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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2996-10T4

LINDA GIBBS,

Plaintiff-Appellant,

v.

CASWELL-MASSEY, EDWARD J.
COLEMAN, STACEY K. MATUSHIN,

Defendants-Respondents,

and

STEVEN CUTLER AND CINDY
CUTLER,

Defendants.

Argued September 21, 2011 - Decided October 20, 2011

Before Judges Graves, J. N. Harris, and Koblitz.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-005590-07.

Gregg S. Sodini argued the cause for appellants (Law Offices of Gregg S. Sodini, L.L.C., attorneys; Mr. Sodini, on the brief).

Michael P. Collins (Bond, Schoeneck & King, PLLC) argued the cause for respondents.

PER CURIAM

On December 1, 2006, plaintiff Linda Gibbs was fired from her job at defendant Caswell-Massey Co., Ltd. (Caswell-Massey) after thirteen years because of alleged disloyalty. She sued the company, seeking remedies under New Jersey's Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -42, among several other legal theories. Two co-defendants were Gibbs's co-employees Edward J. Coleman (president from September 2004 until March 2007) and Stacey K. Matushin (human resources manager).[1] The Law Division dismissed all but one of Gibbs's claims against the Caswell-Massey defendants on summary judgment,[2] finding that Caswell-Massey's decision to discharge Gibbs was primarily based upon a legitimate business reason and Gibbs failed to produce sufficient evidence to create a triable issue that such reason was a pretext for discrimination. We disagree with the motion court's key legal determination regarding pretext and conclude that there are genuine issues of material fact in dispute

[1] Although the other two co-defendants, Steven Cutler and Cindy Cutler, responded to the initial complaint and filed a counterclaim, default judgments ultimately were entered against them. They are not involved in this appeal.

[2] The order granting summary judgment was entered on August 20, 2010. Several months later, Gibbs accepted an offer of judgment from Caswell-Massey on the remaining count for conversion, reserving her right to appeal the motion court's order dismissing the other claims.

rendering summary judgment improper. Consequently, we reverse and remand for further proceedings.

I.

The following facts are derived from the summary judgment motion record. Caswell-Massey is a purveyor of luxury bath and body products. It operates from Edison with a workforce of approximately eighty employees. Gibbs was hired in 1993, at which time she was provided with, and signed for, an employee handbook incorporating company policy and procedures.

Gibbs steadily rose through the company ranks, and ultimately was promoted to the position of Corporate Manager, Retail Stores and International Sales. One of her job duties was to serve as a liaison between company headquarters and its satellite retail stores.

In 2000, Gibbs was diagnosed with sleep apnea by Dr. Andrew R. Freedman, M.D. She immediately brought her medical condition to the attention of Caswell-Massey's then-president Anne E. Robinson. Sleep apnea caused Gibbs to suffer fatigue, making it difficult for her to stay awake at work. Gibbs was observed briefly nodding off several times and was aware that it was an on-going issue affecting the perception of her job performance. Gibbs's doctor prescribed a Continuous Pulmonary Air Pressure (CPAP) device to assist her sleeping at home, but she conceded

that she did not always use the device, "as the noise from the CPAP device prevented her from properly monitoring her ill child throughout the night."

On October 29, 2003, Gibbs was warned in a written memorandum that her "failure to notify, unexcused absence, sleeping, and poor job performance . . . are unacceptable. Further instances of any issues related to your performance at Caswell-Massey will result in your termination." Similar memoranda, authored by Coleman, were sent to Gibbs on November 8, 2004 and March 8, 2005.[3] Despite persistent warnings, reprimands, and sanctions, Gibbs received an overall work quality rating of "performance above overall expectations" on her November 11, 2005 evaluation —— the last performance evaluation before her termination one year later in late November 2006.

In early November 2006, Caswell-Massey granted Gibbs time off for hernia surgery, for which she took disability leave from November 3 to November 28, 2006. She was fired two days after returning to work. During Gibbs's disability leave, Matushin

[3] Gibbs took a leave of absence from Caswell-Massey pursuant to the New Jersey Family Leave Act (NJFLA), N.J.S.A. 34:11B-1 to -16, from November 2003 until February 2004. On February 23, 2004, Caswell-Massey's interim president Wayne Garten sent Gibbs home with a half-day's pay for sleeping on the job. On May 3, 2004, Gibbs was sent home again and given a half-day's pay.

received an unsolicited telephone call from an unidentified individual who claimed that he had information about a Caswell-Massey employee stealing and selling its products. The caller, later identified as co-defendant Steven Cutler, asked to speak to a company representative. Coleman and Matushin met with Mr. Cutler and his wife, co-defendant Cindy Cutler, on the same day of the telephone call.

Steven Cutler introduced himself as an associate of Gene Gibbs, plaintiff's husband. He stated that he was in a business venture with Mr. Gibbs to sell various items, including Caswell-Massey products, at the Route 18 Market, a local flea market in East Brunswick. He further explained that through plaintiff, Mr. Gibbs had "acquired a massive amount of bath and body products," including "[twenty-five] bins full of Caswell-Massey product[s]."

Steven Cutler provided Coleman with (1) photographs of Caswell-Massey's products on display at the booth set up in the flea market, (2) a plastic bin filled with Caswell-Massey products taken from the booth, (3) a copy of a book with Gibbs's handwriting that appeared to be a price list for Caswell-Massey and other products, and (4) a copy of the lease agreement that the Cutlers, together with Gene Gibbs, entered into with the Route 18 Market, specifically mentioning Caswell-Massey

products. Steven Cutler subsequently provided Caswell-Massey with a sworn statement that Gibbs admitted to him that it took her "over [twelve] years" to amass such a "massive amount" of bath and body products.

Based upon these allegations, Coleman decided to conduct an investigation into the veracity of the information. He conducted a search for receipts of purchases made by Gibbs for products acquired through legitimate employee sales. Recalling that he had seen Gibbs at work at an unusual hour, Coleman reviewed Caswell-Massey's security records to confirm his suspicions.[4] Finally, when Gibbs returned to work from disability leave, Matushin and Coleman met with her to discuss the allegations.

At the November 28, 2006 meeting, Coleman asked Gibbs to provide receipts for products, but she was unable to do so because either she did not maintain copies of the receipts or none were provided by Caswell-Massey when she purchased items at warehouse sales. Gibbs denied coming into work at odd hours to pilfer products. Gibbs asserted that as part of her job, she

[4] Gibbs contends that the security reports only reflected access gained into the office areas, not where products were stored. However, she did have access to the products that were stored in her work area. Further, Gibbs admitted that she purchased Caswell-Massey products through warehouse sales, which often were cheaper than the employee discount.

was "charged with setting up displays at [Caswell-Massey's]'s office building and making baskets of [Caswell-Massey] product both of which required [her] to maintain [Caswell-Massey] product in her work area." Gibbs added that her husband took Caswell-Massey products to the Route 18 Market without her knowledge and that when she first saw the booth containing the products, she informed him that he was not allowed to sell them.

Gibbs contended that Steven Cutler was blackmailing her due to a dispute he was having with her husband over some watches. She also claimed that she complained to the police about Steven Cutler and provided Coleman with the name of the police detective involved. Gibbs played voicemails left by Steven Cutler in a threatening tone to corroborate her contention that she was being blackmailed in reprisal for his dispute with Gene Gibbs. At the conclusion of the meeting, Coleman suspended Gibbs without pay pending the outcome of the investigation.

Part of that investigation involved a search of Gibbs's home. She acceded to a demand that company representatives be permitted to search her house, saying, "You can search my house, I don't have a problem. I haven't done anything wrong." Matushin and Caswell-Massey's comptroller, David Bruzzi, inspected Gibb's basement. They found several storage bins, but refrained from actually looking at the contents because they

felt intimidated by Gene Gibbs who, according to Matushin's deposition,

> was clearly agitated, and he was a big guy, and I was quite up tight about even being down there, and I just really really felt uncomfortable being there, so I didn't ask him to open any of the bins. I just wanted to get out of there as soon as possible.

The investigation led Matushin to the Route 18 Market where she spoke to the Director of Operations, Barbara Passwaters, about the booth rented by the Cutlers and Gene Gibbs. Matushin was taken to the booth and observed mostly empty shelves with some products (not Caswell-Massey's), two empty Caswell-Massey shopping bags on the floor, and signage also seen in one of the photographs Steven Cutler provided. In an affidavit, Passwaters stated that she saw plaintiff and Gene Gibbs at the booth several times, including when it was being prepared for business.

Upon review of all of the information obtained by the investigation, Coleman determined that Gibbs's actions[5] were in violation of the employment agreement she signed in 1993, which provided, in part:

[5] Specifically, Coleman was concerned with what he viewed as Gibbs's "side business attempting to sell Caswell-Massey products and her lack of candor in the investigation."

> I agree that I shall not engage, directly or indirectly, during my employment by Caswell-Massey in any activities which could be construed as being competitive with or in conflict, or contrary to the best interests of Caswell-Massey, not accept employment or perform services for remuneration for any other person or organization without the written permission of the Chief Operating Officer of Caswell-Massey.

On December 1, 2006, after conferring with Caswell-Massey's Vice Chairman and outside counsel, Gibbs was sent a letter converting her suspension without pay into a termination of employment.

Gibbs subsequently applied for unemployment benefits and was administratively determined to be eligible from December 3, 2006, without disqualification. Caswell-Massey contested Gibb's eligibility because it believed that her termination for misconduct disqualified her from such benefits. The matter was heard by the Appeal Tribunal of the New Jersey Department of Labor (Appeal Tribunal) in early 2007. The Appeal Tribunal made findings of fact and concluded that "no disqualification [arose] under N.J.S.A. 43:21-5(b) as [Gibbs] was not discharged for misconduct." In particular, it found that Caswell-Massey did not present any evidence that (1) any of its products were sold at the Route 18 Market location or (2) Gibbs violated the covenant not to compete in her employment agreement.

In June 2007, Gibbs filed a complaint in the Law Division against Caswell-Massey, Coleman, and Matushin alleging that they

wrongfully terminated plaintiff from her employment in violation of the LAD. Gibbs also pursued theories of breach of contract; breach of the implied covenant of good faith and fair dealing; violation of the federal Family and Medical Leave Act (FMLA), 29 U.S.C.A. §2601 to §2654; violation of the New Jersey Wage Act, N.J.S.A. 34:11-4.1 to -67, and the common law tort of conversion. Gibbs's claims against Steven and Cindy Cutler were based upon intentional interference with contractual relations and defamation. Because of Gibbs's federal claim under the FMLA, the action was removed to federal court. After almost two years of discovery, the Caswell-Massey defendants moved for summary judgment seeking dismissal of Gibbs's complaint.

In October 2009, the matter was remanded to state court based on Gibbs's stipulation of dismissal of her lone federal claim. The federal judge declined to exercise supplemental jurisdiction over the remaining state law claims, even though the Caswell-Massey defendants had fully briefed the issues as part of its summary judgment motion, "because the parties will suffer minimal expense if the matter is remanded." Once re-established in the Law Division, the Caswell-Massey defendants re-filed their summary judgment motion in May 2010.

Three months later, the Law Division motion judge issued a written opinion granting partial summary judgment. All claims

with the exception of the conversion claim asserted in the sixth count of the first amended complaint[6] were dismissed. Gibbs moved for reconsideration, which was denied.

Thereafter, Caswell-Massey tendered an offer of judgment in the amount of $5,000 in settlement of the conversion claim, which Gibbs accepted, reserving her right to pursue an appeal. This appeal followed.

II.

A.

When reviewing grants of summary judgment, we employ the same standards used by the motion court. Henry v. N.J. Dep't of Human Servs., 204 N.J. 320, 330 (2010); Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div.), certif. denied, 154 N.J. 608 (1998); R. 4:46-2(c) (providing that summary judgment may be granted if the record shows that "there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law."). We are initially tasked to determine whether the moving party has demonstrated that there is no genuine dispute as to any material fact. If there is none, we next decide whether the motion judge correctly applied the

[6] Gibbs's complaint alleged that she left some belongings at her desk —— "photographs, frames, and desk equipment" —— that she was unable to retrieve after she was terminated.

applicable law. Luchejko v. City of Hoboken, 414 N.J. Super. 302, 309-10 (App. Div.), aff'd, 207 N.J. 191 (2011); Atl. Mut. Ins. Co. v. Hillside Bottling Co., Inc., 387 N.J. Super. 224, 230-31, (App. Div.), certif. denied, 189 N.J. 104 (2006). In so doing, we view the evidence in a light most favorable to the non-moving party. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). We review issues of law de novo and accord no deference to the motion judge's legal conclusions. Estate of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 384-85 (2010); Zabilowicz v. Kelsey, 200 N.J. 507, 512-13 (2009).

B.

We start our particularized review with the LAD, which, among other things, prohibits employers from discriminating against employees based upon disability or perceived disability. N.J.S.A. 10:5-4.1; N.J.A.C. 13:13-1.3; Andersen v. Exxon Co. U.S.A., 89 N.J. 483, 491-92 (1982); Myers v. AT&T, 380 N.J. Super. 443, 456-63 (App. Div. 2005), certif. denied, 186 N.J. 244 (2006). Gibbs's LAD disability claim —— where she asserts that she was discriminated against because of her sleep apnea —— requires analysis through the prism of the paradigmatic

traditional burden-shifting formula[7] called for by well-established LAD jurisprudence. O'Brien v. Telcordia Tech., Inc., 420 N.J. Super. 256, 263 (App. Div. 2011) (citing Grigoletti v. Ortho Pharm. Corp., 118 N.J. 89, 97-98 (1990) (recognizing federal approach used in determining Title VII cases as a framework for analysis in discrimination claims brought under the LAD)).

First, Gibbs must demonstrate: (1) that she is a member of a protected class, (2) that she was otherwise qualified and performing the essential functions of the job, (3) that she was terminated, and (4) that the employer thereafter sought similarly qualified individuals for that job. Victor v. State, 203 N.J. 383, 409 (2010) (citing Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 596-97 (1988)). In presenting a prima facie case, Gibbs's evidentiary burden is "slight" and "is to be evaluated solely on the basis of the evidence presented by the plaintiff, irrespective of defendant[']s efforts to dispute that evidence." Zive v. Stanley Roberts, Inc., 182 N.J. 436, 448 (2005).

In this case, Caswell-Massey essentially concedes that Gibbs has satisfied the first prong of her prima facie burden. Once this prong has been met, the burden of going forward shifts

[7] See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973).

to Caswell-Massey to present a legitimate non-discriminatory reason for the discharge. O'Brien, supra, 420 N.J. Super. at 263. If that occurs, the burden shifts back to Gibbs to demonstrate that her employer's reasoning is pretextual. Ibid. The burden of proof remains with Gibbs throughout.

We agree with the motion judge that Caswell-Massey presented sufficient proof of legitimate, nondiscriminatory reasons for the termination of Gibbs, notwithstanding her entreaties that the investigation of her and her husband's attempted sale of Caswell-Massey products was illusory. We also differ with Gibbs to the extent that she argues that a jury question is automatically presented upon the parties' satisfaction of the first two prongs of the McDonnell-Douglas burden shifting test. To accede to Gibbs's argument in this regard is to either ignore or render superfluous the third prong, which must be borne by a plaintiff, "to show that [the employer's] stated reason for [the employee's termination] was in fact pretext." McDonnell-Douglas, supra, 411 U.S. at 804, 93 S. Ct. at 1825, 36 L. Ed. 2d at 675; see also Slohoda v. United Parcel Serv., Inc., 207 N.J. Super. 145, 151 (App. Div.) (recognizing the "fair opportunity" that must be afforded a plaintiff to show that the employer's stated reason for

termination was pretextual), certif. denied, 104 N.J. 400 (1986).

"[A] plaintiff may discharge this burden either by [1] producing circumstantial or direct evidence that discrimination was more likely than not a motivating or determinative cause of the action or [2] by discrediting the reason offered by the employer as the legitimate and non-discriminatory one." El-Sioufi v. St. Peter's Univ. Hosp., 382 N.J. Super. 145, 173 (App. Div. 2005) (citing DeWees v. RCN Corp., 380 N.J. Super. 511, 527-29 (App. Div. 2005)). This "step-three" of the burden is "not insignificant," id. at 174, but may be satisfied by "'demonstrat[ing] such weaknesses, implausibilities, inconsistencies, [incoherencies,] or contradictions in the employer's proffered legitimate reasons . . . that a reasonable fact finder could rationally find them 'unworthy of credence.'" DeWees, supra, 380 N.J. Super. at 528 (quoting Fuentes v. Perskie, 32 F.3d 759, 761-62 (3d Cir. 1994)).

The legal question that remains is whether Gibbs presented sufficient evidence of pretext to warrant submission of her discrimination claim to a jury. The motion judge held that she had not. We disagree. There was sufficient evidence from which it could be inferred that the reasons advanced by Caswell-Massey were false and "motivated by discriminatory intent." Viscik v.

Fowler Equip. Co., 173 N.J. 1, 14 (2002). This is not to say that a jury will find discrimination but only that the evidence is adequate to support such a finding. See Sheridan v. DuPont de Nemours & Co., 100 F.3d 1061, 1066-67 (3rd Cir. 1996) (en banc), cert. denied, 521 U.S. 1129, 117 S. Ct. 2532, 138 L. Ed. 2d 1031 (1997); Fuentes, supra, 32 F.3d at 763-65.

We emphasize that the issue of pretext arose in the context of a motion for summary judgment. Therefore, in analyzing the evidence that Gibbs offered to demonstrate pretext, the motion judge was obligated to give her the benefit of all of the favorable inferences supported by that evidence. See Brill, supra, 142 N.J. at 523. Viewed most favorably to Gibbs, the record evidence could lead a rational juror to conclude that Coleman and Matushin engaged in an ineptly conducted, cursory investigation; relied upon a biased and highly questionable source (Steven Cutler); turned a blind eye to the explanation of a thirteen-year employee (Gibbs), and had no evidence whatsoever that even a single Caswell-Massey product had been either exposed for sale, much less actually sold, at the Route 18 Market or elsewhere. We do not ignore the strong evidence suggesting the opposite, but the friction created by the array of evidence on both sides must be tempered in favor of Gibbs —— the non-moving party —— at this stage of the proceedings. Ibid.

We are fortified in this view by the decision of the Appeals Tribunal, which found that Gibbs was not fired for cause. That being said, the unemployment benefits decision is merely relevant, not conclusive. We neither give it any administrative deference nor treat it as having a preclusive effect upon this litigation. See Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 529 (2006) (unemployment compensation determinations cannot be given collateral estoppel effect in cases arising under New Jersey's Conscientious Employees Protection Act (CEPA), N.J.S.A. 34:19-1 to -8). We instead view the Appeals Tribunal as an exemplar of a rational decision-maker akin to —— but obviously not the equivalent of —— a reasonable juror. Even recognizing the difference between the quantum of evidence presented at the administrative hearing and that contained within the summary judgment record, we cannot discount the logical force of the argument that if the Appeals Tribunal either did not believe or discounted Caswell-Massey's proof of its reason for firing Gibbs —— even if that conclusion was truncated and attenuated due to the constraints of the agency's procedures —— so might an objective, rational trier of fact in the Law Division. Consequently, we find that summary judgment was improvidently granted on Gibbs's LAD claim.

C.

We next address the remaining counts of Gibbs's complaint that were dismissed by the motion court. Gibbs argues that the Law Division erred by dismissing her claims sounding in breach of contract, breach of the implied covenant of good faith and fair dealing, intentional infliction of emotional distress, and intentional interference with contractual relations. We find none of Gibbs's arguments persuasive on these causes of action and affirm the grant of summary judgment in favor of Caswell-Massey and its employee co-defendants.

1.

We recently observed, "[a]bsent a contract providing otherwise, employment in New Jersey is at-will." Lapidoth v. Telcordia Techs., Inc., 420 N.J. Super. 411, 420-21 (App. Div. 2011) (citing Witkowski v. Thomas J. Lipton, Inc., 136 N.J. 385, 397 (1994)). Accordingly, an employer may terminate an at-will employee for any reason, except for the few exceptions proscribed by law. Ibid. Employment manuals can at times be impliedly construed to be binding contracts and absent a clear and conspicuous disclaimer, require employees to be fired only for cause. Woolley v. Hoffman-LaRoche, Inc., 99 N.J. 284, 285 (1985). Otherwise, ordinary contractual doctrine will apply to

contracts of infinite duration, deeming them to be at-will. Id. at 289.

In this matter, Gibbs argues that Caswell-Massey's employment manual mandates progressive discipline for unsatisfactory performance, essentially contending that the ultimate sanction of dismissal is warranted only in "for cause" situations. However, the manual provides, "individual circumstances involving performance or conduct that is not likely to improve through progressive discipline may require discharge of the employee at anytime." In addition, the "Disciplinary Guidelines" section of the manual defines its purpose as: "To define and communicate a consistent process by which the Company advises employees of conduct or performance that is unacceptable."

The motion court interpreted the manual to give Caswell-Massey discretion in taking progressive disciplinary action. It also found that discharging an employee at any time was permissible. Furthermore, the actual employment agreement signed by Gibbs in 1993 provided in the opening line, "in consideration of my employment at will," thus confirming the absence of an expectation of perpetual employment. Moreover, at her deposition, Gibbs conceded that she was on notice that violation of this agreement could result in her termination:

> Q: Did you ask your husband when you saw the booth who set it up, who decorated it, et cetera?
>
> A: I didn't ask him anything when I saw that booth. I was just upset, I didn't feel good, and that was it. All I could think about was my son, that was the only thing that was in my mind was my son and his medical issues and the thought of me not having a job.
>
> Q: Why did you think of you not having a job when you saw that?
>
> A: Because I signed a noncompete in 1993, I know this.
>
> Q: The first thing that dawned on you when you saw the booth was that it could jeopardize your job, right?
>
> A: Yeah, absolutely.

The motion court properly found that the manual did not form a binding contract mandating discharge for cause or progressive discipline short of termination in all cases. Objectively read, the limitation in the manual "to inform and guide," the purpose of the "Disciplinary Guidelines" to "define and communicate a consistent process of communication," the 1993 employment agreement's reference that employment is at-will, and Gibbs's understanding that she could be fired if she violated the employment agreement, all support the motion court's conclusion that there is no genuine issue of material fact for

breach of contract to be decided by a jury. Brill, supra, 142 N.J. at 533-34.

2.

Furthermore, in light of the absence of a contractual basis for job security, Gibbs's theory of a breach of the implied covenant of good faith and fair dealing must likewise fail. Nolan v. Control Data Corp., 243 N.J. Super. 420, 429 (App. Div. 1990) ("In the absence of a contract, there is no implied covenant of good faith and fair dealing.") (citing Noye v. Hoffmann-La Roche Inc., 238 N.J. Super. 430, 433 (App. Div. 1990)). New Jersey courts have not generally invoked the implied covenant of good faith and fair dealing to restrict the authority of employers to fire at-will employees. See Citizens State Bank of N.J. v. Libertelli, 215 N.J. Super. 190, 194 (App. Div. 1987) (citing Woolley, supra, 99 N.J. at 290-292). Thus, Gibbs was an at-will employee at the time of her discharge and cannot invoke the implied covenant of good faith and fair dealing in asserting wrongful termination of her employment.

3.

Gibbs also seeks to establish that Matushin intentionally inflicted emotional distress upon her by 1) aiding and abetting a sham investigation, 2) repeatedly calling Gibbs a thief, 3) invading Gibbs's privacy by coercing an inspection of Gibbs's

basement, 4) delaying providing Gibbs information about her federal COBRA benefits post-discharge, and 5) participating in filing a report of suspected criminal activity with the police. Although we do not endorse the determinations of the motion court, which held that "[p]laintiff was fired for breach of fiduciary duty, or at worst, employment discrimination [sic]," we do, however, agree that Gibbs's best evidence does not warrant submission of her emotional distress grievance to a jury. Medford v. Duggan, 323 N.J. Super. 127, 138 (App. Div. 1999) (recognizing the principle that an appellate court will affirm an order or judgment if it is legally sound, even if the trial court applied poor or incorrect reasoning).

To prevail on a claim of intentional infliction of emotional distress, a plaintiff "must establish intentional and outrageous conduct by the defendant, proximate cause, and distress that is severe." Buckley v. Trenton Sav. Fund Soc'y, 111 N.J. 355, 366 (1988). Under the circumstances presented, it is plain to us that Gibbs has made no showing that Matushin's actions were extreme and outrageous. To be actionable, the conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized

community." Id. at 366. The evidence, indulgently viewed, does not satisfy this heightened standard.

We have held that "[i]t is extremely rare to find conduct in the employment context that will rise to the level of outrageousness necessary to provide a basis for recovery for the tort of intentional infliction of emotional distress." Griffin v. Tops Appliance City, Inc., 337 N.J. Super. 15, 23-24 (App. Div. 2001); see also McDonnell v. Illinois, 319 N.J. Super. 324, 332, 342 (App. Div. 1999), aff'd on other grounds, 163 N.J. 298, cert. denied, 531 U.S. 819, 121 S. Ct. 59, 148 L. Ed. 2d 26 (2000). "[W]hile the loss of employment is unfortunate and unquestionably causes hardship, often severe, it is a common event and cannot provide a basis for recovery for intentional infliction of emotional distress." Id. at 24 (internal citations omitted).

4.

Lastly, Gibbs contends that Coleman and Matushin intentionally interfered with her contractual relations or prospective economic gain, not out of a desire for personal gain, but by acting outside the scope of their employment. The motion court properly dismissed the claim as a matter of law. We decline to address this argument, finding it to have insufficient merit to warrant discussion in a written opinion.

R. 2:11-3(e)(1)(E). Claims arising out of interference with contractual relations are directed against persons who are not parties to the underlying contract or economic relationship. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739 (1989). The record is barren of evidence suggesting that Coleman and Matushin conducted themselves beyond the pale of their employment relationship.

III.

We thus conclude that the summary judgment record was sufficient to warrant a jury trial only on Gibbs's LAD disability claim. Accordingly, we reverse and remand the LAD count for further proceedings. In all other respects we affirm the August 20, 2010 order of the Law Division. We do not retain jurisdiction.