LAVINE, J., dissenting. I respectfully dissent from the majority opinion because I conclude that the March 1, 2007 agreement (2007 agreement) signed by the plaintiff, Norma I. Cruz, and the defendant Robert W. Aube, Jr., is a compensation agreement, not a contract guaranteeing three years of employment with the defendant Visual Perceptions, LLC. Neither the plaintiff, nor Aube believed the agreement guaranteed three years of employment when the agreement was entered into. For this reason, and others, I would reverse the judgment of the trial court.

The issue in this case turns, in part, on the meaning of the first sentence of the 2007 agreement, which states, "[t]his will cover the 36 month period starting April 1, 2007 and ending March 31, 2010." The word "[*t*]*his* frequently creates ambiguity because it can refer to any idea or object and because it often starts a sentence."[1] (Emphasis in original.) M. Ray & J. Ramsfield, Legal Writing: Getting It Right and Getting It Written (2d Ed. 1993) p. 312; see also A. Lunsford & R. Connors, The St. Martin's Handbook (3d Ed. 1995) p. 266. Unlike the majority, I conclude that the first sentence is ambiguous.[2]

"It is generally said that, in interpreting the words of a contract, the courts seek the meaning and intention of the parties. Inasmuch as the parties may have attached different meanings and may have had different intentions at the time of formation of the contract, the court must determine which party's meaning and intention should prevail. In the alternative, the court may discover that the parties' failure to agree has resulted either in no contract having been formed or in the omission from the contract of a disputed term." 5 A. Corbin, Contracts (1998) § 24.5, p. 15. "The individual clauses of a contract . . . cannot be construed by taking them out of context and giving them an interpretation apart from the contract of which they are a part. . . . When there are multiple writings regarding the same transaction, the writings should be considered together to determine the intent of the parties." (Citations omitted; internal quotation marks omitted.) *Frantz* v. *Romaine*, 93 Conn. App. 385, 395, 889 A.2d 865, cert. denied, 277 Conn. 932, 896 A.2d 100 (2006).

In considering the defendants' claims on appeal, I am mindful of the legal context in which the plaintiff and Aube signed the 2007 agreement. "In Connecticut, an employer and employee have an at-will employment relationship in the absence of a contract to the contrary. Employment at will grants both parties the right to terminate the relationship for any reason, or no reason, at any time without fear of legal liability." (Internal quotation marks omitted.) *Thibodeau* v. *Design Group*

One Architects, LLC, 260 Conn. 691, 697–98, 802 A.2d 731 (2002). "Pursuant to traditional contract principles, however, the default rule of employment at will can be modified by the agreement of the parties." *Torosyan* v. *Boehringer Ingelheim Pharmaceuticals, Inc.*, 234 Conn. 1, 15, 662 A.2d 89 (1995).

I disagree with the majority's assertion that the plain language of the contract unambiguously demonstrates that the parties intended to create a contract for a definite duration of thirty-six months. Nowhere does it so state. In this case, there is clearly ambiguity as to whether a contract for a term of employment for a definite duration was created. Given that the 2007 agreement contains no mention of termination, even for cause, I conclude that, at the time the parties signed the agreement, neither one of them contemplated an agreement at odds with Connecticut law or that the plaintiff was anything other than an at-will employee. Without a clear and explicit statement that the plaintiff was to be employed for a specific period of time, the agreement between the parties must be construed as an employment at will agreement. See id., 14–15. Moreover, the testimony of the parties demonstrates that the 2007 agreement was signed by the plaintiff and Aube to establish the amount of the plaintiff's compensation for the next three years, not to guarantee employment for a fixed term of three years.

The plaintiff was employed by Visual Perceptions, LLC, in February, 2006. At the time, she and Aube signed an agreement concerning the plaintiff's compensation, commission opportunities, benefits and schedule. The February, 2006 agreement provided, in part, that "[t]his will cover the 12 month period starting February 28, 2006 unless a different contract is agreed upon during that time."[3] On April 6, 2006, the plaintiff and Aube signed a second agreement that provided in part that "[t]his will cover the 12 month period starting April 10, 2006 unless a different contract is agreed upon during that time."[4] Aube testified that the plaintiff "was hired as an assistant to our then optician, and then when the optician left, she was promoted to [laboratory] manager." The plaintiff testified that neither of those agreements lasted twelve months and that she sought to renegotiate the terms of the first two agreements.

In February, 2007, the plaintiff approached Aube to renegotiate her compensation. She prepared handwritten notes for the meeting, which were placed into evidence.[5] The plaintiff testified that the notes were to be used when she asked for a raise. "I wrote the notes down so that I can discuss the reasoning for my wanting to have a higher salary." Importantly, the notes mention no time frame to which the salary request applied and are strictly related to compensation. The plaintiff testified that she did not ask Aube to guarantee thirty-six months of employment, as it was Aube's idea to set the

thirty-six month term for her compensation. As a result of the negotiations between the plaintiff and Aube, Aube drafted the 2007 agreement. He testified that he did not intend the 2007 agreement to be a contract for three years of employment, but to establish the plaintiff's salary for the next three years. He and the plaintiff had renegotiated her salary three times in the past year.[6]

During Aube's direct examination by counsel for the defendants, he testified: "I did not intend this to be a guaranteed contract. I intended this to be a term of employment, a term of compensation for thirty-six months. Not even employment, just that's what she would be paid while she worked for me over that time." He did not include a termination provision in the 2007 agreement because his "understanding was this was an at-will state, and I was able to terminate an employee at any time."

Given the ambiguity of the first sentence in the 2007 agreement, the absence of any term abrogating the employment at-will doctrine, the plaintiff's testimony that she was not seeking a three year agreement and Aube's testimony that he wanted to fix the plaintiff's compensation for a three year period, I conclude that the 2007 agreement was not an employment contract for a term of thirty-six months, but a compensation agreement in effect from April 1, 2007 until March 31, 2010.[7] There was no meeting of the minds that a three year contract of employment was being created.

For the foregoing reasons, I respectfully dissent.

[1] "To avoid the problem, add the appropriate noun after *this*." (Emphasis in original.) M. Ray & J. Ramsfield, Legal Writing: Getting It Right and Getting It Written (2d Ed. 1993) p. 312.

[2] The fact that the 2007 agreement is entitled "Norma Cruz Employment Contract" does not support the argument that it was an employment contract for a term of years. It is agreed that the plaintiff and Aube reached an agreement; the dispute centers on what kind of contract was created; e.g., a contract fixing compensation for a period of time or a contract assuring employment for a fixed period of time.

[3] The February, 2006 agreement contains no termination of employment provision.

[4] The April, 2006 agreement contains no termination of employment provision.

[5] The plaintiff's handwritten notes contain the following: "*Yearly* Income $65,000 *Not* Including Bonus *or* additional days worked Health & Dental— stays as is Vacation days— Sick Days/personal. 65,000 [divided by] 12 months = 5416.67 (monthly) [divided by] 134 hours (not including additional days worked or bonuses = $40.42 hrly ($12.87 raise.) Loss of Hours For Licensing. 134 monthly x 12 = 1608 hours + 300 + 1900 + hours lost" (Emphasis in original.)

[6] On direct examination by the plaintiff's counsel, Aube testified in part as follows:

"[The Plaintiff's Counsel]: These are the terms of her employment. Now, you agreed with her that she would be employed for a period of thirty-six months. Correct?

"Aube: No.

"[The Plaintiff's Counsel]: Okay. So when you entered into an agreement that says this will cover the thirty-six month period starting April 1, 2007, and ending March 31, 2010, you didn't mean that. Is that what your testimony is?

"Aube: Correct.

* * *

"[The Plaintiff's Counsel]: Okay. So all the other terms in here, including total compensation, would be $65,693.32, plus potential monthly bonuses,

all of these terms were terms that you agree on with [the plaintiff]. Correct?

"Aube: Yes. . . .

"[The Plaintiff's Counsel]: Now, it's your testimony, then, that all of the conditions—terms in this agreement are terms that you intended, but the first sentence is something you didn't mean?

"Aube: Well, that was the third contract that we had—or terms of employment that we had discussed in one year, so my intention was to just keep her salary stable for the next three years and not have to keep doing it over and over again.

"[The Plaintiff's Counsel]: Okay.

"Aube: So my intention was that that would be her terms of employment for the next thirty-six months so we didn't have to keep going back to the drawing board every few months, because we had done it three times in one year."

[7] Because I conclude that the 2007 agreement is a compensation agreement, not an employment contract for a term of three years, I do not reach the defendants' second claim.