

Superior Court of New Jersey Ocean Vicinage

CHAMBERS OF
MARK A. TRONCONE, J.S.C.



OCEAN COUNTY COURT HOUSE
P. O. BOX 380
TOWNSHIP OF TOWNE, NEW JERSEY 08214-2191

MEMORANDUM OF REASSIGNMENT

TO: Honorable James Den Uyl, J.S.C.
FROM: Mark A. Tronccone, J.S.C.
DATE: April 24, 2014
RE: Scott Bundy v. Brick Township Municipal Utility Authority
Docket No. OCN-L-2009-13

The above matter is being assigned

- for trial
 management purposes

The reason for the assignment of this case is as follows:

1. Conflict (see comments)
2. Special assignment by case.
3. Special assignment of particular case by Presiding Judge.
4. Reassignment by Presiding Judge due to case conflict with all members of a judicial team.

Comments:
Conflict with Brick Township
Municipal Authority



Mark A. Tronccone, J.S.C.

**SUPERIOR COURT OF NEW JERSEY
OCEAN VICINAGE**

CHAMBERS OF
ROBERT E. BRENNER, J.S.C.
(732) 506-5300



OCEAN COUNTY COURTHOUSE
P.O. BOX 2191
TOMS RIVER, NJ 08754-2191

May 7, 2015

Reg. Mail & E-Mail: Amy.Donlon@judiciary.state.nj.us

Attn: Amy Donlon, Esquire
Superior Court, Appellate Division
Joseph H. Orlando, Appellate Div. Clerk
25 W. Market Street, P.O. Box 006
Trenton, New Jersey 08625

Re: Scott Bundy v. Brick Township Municipal Utilities Authority; Patrick ~~Bottazzi~~
and John Does 1-5 and 6-10
Docket No. OCN-L-2009-13 /AM-000475-14

Dear Ms. Donlon:

Please find enclosed an **Amplified Opinion** which shall serve to expand the ~~record regarding~~ the above-mentioned case.

Should you have any questions, please feel free to contact my chambers. **Thank you for** your attention to this matter.

Respectfully submitted,

HON. ROBERT E. BRENNER, J.S.C.

REB:mlb
Enclosure
Jerry J. Dasti, Esquire (via regular mail)
Drake P. Bearden, Jr., Esquire (via regular mail)

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SCOTT BUNDY,

Plaintiff

vs.

BRICK TOWNSHIP MUNICIPAL UTILITIES
AUTHORITY; PATRICK BOTTAZZI and
JOHN DOES 1-5 and 6-10,

Defendants

SUPERIOR COURT OF NEW JERSEY
OCEAN COUNTY - LAW DIVISION

CIVIL ACTION

DOCKET NO. OCN-L-2009-13
AM-000475-14

AMPLIFIED OPINION

May 7, 2015

Robert E. Brenner, J.S.C.

This is an amplification of the Court's oral opinion rendered on April 10, 2015, submitted pursuant to R.2:5-1(b), in connection with the denial of a Summary Judgment Motion filed by ~~defendants~~, Brick Township Municipal Utilities Authority (~~hereinafter Authority~~) and Patrick Bottazzi, then Chairman of the ~~Authority~~.

NATURE OF THE LITIGATION

This is a claim filed by plaintiff, Scott Bundy (~~hereinafter Bundy~~), then Director of Central Services for the ~~Authority~~, alleging a violation of the Conscientious Employee Protection Act (~~hereinafter CEPA~~). Bundy alleges, pursuant to N.J.S.A. 34:15-3(c), that then Chairman Bottazzi used his influence to ~~transfer Authority bank accounts from TD Bank to Crown Bank in exchange for~~

receiving a one million five hundred thousand dollar (\$1,500,000.00) loan from Crown Bank to refinance two commercial properties he owned. Bundy alleges that his contract as Director of Central Services was not renewed on December 31, 2012 as retaliation for the reporting of Bottazzi to the Federal Bureau of Investigations (FBI) on October 4, 2010.

The Authority alleges that the transfer of some of its accounts from TD Bank to Crown Bank was done purely for economic reasons and not as a result of any undue influence from then Chairman Bottazzi. The Authority asserts that TD Bank was intending to charge certain fees to the Authority going forward that Crown Bank agreed to waive. The Authority alleges further that Bundy's contract as Director of Central Services was not renewed for purely economic reasons and denies any claims of retaliation.

PROCEDURAL HISTORY

Bundy filed his Complaint in the Superior Court of New Jersey, Law Division, Ocean County, on July 19, 2013. Thereafter, defendants filed an Answer and Counterclaim on September 5, 2013. An Amended Answer was filed on behalf of the defendants on September 30, 2013.

Defendants filed a Motion for Summary Judgment on March 23, 2015. Responsive pleadings were filed by plaintiff on March 24, 2015. Defendants filed a Reply Brief and Certification on April 1

6, 2015. Defendants' Motion was heard by this Court on April 29, 2015 on which date an Order was entered denying the Motion for Summary Judgment. Notice of Motion for Leave To Appeal was filed on April 29, 2015.

LEGAL ANALYSIS

This amplification of the Court's opinion centers on two issues raised by the Defendants on its Motion for Leave to Appeal.

The first is whether Bundy was required by N.J.S.A. 34:19-4 to provide written notice of his claim against Bottazzi to a supervisor of the Authority before having reported his claim to a public body.

The second is whether Bundy, in asserting a *prima facie* case of discriminatory retaliation under CEPA, satisfied the requirement that he had a reasonable belief that Bottazzi's conduct was in violation of either a law, rule or regulation promulgated pursuant to law, or a clear mandate of public policy. Dworkin v. McDevitt, 177 N.J. 451 (2003).

A. N.J.S.A. 34:19-4 DOES NOT REQUIRE WRITTEN NOTICE WHERE THE EMPLOYEE IS REASONABLY CERTAIN THAT THE ACTIVITY, POLICY OR PRACTICE IS KNOWN TO ONE OR MORE SUPERVISORS OF THE EMPLOYER.

N.J.S.A. 34:19-4 provides:

The protection against retaliatory action provided by this act pertaining to disclosure to a public body shall not apply to an employee who makes a disclosure to a public body unless the employee has brought the

activity, policy or practice in violation of a law, or a rule or regulation promulgated pursuant to law to the attention of a supervisor of the employee by written notice and has afforded the employer a reasonable opportunity to correct the activity, policy or practice. Disclosure shall not be required where the employee is reasonably certain that the activity, policy or practice is known to one or more supervisors of the employer or where the employee reasonably fears physical harm as a result of the disclosure provided, however, that the situation is emergency in nature. (Emphasis supplied).

The undisputed facts reveal that before Bundy reported this matter to the FBI on October 4, 2010, he had met separately with the Authority's solicitor, Jerry J. Dasti, Esq., the Authority's auditor, Frank B. Holman, III, and the Authority's Executive Director, James Lacey, at which time he advised each one that he believed that Bottazzi had used undue influence in moving certain Authority accounts from TD Bank to Crown Bank in exchange for which Bottazzi would obtain a commercial mortgage loan to refinance property he owned. According to defendants, Bundy was told by each Authority representative to whom he reported this matter, including James Lacey, the Executive Director, that there were no facts to support his conclusion. (Da7 at ¶10; Da86-87 at ¶2-3; and Da78-79 at ¶2-3).

At oral argument, counsel for defendants confirmed prior disclosure by Bundy and the action taken by the Authority in response:

"But in any event, before he went to the FBI,

he went to all of his superiors, and all the professionals, all of whom investigated this and said, Scott [Bundy], there is nothing here." (T12-7 through 10).

As set forth in the statute, the requirement of ~~providing~~ written notice to the employer is to afford ". . . the ~~employer~~ a reasonable opportunity to correct the activity, ~~policy~~ or practice."

Here, the Authority and Bottazzi do not dispute ~~notice~~ of Bundy's claim prior to his reporting it to the FBI and ~~that it was~~ afforded the opportunity to correct the alleged illegal activity. In fact, the Authority concedes that each Authority ~~representative~~ performed an investigation and determined that there ~~was no basis~~ for the claim which it advised Bundy. Based on the ~~foregoing~~, Bundy has established that he was reasonably certain ~~that the~~ activity he was complaining of was known to one or more ~~supervisors~~ of the Authority and accordingly, written notice of ~~the claim~~ was not required pursuant to N.J.S.A. 34:19-4.

**B. SUMMARY JUDGMENT SHOULD BE DENIED WHERE
DETERMINATION OF MATERIAL DISPUTED FACTS
DEPENDS PRIMARILY ON CREDIBILITY EVALUATIONS.**

In opposition to defendants' Motion for Summary Judgment, Bundy relied in part on his sworn answers to interrogatories and his deposition testimony to the effect that in August of 2010 both Stephen Scaturro, then Chairman of the Brick Township ~~Republican~~ Organization, and James Lacey, the Executive Director of the

Authority, told him that Bottazzi was suffering from financial difficulties and was dumping a lot of cash into his restaurant and it was going under. Further, and most significantly, Scaturro and Lacey told Bundy that Bottazzi was receiving the loan from Crown Bank in exchange for transferring the Authority's bank accounts to Crown Bank.

It is upon these sworn allegations from Bundy that the Court determined that Bundy had a reasonable belief that Bottazzi's conduct was in violation of a law as is required in asserting a prima facie case of discriminatory retaliation under CEPA.

In direct contrast to Bundy's sworn claims, the Authority submitted sworn Certifications from Lacey and Scaturro refuting these facts.

A Motion for Summary Judgment should be denied where the determination of a material disputed fact depends primarily on credibility evaluations or if the existence of a genuine issue of material fact appears from the discovery materials or from the pleadings and affidavits on the motion. Parks v. Rogers, 176 N.J. 491, 502 (2003); Gilborges v. Wallace, 153 N.J. Super, 121 (App. Div. 1977), aff'd in part and rev'd in part 78 N.J. 342 (1978). As Judge Pressler noted, "a trial court should never decide on its merits a dispute on which a rational jury could go either way." Pressler & Verniero, Current N.J. Court Rules, comment on

R.4:46-2 (2015). As the Court was presented with competing sworn testimony by the parties, the entry of Summary Judgment on behalf of the defendants would be inappropriate. These disputed material facts, which form the basis of plaintiff's CEPA claim, depend on credibility evaluations and must, therefore, be determined by a jury. Accordingly, for these additional reasons, the Authority's Motion for Summary Judgment is denied.