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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1986-16T4

CHARLES E. LYONS, JR.,

Plaintiff-Appellant,

v.

THE CITY OF CAMDEN,

Defendant-Respondent.

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Argued December 13, 2017 – Decided February 27, 2018

Before Judges Alvarez, Nugent, and Currier.

On appeal from Superior Court of New Jersey,  
Law Division, Camden County, Docket No.  
L-0310-13.

Jacqueline M. Vigilante argued the cause for  
appellant (Vigilante Law Firm, PC, attorneys;  
Jacqueline M. Vigilante, of counsel and on the  
brief).

Daniel E. Rybeck argued the cause for  
respondent (Weir & Partners LLP, attorneys;  
John C. Eastlack, Jr., on the brief).

PER CURIAM

Plaintiff Charles Lyons appeals the December 2, 2016 grant  
of summary judgment to his former employer, defendant the City of

Camden, dismissing his complaint. Lyons had alleged his 2011 layoff violated New Jersey's Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. We affirm.

When laid off, Lyons was the Chief of Planning and Project Execution in Camden's Department of Planning and Development. He became wheelchair-bound three years after his hiring in 1988. The County, not Camden, was responsible for the maintenance of the building in which he worked. The County twice over the years replaced an interior chair lift he required to reach his office, to no avail. Lyons was forced at times to use a freight elevator, which also had maintenance problems. Because of these access difficulties, he was occasionally unable to work since he could not get inside his office. Lyons's supervisors were well aware of these concerns.

Lyons's layoff was included in a budget reduction plan submitted by Camden to the Department of Community Affairs in order to qualify for Transitional Aid to Localities for the 2011 fiscal year. A total of 383 employees were laid off.

Lyons did not have lateral or bumping rights. 318 employees were eventually rehired, and of that number, 213 were employees of the police department, 67 were employees of the fire department, and 38 were civilians. Lyons's job functions were assumed by his supervisor. He was not rehired.

Lyons appealed his layoff with the Civil Service Commission. His case, consolidated with three other terminated employees, was transferred for hearing to the Office of Administrative Law (OAL). See N.J.S.A. 52:14B-10(c). Camden successfully argued that the layoffs were "for purposes of economy and efficiency." In his comprehensive 113-page written opinion, the Administrative Law Judge (ALJ) also concluded that Lyons had failed to prove by a preponderance of the credible evidence "that his layoff was other than for good-faith reasons of economy."

That decision was affirmed by the Civil Service Commission in a September 16, 2015 letter decision. The Commission adopted the ALJ's findings of fact and conclusions of law after its independent review of the record.

On October 30, 2015, Lyons appealed the Commission's decision. That appeal was voluntarily withdrawn on July 22, 2016.

In the interim, on January 17, 2013, Lyons filed this complaint in the Law Division. On the motion for summary judgment, Camden argued that Lyons was collaterally estopped from relitigating the same LAD issue in Superior Court after obtaining an unfavorable result in the OAL. The judge concluded, based on Ensslin v. Township of North Bergen, 275 N.J. Super. 352 (App. Div. 1994), and Hennessey v. Winslow Township, 368 N.J. Super. 443

(App. Div. 2004), that the issue could not be readdressed in Superior Court.

Lyons had testified before the ALJ regarding his accommodation problems, and that Camden's layoff was motivated by a desire to eliminate him from employment because of his disability. When questioned whether Lyons was claiming that his "layoff from the City . . . was causally related to or in any way connected with the fact that [he was] disabled[,]" Lyons responded "I do believe that there is a connection."

In his summary judgment findings, the judge noted that the ALJ heard testimony, not only regarding Lyons's disability, but also the grievances he filed regarding access, and the requests he had made about it to his supervisors over the years. The judge opined that the ALJ had "thoroughly examined" the evidence of discrimination, engaged in the "proper analysis and conclusion[,]" and decided that neither the layoff nor the failure to offer Lyons a new position was motivated by any discrimination.

Now on appeal, Lyons presents the following issues for our consideration:

POINT I  
THE JUDGMENT OF THE TRIAL COURT SHOULD BE REVERSED AND REMANDED FOR A NEW TRIAL ON THE ISSUE OF DISCRIMINATION BECAUSE IT WAS NOT FULLY AND FAIRLY LITIGATED AND DECIDED BY THE ALJ (Raised Below).

POINT II

THE ISSUE DECIDED BY THE ALJ WAS WHETHER THE CITY'S 2011 LAYOFFS WERE MOTIVATED BY GOOD FAITH REASONS OF ECONOMY AND EFFICIENCY (Raised Below).

POINT III

LYONS DID NOT RAISE DISCRIMINATION AND RETALIATION AS A CENTRAL THEME OF HIS ADMINISTRATION APPEAL (Raised Below).

A. The City Omitted Critical Information that Pertained to the City's Financial Condition.

B. There were Irregularities in the City's Layoff Process.

C. The City Failed to Consider Alternatives to Layoffs and Implement Pre-Layoff Actions.

D. The Appointing Authority Wanted to Protect Certain Employees from Layoffs.

POINT IV

THE ALJ DID NOT DECIDE WHETHER LYONS WAS A VICTIM OF DISCRIMINATION UNDER THE NJLAD (Raised Below).

A. Disparate Treatment.

B. Disparate Impact.

POINT V

THE CSC'S DECISION DOES NOT PRECLUDE A TRIAL ON THE MERITS OF THE CLAIM OF DISCRIMINATION (Raised Below).

A. The Issue Sought to Be Precluded is Not Identical to the Issue Decided in the First Proceeding.

B. There Was No Full and Fair Opportunity to Litigate the Issue in the Prior Proceeding.

C. A Final Judgment on The Merits Was Issued in The Prior Proceeding.

D. Determination of the Issue of Discrimination Was Not Essential to The Prior Judgment.

E. The Party Against Whom Issue Preclusion is Asserted Was a Party.

POINT VI

WINTERS DOES NOT MANDATE COLLATERAL ESTOPPEL IN LAD DISCRIMINATION CASES (Raised Below).

I.

We review a grant of summary judgment employing the same standard as the trial court. Rowe v. Mazel Thirty, LLC, 209 N.J. 35, 41 (2012) (citing Henry v. N.J. Dep't of Human Servs., 204 N.J. 320, 330 (2010)). Summary judgment is proper where there is no genuine issue of material fact, considering the evidence in the light most favorable to the non-moving party, and the moving party is entitled to prevail as a matter of law. Id. at 38, 41 (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995); R. 4:46-2(c)). "When no issue of fact exists, and only a question of law remains, [an appellate court] affords no special deference to the legal determinations of the trial court." Cypress Point Condo. Ass'n v. Adria Towers, L.L.C., 226 N.J. 403, 415 (2016)

(citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

## II.

Lyons asserts that the issues tried before the ALJ were not the same as those raised in his complaint, and that, therefore, summary judgment should not have been granted to Camden. His position is that since his disability was not the "central theme" in the administrative forum, it should not bar him from pursuing the claim here.

The doctrine of collateral estoppel, or issue preclusion, prohibits "the relitigation of an issue that has already been addressed in a prior matter," where

(1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.<sup>1</sup>

[Bondi v. Citigroup, Inc., 423 N.J. Super. 377, 423 (App. Div. 2011) (citing First Union Nat'l Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 352 (2007)).]

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<sup>1</sup> Plaintiff concedes that elements three and five are met.

To avoid duplicative litigation and inconsistent decisions, our Supreme Court has held that collateral estoppel applies even to "findings made in administrative proceedings and [will] affect subsequent judicial proceedings." Winters v. N. Hudson Reg'l Fire & Rescue, 212 N.J. 67, 73 (2012) (citing Hennessey v. Winslow Twp., 183 N.J. 593, 599-600, 604 (2005)). So long as the agency litigation provided procedural and substantive safeguards similar to those in the trial court, and the parties were afforded a full and fair opportunity to litigate, collateral estoppel precludes re-litigation of an issue decided in administrative proceedings arising from the same set of operative facts. Hennessey, 183 N.J. at 600; Ensslin, 275 N.J. Super. at 369-71.

In Winters, the Court held that the plaintiff was collaterally estopped from litigating a retaliation claim under the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to -14. 212 N.J. at 92. In the OAL, Winters unsuccessfully argued that his termination was retaliation for his "whistleblowing" activities. Id. at 81. The ALJ found the termination was not retaliatory, but was legally justified in light of his conduct in the workplace. Ibid. Winters filed a CEPA complaint in Superior Court, arguing that his activism was the basis for his termination. Id. at 82. He also argued that retaliation was not expressly adjudicated in the administrative proceeding, and that therefore,



the issue of retaliation was not fully and fairly litigated. Id. at 84. The Court disagreed, stating that Winters's decision not to fully develop his retaliation claim before the ALJ did not entitle him to a second bite of the apple in the trial court. Id. at 88.

The Court observed that Winters "was justifiably removed for reasons that were independently proven and have no taint of retaliation." Ibid. The ALJ fully:

assessed his claim of retaliation, to the extent that it was supported, when he rendered his findings and conclusion. That it was not addressed specifically is not fatal to the analysis in this particular case, where everything Winters pointed to, or at, was supposedly evidence of overall animosity and retaliatory bias by [his employer].

[Id. at 91.]

"In the interest of promoting the public interest in finality and consistency in judicial and quasi-judicial proceedings involving the same transaction," the agency determination estopped Winters from bringing a CEPA retaliation claim. Id. at 92.

Winters precludes Lyons's NJLAD retaliation claim. The ALJ heard evidence of disability discrimination and retaliation in the agency proceeding. However, Lyons maintains that his NJLAD discrimination complaint survives summary judgment because the ALJ did not specifically address disparate treatment, disparate

impact, and pretext. However, even if these issues were not specifically raised, the argument makes a distinction lacking in real difference.

Lyons had the opportunity at the administrative law hearing to fully develop the allegation that his layoff was discriminatory. When asked directly, he acknowledged<sup>2</sup> that he had not proffered testimony connecting his disability with his termination, but he also said that it was his contention, and that in his mind it was the reason he was laid off. The issue of his disability was raised by counsel before, during, and after the hearing. It is clear from the ALJ's decision that he weighed and rejected Lyons's argument that he was terminated solely because of his disability, and because of his need for reasonable accommodation.

In his decision, the ALJ described in detail Lyons's complaints regarding the wheelchair lift, his refusal to take the freight elevator, and that the chain of command was aware of his complaints about unreliable access.

Even prior to Winslow, Ensslin barred this action. In Ensslin, a plaintiff appealed from entry of summary judgment in favor of Bergen Township dismissing his Law Division complaint.

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<sup>2</sup> We do not have available the full transcripts of that proceeding, and are basing our summary of facts from excerpts contained in the appendices and in the ALJ's findings.


275 N.J. Super. at 357. Ensslin, like Lyons, alleged he was dismissed because of his disability, in violation of the LAD. Ibid. We held that the administrative hearing previously conducted regarding his termination adequately addressed the LAD claim. Id. at 369. Ensslin had requested the administrative process and raised the LAD issues in that forum, like Lyons did here. Id. at 358. Ensslin was estopped from trying the matter twice.

The argument that some other aspect – disparate treatment, impact, and pretext – of Camden's alleged discriminatory conduct towards Lyons warrants continuation of this litigation in Superior Court simply lacks merit. The core issue was identical, and addressed by the ALJ, whose decision was adopted in the Commission's final decision. That determination, that Camden did not discriminate against Lyons because of his disability, was essential to the ALJ's ultimate conclusion Camden did not act in bad faith.

The motion judge's decision to grant summary judgment was not error. Looking at the evidence, even in the light most favorable to Lyons, Camden prevails as a matter of law.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION