NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2754-11T2

SALVATORE ARMATO,

Plaintiff-Appellant,

v.

AT&T MOBILITY LLC and
REGAN LADISIC,

Defendants-Respondents.

Submitted December 17, 2012 - Decided January 15, 2013

Before Judges Sabatino and Maven.

On appeal from Superior Court of New Jersey, Law Division, Morris County, Docket No. L-817-10.

Jon Rory Skolnick, attorney for appellant.

Amanda J. Lavis (Rhoads & Sinon LLP), attorney for respondents (Ms. Lavis, John R. Martin (Rhoads & Sinon LLP) of the Pennsylvania bar, admitted pro hac vice, and Todd J. Shill (Rhoads & Sinon LLP) of the Pennsylvania bar, admitted pro hac vice, on the brief).

PER CURIAM

Plaintiff Salvatore Armato appeals from a January 6, 2012 Law Division order granting summary judgment to defendant AT&T Mobility LLC (AT&T) and dismissing plaintiff's complaint with prejudice. We affirm.

The pertinent facts are summarized as follows. Plaintiff began working for AT&T in 2002 as a District Sales Manager. In 2007, after a colleague was promoted to become his supervisor, plaintiff asserts that he began to be treated differently than the other managers. Plaintiff acknowledges that he "started making dumb mistakes" during this time and that he and his supervisor developed an adversarial relationship. In 2008, his superiors notified plaintiff about several work-related performance deficiencies. He received a written warning and a copy of his Performance Improvement Plan evaluation that detailed his "sub-standard" review for the prior ninety days. Particularly, plaintiff had low participation rates, unacceptable sales results, and had been frequently late in submitting expense reports, which on thirteen occasions were incorrectly completed. On or about August 5, 2009, plaintiff was terminated from his position for, among other things, "repeatedly making misrepresentations about interviewing a potential candidate for hire when . . . he was told to interview all applicants."

Plaintiff subsequently filed a lawsuit against AT&T for wrongful termination, where he alleged: (1) age discrimination in violation of N.J.S.A. 10:5-12; (2) intentional infliction of emotional distress; (3) negligent infliction of emotional

distress; (4) breach of "contractual entitlement" due to AT&T's failure to follow its disciplinary policy with respect to termination; (5) breach of an "implied covenant" not to violate various employment laws; and (6) AT&T's failure to pay plaintiff all monies due at the time of his termination.[1]

AT&T filed a motion for summary judgment. Following oral argument, the trial court rejected plaintiff's age discrimination argument, finding it was not specifically pled in the complaint, and also rejected the claim of intentional infliction of emotional distress due to plaintiff's failure to demonstrate "the degree of outrageous [conduct] required to support . . . [this] claim."[2] The court further found that plaintiff failed to establish a prima facie case of negligent infliction of emotional distress,[3] noting that plaintiff's assertions were nothing more than "the kind of unpleasantness that sometimes occurs in the workplace." With respect to the remaining two claims, the judge determined that the AT&T's policy manual established that plaintiff was an at-will employee

[1] Plaintiff withdrew the sixth count upon receiving all monies owed to him.

[2] See Griffin v. Tops Appliance City, Inc., 337 N.J. Super. 15, 22-23 (App. Div. 2001).

[3] See Young v. Hobart West Group, 385 N.J. Super. 448, 468-69 (App. Div. 2005).

and not subject to any contractual terms of employment. The court granted summary judgment in favor of AT&T and dismissed the complaint. This appeal followed.

Our review of the trial court's grant of summary judgment is plenary, employing the same standard used by the trial court. Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div. 1998), certif. denied, 154 N.J. 608 (1998). That is, we 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). If no genuine issue of material fact is presented, the appellate court then decides whether the lower court's ruling on the law was correct. Walker v. Alt. Chrysler Plymouth, 216 N.J. Super. 255, 258 (App. Div. 1987).

Plaintiff's issue on appeal contends that the trial court erred in ruling as a matter of law that he was an at-will employee. He maintains that he had a "contract of employment" based upon AT&T's employment manual, which contains various provisions outlining that termination be only for cause and no other information setting forth discharge without cause. This argument is without merit.

New Jersey recognizes the "doctrine of employment at will." Fleming v. United Parcel Serv., Inc., 255 N.J. Super. 108, 130 (Law Div. 1992), aff'd, 273 N.J. Super. 526 (App. Div.), certif. denied, 138 N.J. 264 (1994), cert. denied, 516 U.S. 847, 116 S. Ct. 139, 133 L. Ed. 2d 85 (1995). In other words, either the employer or employee can terminate their relationship at any time and for any reason. Peck v. Imedia, Inc., 293 N.J. Super. 151, 162-63 (App. Div.), certif. denied, 147 N.J. 262 (1996). An employment relationship remains terminable unless an agreement, such as a policy manual, exists that may provide otherwise. Witkowski v. Thomas J. Lipton, Inc., 136 N.J. 385, 397 (1994); Mita v. Chubb Computer Servs., Inc., 337 N.J. Super. 517, 525 (App. Div. 2001); Peck, supra, 293 N.J. Super. at 162; Hogan v. Bergen Brunswig Corp., 153 N.J. Super. 37, 42 (App. Div. 1977); Hindle v. Morrison Steel Co., 92 N.J. Super. 75, 81 (App. Div. 1966).

"An employee may not select among the provisions of an employment manual to determine which provision should give rise to enforceable contractual obligations . . . . An effective disclaimer by the employer may overcome the implication that its employment manual constitutes an enforceable contract of employment." Nicosia v. Wakefern Food Corp., 136 N.J. 401, 411-12 (1994); see also Woolley v. Hoffman-La Roche, Inc., 99 N.J.

284, 285, modified on other grounds, 101 N.J. 10 (1985)). Such a disclaimer serves "to provide adequate notice to an employee that she or he is employed only at will and is subject to termination without cause." Nicosia, supra, 136 N.J. at 412.

Applying these legal principles to the case at hand, we are satisfied that the AT&T's employment manual clearly disclaims any contract of employment. The policy manual states

> AT&T Mobility retains all rights arising out of its at-will employment relationships. This policy does not change any of the terms of its at-will employment relationship and is not to be construed as a contract of employment.
>
> [(emphasis added).]

This provision, set out on page two of the manual under the heading, "Code of Business Conduct & Performance for Management (Management Accountability Policy) Effective July 2006," is labeled "At-Will Employment." We conclude that the policy manual sufficiently apprised plaintiff that his employment was at-will. As such, the motion court properly rejected this claim.

Because the other assertions raised by plaintiff were not properly briefed, we need not consider them. See R. 2:6-2(a)(5). We further conclude that they are also without sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following.

Plaintiff claims that he was terminated before receiving the benefit of the progressive disciplinary steps outlined in AT&T's employment manual. The manual, however, does not provide for a mandatory graduated disciplinary process, especially with respect to management-level employees. Instead, the "Management Disciplinary Process" section details that the company may use certain methods to improve "unacceptable standards of conduct," but it also states that "certain acts will result in immediate suspension and/or termination." AT&T retained discretion in carrying out any progressive disciplinary measures. Based on the corporate policy regarding the discipline of its management employees, this claim is also without merit.

Accordingly, we conclude that the trial court properly granted summary judgment.

Affirmed.