NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1688-13T1

DEBORAH STROLI, R.N.,

Plaintiff-Appellant,

v.

BERGEN COMMUNITY BLOOD
SERVICES, INC.,

Defendant-Respondent.

Submitted March 24, 2015 – Decided August 4, 2015

Before Judges Accurso and Manahan.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-3261-12.

Gareth David De Santiago-Keene, LLC, attorney for appellant.

Drinker Biddle & Reath, LLP, attorneys for respondent (John A. Ridley and Jessica Burt, on the brief).

PER CURIAM

Plaintiff, Deborah Stroli, appeals the trial court's order granting summary judgment to defendant, Bergen Community Blood Services, Inc. (CBS), on her claims for breach of employment contract and fraud; the court's denial of her cross-motion for summary judgment and her motion to amend the complaint to add additional claims. We affirm.

In late November 2006, plaintiff, a registered nurse, submitted a letter of resignation to CBS due to dissatisfaction with certain unsafe employment practices. After being advised by her supervisor to reconsider her decision over the weekend, plaintiff returned to work to find that her resignation had been accepted. Now unemployed, plaintiff applied for unemployment benefits. Her application was initially granted, but ultimately reversed by the Board of Review (the Board). Plaintiff filed an appeal. We affirmed the Board's decision.

Almost six years later, plaintiff filed a complaint seeking severance benefits from CBS for violation of an employment contract she alleged arose from an employee handbook and accusing her supervisor of fraud based upon the supervisor's statement that plaintiff should reconsider her decision. CBS moved for summary judgment.[1] The court granted CBS's motion in an opinion on the record finding collateral estoppel barred re-litigation on the issues of whether plaintiff voluntarily resigned; the Employee Handbook (Handbook) did not create a contract; and plaintiff failed to sufficiently plead fraud.[2]

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[1] The plaintiff crossed-moved for summary judgment. Although there was no accompanying order entered, the court referenced the denial of the cross-motion in its opinion.

[2] Prior to the order granting summary judgment, the court entered an order denying plaintiff's motion "To immediately disqualify defense firm and every attorney in defense firm" and defendant's motion for discovery sanctions. The court also entered an order (continued)

In June 2006, CBS issued the Handbook to all of its employees effective July 1, 2006. Plaintiff signed a "Receipt and Acknowledgment" of the Handbook on June 19, 2006, which stated:

> I certify that I have received a copy of the Community Blood Services Employee Handbook. I understand that these policies and practices supersede and replace all previous policies, practices or other policy summaries, both written and verbal. I further acknowledge and understand that I am responsible for understanding its contents.
>
> Neither this Handbook nor any other company guidelines, policies or practices create an employment contract. Community Blood Services has the right, with or without notice, in an individual case or generally, to change any of its guidelines, policies, practices, working conditions or benefits (including compensation) at any time. In the event further clarification of the content is needed, I understand that I should contact Human Resources. I understand that failure to comply with the blood center's handbook contents may result in disciplinary action up to and including termination.

The Handbook also addressed "Employment At-Will":

> All employees of Community Blood Services are employees at-will and can resign at any time or be separated by the

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(continued)
striking from the record plaintiff's expert's report. Plaintiff cites to these orders in her Notice of Appeal but has not addressed them in her brief. We deem any appellate issues relating to these orders waived. 539 Absecon Blvd., L.L.C. v. Shan Enters. Ltd. P'ship, 406 N.J. Super. 242, 272 n.10 (App. Div. 2009).

> blood center at any time with or without notice and with or without cause, subject only to applicable law. Community Blood Services makes no express or implied guarantees of continued employment. No employee should rely on oral or written representations to the contrary, since this policy can be modified in writing only by the CEO.

The Handbook contained a section entitled "Severance Pay Benefits," which stated, "[C]ommunity Blood Services may, at its sole discretion, grant severance pay to full-time regular employees who have been involuntarily terminated."

Plaintiff argues that she entered into an employment contract with CBS upon signing the Handbook. However, in her deposition, plaintiff acknowledged she was an at-will employee:

> Q. What is your understanding as to what [employee at-will] means?
>
> A. My understanding of – of an employee at-will, is an employee, let's say I – I decide that I want to leave. So I say, well, I'm leaving, or if the employer says, look, we no longer want your – want your services, they could terminate me.
>
> Q. Okay. And in those circumstances, can the employer terminate you for any reason or no reason?
>
> A. If I have a wart on my nose and they don't like it they can terminate me.
>
> . . . .
>
> Q. Okay. Now, was it your understanding that your employment at CBS was as an employee at-will?

A. Yes. I signed a paper for that too. I think it was a paper that I signed employee at-will.

Q. Okay. You didn't have any written contract with CBS, did you?

A. A separate contract? No.

Q. And did you have any oral contract with any manager or supervisor at CBS that you claimed to have relating to your employment?

A. Not to my knowledge.

Plaintiff argues she signed the Acknowledgment under duress. Somewhat to the contrary, during her deposition she described what occurred on the date she signed the Acknowledgment:

> We had a meeting, you know, like they called the employees into the conference room, and they were saying that there was the – Dr. Todd was there, Colleen was there, and they were giving out new employee handbooks. So they gave us the new employee handbooks, I remember everybody had to sign.
>
> There was also a pack, you know, like a manila envelope: There was the employee handbook and then there was like another, like a manila envelope that they were doing the employee – what you call it, educational program, which was not part of the handbook that I got. It was in a separate little package. And we all singed it, you know, we acknowledged that we received it. We handed it back to them and – and that was it.

Plaintiff also argues that the circumstances surrounding her resignation rendered it involuntary.

For purpose of our determination, we consider plaintiff's version of events leading to her resignation in a light most favorable to her. In mid-July 2005, plaintiff's supervisor, Bernadette O'Keefe, informed her that the training room in which she had been training employees would no longer be available to her and she would be relocated to a different room. O'Keefe also advised her that the size of the class would be increased from ten to thirteen. Plaintiff objected to the increase in class size, in part because of the small size of the new room and the large amount of "foot traffic created by employees, donors and visitors" near the new room which interfered with the quiet and stress-free environment her students required. Plaintiff was also upset that the new room was located near a copying machine, which was noisy and interfered with her hearing aid. When plaintiff informed O'Keefe of her concerns, O'Keefe told her to "do it anyway."

At the end of November 2006, plaintiff submitted her letter of resignation to O'Keefe indicating December 16 would be her last day of employment. The letter stated:

> For nineteen years I have been a dedicated employee at Community Blood Services. I take pride in giving quality service and I will not compromise the high standards in training of Donor Services Employees.
>
> I am put in a position that I feel may compromise the quality of service to the

> blood center, therefore I would rather resign than compromise the safety of the donors. I am giving notice of resignation effective December 16, 2006.

After plaintiff submitted her resignation letter, O'Keefe told her to discuss the letter with Holly Palma, the Human Resources Manager. Plaintiff told Palma that she objected to the number of students assigned to her and, given the size of the room and level of distractions, it would not be possible to adequately train the students. Palma told plaintiff to "take a break and come back in an hour." When she returned, Palma suggested that she go back and speak with O'Keefe. After a brief discussion, O'Keefe suggested a compromise in which the trainees would be split into two groups. Due to the compromise, plaintiff stated that she would withdraw her resignation. O'Keefe responded that plaintiff should "go home and reconsider."

Plaintiff claims when she left on Thursday, her resignation had not been accepted. Plaintiff did not work on Fridays for religious reasons. When she returned on Monday, O'Keefe told plaintiff that things were going to get worse for her, withdrew her offer to compromise and informed plaintiff her services were no longer needed. Upset by the "withdrawal" of the compromise, plaintiff asked Palma if she could be considered for alternative employment. Palma informed her that no jobs were available.

Plaintiff remained employed until December 16, 2006. According to plaintiff, CBS did not conduct an exit interview, did not pay her any consideration for the accrued but unused vacation and sick time she had earned in 2006, and did not explain her COBRA or ERISA rights to her in person, though they did send a brief letter about COBRA matters in December.[3]

Plaintiff filed for unemployment benefits on December 17, 2006, claiming she was involuntarily terminated from employment.[4] A deputy claims examiner initially granted plaintiff's claim for unemployment benefits on January 19, 2007. CBS appealed the decision to the Appeal Tribunal (Tribunal). On February 16, 2008, the Tribunal conducted a telephonic hearing on plaintiff's claim during which plaintiff testified concerning the circumstances of her departure from CBS. Palma testified on behalf of CBS. The Tribunal reversed the initial decision, finding plaintiff was disqualified from receiving benefits

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[3] In the hearing relating to her appeal of the denial of unemployment benefits, plaintiff claimed that she complained to O'Keefe orally, and in writing, about working conditions. Plaintiff admitted she never made O'Keefe aware that she was not satisfied with O'Keefe's handling of her complaints due to a fear of retaliation.

[4] Approximately five weeks after plaintiff filed her claim, her husband sent an e-mail to Colleen Hurley, CBS's Vice President of Human Resources, requesting a "severance package" for his wife. Hurley responded on January 29 and stated that plaintiff was not entitled to any type of "severance package" because she had voluntarily resigned.

because she "left work voluntarily without good cause attributable to the work." Plaintiff, through her counsel, appealed the Tribunal's decision to the Board. The Board affirmed the Tribunal's decision. We affirmed the Board's holding. Stroli v. Bd. of Review & Bergen Cmty. Blood Bank, No. A-5081-06 (App. Div. Mar. 20, 2008) (slip op. at 8). This court cited to the Tribunal's findings:

> [T]he claimant gave notice of resignation effective 12/16/06. She opted to resign after her supervisor asked her to add three more students to a training class. The claimant felt that a total of fifteen students was excessive and it constituted a violation of safety rules. The claimant did not address the issue with Human Resources prior to giving notice of resignation. The claimant was already dissatisfied with her employer's repeated violations to safety standards. The claimant was also unhappy with the way her complaints were handled by her supervisor. The claimant never discussed her grievances with anyone else from management. The claimant did not complain [] in fear of retaliation.
>
> . . . .
>
> The claimant's failure to discuss her grievances with management because she feared retaliation, is not justified. The claimant did not take reasonable steps to resolve her complaints prior to leaving work and her actions are evidence of a willful intent to sever the employment relationship. The claimant is disqualified for benefits, under N.J.S.A. 43:21-5(a) as of 12/17/06, as the claimant left work voluntarily without good cause attributable to the work.
>
> [Id. at 3-4.]

We concluded that "the Board's determination that appellant left work without good cause attributable to the work is amply supported by substantial credible evidence in the record as a whole, and is not arbitrary, capricious, or unreasonable." Id. at 7-8.[5]

Collateral Estoppel

CBS argued before the trial court and again on appeal that plaintiff was collaterally estopped from litigating the issue of her voluntary departure. CBS avers the issue of plaintiff's departure was decided in both the administrative and judicial proceedings. In reading the determination to grant CBS's motion for summary judgment, the court agreed that collateral estoppel applied. The court held in pertinent part:

> [Plaintiff] filed for unemployment benefits with the Division of Unemployment benefits, which application was initially accepted. The employer took an appeal. That decision was – the hearing examiner's decision was overturned. There was a further administrative appeal in the [T]ribunal.
>
> And then ultimately the employee, the plaintiff here, appealed to the Appellate Division. The Appellate Division addressed the claims regarding whether or not the plaintiff was entitled to unemployment benefits in the context of whether her

[5] We do not refer to our unpublished opinion as precedent. R. 1:36-3. Rather, we refer to the opinion in the context of its import upon collateral estoppel.

> separation from . . . CBS was voluntary or involuntary.
>
> And they concluded that based upon the record that had been established, and there was a, apparently, a fairly extensive record, that she had voluntarily separated from CBS and therefore was not entitled to unemployment benefits.
>
> The issues that she raised regarding her work conditions and the reasons surrounding . . . her resignation were addressed by the Appellate Division.
>
> And they affirmed the administrative determination that rejected those positions as being grounds for construing her termination as involuntary.
>
> . . . .
>
> The defendant argues that the Doctrine of Collateral Estoppel should apply to these claims because those issues that plaintiff raises here in the Law Division have been addressed specifically within the context of the administrative review process and ultimately affirmed by the Appellate Division.
>
> And the court is satisfied that indeed they were . . . .

The court continued after citing the text of this court's decision:

> The Appellate Division notes that she never raised safety concerns with anyone in HR, did not consult with the CEO. Workplace safety was – the issues were addressed by the Appellate Division and – as addressed below by the unemployment – the Division of Unemployment.

> The court found as follows, said the claimant gave notice of her resignation effective 12/16/06. She opted to resign after supervisor asked her to add three more students to her training class.
>
> She felt the total of fifteen students was excessive and constituted a violation of safety rules, again noted that – her failure to address them with the appropriate parties. The court noted that she never discussed her grievance with anyone from management.
>
> The court concluded that her failure to discuss the grievance with management because she feared retaliation is not justified. She didn't take any reasonable steps to resolve her complaints prior to leaving work and her actions are evidence of a willful intent to sever employment agreement.
>
> The claimant is disqualified for benefits as she left work voluntarily without good cause attributable to the work.
>
> And the court went on to express that it was going to affirm the decision below based upon the record accordingly.

The court then concluded:

> Well, there is no basis for this court to interfere with that process. The parties had an opportunity. The parties being the plaintiff . . . and CBS were in the position of controverting those issues. There was an adjudication. There was a full opportunity to litigate the claims.
>
> If the administrative agency had determined that her complaints were justified and substantiated and that her resignation was not one that was voluntary but rather one that was compelled by actions of the employer, they would have determined that

> she was involuntarily separated . . . from her employment and rule that she had left with good cause and therefore would have been entitled to benefits.
>
> So simply stated, you are entitled to a bite of the apple however deep you wish to go. But in this case you get one bite of the apple. And that apple has already been taken and pierced.

The doctrine of collateral estoppel "bars re-litigation of any issue which was actually determined in a prior action, generally between the same parties, involving a different claim or cause of action." Ziegelheim v. Apollo, 128 N.J. 250, 265 (1992) (quoting State v. Gonzalez, 75 N.J. 181, 186 (1977)). The purpose of the doctrine is to avoid re-litigating issues that have been fully and fairly litigated and determined in an earlier proceeding. First Union Nat'l Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 352 (2007); Lopez v. Patel, 407 N.J. Super. 79, 93 (App. Div. 2009). Collateral estoppel is an equitable remedy, and the decision of whether to apply it in a particular case is left to the trial court's discretion after the court "weigh[s] economy against fairness." Barker v. Brinegar, 346 N.J. Super. 558, 566 (App. Div. 2002).

To successfully assert the bar of collateral estoppel, a party must establish the following factors:

> (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.
>
> [First Union Nat'l Bank, supra, 190 N.J. at 352.]

Collateral estoppel is limited to issues actually litigated and decided in a prior action. Ibid. "[W]hen the five elements of collateral estoppel . . . are not satisfied, the inquiry ends." Perez v. Rent-A-Center, Inc., 186 N.J. 188, 199 (2006) (internal citation omitted).

Plaintiff argues that collateral estoppel is inapplicable predicated upon Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511 (2006). We agree. In Olivieri, the plaintiff filed suit under New Jersey's Conscientious Employees Protection Act (CEPA), alleging she was terminated because she refused to provide false testimony in a separate civil matter. Id. at 518-19. The plaintiff sought to introduce her favorable unemployment compensation determination to preclude her employer from claiming that she voluntarily left her employment. Id. at 519. In reaching its determination that an unemployment compensation determination did not warrant a collateral estoppel effect, the Court held that the third exception to the Second Restatement of Judgments' general rule of issue preclusion applied, i.e., "a

new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts . . . ." Id. at 523. In Olivieri, the Court noted that (1) nothing in the record demonstrated that the unemployment proceedings were recorded; (2) the hearing was conducted in an "informal fashion"; (3) the defendant appeared without counsel; and (4) the unemployment hearings were not bound by the Rules of Evidence. Id. at 524-25.

Collateral estoppel, or issue preclusion, "bars re-litigation of issues in suits that arise from different causes of action[,]" Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 173 (App. Div. 2000), if they have been "fairly litigated and determined." First Union Nat'l Bank, supra, 190 N.J. at 352.

In Olivieri, the Court premised its decision on the procedural inadequacies of the unemployment proceedings. As such, the Court determined the issue sought to be precluded by the plaintiff was not adequately litigated. Also, the Court noted that it would be unfair to enforce collateral estoppel against an employer when the employee had the benefit of the compensation law which is to be "liberally construed in favor of claimants to effectuate its remedial purposes." Olivieri, supra, 186 N.J. at 526 (quoting Brady v. Bd. of Review, 152 N.J. 197, 211-12 (1997)).

Here, during the administrative proceedings, plaintiff was represented by counsel. Briefs and exhibits were submitted and considered during those proceedings. Witnesses were cross-examined. There was a record of the proceedings.

Nonetheless, we find the procedural concerns that influenced the Court's decision in Olivieri are present here. We concur with Olivieri that the "quality and extensiveness" of the Board's procedures to determine unemployment benefits are not sufficiently analogous to those employed in the judicial forum to provide its determination preclusive effect. As such, the doctrine of collateral estoppel would not bar plaintiff's claim that she was involuntarily terminated from employment.

We next address plaintiff's "unilateral contract" claim.

The Handbook

Plaintiff contends the trial court erred in determining that the Handbook did not satisfy the requirements of Woolley v. Hoffmann-LaRoche, Inc., 99 N.J. 284 (1985). Plaintiff argues the document she signed was not labeled a disclaimer. In rejecting this argument, the trial court held:

> The court rejects the contention that the [H]andbook and specifically the section dealing with employment at-will fails to meet the test of Woolley.
>
> There's nothing which requires the documents to indicate that it was a disclaimer. In this instance, the page upon which the operative materials appear, which is page

> 11, it states in rather bold print employment at-will.
>
> And then it goes on in approximately five lines to describe the relationship between the parties. It is clear, succinct, and unambiguous.
>
> It also provides that there are no express or implied guarantees of continued employment. So Ms. Stroli had no expectation or a basis to presume that there was an expectation that her employment would be continued at any point and at any time for any reason unless there was a specific agreement reached between her and the CEO of CBS.
>
> She acknowledged that she understood the import of this – of this relationship. And as was noted in the colloquy between the court and counsel, she said it perhaps as succinctly and as clearly as anyone could have not beings schooled in the law.

In general, absent a contractual relationship, employment is at-will. Bernard v. IMI Sys., Inc., 131 N.J. 91, 106 (1993). An at-will employee may be discharged from employment for any reason with or without cause, Woolley, supra, 99 N.J. at 290-91, as long as the employer's action does not contravene laws or otherwise violate public policy. Pierce v. Ortho Pharm. Corp., 84 N.J. 58, 72 (1980).

However, "an implied promise contained in an employment manual that an employee will be fired only for cause may be enforceable against an employer even when the employment is for an indefinite term and would otherwise be terminable at-will[,]"

as long as the employment manual does not have "a clear and prominent disclaimer." Woolley, supra, 99 N.J. at 285-86. "[T]he reasonable expectations of the employee[]" is the key factor when determining whether the employment manual contains an implied promise to terminate employment only for cause. Witkowski v. Thomas J. Lipton, Inc., 136 N.J. 385, 392-93 (1994).

To be effective, a disclaimer must clearly advise the employee that the employer has the power to terminate employment "with or without good cause." Woolley, supra, 99 N.J. at 309. The disclaimer must also be "in a very prominent position." Ibid. The requirement of prominence may be satisfied in a variety of ways so long as it is "separated from or set off in a way to attract attention." Nicosia v. Wakefern Food Corp., 136 N.J. 401, 415 (1994). Ways to give a statement prominence include bold lettering, italics, capital letters, underlining, color, bordering, highlighting, or any other presentation that would "make it likely that it would come to the attention of an employee reviewing it." Id. at 416. "[T]he requirement of prominence can be satisfied in a variety of settings, and . . . no single distinctive feature is essential per se to make a disclaimer conspicuous[.]" Id. at 416.

The Handbook contains two disclaimers. The first disclaimer is found beneath the underlined heading "Employment

At-Will." It notifies CBS's employees that the Handbook is not a contract, and that they are employed at-will subject to discharge with or without cause and with or without notice. The disclaimer states:

> All employees of Community Blood Services are employees at-will and can resign at any time or be separated by the blood center at any time with or without notice and with or without cause, subject only to applicable law. Community Blood Services makes no express or implied guarantees of continued employment. No employee should rely on oral or written representations to the contrary, since this policy can be modified in writing only by the CEO.

The second disclaimer is on the page set aside for employee signatures acknowledging their receipt of the Handbook. The disclaimer states:

> Neither this Handbook nor any other company guidelines, policies, or practices create an employment contract. Community Blood Services has the right with or without notice, in an individual case or generally, to change any of its guidelines, policies, practices, working conditions or benefits (including compensation) at any time.

The disclaimers clearly and unambiguously provide notice that employees of CBS, including plaintiff, may be terminated without cause and without any progressive discipline or performance improvement plan.

Saliently, in plaintiff's deposition testimony she acknowledged that she did not have a written employment contract

with CBS nor did she enter into an oral employment contract with any CBS manager or supervisor. Plaintiff testified she was aware of the definition of "employment at-will" and conceded she was an at-will employee.

The disclaimers, as presented in the Handbook, were placed in a manner designed to attract the attention of the employee. The disclaimers were written in plain language so that an employee, like plaintiff, understood they were an at-will employee and subject to termination at any time and for any reason.

Therefore, we hold, as a matter of law, these disclaimers provided adequate notice to plaintiff. See Nicosia, supra, 136 N.J. at 416-17 (holding that the effectiveness of a disclaimer can be resolved by the court as a question of law when the disclaimer is clear and uncontroverted).

Having reviewed plaintiff's remaining arguments in light of the record and applicable law, we conclude they are without merit and do not warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.