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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3215-09T3

SUSAN BAADER,

Plaintiff-Appellant,

v.

AT&T

Defendant-Respondent,

and

LILIA F. BUNALES, M.D.,

Defendant.

Argued November 29, 2010 – Decided August 9, 2011

Before Judges Rodríguez and LeWinn.

On appeal from the Superior Court of New Jersey, Law Division, Somerset County, Docket No. L-863-08.

Kevin Kovacs argued the cause for appellant.

Gregory C. Parliman argued the cause for respondent (Day Pitney, attorneys; Mr. Parliman, on the brief).

PER CURIAM

Plaintiff Susan Baader appeals from the January 22, 2010 order granting summary judgment and dismissing her complaint against defendant AT&T. We affirm.

Baader, an at will employee of AT&T from 1979 through June of 2006, was involved in a car accident on September 29, 2005, and began a short term disability leave of absence on October 7, 2005. MetLife, AT&T's employee health insurance provider, certified Baader as disabled and she "received short term disability benefits under the AT&T Sickness and Accident Disability Benefit Plan for Occupational Employees from October 7, 2005 through March 12, 2006."[1] She was absent from work from September 29, 2005 until June 29, 2006, when AT&T terminated her employment. At the time of her termination, Baader was working as a reports clerk and receiving positive reviews from her supervisor.

Baader was under the care of Dr. Lilia Bunales for injuries related to the accident during her leave. Dr. Bunales provided the initial medical opinion that Baader should be held out of work. Neurologist Dr. Youn K. Oh also treated Baader for injuries related to the car accident. Dr. Oh's notes and prescriptions for Baader indicated that Baader was disabled and

[1] We summarize the pertinent facts from the motion papers.

unable to return to work before her appointment on June 22, 2006.

AT&T utilized MetLife to make all disability determinations and collect medical information from its employees. Only MetLife could advise AT&T employees about their benefits. Baader received a letter from MetLife dated March 13, 2006 stating that she was no longer certified to be out on disability and on March 31, 2006, MetLife terminated Baader's disability benefits for lack of documentation.

AT&T policy states that once MetLife had provided an estimated return to work date, the employee's supervisor should contact the employee and review the return to work date with her. Albert Corisdeo, Baader's supervisor, had no access to her medical information and had no ability to influence MetLife's disability determinations. On March 31, 2006, Corisdeo received an email from the MetLife case worker stating that the documentation provided by Baader did not support a disability claim.

On May 30, 2006, Corisdeo sent Baader a letter with language provided by the Human Resources department stating:

> Since MetLife advised you to return to work as of March 13, 2006 and no documentation to support a claim of disability for your current absence has been submitted to MetLife, your claim as of March 31, 2006 has been placed in denied status by MetLife.

> With the disability claim being denied, the expectation of the Company is that you should return to work by Monday, June 12, 2006.
>
> If you feel there are other facts we should consider, please let me know, otherwise failure to return to work by June 12, 2006 will indicate your desire to and our acceptance of your resignation from AT&T.

Prior to receiving this letter, Baader called Corisdeo on June 1, 2006, to inform him that she was still experiencing residual effects from the accident and that she was appealing MetLife's decision to discontinue disability benefits. Corisdeo did not mention the letter dated May 30, 2006, or the June 12, 2006 return to work date.

After receiving the letter on June 12, 2006, Baader called Corisdeo and said that she had "a doctor's appointment with Dr. Oh on the 22nd of [June]" and that "MetLife knows that I had a note that I would be out until the 22nd." Baader asked whether Corisdeo knew about her appointment and Baader contends that:

> he didn't answer, but he sounded like he knew nothing. He really didn't speak much at all during the conversation. And I said, other than that, I don't know, you know, what else I can tell you. I said, is there anything else you need me to do or do you need any other information? He said no. And that was it. I said okay, I will call you after my doctor's appointment. He said all right. And that was the end of the conversation.

Based on her conversation with Corisdeo, Baader believed that her job was secure.

Corisdeo stated that he had no ability to influence the determination of whether Baader remained on disability regardless of any additional information she could have provided. He also stated that the final line of the letter requesting that Baader contact him with any additional information referred to any updates from MetLife rather than any information that would support her disability claim because he could not do anything with that information.

Dr. Oh discharged Baader on June 22, 2006, referring her back to Dr. Bunales and stating that "she was able to return to work." Baader saw Dr. Bunales on June 23, 2006, and told her that she was still experiencing headaches, muscle spasms shortness of breath, and anxiety. According to Baader, Dr. Bunales agreed that she should not return to work and that she should stay out of work until her next visit on July 11, 2006. However, Dr. Bunales did not send her notes to Metlife until July 7, 2006, and the notes did not include the recommendation that Baader stay out of work until her next visit. Shortly after her appointment with Dr. Bunales, Baader called Corisdeo and left a message telling him that she was going back to the

doctor and that she would call him back in a few days and to call her if he needed anything else.

Baader realized that AT&T had terminated her position when she received a package informing her of her pension benefits on July 7, 2006. She contended that if she had received a certain return date when she spoke to Corisdeo, she would have returned to work on that date despite her symptoms. Baader indicated that the May 30, 2006 letter was the first indication that her job was in jeopardy. She stated that she "loved [her] job and had no thought or intention of resigning."

Baader sued, alleging that AT&T "breached its own policies and procedures regarding employees on leave and breached assurances by [Corisdeo] that nothing further was needed to continue her leave." At Baader's deposition, AT&T's attorney asked her "[w]hat policies or procedures of AT&T were breached by virtue of your termination?" Baader answered "I don't know." After a period of discovery, AT&T moved for summary judgment. Judge Edward M. Coleman granted the motion.

In deciding AT&T's motion for summary judgment, Judge Coleman noted that Corisdeo's letter to Baader included language "inviting her to provide additional facts to [AT&T] that they should consider, otherwise, she needed to return to work on the 12th of June or be terminated." In addition, the judge found

that a reasonable jury could find that the language in Corisdeo's letter to Baader constituted a pervasive company-wide policy. Judge Coleman further found that Corisdeo was authorized to correspond with Baader and that there was a clear designation of MetLife as the decision maker with regard to the disability of employees. The judge also found that "Baader did not have a reasonable expectation that her job was secure based on the conversation she had with her supervisor on June 12th."

On appeal, Baader contends that her termination by AT&T breached an implied contract of continued employment. Baader argues that AT&T's company policy provides decertified employees who have been provided a return to work date an opportunity to provide additional information to their supervisor that could modify the return to work date. Baader argues that AT&T's provision of this option created an implied contract of continued employment that it breached when it terminated her employment. Baader also contends that genuine issues of material fact precluded the entry of summary judgment in a wrongful termination case based on an implied contract covering a term of employment.

New Jersey recognizes "implied-in-fact contracts" that "arise from promises implied by words and conduct in light of the surrounding circumstances." Iliadis v. Wal-Mart Stores,

Inc., 191 N.J. 88, 109 (2007) (citing Wanaque Borough Sewerage Auth. v. Twp. of W. Milford, 144 N.J. 564, 574 (1996)). "Implied-in-fact contracts are formed by conditions manifested by words and inferred from circumstances, thus entailing consideration of factors such as oral representations, employee manuals, and party conduct." Ibid. (citing Troy v. Rutgers, 168 N.J. 354, 365 (2001)). "Oral promises, representations, employee manuals, or the conduct of the parties, depending on the surrounding circumstances, have been held to give rise to an enforceable obligation on the part of an employer." Troy, supra, 168 N.J. at 365 (citing Wanaque, supra, 144 N.J. at 574). "[A]bsent a clear and prominent disclaimer, an implied promise contained in an employment manual that an employee will be fired only for cause may be enforceable against an employer even when the employment is for an indefinite term and would otherwise be terminable at will." Woolley v. Hoffmann-La Roche, Inc., 99 N.J. 284, 285-286, modified on other grounds, 101 N.J. 10 (1985). "[T]he basic test for determining whether a contract of employment can be implied turns on the reasonable expectations of employees" and includes "the definiteness and comprehensiveness of the termination policy and the context of the manual's preparation and distribution." Witkowski v. Thomas J. Lipton, Inc., 136 N.J. 385, 393 (1994).

In order to establish the existence of an implied contract of continued employment Baader must prove that: (1) "the policy, written or oral, . . . contain[s] an express or implied promise concerning the terms and conditions of employment"; (2) the policy was "'a definitive, established, company-wide employer policy'"; (3) "the employer's statements . . . constitute 'an accurate representation of policy' which the employer was authorized to make"; and (4) "the employee reasonably believes that a particular personnel policy has been established and is applied consistently and uniformly to each employee." Gilbert v. Durand Glass Mfg. Co., 258 N.J. Super. 320, 330 (App. Div. 1992) (quoting Shebar v. Sanyo Bus. Sys. Corp., 218 N.J. Super. 111, 120-21 (App. Div. 1987), aff'd, 111 N.J. 276 (1988)).

"Implied contract terms generally are considered as binding as express contract terms." Troy, supra, 168 N.J. at 365 (citing Wanaque, supra, 144 N.J. at 574). "[I]n order to be enforceable the terms of such a contract must be sufficiently clear and capable of judicial interpretation." Shebar, supra, 111 N.J. at 290. Thus, in order to enforce contacts, courts "require sufficient definiteness of terms so that the performance required of each party can be ascertained with reasonable certainty, as well as knowledge of and acquiescence in the stated terms." Cooper River Plaza E., LLC v. Briad Grp.,

359 N.J. Super. 518, 527 (App. Div. 2003) (citing Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992)).

Baader argues that the record establishes the existence of an implied contract of her continued employment with AT&T. Specifically, she points to the language of Corisdeo's letter and her subsequent telephone conversation with him. Baader argues that the letter and her subsequent communications with AT&T implied that she would not be terminated while on leave until AT&T reviewed all relevant information provided and gave her a meaningful specific return to work date.

Although the letter from Corisdeo advised Baader that she should provide AT&T with any additional facts that it should consider, it makes no promise that such a submission would allow her to remain out of work beyond June 12, 2006. Baader provided no medical documentation to support a finding that she was entitled to remain out of work under the AT&T disability policy. Moreover, Baader's Dr. Oh agreed that she was able to return to work. Though Baader may have believed she was entitled to extend her leave of absence, the evidence does not support a finding that her belief was reasonable. The statements and letter by Corisdeo created no reasonable expectation that she could provide additional information that could alter her return

to work date. She has therefore, failed to establish a prima facie claim of implied contract as set forth in Gilbert.

"In reviewing the entry of summary judgment, we apply the same standard that governs the trial court." Higgins v. Thurber, 413 N.J. Super. 1, 5 (App. Div. 2010) (citing Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007)). Rule 4:46-2(c) provides in part that a court shall grant summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show 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." The determination of whether a genuine issue of material fact exists "requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

"Whether the parties acted in a manner sufficient to create implied contractual terms is a question of fact generally precluding summary judgment." Troy, supra, 168 N.J. at 366 (citing Reynolds v. Palnut Co., 330 N.J. Super. 162, 171-72 (App. Div. 2000)). "[S]ummary judgment ordinarily is not appropriate in an implied employment contract claim because 'factual questions will persist concerning the meaning and intent of certain documents relevant to [such] a decision.'" Id. at 366 (alteration in original) (quoting Giudice v. Drew Chem. Corp., 210 N.J. Super. 32, 36 (App. Div.), certif. denied, 104 N.J. 465 (1986)). In addition, "[t]he legitimacy of the representations and the reasonableness of the employee's reliance are questions for the finder of fact that are not appropriate for summary judgment." Id. at 366 (alteration in original) (internal quotation marks omitted) (quoting Labus v. Navistar Int'l Transp. Corp., 740 F. Supp. 1053, 1063 (D.N.J. 1990)).

Judge Coleman found that a reasonable jury could conclude that AT&T's invitation in Corisdeo's letter, to provide "additional facts to [AT&T] that they should consider" was an accurate representation of a pervasive company-wide policy because the language came from the Human Resources department and AT&T used the same language on prior occasions. The judge

also found that "Corisdeo was authorized to communicate with the Baader." However, Judge Coleman found that "Baader did not have a reasonable expectation that her job was secure based on the conversation she had with her supervisor on June 12th" and that the conversation was "insufficient to create an expectation of a binding contract with [AT&T]." The judge noted that Baader's unfounded expression of hope that she would be successful in convincing MetLife to recertify her and statement about a future doctor's appointment, taken with Corisdeo's non-committal response, lacked the "definite terms so that the performance required of each party can be ascertained with a reasonable certainty." We are satisfied that the judge's conclusions are supported by the record and consistent with controlling case law.

There was a paucity of communication between the parties regarding the terms of the alleged implied contract in this case. The fact that Corisdeo did not respond to Baader when she told him about her doctor's appointment, that she was still "battling it out" with MetLife, and that she did not receive the letter until the day she was supposed to return to work, cannot reasonably be construed as an agreement on AT&T's part that Baader's return to work date could be modified based on this information. Therefore, notwithstanding the generally fact-

sensitive nature of implied employment contract claims, Troy, supra, 168 N.J. at 366, summary judgment is appropriate in this case for the reasons stated by Judge Coleman in his decision. R. 2:11-3(e)(1)(A).

Affirmed.