SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0440-16T1

ANGELA MASELLI,

Plaintiff-Appellant,

v.

VALLEY NATIONAL BANCORP.,
VALLEY NATIONAL BANK,

Defendants-Respondents.

Submitted October 2, 2017 – Decided February 13, 2018

Before Judges Ostrer and Rose.

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-4530-16.

Michael S. Harwin, attorney for appellant.

Fox Rothschild LLP, attorneys for respondents (Christina A. Stoneburner, of counsel and on the brief; Thomas R. Basta, on the brief).

PER CURIAM

Plaintiff Angela Maselli appeals from the Law Division's August 19, 2016 order dismissing with prejudice her breach-of-contract complaint against defendant Valley National Bank (the Bank). Specifically, Maselli alleges that the Bank breached

binding promises in its Code of Conduct and Ethics (the Code). The trial court accepted the Bank's contention that the Code adequately disclaimed any contractual duty. Having reviewed Maselli's arguments in light of the record and governing principles of law, we reverse.

Maselli contends the Bank failed to enforce the Code's anti-harassment provisions when Maselli's supervisor bullied and mistreated her. Maselli alleges the unaddressed and unabated harassment caused her to take a medical leave and return to a position in a different unit of the Bank. A subsequent downsizing of that unit — but not her previous unit — led to her furlough. Although she concedes she was an at-will employee, she alleges the Bank's breach of its Code caused her loss of employment.

In its motion to dismiss in lieu of an answer, the Bank contended it disclaimed any contractual obligations. The Bank relied on the following language, which appeared in the first substantive page of an eighteen-page pamphlet:

> **Employment is at Will:**
>
> Employees of Valley National Bank are generally employees-at-will. This means that both the employee and Valley have the unrestricted right to terminate the employment relationship, with or without cause, at any time. No employee or agent of Valley National Bank is authorized to make any oral or written representations altering the at-will employment relationship unless made the

> subject of a specific written contract of employment. Such contract can only be authorized by the Chairman, President, and CEO.
>
> It should be noted that nothing contained in this Valley Code of Conduct and Ethics or in any policy or work rule of Valley shall constitute a contract of employment or a contract or agreement for a definite or specified term of employment.

We exercise de novo review of the trial court's decision to grant a motion to dismiss under Rule 4:6-2(e). Rezem Family Assocs. v. Borough of Millstone, 423 N.J. Super. 103, 114 (App. Div. 2011). "In reviewing a complaint dismissed under Rule 4:6-2(e) our inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989); see also Green v. Morgan Props., 215 N.J. 431, 451 (2013).

We do not address whether the Code, absent an effective disclaimer, constituted an implied and enforceable promise by the Bank to comply therewith. See Witkowski v. Thomas J. Lipton, Inc., 136 N.J. 385, 393 (1994) (setting forth "factors [that] bear on whether an employee may reasonably understand that an employment manual is intended to provide enforceable employment obligations"); see also Woolley v. Hoffmann-La Roche, 99 N.J. 284, 302, modified, 101 N.J. 10 (1985) (holding that an employment manual contained an implied and enforceable promise that the

employee could be fired only for cause). The sole issue before us is whether the disclaimer was effective as a matter of law, obviating the need to determine the import of the Code, or to reach Maselli's claim of contract breach and consequential damage.

The Court in Woolley recognized the efficacy of a disclaimer in an otherwise contractually binding manual. Woolley, 99 N.J. at 309. The disclaimer must be "in a very prominent position." Ibid. It also must be "clear." Id. at 285. The Court suggested what an effective disclaimer could say, to disavow an implied promise to terminate only for cause. Id. at 309. The suggested disclaimer includes a general disavowal of any contractual obligation: "there is no promise of any kind by the employer contained in the manual; [and] that regardless of what the manual says or provides, the employer promises nothing . . . ." Ibid. The suggested disclaimer then generally describes what the employer remains free to do, stating the employer "remains free to change wages and all other working conditions without having to consult anyone and without anyone's agreement . . . ." Ibid. Finally, the suggested disclaimer specifically addresses termination at will, stating "the employer continues to have the absolute power to fire anyone with or without good cause." Ibid.

We have no quarrel with the trial court's determination that the disclaimer was sufficiently prominent. It appeared on the

first substantive page of the Code; it was set off in a separate paragraph; and introduced by a bolded title. However, we decline to find that the title "Employment is at will," clearly describes the substance of the disclaimer that follows. We also conclude that the text of the disclaimer does not unambiguously disavow a binding contract to abide by the Code.

We must examine the substance of the Bank's disclaimer. Although the Bank's disclaimer is significantly more limited than the one the Court suggested in Woolley, the Bank contends it nonetheless suffices to "disclaim any contractual relationship" between Maselli and the Bank. "[W]hen the facts surrounding the content . . . of a disclaimer are themselves clear and uncontroverted . . . the effectiveness of a disclaimer can be resolved by the court as a question of law." Nicosia v. Wakefern Food Corp., 136 N.J. 401, 416 (1994). However, "in some cases . . . a jury may need to decide whether the content of a disclaimer is effective." Ibid.

The meaning of the Bank's disclaimer hinges on the meaning of the phrase "contract of employment" in the disclaimer's last sentence, and whether it encompasses promises to abide by an anti-harassment policy Maselli contends the Code establishes. The balance of the disclaimer pertains to job security – not whether the Bank or employee has assumed binding promises so long as the

employment subsists. The disclaimer's bold heading and the first full paragraph convey only that employment is at will and the Bank and employees have "the unrestricted right to terminate the employment relationship, with or without cause, at any time . . . ." The single-sentence, second paragraph disclaims two kinds of contracts: "a contract of employment" and a "contract or agreement for a definite or specified term of employment." The second paragraph, like the first, pertains to job security.

Notably, the disclaimer does not expressly and unqualifiedly disavow the creation of a contract, as Woolley suggested with the language, "there is no promise of any kind by the employer contained in the manual; [and] that regardless of what the manual says or provides, the employer promises nothing . . . ." Woolley, 99 N.J. at 309. Rather, the disclaimer denies the creation of a "contract of employment." We are disinclined to treat language as surplusage. Washington Const. Co. v. Spinella, 8 N.J. 212, 217 (1951) (stating that "all parts of the writing and every word of it will if possible, be given effect" (quoting 9 Williston on Contracts (Rev. ed.), sec. 46, p. 64)). Thus, we must give meaning to the words "of employment."

In contending that the disclaimer disavows any contractual relationship, the Bank essentially interprets the words "of employment" to mean "related to your employment in any way." So

defined, that would certainly encompass a promise to abide by an anti-harassment policy embodied in the Code. Bolstering the Bank's interpretation, the second part of the sentence refers to job security, implying that the first part refers to something else. On the other hand, if the first part is as broad as the Bank essentially contends, there would be no need for the second part.

An equally plausible reading by a reasonable employee is that a "contract of employment" means "a contract to employ." That would disclaim any promise of job security, or termination only for cause. However, it would not disclaim a promise to abide by the Code as long as an employee remained employed. This reading is supported by the title, "**Employment is at will**," and by the content of the first paragraph. Both refer only to job security.

In sum, the meaning of the disclaimer is ambiguous, because the terms "are susceptible to at least two reasonable alternative interpretations." See Chubb Custom Ins. Co. v. Prudential Ins. Co. of Am., 195 N.J. 231, 238 (2008). As the content of the disclaimer is not clear, the issue of its effectiveness is reserved for a jury. Nicosia, 136 N.J. at 416. Therefore, the disclaimer did not compel dismissal at this early stage of the case.

Reversed and remanded. We do not retain jurisdiction.