



**NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON
OPINIONS**

WILLIAM E. NUGENT, J.S.C.

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MEMORANDUM OF DECISION

CASE: Jones v. City of Atlantic City
DOCKET #: ATL-L-2564-08
DATE: December 26, 2008
MOTION: Dismiss for Failure to State a Claim
MOVANT: Defendant Kim Baldwin, by Todd J. Gelfand, Esq.

Defendant Kim Baldwin, former Atlantic City Solicitor, brings this motion under R.4:6-2(e) to dismiss the complaint against her for failure to state a claim upon which relief can be granted. The motion is opposed.

Rule 4:6-2 (e) governs motions to dismiss a complaint for failure to state a claim upon which relief can be granted. Generally, when ruling on a R. 4:6-2 (e) motion, a court must review the plaintiff's complaint to determine "whether a cause of action is suggested by the facts." Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988). Accordingly, a reviewing court "searches 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 Electronics Corp., 116 N.J. 739, 746 (1989). After this review, if a cause of action can be gleaned from the complaint, the motion to dismiss must be denied. Id. If the moving party relies upon facts beyond the pleadings in making its motion to dismiss, the Court shall consider the application for dismissal a motion for summary judgment and provide the

parties a full opportunity to address the merits of the application. Wang v. Allstate Ins. Co., 125 N.J. 2, 9 (1991).

In his complaint, the plaintiff alleges that while he was an employee of the City of Atlantic City, he was on a list of employees who were eligible for the position of Superintendent of Sanitation. According to the plaintiff, he should have remained on the list for four years, but due to his "continued insistence upon safe working equipment within the department and his efforts to avoid injury to the personnel under his authority, and due to Plaintiff's complaints of harassment and retaliation brought to Director Norwood, the City allowed the list to expire, ... and Plaintiff was demoted to a Supervisor position." The plaintiff apparently complained about the situation, because on March 5, 2007, Assistant City Solicitor John C. Hegarty wrote the following to plaintiff's attorney, Richard Press:

I have discussed Mr. Jones' situation with both the Business Administrator and the Director of Public Works. The City agrees to resolve Mr. Jones' contention regarding his title, by promoting him provisionally to the position of Superintendent of Sanitation. The promotion will come with a 6% increase. The City will attempt to make the promotion retroactive to Mr. Jones previous promotion date of October 2006. It must be clear that any retroactive pay from 2006 must be placed before City Council via resolution, as the funds will be coming out of the previous budget year. Furthermore it must be clear that the promotion will be provisional as the previous certification has expired. In exchange for resolving this issue, the City is expecting a release of all claims as we have done in other matters recently handled by your office.

Plaintiff also alleges that he and his attorney continued to follow up by way of phone calls, letters and personal discussions with the Director of Public Works and with the Solicitor's Office "which at that time was run by Ms. Kimberly Baldwin." The plaintiff also alleges that former Solicitor Baldwin gave authority to the Assistant City Solicitor to enter into the alleged settlement documented in the above letter

Based upon the foregoing factual allegations, the plaintiff claims that the city of Atlantic City, its Director of Public Works, former Solicitor Baldwin, and the former mayor created a hostile work environment, retaliated against the plaintiff, breached the settlement agreement, violated New Jersey Department of Personnel rules and regulations, failed to provide reasonable accommodations, and violated the plaintiff's rights of due process, equal protection, freedom of speech, the New Jersey Law Against Discrimination and the New Jersey Conscientious Employee Protection Act.

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain a statement of the facts on which the claim is based, showing that the pleader is entitled to relief. R.4:5-2. The plaintiff has alleged no such facts against defendant Baldwin. Although he has alleged that Ms. Baldwin authorized a subordinate to enter into a settlement agreement with the plaintiff, and that Ms. Baldwin was the head of her department, neither of those facts shows that the plaintiff is entitled to relief, because neither of those facts states a cause of action against her.

In opposing this motion, the plaintiff asserts that count one of the complaint states a cause of action against Ms. Baldwin for aiding and abetting a contractual breach. Even giving the complaint the liberal reading required by R.4:6-2(e), the complaint makes no such allegation. Moreover, later in his opposition, the plaintiff states that "[u]ntil Kimberly Baldwin's Deposition is taken, Plaintiff can not know whether she was either an aider or abettor in the actions taken against him." That statement raises the issue of whether the plaintiff has a good-faith basis for bringing the complaint against Ms. Baldwin, and confirms that he presently has no facts to support the legal theory that he claims is plead in the complaint.

The plaintiff should not lose sight of Ms. Baldwin and Mr. Hegarty's status as legal counsel to the City of Atlantic City. Is the plaintiff suggesting that any time a client violates a settlement agreement the client's attorney and the senior partner or partners in the attorney's firm are susceptible to an action for breach of contract and an amalgam of theories of liability based upon violation of constitutional rights? After all, the plaintiff has alleged nothing more against Ms. Baldwin. Essentially, the complaint alleges that her subordinate wrote a letter to plaintiff's attorney in which the subordinate represented that the City was willing to settle the plaintiff's grievance, but then did not return phone calls when the plaintiff's attorney attempted to consummate the settlement. Those facts state no theory of liability against Ms. Baldwin, and no claim upon which relief can be granted against her.

For the foregoing reasons, the motion is granted. The complaint is dismissed without prejudice. The plaintiff may file an amended complaint provided that he includes the specifics of his claim as explained in this Memorandum of Decision. An order has been entered accordingly.



William E. Nugent, J.S.C.
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FILED

DEC 29 2008

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Attorney for Defendant, [former City Solicitor] Kimberly Baldwin

MELVIN JONES
Plaintiff,

vs.

CITY OF ATLANTIC CITY;
DIRECTOR OF PUBLIC WORKS
RICHARD NORWOOD;
FORMER CITY SOLICITOR KIMBERLY
BALDWIN;
CURRENT MAYOR/ APPOINTING
AUTHORITY SCOTT EVANS; and,
JOHN DOE CITY OF ATLANTIC CITY
DECISION MAKERS AND
EMPLOYEES (Plural 1-10
Defendants

SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY
LAW DIVISION

Docket Number
ATL-L-2564-08


ORDER

THIS MATTER having been brought before the Court by Todd J. Gelfand, Esquire, of the Law Offices of Barker, Scott & Gelfand, attorneys for Defendant, Former City Solicitor Kimberly Baldwin; and, the Court having reviewed the submission by counsel and any opposition filed

thereto; and, good cause having been shown; and having decided to grant the Defendant Kimberly Baldwin's Motion to Dismiss;

IT IS on this 29th day of December, 2008 ORDERED that pursuant to Rule 4:6-2(e), Plaintiff's Complaint against the Defendant, Former City Solicitor Kimberly Baldwin, is **DISMISSED** ^{without prejudice} due to the failure to state a claim upon which relief can be granted.

IT IS FURTHER ORDERED that a copy of this Order shall be served on all parties within 7 days.



WILLIAM E. NUGENT, J.S.C.

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