SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2299-15T4

JAMES D. BORDONE,

Plaintiff-Appellant,

v.

PASSAIC PUBLIC LIBRARY TRUST (improperly pleaded as the Passaic Public Library), CITY OF PASSAIC and MARIO GONZALEZ,

Defendants-Respondents.

Argued February 28, 2018 — Decided May 18, 2018

Before Judges Fuentes, Manahan, and Suter.

On appeal from Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-4063-13.

Andrew M. Moskowitz argued the cause for appellant (Javerbaum, Wurgaft, Hicks, Kahn, Wikstrom & Sinins, PC, attorneys; Andrew M. Moskowitz, on the brief).

Kevin M. Eppinger argued the cause for respondents Passaic Public Library Trust and Mario Gonzalez (Gold, Albanese, Barletti & Locascio, LLC, attorneys; Kevin M. Eppinger, on the brief).

John R. Gonzo argued the cause for respondent City of Passaic (L'Abbate, Balkan, Colavita & Contini, LLP, attorneys; John R. Gonzo, of counsel and on the brief; Jason Mastrangelo, on the brief).

PER CURIAM

Plaintiff James D. Bordone appeals from the October 23, 2015 order that denied reconsideration of a summary judgment order entered on September 10, 2015. That summary judgment order dismissed his complaint filed against defendants Passaic Public Library Trust (the Library), City of Passaic (the City) and Mario Gonzalez (Gonzalez) (collectively, defendants). The complaint alleged violations of the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to -14, the New Jersey Civil Rights Act (NJCRA), N.J.S.A. 10:6-1 to -2, and common law causes of action for wrongful discharge and defamation,[1] arising from the March 12, 2013 termination of plaintiff's employment with the Library. We affirm.

I

A

Plaintiff was employed as a senior librarian for the Library from 2003 until March 12, 2013, when his employment was terminated. From March 2009, Gonzalez was employed as the Library's director.

[1] The defamation count was dismissed by stipulation of the parties during oral argument before the trial court.

Mabel Ajala, who is not a defendant here, was plaintiff's direct supervisor.

On August 27, 2012, Gonzalez and Ajala met with plaintiff to discuss a number of incidents involving plaintiff's conduct at work between April and August 2012. Ajala presented him with a document entitled "Behavioral Change Warning" with the subtitle "Re: Personal Conduct: Creating a Disturbance in the Workplace and Use of Obscene Language." The memo related incidents where plaintiff became angry, raised his voice, and cursed in areas of the library where the public could hear and that also scared Ajala. The memo warned plaintiff about this behavior, described as "hostile, unnecessary outbursts" that were "inappropriate." He was advised to "correct this" and to "sustain a composed professional behavior" or further discipline could be taken, including suspension without pay. Plaintiff refused to sign the memo, calling it "bogus" and "flipped it back at [Gonzalez.]" Gonzalez alleged that plaintiff raised his voice, pointed his fingers at him in the gesture of a gun, threatening to "get us," screamed, swore and "appeared to become 'unglued.'" Plaintiff denies this conduct.

The next day, Gonzalez called plaintiff, telling him that he was suspended from his employment with pay, and the suspension would continue until he was psychologically evaluated and cleared

to return to work. Plaintiff did not attend the scheduled psychological evaluation.

A Preliminary Notice of Disciplinary Action was issued, charging plaintiff with threatening and bullying behavior toward library supervisors, "Verbal Abuse," "Conduct Unbecoming [of] a Public Employee" and "Other Sufficient Causes." He was suspended without pay. Subsequently, plaintiff submitted to a psychological evaluation but then would not attend a psychiatric evaluation. An Amended Preliminary Notice of Disciplinary Action was issued in December 2012, seeking plaintiff's termination from employment. A hearing was conducted in January 2013, before a hearing officer. In March 2013, the hearing officer's report recommended terminating plaintiff's employment.

At the hearing, plaintiff testified that he and Gonzalez initially had an excellent relationship but the relationship changed based on what the hearing officer characterized as

> disagreement over historical materials, i.e. Herald News articles that the witness wanted digitized, but of which Mr. Gonzalez wanted disposal. Mr. Gonzalez issued a memo regarding non-contact with [the local historian] is not permitted in non-public areas, which the witnesses felt was a disservice. Gonzalez maintained this position at a subsequent meeting in March 2012 between the two regarding the moving of the materials to the Reid Branch location of the library.

A Final Notice of Disciplinary Action terminated plaintiff's employment with Library effective March 12, 2013. Plaintiff did not appeal the Final Notice.

B

Plaintiff filed a four-count complaint in the Law Division in August 2013, against the Library, the City and Gonzalez. He alleged his firing was in violation of CEPA, the NJCRA, and common law and was defamatory because it was in retaliation for complaints he had made about Gonzalez. The complaint stated that plaintiff objected to Gonzalez's "directive to discard historical documents, records, and books; the discontinuance of the computer program offered to the public; the relocation of the historical collection from the Forstmann to the Reid Library; the directives to the Library's employees regarding City Historian Mr. [Mark] Auerbach; and the slashing of the Library's reference department by 50%." The complaint averred that the Library failed to appropriately utilize certain grant moneys. The complaint also averred that these actions were in violation of the law and "incompatible with a clear mandate of public policy concerning the public welfare," citing the Library's Mission Statement.

Defendants denied the various allegations. The parties conducted discovery for 640 days, following which the court granted defendants' motions for summary judgment. We recite the facts

from the summary judgment record, viewing them in the light most favorable to plaintiff, the non-moving party. Globe Motor Co. v. Igdalev, 225 N.J. 469, 479 (2016); R. 4:46-2(c).

C

Gonzalez became the Library's Executive Director in March 2009. He issued a memorandum to his staff that September, at the request of the Library's Board of Trustees, about City Historian Mark Auerbach. The memo advised there could be disciplinary action "up to and including termination" for anyone who allowed Auerbach access to non-public areas or non-public holdings of the Library. Gonzalez suggested to his staff that they "limit" conversations with Auerbach. Although plaintiff could speak with Auerbach during non-work hours, Gonzalez told plaintiff it "wasn't smart" for him to do so because Auerbach "was giving him bad advice" and was "negative about the staff." Even though plaintiff disagreed with the memo, he did not speak with Auerbach except for one time in December 2010, when he gave Auerbach a copy of a book plaintiff had written.

The City's mayor wrote to Gonzalez in January 2012, about allowing Auerbach to have access to the City's historical records stored at the Library while the City was in the process of reorganizing its historical documents and holdings. Auerbach already had access to all public areas and Gonzalez testified in

his deposition that the staff would continue to assist him in retrieving documents from non-public areas.

Plaintiff resumed his communications[2] with Auerbach in January 2012, because he felt Gonzalez "was destroying [C]ity property and . . . didn't think that was the right thing to do." Plaintiff emailed Auerbach on February 28, 2012, telling him that Gonzalez was discarding "a lot of the material once considered historically significant." He referenced a "few" materials in the "Scott" collection that were discarded but indicated that they were "in pretty bad shape" from mold and mildew and were "basically unusable." The rest of the "damaged" books would be discarded in the next few weeks. The historian's materials that were stored there and other materials were going to be sent to the Reid Library, which plaintiff believed to be a "disservice to the people

[2] Plaintiff worked with Auerbach on a project in 2005, that involved an inventory by the Library of its historical collection. Auerbach was taken off the project based on his disagreements with the Library's then director. Plaintiff remained in contact with Auerbach about the affairs of the Library. Disciplinary charges were brought against plaintiff in August 2005, for neglect of duty and insubordination because he allegedly "continued to involve [him]self in the City Historian's concerns about the Library's management of the local history collection." The Library did not pursue a Final Notice of Discipline. Gonzalez was not the Library's director at that time.

of Passaic," because an appointment would have to be made to access the materials.

Plaintiff asked to meet with Gonzalez in February or March 2012, to discuss his concerns that included Gonzalez's decision to reorganize portions of the library, including old newspapers, microfilm and the 800 series[3] of books. He disagreed with Gonzalez's decision to move the newspapers to the basement, although he acknowledged in his subsequent deposition that the newspapers were preserved on microfilm because they "can only keep them so far back" and there were "a mess of papers in the basement. It was a nightmare." Plaintiff disagreed with the decision to move the local history collection to the Reid Library even though it was to keep the materials in a location that was dry. While stored at the Library in the basement, books would get "ruined" when the bathroom would overflow. Plaintiff also spoke with Gonzalez about grant moneys; Gonzalez told him he would follow up.

When "[n]othing changed," plaintiff wrote to Walter Pronto, President of the Library Board of Trustees, in an email dated March 11, 2012, where he raised seven issues about Gonzalez's "mismanagement" of the Library and the undermining of their "professional judgment as librarians." These complaints involved

[3] The reference is to the 800 series of the Dewey Decimal system.

(1) discontinuing a computer program; (2) discarding items in the basement without consulting staff; (3) moving the microfilm to the basement; (4) taking daily newspapers off racks, which caused a "messy" reading area; (5) moving the historical collection to the Reid Library; (6) discarding over a thousand books for lack of circulation using a "weeding" system with which he disagreed[4] and historical books and bound volumes of the Herald News, although some of them were "moldy and unusable to anyone"; and the "ultimate reason" for writing, (7) relocating several types of books to different areas of the library. None of the allegations referenced Auerbach, grant moneys or criminality.

The next day, the City attorney, Christopher Harriot, wrote to Gonzalez advising him not to dispose of the City's historical documents, records and/or artifacts because Gonzalez had "no authority whatsoever to dispose of, remove or destroy same." Plaintiff and another staff member met with Porto on March 15, 2012, about plaintiff's email. Porto placed a call to Gonzalez's office during the meeting, leaving a message that Gonzalez was to "hold off . . . discarding anything."

Gonzalez testified in his deposition that not all the books, records and documents were owned by the Library. The only items

[4] Plaintiff favored evaluating a book's "overall value," not just whether a book had been circulated.

he planned to discard belonged to the Library, not to the City. Some of the Library's books, records and documents were damaged in a flood of sewage from the Library's bathrooms.

Auerbach and Harriot conducted an inspection of the Library's branches to inventory City owned documents, and later, Auerbach went through bags of trash. Despite the inspection and the garbage search, there was no inventory produced of any City owned documents that were discarded. Copies of old newspapers, including the Herald News, were available on microfilm.

Later in the summer, plaintiff emailed to Gonzalez that the Library should return certain grant moneys that it had received to set up a website of historical photographs because the project was not complete. The project since has been completed.

D

Defendants' motions for summary judgment to dismiss plaintiff's CEPA, NJCRA, and common law retaliation claims were granted on September 10, 2015. The court found plaintiff failed to demonstrate a prima facie claim under CEPA because "the bad acts alleged [by plaintiff were] not a violation of a law, rule, regulations, or clear mandate of public policy." Plaintiff's beliefs "were not objectively reasonable in nature and he cannot demonstrate that a substantial nexus exists between the

complained-of conduct and a law, rule, regulation, or public policy." The court did not address any other CEPA requirements.

The remaining counts of the complaint were dismissed based on CEPA's waiver provision. See N.J.S.A. 34:19-8. The court found that the non-CEPA claims all rested on the same facts that plaintiff's termination was in retaliation for complaining about Gonzalez.

Plaintiff sought reconsideration of the summary judgment orders in September 2015, which was denied.[5]

On appeal, plaintiff contends his CEPA claim should not have been dismissed because he reasonably believed that Gonzalez's conduct violated a law, was fraudulent or criminal and was not compatible with a clear mandate of public policy. In addition to what he believed was evidence of a CEPA violation, plaintiff argues that his complaint stated a viable claim for common law retaliation and that CEPA's waiver provision did not apply until the case was before the jury. As for his claim under the NJCRA, plaintiff asserted that it is substantially independent of CEPA and should not have been dismissed. Plaintiff also argues that the City remains liable because it is a joint employer with the Library.

[5] The court heard oral argument on plaintiff's motion on November 6, 2015, but the order denying reconsideration was dated October 23, 2015, and not received by plaintiff's counsel until January 5, 2016. This discrepancy was not raised as an issue on appeal.

II

We review a court's grant of summary judgment de novo, applying the same standard as the trial court. Conley v. Guerrero, 228 N.J. 339, 346 (2017). Summary judgment must be granted 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." Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016) (quoting R. 4:46-2(c)).

A

CEPA is designed to "prevent retaliation against those employees who object to employer conduct that they reasonably believe to be unlawful or indisputably dangerous to the public health, safety or welfare." Mehlman v. Mobil Oil Corp., 153 N.J. 163, 193-94 (1998). It is "remedial legislation" to be construed liberally to achieve its purpose. Estate of Roach v. TRW, Inc., 164 N.J. 598, 610 (2000).

To establish a prima facie CEPA claim, the employee must prove that

> (1) he or she reasonably believed that his or her employer's conduct was violating either a law, rule, or regulation

> promulgated pursuant to law, or a clear mandate of public policy;
>
> (2) he or she performed a "whistle-blowing" activity described in N.J.S.A. 34:19-3(c);
>
> (3) an adverse employment action was taken against him or her; and
>
> (4) a causal connection exists between the whistle-blowing activity and the adverse employment action.
>
> [Lippman v. Ethicon, Inc., 222 N.J. 362, 380 (2015) (quoting Dzwonar v. McDevitt, 177 N.J. 451, 462 (2003)).]

Plaintiff's CEPA claim was brought under N.J.S.A. 34:19-3(c)(1) to (3) which precludes an employer from taking retaliatory action against an employee who objects to an "activity policy or practice" that the employee reasonably believes (1) "is in violation of a law, or a rule or regulation promulgated pursuant to law," (2) "is fraudulent or criminal," or (3) "is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment." N.J.S.A. 34:19-3(c)(1) to (3). Plaintiff alleges he reasonably believed that defendants' conduct satisfied each of these subsections.

"[W]hen a plaintiff brings an action pursuant to N.J.S.A. 34:19-3(c), the trial court must identify a statute, regulation, rule, or public policy that closely relates to the complained-of conduct." Dzwonar, 177 N.J. at 463. Where a violation of public

policy is alleged, it must be a clear mandate of public policy. "'[P]ublic policy has been defined as that principle of law which holds that no person can lawfully do that which has a tendency to be injurious to the public or against the public good.'" Hitesman v. Bridgeway, Inc., 218 N.J. 8, 28 (2014) (quoting Mehlman, 153 N.J. at 187).

"[T]he trial court must make a threshold determination that there is a substantial nexus between the complained-of conduct and a law or public policy identified by the court or the plaintiff." Dzwonar, 177 N.J. at 464. "A plaintiff who brings a claim pursuant to N.J.S.A. 34:19-3[(c)] need not show that his or her employer or another employee actually violated the law or a clear mandate of public policy." Id. at 462. Rather, a plaintiff "must set forth facts that would support an objectively reasonable belief that a violation has occurred." Id. at 464; see Klein v. Univ. of Med. & Dentistry of N.J., 377 N.J. Super. 28, 40 (App. Div. 2005).

Under the second prong of CEPA an employee must show that he performed whistle-blowing within the meaning of the statute by providing information or threatening to provide information to a supervisor or public body about an alleged violation of the law. N.J.S.A. 34:19-3.

The third element involves retaliation against an employee. Retaliation is "the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment." Maimone v. Atl. City, 188 N.J. 221, 235 (2006) (quoting N.J.S.A. 34:19-2(e)).

Under CEPA, an employee must show "a causal connection exists between the whistleblowing activity and the adverse employment action[,]" Dzwonar, 177 N.J. at 462, which "can be satisfied by inferences that the trier of fact may reasonably draw based on circumstances surrounding the employment action." Maimone, 188 N.J. at 237.

Once a plaintiff establishes a prima facie CEPA claim, a defendant must then "come forward and advance a legitimate, nondiscriminatory reason for making the adverse decision." Kolb v. Burns, 320 N.J. Super. 467, 479 (App. Div. 1999).

We analyze plaintiff's arguments with these principles in mind. We agree with the trial court that plaintiff did not show an objectively reasonable belief under N.J.S.A. 34:19-3(c)(1) that a law, rule or regulation was violated. There was no restriction on plaintiff's constitutional right of free association. Gonzalez's memo in 2009 restricted Auerbach's access to non-public portions of the Library and its non-public materials; it did not restrict plaintiff's association with Auerbach at the Library in

the public areas or from associating or speaking with him in his free time. Gonzalez told his staff to "limit" their contact with Auerbach and to not discuss Library business with him; it was not objectively reasonable for plaintiff to construe this as pertaining to his personal time.

Plaintiff's allegation that Gonzalez improperly disposed of historical documents also did not satisfy N.J.S.A. 34:19-3(c)(1) under CEPA. Plaintiff's complaint did not identify any specific law, rule or regulation that was violated by Gonzalez and thus, did not satisfy the CEPA statute. In opposing defendants' summary judgment motions, plaintiff cited two criminal statutes to support his claim: official misconduct under N.J.S.A. 2C:30-2, and theft by unlawful taking under N.J.S.A. 2C:20-3(a).

Official misconduct requires that a person act "with [a] purpose to obtain a benefit for himself or another or to injure or to deprive another of a benefit." N.J.S.A. 2C:30-2. Theft by unlawful taking requires that the unlawful taking of another's movable property be "with purpose to deprive him thereof." N.J.S.A. 2C:20-3(a). Plaintiff presented no evidence that Gonzalez's actions satisfied the requirements of these statutes or that plaintiff even believed that Gonzalez's actions were done with a purpose to benefit himself or to deprive another of the materials.

We reject as well plaintiff's claim under N.J.S.A. 34:19-3(c)(3) that the Library's prohibition against Auerbach accessing non-public areas, its "policy of restricting Library employees' contact" with Auerbach, and the Library's discarding of historical items without consulting Auerbach were all incompatible with the express terms or public policy of the Local Historians Enabling Act (Historian Act), N.J.S.A. 40:10A-1 to -8.

When enacting the Historian Act, the Legislature declared "as a matter of public policy that each municipality and county may participate to increase the education, appreciation and communication of our heritage through local historians." N.J.S.A. 40:10A-3. It allowed for the appointment of a local historian. The local historian is to "carry out an historical program" which includes "collecting, preserving and making available materials relating to the history of the local unit." He makes an annual report to the governing body of the local unit, and may research, write, and publish a local history. N.J.S.A. 40:10A-7(a) to (c).

The Historian Act does not address access to public libraries or their staff. It did not transfer the management of public libraries to local historians nor restrict their functions through the appointment of a local historian. See N.J.S.A. 40:54-12 (providing the trustees of a public library shall "generally do all things necessary and proper for the establishment and

maintenance of the free public library in the municipality"). As such, the Historian Act did not set forth a clear mandate of public policy that the public interest would be harmed by a public library's disposal of moldy and contaminated newspapers that were preserved on microfilm, or the weeding out of books that have not circulated without first obtaining the approval of the local historian. Nothing changed the Library's function to do what was necessary to maintain the library.

Plaintiff's claim that there was fraudulent or criminal activity at the Library based on its use of certain grant moneys also did not satisfy N.J.S.A. 34:19-3(c)(2). Plaintiff was removed from the grant project he referenced before it was completed. It has since been completed. His claim was based on stale information and was not objectively reasonable.

The record shows that plaintiff disagreed with Gonzalez's management of the Library. He complained to Porto about Gonzalez's "mismanagement" and the "dire situation" concerning the "very severe decline in morale" among the staff. His "ultimate reason" for writing to Porto in March 2012 was Gonzalez's relocation (not destruction) of books around the Library that he considered was a "nonsensical approach to our collection." He disagreed with Gonzalez's "weeding" policy because it only considered the books circulation history. Plaintiff disagreed with Gonzalez's decision

to move some of the local historical materials to other libraries where they could be kept dry because it would modify access to them. These types of disagreements do not constitute a violation under CEPA. See Klein, 377 N.J. Super. at 42 (providing in the context of hospital operations that "[t]he whistle-blower legislation is not intended to shield a constant complainer who simply disagrees with the manner in which [the institution] is operating . . . provided the operation is in accord with lawful and ethical mandates.").

Having failed to show evidence of a violation under N.J.S.A. (c)(1) to (3), we agree with the trial court's order that granted summary judgment and dismissed plaintiff's complaint.

B

We next address plaintiff's common law retaliation claims. In Pierce v. Ortho Pharmaceutical Corp., 84 N.J. 58, 72 (1980), the Court recognized that a common law cause of action could be maintained against an employer for retaliatory termination when the "discharge is contrary to a clear mandate of public policy." Plaintiff claimed that the restrictions on access to Auerbach and the alleged disposal of historical documents were all incompatible with a clear mandate of public policy.

The trial court dismissed plaintiff's common law retaliation claims under CEPA's waiver provision. That section provides:

> Nothing in this act shall be deemed to diminish the rights, privileges, or remedies of any employee under any other federal or State law or regulation or under any collective bargaining agreement or employment contract; except that the institution of an action in accordance with this act shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, State law, rule or regulation or under the common law.
>
> [N.J.S.A. 34:19-8.]

Plaintiff's common law cause of action relied on the same facts he relied on for his CEPA claim. "Common-law claims of wrongful discharge in violation of public policy, which merely duplicate a CEPA claim, are routinely dismissed under CEPA's exclusivity provision . . . ." Maw v. Advanced Clinical Commc'ns, 359 N.J. Super. 420, 441 (App. Div. 2003), rev'd on other grounds, 179 N.J. 439 (2004).

Recognizing that his common law claim could be subject to dismissal under this provision, plaintiff argues he did not have to make an election until the case was submitted to the jury. We disagree with this argument.

N.J.S.A. 34:19-8 provides that the "the institution of an action in accordance with this act shall be deemed a waiver of the rights and remedies available . . . under the common law." In Young v. Schering Corp., 141 N.J. 16, 32 (1995), the Court observed that "[t]he meaning of 'institution of an action' could conceivably

contemplate an election of remedies with restrictions in which the election is not considered to have been made until discovery is complete or the time of a pretrial conference contemplated by Rule 4:25-1." In Maw, 359 N.J. Super. at 441, we held that prior to electing remedies, a CEPA plaintiff "should have the opportunity to complete discovery. Only after gaining access to all of the facts, will a plaintiff be in a position to make a knowing and meaningful election."

The parties conducted discovery for 640 days and were finished it before the motions for summary judgment were filed, which was only a month before the trial date. Plaintiff had all the facts necessary to make his election when discovery closed. Consistent with Maw, plaintiff elected his remedy by proceeding with the CEPA claim thereafter.

The cases cited by plaintiff do not support his election of remedies argument. In Crusco v. Oakland Care Center., Inc., 305 N.J. Super. 605 (App. Div. 1997), we held that plaintiff's common law retaliation claim could proceed because the CEPA claim was barred by the statute of limitations. "It is . . . quite obvious that an employee who is barred from making a CEPA claim has no remedy under the Act and cannot, therefore, be seen to have any options from which to elect." Id. at 613. In Ballinger v. Delaware River Port Authority, 172 N.J. 586 (2002), the plaintiff's

common law claims were not barred because the Court found that CEPA did not apply to the Delaware River Port Authority.

Plaintiff's case does not involve a statute of limitations bar or an ineligible defendant. His common law claims arose out of the same facts as the CEPA claim and discovery was completed. Under Maw, the trial court was correct to bar these claims under CEPA's election of remedies provision.

C

Finally, we address plaintiff's civil rights claims. A person can make a claim under the NJCRA when he or she: a) is "deprived of a right"; or b) "has a right interfered with by threats, intimidation, coercion or force." Ramos v. Flowers, 429 N.J. Super. 13, 21 (App. Div. 2012). However, claims that are not "substantially independent" of the retaliatory discharge claim are barred by CEPA's waiver provision. See Matthews v. N.J. Inst. of Tech., 717 F. Supp. 2d 447, 452 (D.N.J. 2010).

Plaintiff alleged that his claim involved a matter of public concern that he was told by the Library not to speak to Auerbach but he spoke to Auerbach concerning destruction of historical documents. There was nothing independent about plaintiff's NJCRA claim; all of the facts alleged were the same. The trial court was correct therefore to dismiss this count under the CEPA election of remedies provision.

In conclusion, we hold that plaintiff's argument relating to joint employment is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.