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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-1704-16T1

LYNDERIA MANSFIELD,

Plaintiff-Appellant,

v.

NEWARK PUBLIC SCHOOLS, a
corporation or business
organization or body politic,

Defendant-Respondent,

and

ROGER LEON, MR. CEPERO a/k/a
ARMANDO CEPERO, DR. KARR, MRS.
MILLER a/k/a SHAKIRAH C.
MILLER-HARRINGTON, and MICHELLE
TAKYI a/k/a MS. TAKYI,

Defendants.

Submitted October 30, 2017 – Decided December 8, 2017

Before Judges Ostrer, Whipple, and Rose.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Docket No. L-1588-
16.

Freeman & Bass, PA, attorneys for appellant
(Randall Bass, on the brief).

Adams Gutierrez & Lattiboudere, LLC, attorneys for respondent (Jerrold J. Wohlgemuth, of counsel and on the brief; Leslie F. Prentice, on the brief).

PER CURIAM

Plaintiff appeals from a November 18, 2016 order dismissing her complaint with prejudice for failure to state a claim under Rule 4:6-2(e). We affirm.

Plaintiff worked for the Newark Public School District (the District) as a tenured teacher until the 2015-2016 school year. In February 2016, the District brought charges against plaintiff under the Tenure Employees Hearing Law, N.J.S.A. 18A:6-10 to -18.1, seeking her dismissal for inefficiency, conduct unbecoming, or good cause following an investigation on charges that plaintiff had engaged in inappropriate physical contact and abusive behavior towards students. The charges were certified, pursuant to N.J.S.A. 18A:6-11, to the Commissioner of Education, who referred the matter to arbitration.

During the arbitration proceeding, the District produced witnesses who testified about plaintiff's conduct. The arbitrator found their testimony credible, supported by corroborating evidence, and sufficient to satisfy the District's burden. Though plaintiff testified on her own behalf, she produced no credible evidence to rebut the witness testimony.

As affirmative defenses to the tenure charges, plaintiff asserted retaliation and denial of her due process rights. She argued the District was retaliating against her and attempting to re-litigate previously dismissed charges from 2013. The arbitrator rejected those arguments, stating "regardless of the 2013 charges or arbitration outcome . . . no one can be immune to or immunized against fresh charges[.]" Furthermore, he found, "there was no evidence or proof of retaliation."

The arbitrator determined the District proved its case against plaintiff for conduct unbecoming and terminated her employment with the District. In March 2016, plaintiff filed an order to show cause in the Chancery Division, seeking to vacate the arbitration award. On April 3, 2016, the court denied plaintiff's motion to vacate and confirmed the award.

During the pendency of the tenure proceedings, and prior to Chancery Division order, plaintiff filed a complaint¹ alleging violations of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -49 (LAD), violations of public policy, breach of contract, wrongful attempted discharge, tortious interference with an employment contract, retaliation, and violations of due

¹ The District moved to dismiss plaintiff's initial complaint, and on August 4, 2016, the court denied the District's motion without prejudice and permitted plaintiff to file an amended complaint.

process. The District moved to dismiss plaintiff's amended complaint for failure to state a claim pursuant to Rule 4:6-2(e).

On November 18, 2016, the court granted the District's motion, relying upon Shepherd v. Hunterdon Development Center, 174 N.J. 1, 26 (2002), for the proposition that an employer's filing of a disciplinary action alone cannot sustain a discrimination claim under the LAD. Moreover, the court found because the arbitrator had considered the evidence presented and found no pre-textual reason for the District's action, dismissal of the LAD claim preempted plaintiff's common law claims. Lastly, the court found collateral estoppel barred plaintiff's claims of retaliatory discharge and violations of her due process rights, because plaintiff unsuccessfully raised those arguments before the arbitrator. This appeal followed.

We review an order granting a motion to dismiss de novo. Castello v. Wohler, 446 N.J. Super. 1, 14 (App. Div.), certif. denied, 228 N.J. 39 (2016). A motion to dismiss a complaint for failure to state a cause of action must be denied if, giving plaintiff the benefit of all her allegations and all favorable inferences, a cause of action has been made out. R. 4:6-2(e); see Burg v. State, 147 N.J. Super. 316, 319-20 (App. Div.), certif. denied, 75 N.J. 11 (1977). Based upon our review of the record, we discern no error by the motion judge.

In Shepherd, our Supreme Court held "without more, an employer's filing of a disciplinary action cannot form the basis of an LAD complaint." Shepherd, supra, 174 N.J. at 26. Plaintiff's complaint sets forth no facts supporting her claim she was subjected to a hostile work environment, and no other allegations except that her employment contract was terminated, an action upheld by the arbitrator and confirmed by the court.

Moreover, decisions by an arbitrator are "given collateral estoppel effect by reviewing courts." Barcon Assocs., Inc. v. Tri-County Asphalt Corp., 86 N.J. 179, 187 (1981) (citing Ukrainian National Urban Renewal Corp. v. Muscarelle, Inc., 151 N.J. Super. 386, 398 (App. Div.), certif. denied, 75 N.J. 529 (1977)). The decision of the arbitrator is "subject to judicial review limited to the narrow grounds of arbitrator partiality or corruption, fraud, undue means, conduct prejudicial to the rights of a party or failure to make a 'mutual, final and definite award,' or 'evident' mistakes by the arbitrators." Id. at 187-88; N.J.S.A. 2A:24-8; N.J.S.A. 2A:24-9.

The record herein is devoid of allegations of partiality, corruption, fraud, or conduct unbecoming by the arbitrator or that the arbitrator made an "evident miscalculation." Thus, under Shepherd, and with the preclusive effect of the arbitrator's findings under Barcon, plaintiff's termination does not satisfy

the elements of a discriminatory discharge claim, and dismissal of the claims under the LAD for failure to state a claim was appropriate.

We review the dismissal of the common law claims asserted in plaintiff's complaint under the same plenary standard. "[S]upplementary common law causes of action may not go to the jury when a statutory remedy under the LAD exists." Catalane v. Gilian Instrument Corp., 271 N.J. Super. 476, 492 (App. Div.), certif. denied, 136 N.J. 298 (1994). Thus, common law claims of employment discrimination in violation of public policy do not continue. See ibid.; Bosshard v. Hackensack Univ. Med. Ctr., 345 N.J. Super. 78, 90 (App. Div. 2001). If a claim "does not 'seek to vindicate interests independent of those protected by the LAD[,]' it is barred." A.D.P. v. ExxonMobil Research & Eng'g Co., 428 N.J. Super. 518, 545 (App. Div. 2012) (quoting Bosshard, supra, 345 N.J. Super. at 90).

Throughout the complaint, plaintiff's alleged damages stem from the same conduct by the District, during the same time period. Plaintiff seeks the same remedy for each count, namely, "judgment against the defendants . . . for money damages together with costs of suit." Thus, because plaintiff's LAD claims failed, her additional common law claims were properly dismissed as preempted. Catalane, supra, 271 N.J. Super. at 492.

Plaintiff argues the motion judge erred in determining her retaliation and due process rights claims were collaterally estopped. The doctrine of collateral estoppel "bars relitigation of issues previously litigated and determined adversely to the party against whom [it] is asserted." Barker v. Brinegar, 346 N.J. Super. 558, 566 (App. Div. 2002) (quoting Kortenhaus v. Eli Lilly & Co., 228 N.J. Super. 162, 164 (App. Div. 1988)). Plaintiff's retaliatory discharge claim was fully and fairly litigated in a proceeding where she received the benefit of "'significant procedural and substantive safeguards,' similar to those that are provided to litigants in courts of law." Winters v. N. Hudson Reg'l Fire & Rescue, 212 N.J. 67, 87 (2012) (quoting Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 524 (2006)).

All additional arguments introduced by plaintiff are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION