

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the 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-0726-21**

LUKE STEDRAK,

Plaintiff-Appellant,

v.

**SETON HALL UNIVERSITY,
DR. MARY MEEHAN, KAREN
BOROFF, and MAUREEN
GILLETTE,**

Defendants-Respondents.

Argued April 25, 2023 – Decided July 10, 2023

Before Judges Gilson and Gummer.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-5041-20.

Evan L. Goldman argued the cause for appellant (Goldman Davis Krumholz & Dillon, PC, attorneys; Evan L. Goldman, of counsel and on the briefs; Kelly A. Smith, on the briefs).

James P. Lidon argued the cause for respondents (McElroy, Deutsch, Mulvaney & Carpenter, LLP,

attorneys; James P. Lidon, of counsel and on the brief;
David H. Han, on the brief).

PER CURIAM

Plaintiff Luke Stedrak was an assistant professor at Seton Hall University (the University) who had been denied tenure. He sued the University; Dr. Mary Meehan, the interim president; Dr. Karen Boroff, the interim provost; and Dr. Maureen Gillette, a dean (collectively, defendants). He alleged that they had violated a clear public policy in denying him tenure and tortiously interfered with his prospective economic advantage. Plaintiff appeals from an order dismissing his first amended complaint with prejudice. Because plaintiff did not identify a clear public policy applicable to his tenure decision and because he did not plead facts supporting a claim of tortious interference with prospective economic advantage, we affirm.

I.

We accept the facts as pled by plaintiff. Plaintiff worked as an assistant professor in the University's College of Education and Human Services (the College). Plaintiff joined the University's faculty in 2013. He taught courses in "Finance, Law, Policy, Curriculum, Survey Research, Directed and Cybernetic Research and other courses." While employed at the University, plaintiff "received overwhelmingly positive evaluations by both students and professors

who . . . evaluated him." He had published articles, book chapters, and presented at several conferences. In 2018, plaintiff became eligible for tenure. He subsequently applied for a promotion to be associate professor with tenure.

The procedures and criteria for promotion and tenure are set forth in articles four and five of the University's faculty guide.¹ To receive tenure, an applicant must be reviewed and recommended by his or her department, his or her college's Rank and Tenure Committee, and the University's Rank and Tenure Committee. The application is then submitted to the provost who can deny the application or "endorse[]" it and forward it to the University's Board of Regents for final approval. If a tenure application is denied, the applicant can appeal that decision to the University's president, provided that the applicant had been recommended by a majority of the University's Rank and Tenure Committee.

In accordance with the tenure provisions, plaintiff's application was reviewed and recommended by his department (the Education Leadership Management and Policy Department), the College's Rank and Tenure

¹ Plaintiff referenced the University's faculty guide in his complaint, and he does not dispute that it governed his tenure application. See Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005) (explaining that on a motion to dismiss a court can appropriately review documents or materials that are referenced in the complaint or that are integral to plaintiff's claim); Myska v. N.J. Mfrs. Ins. Co., 440 N.J. Super. 458, 482 (App. Div. 2015) (also explaining this principle).

Committee, and the University's Rank and Tenure Committee. His application was also submitted to the then-interim provost, Dr. Boroff. Dr. Boroff denied plaintiff tenure and informed him of her decision in a letter dated March 29, 2019. Dr. Boroff also informed plaintiff that, in accordance with University policy, the denial of his tenure application would result in the non-renewal of his annual contract to be an assistant professor.

Plaintiff appealed the provost's decision to the then-interim president, Dr. Meehan. After meeting with plaintiff, Dr. Meehan sent him a letter, dated May 6, 2019, informing him that she was upholding the provost's decision to deny him tenure. In 2019, plaintiff's employment with the University ended.

In July 2020, plaintiff sued the University, Dr. Meehan, Dr. Boroff, and Dr. Gillette. He alleged that he had been wrongfully terminated because Dr. Meehan had a conflict of interest in acting on his tenure application and the conflict violated a clear public policy. In support of that claim, plaintiff identified the University's conflict of interest policy in his initial complaint. He also contended that defendants had tortiously interfered with his promotion and employment at the University.

Defendants moved to dismiss plaintiff's complaint. Thereafter, plaintiff agreed to amend his complaint and defendants agreed to withdraw their motion to dismiss his initial complaint.

In January 2021, plaintiff filed a first amended complaint. In that complaint, plaintiff asserted two causes of action: (1) wrongful termination in violation of a clear public policy; and (2) tortious interference with prospective economic advantage. In count one, plaintiff again alleged that defendants had conflicts of interest in acting on his tenure application and that those conflicts violated a clear public policy. Plaintiff identified both the University's conflict-of-interest policy and the conflict-of-interest policies established by the Middle States Commission on Higher Education (MS Commission).

The MS Commission is a voluntary, non-governmental organization that gives accreditation to institutions of higher education in the Mid-Atlantic region of the United States. The United States Department of Education recognizes the accreditations given by the MS Commission and the University is identified as an accredited university by the MS Commission.

Plaintiff identified the MS Commission's standards on conflicts of interest and fair and impartial practices in promoting employees. Plaintiff then alleged that defendants had violated the MS Commission's standards, as well as the

University's conflict-of-interest policy, because Dr. Meehan had a conflict of interest in acting on his tenure application. In support of his claim, plaintiff alleged the following facts:

13. In his appeal [plaintiff] argued, among other things, that at the time that his tenure was denied, interim [p]resident [Dr. Meehan] had already accepted a position in the Department of Education Leadership Management and Policy, which is directly supervised by a dean and department chair.

14. Dean and Department Chair, defendant, [Dr. Gillette], repeatedly violated both the Employee Handbook and the Faculty Guide in a deliberate attempt to sabotage any promotion to an [a]ssociate [p]rofessor with [t]enure.

15. On or about April 26, 2018, Dean Gillette announced to the Department of Education that [Dr. Meehan] created an endowed fund to support the Ph.D. program in Higher Education.

16. [Dr. Meehan] requested that the endowed fund be named the Stetar-Finkelstein Endowed Fund. Part of the endowment was placed in the name of Martin Finkelstein, who is the husband of Elaine Walker, Chair of the Department of Education Leadership, Management and Policy.

17. Dean Gillette should have never appointed Martin Finkelstein (Elaine Walker's husband) to serve on the University['s] Rank and Tenure Committee, as it violated both the Employee [H]andbook and the Faculty Guide.

18. Upon information and belief, both Martin Finkelstein and Elaine Walker voted against [plaintiff] on two separate occasions.

19. There were extensive letters of support for [plaintiff] in favor of his appointment to [a]ssociate [p]rofessor with [t]enure. These letters also addressed any negative comments made by those who voted against [plaintiff].

20. At the same time, the Chair of the Faculty Senate and Chair of the Faculty Grievance Committee both recommended that Martin Finkelstein be removed from the Rank and Tenure Committee. The request was made to [Dr.] Boroff, but no action was taken.

21. Dr. Jonathan Farina, Chair of the Faculty Senate, requested that the newly named [p]resident (who had not yet officially begun his duties), Joseph Nyre, reconsider the University's decision not to promote [plaintiff].

22. Prior to President Nyre actually making his decision, he received a letter from the general counsel of the University, Catherine Kiernan, indicating that there was "no avenue" for him to consider the final decision of the University.

23. This was a further blatant attempt by [the University] to prevent [plaintiff] from receiving a promotion with tenure, who's denial was the result of the University's failure to follow its own policies of conflict of interest.

In support of his claim of a tortious interference, plaintiff alleged:

32. At all times relevant hereto, plaintiff was performing his job at a level that met his employer's

expectations, and also complied with all prerequisites to be approved for tenure. By failing to approve his application for tenure and denying his appeal of that decision, defendants interfered with plaintiff's ability to pursue and obtain future employment which would be compensated at a level commensurate with his experience.

33. Defendants' denial of plaintiff's application for tenure and of his appeal of that decision caused him to lose prospective gain. But for defendants' interference, plaintiff would have received significant economic benefits in the future.

Defendants moved to dismiss the first amended complaint for failure to state viable causes of action. After hearing argument, on August 24, 2021, the trial court issued an order and written statement of reasons dismissing plaintiff's complaint. Addressing plaintiff's common-law wrongful-termination claim, the trial court reasoned that the MS Commission's standards could be a source of public policy. The court went on to hold, however, that the general conflict-of-interest standards identified by plaintiff did not establish a clear public policy violation when applied to the facts he pled. Concerning plaintiff's second claim, the trial court held that plaintiff had failed to allege facts showing that defendants interfered with a specific prospective economic relationship. The court also held that plaintiff had failed to plead facts showing that defendants

intentionally or maliciously interfered with any prospective economic relationship.

The August 24, 2021 order dismissed plaintiff's complaint without prejudice and allowed him to file an amended complaint within forty-five days. Thereafter, plaintiff informed the trial court that he would not file a second amended complaint and that he wanted to appeal the dismissal of his first amended complaint. Accordingly, on October 1, 2021, the trial court entered a final order dismissing plaintiff's first amended complaint with prejudice. Plaintiff now appeals from that final order.

II.

On appeal, plaintiff makes two arguments. First, he contends that the trial court erred in dismissing his wrongful termination claim because he had identified a violation of a clear public policy in the denial of his tenure application. Second, plaintiff argues that he stated a viable claim for tortious interference with a prospective economic relationship. We reject both these arguments because plaintiff did not plead facts supporting viable legal causes of action.

Appellate courts use a de novo standard of review when evaluating a motion to dismiss. Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman

& Stahl, P.C., 237 N.J. 91, 108 (2019). In conducting that review, we determine whether the pleadings "suggest[]" a basis for the requested relief. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). Accordingly, we accept the factual allegations as true, and "search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of [a] claim." Ibid. (quoting Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957)). "However, we have also cautioned that legal sufficiency requires allegation[s] of all the facts that the cause of action requires." Cornett v. Johnson & Johnson, 414 N.J. Super. 365, 385 (App. Div. 2010). In the absence of sufficient allegations, claims should be dismissed. Ibid.

A. The Wrongful Termination Claim.

In the absence of an employment contract, an employee or an employer can terminate the employment relationship with or without cause. Pierce v. Ortho Pharm. Corp., 84 N.J. 58, 65-66 (1980). To protect at-will employees from abusive employment practices, New Jersey recognizes a common-law cause of action when an employee is discharged "contrary to a clear mandate of public policy." Id. at 72.

In establishing that wrongful-termination cause of action, the New Jersey Supreme Court held that the public policy must be "clearly identified and firmly grounded." MacDougall v. Weichert, 144 N.J. 380, 391 (1996). In that regard, the Court stated:

A basic requirement of the wrongful discharge cause of action is that the mandate of public policy be clearly identified and firmly grounded. A vague, controversial, unsettled, and otherwise problematic public policy does not constitute a clear mandate. Its alleged violation will not sustain a wrongful discharge cause of action.

[Id. at 391-92 (citations omitted).]

"The sources of public policy include legislation; administrative rules, regulations or decisions; and judicial decisions. In certain instances, a professional code of ethics may contain an expression of public policy. . . . Absent legislation, the judiciary must define the cause of action in case-by-case determinations." Pierce, 84 N.J. at 72.

To sustain a cause of action, the employee must identify a specific expression of public policy that had been violated by his or her discharge. MacDougall, 144 N.J. at 391. Identifying a mandate of public policy is a question of law. Warthen v. Toms River Cmty. Mem'l Hosp., 199 N.J. Super. 18, 24 (App. Div. 1985). Moreover, determining public policy is a matter of weighing competing interests. See Pierce, 84 N.J. at 71; McVey v. AtlantiCare

Med. Sys. Inc., 472 N.J. Super. 278, 287 (App. Div. 2022). A clear mandate of public policy is one that "on balance is beneficial to the public." Hennessey v. Coastal Eagle Point Oil Co., 129 N.J. 81, 100 (1992). An employee who is discharged for reasons related to an employer's policies that affect only a private interest does not have a cause of action under Pierce. See MacDougall, 144 N.J. at 392. Accordingly, when an employee fails to identify a specific expression of public policy that would protect him or her from at-will termination, the claims should be dismissed. Alexander v. Kay Finlay Jewelers, Inc., 208 N.J. Super. 503, 507-08 (App. Div. 1986).

In support of his wrongful termination claim, plaintiff identified standards for ethics and integrity set forth in the MS Commission's standards. Specifically, plaintiff relied on the MS Commission's standards that state:

An accredited institution possesses and demonstrates the following attributes or activities:

....

4. [T]he avoidance of conflict of interest or the appearance of such conflict in all activities and among all constituents;
5. [F]air and impartial practices in the hiring, evaluation, promotion, discipline, and separation of employees.

Plaintiff then contended that Dr. Gillette had not supported his tenure application and had improperly appointed Finkelstein to the University's Rank and Tenure Committee, knowing that Finkelstein would oppose plaintiff's tenure application. Plaintiff also alleged that Dr. Meehan had a conflict of interest because she planned to rejoin the faculty and would be supervised by Dr. Gillette and, therefore, wanted to curry favor with Dr. Gillette.

We hold that those factual allegations do not establish a common-law wrongful-termination cause of action. The MS Commission standards identified by plaintiff are general standards that do not establish clear public policies applicable to a tenure determination. Indeed, a generous reading of plaintiff's factual allegations of a conflict of interest do not establish a clear conflict. Plaintiff alleges that Dr. Gillette improperly appointed Finkelstein to the University's Rank and Tenure Committee reviewing plaintiff's tenure application. That committee, however, recommended plaintiff for tenure. It is, therefore, not clear how any alleged conflict of interest adversely affected plaintiff. Plaintiff then suggested that Dr. Meehan had some type of conflict of interest because she wanted to curry favor with Dr. Gillette. Those allegations simply do not show that plaintiff's denial of tenure was in violation of a clear public policy.

On appeal, plaintiff argues that the trial court correctly found that the MS Commission standards did establish a clear public policy against conflicts of interest. Plaintiff then contends that the trial court erred in applying that standard and that the court should not have done that on a motion to dismiss. We reject plaintiff's arguments for two reasons.

First, we do not agree with plaintiff's reading of the trial court's decision. Although the court acknowledged that the MS Commission standards could establish a clear public policy, the court correctly held that the standards were too general to be applied to plaintiff's tenure decision. Second, to the extent that the trial court held that the MS Commission standards established a clear public policy applicable to a tenure decision, we reject that legal conclusion. The MS Commission standards identified by plaintiff are too general and vague to establish a clear public policy as applied to a tenure decision.

B. The Tortious-Interference Claim.

To establish a claim for tortious interference with a prospective economic advantage, a plaintiff must show: (1) some protectable right, such as a prospective economic or contractual relationship; (2) an intentional and malicious interference with that expectation; (3) a causal connection between the interference and the loss of the prospective gain; and (4) damages. See

Printing Mart-Morristown, 116 N.J. at 751-52; Lamorte Burns & Co. v. Walters, 167 N.J. 285, 305-06 (2001). Malice is defined as intentionally inflicted harm without justification or excuse. Printing Mart-Morristown, 116 N.J. at 756. The determination of malice must focus on defendant's actions based on the facts of each individual case. Id. at 756-57. "The line clearly is drawn at conduct that is fraudulent, dishonest, or illegal and thereby interferes with a competitor's [or person's] economic advantage." Walters, 167 N.J. at 307; see also Shebar v. Sanyo Bus. Sys. Corp., 218 N.J. Super. 111, 118 (App. Div. 1987) (holding an employee who was fired after his employer used deceit to induce him to revoke acceptance of an outside employment offer until a replacement was found satisfies the malicious interference requirement).

Plaintiff failed to plead facts supporting a viable tortious-interference claim. Most fundamentally, plaintiff has not pled facts that show that defendants acted with malice in denying his tenure. Absent proof of intentional and malicious interference with his tenure application, plaintiff cannot establish a tortious-interference claim. In addition, in his first amended complaint, plaintiff contended that the prospective economic advantage was employment at another education institution. In that regard, he alleged defendants interfered with his ability to obtain employment that "would be compensated at a level


commensurate with his experience." Plaintiff, however, has alleged no facts demonstrating any defendant knew of or interfered with plaintiff obtaining a position at another college or university.

III.

In summary, plaintiff asserted two causes of action based on the denial of his tenure application. He failed to identify a violation of a clear public policy in the denial of his tenure. Consequently, he did not state a viable cause of action for wrongful termination. He also failed to identify any intentional or malicious interference with his tenure application or his expectation concerning future employment at another institution. The trial court, therefore, correctly dismissed plaintiff's complaint with prejudice.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION