SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4889-15T4

JOHN HOWELL,

Plaintiff-Appellant,

v.

GREENWICH TOWNSHIP MAYOR and COUNCIL, and GREENWICH TOWNSHIP MUNICIPAL CLERK,

Defendants-Respondents.

Argued November 16, 2017 – Decided December 6, 2017

Before Judges Simonelli and Haas.

On appeal from Superior Court of New Jersey, Law Division, Warren County, Docket No. L-0051-16.

George T. Daggett argued the cause for appellant.

James M. McCreedy argued the cause for respondents (Wiley Malehorn Sirota & Raynes, attorneys; Mr. McCreedy, of counsel and on the brief; Carolyn C. Duff, on the brief).

PER CURIAM

Plaintiff John Howell appeals from the Law Division's June 7, 2016 order dismissing his complaint against defendants

Greenwich Township Mayor and Council, and Greenwich Township Municipal Clerk. We affirm.

Plaintiff worked for Greenwich Township from January 20, 1988 until he retired over twenty-seven years later on April 30, 2015. During his employment, plaintiff was a member of a union that negotiated a collective bargaining agreement (Agreement) with the Township covering the period between January 1, 2013 and December 31, 2015. This Agreement applied to plaintiff and similarly-situated employees and, as stated in its preamble, "represent[ed] the final understanding on all the bargainable issues between the Township and the [u]nion."

In pertinent part, the Agreement stated: "The Township agrees to furnish Medical and Dental Insurance to its present employees and their eligible dependents." (Emphasis added). Nothing in the Agreement provided that retired employees, like plaintiff, were entitled to health insurance upon retirement. The Agreement also stated:

> This Agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargainable issues which were or could have been the subject of negotiations. During the term of this Agreement, neither party will be required to negotiate with respect to any such matter whether or not covered by this Agreement, and whether or not within the knowledge or contemplation of either or both of the parties

> at the time they negotiated or signed this Agreement.
>
> This Agreement shall not be modified in whole or in part by the parties, except by instrument in writing only executed by both parties.

When plaintiff retired, the Township canceled his health insurance. Plaintiff subsequently filed a complaint against defendants, and asserted he was entitled to health insurance as a retiree based upon the following statement that was included in the Greenwich Township Personnel Policies and Procedures Manual (Manual)[1]:

> (Employees who retire with twenty-five years of service to the Township may continue to receive paid health insurance coverage. Employees receiving retiree health benefits must notify the Municipal Clerk in writing, with proof of enrollment, when they become eligible for Medicare Parts A and B. For more information, consult the Municipal Clerk.)

At the same time the Township adopted the Manual, it also adopted an Employee Handbook (Handbook), which contained a provision identical to that quoted above.

"[E]mployee manuals, . . . depending on the surrounding circumstances, have been held to give rise to an enforceable obligation on the part of an employer." Troy v. Rutgers, 168 N.J. 354, 365 (2001). However, an employer's "general personnel

[1] The Township adopted the Manual on April 15, 2010.

practices embodied in a policy manual do not automatically become legally binding terms and conditions of employment." Ware v. Prudential Ins. Co., 220 N.J. Super. 135, 144 (App. Div. 1987), certif. denied, 113 N.J. 335 (1988). Indeed, if an employer

> does not want the manual to be capable of being construed by [a] court as a binding contract, there are simple ways to attain that goal. All that need be done is the inclusion in a very prominent position of an appropriate statement that there is no promise of any kind by the employer contained in the manual; that regardless of what the manual says or provides, the employer promises nothing and remains free to change wages and all other working conditions without having to consult anyone and without anyone's agreement; and that the employer continues to have the absolute power to fire anyone with or without good cause.
>
> [Woolley v. Hoffman-La Roche, Inc., 99 N.J. 284, 309, modified on other grounds, 101 N.J. 10 (1985).]

The Manual relied upon by plaintiff in his complaint contained just such a conspicuous disclaimer on the first substantive page of the document. This disclaimer stated:

> The Personnel Policies and Procedures Manual adopted by the Township Committee is intended to provide guidelines covering public service by Township employees and is not a contract. This manual contains many, but not necessarily all of the rules, regulations, and conditions of employment for Township personnel. The provisions of this manual may be amended and supplemented from time to time without notice and at the sole discretion of the Township.

[(Emphasis added).]

The Handbook contained a similar, prominent disclaimer. The first substantive page of the Handbook stated:

> Neither this handbook nor any other Township document, confers any contractual right, either express or implied, to remain in the Township's employ. Nor does it guarantee any fixed terms and conditions of your employment. The provisions of this Employee Handbook may be amended and supplemented from time to time without notice and at the sole discretion of the Township Committee.

On the second substantive page, the Handbook stated in capital letters and bold type: "NEITHER THIS MANUAL NOR ANY OTHER GUIDELINES, POLICIES OR PRACTICES CREATE AN EMPLOYMENT CONTRACT. THE TOWNSHIP OF GREENWICH 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 AT ANY TIME."

Based upon the clear language of the Agreement that only provided health insurance for present employees, and the equally clear disclaimers included in the Manual and the Handbook, defendants moved to dismiss plaintiff's complaint under Rule 4:6-2(e) for failure to state a claim. Following oral argument, Judge John H. Pursel rendered a thorough written opinion, granting defendants' motion and dismissing the complaint.

Applying the precedents discussed above, Judge Pursel found that, as a member of the union, plaintiff was bound by the terms of the Agreement, which "does not provide for health insurance benefits for retired employees of the Township of Greenwich." Because both the Manual and the Handbook "included prominent and effective disclosures stating that [they] did not create a contract[,]" the judge rejected plaintiff's contention that he was entitled to health insurance under either of these documents. This appeal followed.

On appeal, plaintiff argues that the judge erred in granting defendants' motion to dismiss and in finding that the Agreement was "the controlling document." We disagree.

In reviewing a Rule 4:6-2(e) dismissal, we employ the same standard as that applied by the trial court. Donato v. Moldow, 374 N.J. Super. 475, 483 (App. Div. 2005). We "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 claim[.]" Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (citation omitted).

"[W]hen the facts surrounding the content and placement of a disclaimer are themselves clear and uncontroverted, . . . the effectiveness of a disclaimer can be resolved by the court as a question of law." Wade v. Kessler Inst., 172 N.J. 327, 339 (2002)

(alteration in original) (quoting Nicosia v. Wakefern Food Corp., 136 N.J. 401, 412 (1994)). We "assume the facts as asserted by plaintiff are true[,]" and we give the plaintiff "the benefit of all inferences that may be drawn[.]" Banco Popular N. Am. v. Gandi, 184 N.J. 161, 166 (2005) (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). A motion to dismiss "may not be denied based on the possibility that discovery may establish the requisite claim; rather, the legal requisites for plaintiff's claim must be apparent from the complaint itself." Edwards v. Prudential Prop. & Cas. Co., 357 N.J. Super. 196, 202 (App. Div.), certif. denied, 176 N.J. 278 (2003).

We have considered plaintiff's contentions in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We are satisfied that Judge Pursel properly dismissed plaintiff's complaint, and affirm substantially for the reasons expressed in his written opinion. However, we add the following brief comments.

The Manual that plaintiff primarily relied upon in support of his claim that he was entitled to health insurance after his retirement plainly stated that it was not a contract, and could be changed by the Township at any time. Thus, the judge correctly ruled that this prominent disclaimer prevented the Manual from

creating an implied contract between plaintiff and the Township on this or any other issue. Woolley, supra, 99 N.J. at 309; Ware, supra, 220 N.J. Super. at 144.

On the other hand, the Agreement that plaintiff's union negotiated with the Township clearly stated that it "represent[ed] the final understanding on all the bargainable issues between the Township" and the union employees. The Agreement just as clearly provided that the Township had agreed to provide medical and dental insurance to its present employees. Nothing in the Agreement extended this benefit to retirees such as plaintiff. Under these circumstances, the judge properly concluded that the Agreement controlled over the statements contained in the Manual and, therefore, plaintiff did not have a cognizable claim for health insurance.

Contrary to plaintiff's contention, the judge's consideration of the Manual, the Agreement, and the Handbook did not require him to treat the motion to dismiss as a motion for summary judgment. It is well established that "a court may consider documents specifically referenced in the complaint 'without converting the motion into one for summary judgment.'" Myska v. N.J. Mfrs. Ins. Co., 440 N.J. Super. 458, 482 (App. Div. 2015) (quoting E. Dickerson & Son, Inc. v. Ernst & Young, LLP, 361 N.J. Super. 362, 365 n.1 (App. Div. 2003), aff'd, 179 N.J. 500 (2004)), appeal

dismissed, 224 N.J. 523 (2016). Moreover, even if the judge had treated defendants' motion as one for summary judgment, the final result would have been the same because defendants were clearly entitled to a judgment in their favor as a matter of law for the reasons discussed above.

Finally, the judge did not err by considering defendants' motion prior to the close of the discovery period. A party alleging that the court should not consider a dispositive motion because discovery is not complete must demonstrate that "there is a likelihood that further discovery would supply . . . necessary information" to establish a missing element in the case. J. Josephson, Inc. v. Crum & Forster Ins. Co., 293 N.J. Super. 170, 204 (App. Div. 1996). The party must also show, with some specificity, the nature of the discovery sought and its materiality to the issues at hand. In re Ocean County Comm'r of Registration, 379 N.J. Super. 461, 479 (App. Div. 2005).

Plaintiff did not meet that burden here. As discussed above, the terms of the Agreement are clear, as are the conspicuous disclaimers contained in the Manual and the Handbook. Because plaintiff's complaint stated no viable claim for relief, further discovery was not warranted.

Affirmed.