit in the agreement. The trial court properly dismissed the complaint for failure to state a claim.

*By the Court.*—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

