NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5751-09T3

MANSOUR JANAKAT,

Plaintiff-Appellant,

v.

METAL CUTTING CORPORATION,

Defendant-Respondent.

Argued March 14, 2011 – Decided July 22, 2011

Before Judges C.L. Miniman and LeWinn.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-1282-08.

Paul F. O'Reilly argued the cause for appellant.

Elliott Joffe argued the cause for respondent (Newman & Simpson, LLP, attorneys; Mr. Joffe, on the brief).

PER CURIAM

Plaintiff was an employee of defendant Metal Cutting Corporation (MCC) for thirty-four years, rising from a machine operator in 1973 to vice president of manufacturing in 2007, when he was terminated for cause. He appeals from the June 16,

2010 final judgment dismissing his complaint seeking payment of an $80,000 bonus for 2007. We affirm.

We summarize the pertinent evidence from the non-jury trial held before Judge W. Hunt Dumont. MCC began paying plaintiff annual bonuses in lieu of salary increases in 1994. In that year, Jordan Jablons, MCC's president, informed plaintiff that he would receive an annual bonus in an amount equivalent to one percent of manufacturing sales[1] for the fiscal year, which ran from October 1 to September 30. Jablons told plaintiff this arrangement would remain in effect for six years.

Notwithstanding the six-year limitation of the 1994 agreement, plaintiff continued to receive annual bonuses through 2006. In addition, he received a salary increase in 2004 from $100,000 to $125,000 annually.

Starting in 2006, plaintiff's manufacturing division began to lose money. Jablons met with plaintiff and advised him of the need to make changes in division operations, including better supervision of employees and eliminating late shipments. By the spring of 2007, plaintiff had not implemented any of the changes. Jablons concluded that plaintiff was not adequately performing his job and terminated him. He also informed

[1] In 1997, the bonus was recalculated to one percent of all of MCC's sales.

plaintiff that he would receive no bonus for 2007 unless he agreed to sign a non-compete agreement. Plaintiff refused to sign such an agreement. He was terminated on August 31, 2007, and did not receive a bonus for that year.

In his complaint, plaintiff asserted he was entitled to a bonus for 2007 "based on his agreement as followed by usage since 1994 and also in accordance with" two corporate resolutions he appended to his complaint reflecting the calculation of his bonuses for 2005 and 2006. At trial, plaintiff testified that he believed his bonuses accrued on a monthly basis throughout the fiscal year; however, he acknowledged that the only basis for this belief was a letter Jablons had written on his behalf to a bank where plaintiff had applied for a mortgage. Jablons testified that he wrote that letter at plaintiff's request to explain to the bank a certain aspect of plaintiff's income; he denied that plaintiff's bonus accrued on a monthly basis.

Plaintiff acknowledged that his bonus compensation arrangement had not been the subject of negotiations; rather, it was strictly Jablons' decision. However, because the bonuses had been offered in lieu of raises, plaintiff asserted he was entitled to continue receiving an annual bonus for each year in

which he did not receive a raise. He acknowledged that he had never been promised annual raises.

At the conclusion of trial, Judge Dumont rendered a decision from the bench, in which he concluded:

> The question is whether the continuation of bonus payments, through 2006, implied a contract . . . which the plaintiff now says was breached in 2007. The [c]ourt finds there was no implied contract in fact or in law. First, there was no express contract after 2000. Second, an implied contract in fact may arise or be inferred from the party's conduct or from circumstances surrounding their relationship.
>
> While the bonus payments did continue for the period 2001 to 2006, nevertheless, the circumstances differed. First, despite the initial agreement in 1994, that the bonus was in lieu of salary increases, that changed as plaintiff was given a salary increase in 2004, from [$]100,000 to [$]125,000.
>
> Additionally, his performance changed, questions concerning the operation of his division were raised in 2006 and he was given two years to make changes. Admittedly, he made none. This, ultimately, led to his termination in 2007. As such, he did not perform as expected and he was let go . . . .
>
> Thus, he was not entitled to a bonus, because his service did not merit it and he was no longer employed by the defendant.
>
> Finally, there's no basis for a contract implied in law or a quasi contract, which is really not a contract at all. It is imposed by law to bring about justice without reference to the intention of the

> parties. . . . The key element for quasi contract is that one party is unjustly enriched at the expense of another. That is not the case here.
>
> The defendant was very good and very generous to the plaintiff in his [thirty-four] years. . . . [H]e received approximately $1[,000,000] . . . in bonuses and that is without even accounting for Christmas and longevity bonuses received as well. Bonuses are paid to employees who are still with [the] company.
>
> The plaintiff was no longer with the defendant as of August 31, 2007, and should not have expected same after he was let go.

On appeal, plaintiff contends that the 1994 and 1997 bonus compensation agreements were "valid, enforceable employment contracts . . . still in effect in . . . 2007"; he also contends that "there was a valid implied contract in fact," and the fact that he was paid a bonus "for [twelve] straight years . . . even when the manufacturing division lost significant sums of money speaks for itself."

Having considered these contentions in light of the record and the controlling legal principles, we are satisfied they "are without sufficient merit to warrant discussion in a written opinion." R. 2:11-3(e)(1)(E). We affirm substantially for the reasons stated by Judge Dumont in his May 4, 2010 bench decision; we are satisfied that his decision "is based on

findings of fact which are adequately supported by [the] evidence." R. 2:11-3(e)(1)(A).

Affirmed.