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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-1505-23**

RAYMOND MANZO,

Plaintiff-Respondent,

v.

URBY, LLC and
MIGUEL RUPERTO,

Defendants-Appellants.

Argued May 15, 2024 – Decided June 7, 2024

Before Judges Vernoia and Walcott-Henderson.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-3455-21.

Samuel J. Samaro argued the cause for appellants (Pashman Stein Walder Hayden, PC, attorneys; Samuel J. Samaro and Dominique Kilmartin, on the briefs).

Francine R. Foner argued the cause for respondent (Hyderally & Associates, PC, attorneys; Ty Hyderally, of counsel and on the brief; Francine R. Foner, on the brief).

PER CURIAM

By leave granted, defendants Urby, LLC (Urby) and Miguel Ruperto appeal from an order denying their motion for summary judgment on plaintiff Raymond Manzo's claims defendants failed to accommodate his disability, terminated his employment with Urby, and retaliated against him in violation of the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 to -49. We dismiss the appeal as improvidently granted.

Plaintiff filed a five-count complaint alleging he suffered from a "handicap, disability and/or medical condition," "syncope, . . . which causes vertigo, dizziness, and fainting," during his employment as a maintenance technician at Urby. Plaintiff asserted a cause of action under the NJLAD alleging defendants discriminated against him, in part by terminating his employment due to his disability. Plaintiff also asserted a cause of action under the NJLAD, claiming defendants retaliated against him by terminating his employment because he had sought disability leave and requested a reasonable accommodation. The complaint also asserted causes of action under the NJLAD based on defendants' alleged failures to provide a reasonable accommodation for plaintiff's disability and to engage in an interactive process such that they could provide a reasonable accommodation. Last, plaintiff alleged defendants

violated the Family and Medical Leave Act (FMLA), 29 U.S.C. §§ 2601 to 2654, by terminating plaintiff's employment based on his disability for the purpose of depriving him of the statute's benefits. Defendants filed an answer to the complaint generally denying plaintiff's allegations and asserting various affirmative defenses.

Following completion of discovery, and plaintiff's voluntary dismissal of his claim under the FMLA, defendants moved for summary judgment on the remaining causes of action under the NJLAD. In support of the motion, defendants argued plaintiff had not presented sufficient medical evidence he suffered from a disability and, as a result, he could not prevail on his claims defendants had failed to provide a reasonable accommodation and engage in the interactive process to develop a reasonable accommodation for his alleged disability. Defendants also argued plaintiff lacked evidence establishing a prima facie claim of unlawful retaliation under the NJLAD because he had never requested a reasonable accommodation and had never taken leave based on his purported disability. Defendants further argued plaintiff was properly terminated due to excessive absenteeism.

In a detailed written opinion, the court denied defendants' motion, finding the summary judgment record revealed genuine issues of material fact as to

whether the syncope from which plaintiff alleged he suffered was a disability that precluded a determination defendants were entitled to summary judgment as a matter of law on plaintiff's discrimination and failure-to-engage-in-the-interactive-process claims.

The court similarly found genuine issues of material fact precluding summary judgment on plaintiff's failure-to-accommodate claim. More particularly, the court found there was a genuine issue of material issue of fact as to whether a request plaintiff had made for a leave of absence from February 5, 2023 to February 10, 2023—which defendants denied—was a request for a reasonable accommodation for his disability. The court also denied defendants' motion for summary judgment on plaintiff's retaliatory termination claim, finding there were genuine issues of material fact as to whether plaintiff suffered from a disability in the first instance and whether he had been terminated for taking a short leave of absence that he claimed should have been granted as a reasonable accommodation.

The court entered an order denying without prejudice defendants' motion for summary judgment. Defendants filed a motion for leave to appeal from the court's order based on the limited claims that the motion court had erred by finding there was a fact issue as to whether plaintiff suffered from a disability

because plaintiff had not presented medical evidence he suffered from a disability or, more particularly, that he suffered from the disability on the days he had been absent from work. This court granted defendants' motion for leave to appeal and permitted supplemental briefing. Plaintiff and defendants submitted additional briefing and appendices supporting their respective positions.

Having reviewed the parties' submissions addressing the merits of the appeal, we are convinced defendants' motion for leave to appeal was improvidently granted. A motion for leave to appeal "is permitted only 'in the interest of justice,'" Brundage v. Est. of Carambio, 195 N.J. 575, 599 (2008) (quoting R. 2:2-4), and where "there is the possibility of 'some grave damage or injustice' resulting from the trial court's order," ibid. (quoting Romano v. Maglio, 41 N.J. Super. 561, 568 (App. Div. 1956)).


We recognize a motion for leave to appeal "may be granted 'where the appeal, if sustained, will terminate the litigation and thus very substantially conserve the time and expense of the litigants and the courts,'" ibid. (quoting Romano, 41 N.J. Super. at 568). However, based on our review of the record and the arguments included in the parties' submissions following our order granting defendants' motion for leave to appeal, we are unpersuaded we should

depart from "our general policy against piecemeal review of trial-level proceedings," ibid. (citing State v. Reldan, 100 N.J. 187, 205 (1985)), or that "there is . . . 'some grave damage or injustice,'" ibid. (quoting Romano, 41 N.J. Super. at 568), that may result "from the trial court's order" such that interlocutory review of the court's order is appropriate, ibid. Nor do we find that the record presented establishes "that 'justice calls for [our] interference in the cause'" prior to entry of a final order. Ibid. (quoting Romano, 41 N.J. Super. at 568). We therefore dismiss the appeal as improvidently granted.

Our dismissal of the appeal is without prejudice to defendants' right to challenge the court's order following entry of a final order. We further note we have not made any dispositive determinations as to the merits of defendants' arguments. We decide only that our review of the parties' supplemental submissions leaves us unconvinced this matter is one in which the interest of justice permits or requires a review of the court's interlocutory order prior to the final disposition of the matter in the trial court.

Dismissed.

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



CLERK OF THE APPELLATE DIVISION