NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2064-08T2

RICHARD P. RODBART, KENNETH N. SIEGEL, and LAWRENCE C. WLAZLO,

Plaintiffs-Appellants,

and

JAMES J. DURKIN, JAMES A. HART, III, PETER A. McCORD, and DAVID F. REGAL,

Plaintiffs,

v.

COUNTY OF UNION and GEORGE W. DEVANNEY,

Defendants-Respondents.

Argued November 18, 2009 - Decided December 21, 2009

Before Judges Stern, Graves, and J.N. Harris.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-1845-07.

Eric L. Harrison argued the cause for appellants Richard P. Rodbart, Kenneth N. Siegel, and Lawrence C. Wlazlo (Methfessel & Werbel, attorneys; Paul J. Endler, Jr., of counsel and on the brief; Mr. Harrison, on the brief).

Kathryn V. Hatfield argued the cause for respondents (Bauch Zucker Hatfield L.L.C., attorneys; Ms. Hatfield, of counsel and on the brief; Evan M. Lison, on the brief).

PER CURIAM

We consider whether Union County broke a promise with some of its long-time employees involving inducements to retire early on the pledge of "fully paid health benefits for life." Plaintiffs assert a breach of contract when the County refused to reimburse them for Medicare Part B premiums at the time they reached sixty-five years of age. We conclude that there was no failure of performance and therefore affirm the dismissal of plaintiffs' complaint.

The appeal exposes an interpretive rift between a county government and retired government lawyers and law enforcement officers over a contract providing incentives for early retirement. Accordingly, it brings to mind the wise caution that "there is no surer way to misread a document than to read it literally." Guiseppi v. Walling, 144 F.2d 608, 624 (2d Cir. 1944) (concurring opinion), aff'd sub nom. Gemsco, Inc. v. Walling, 324 U.S. 244, 89 L. Ed. 921, 65 S. Ct. 605 (1945). On the other hand, we are equally reminded to ensure that "[i]n dealing with the public, government must 'turn square corners.'" F.M.C. Stores Co. v. Borough of Morris Plains, 100 N.J. 418, 426 (1985).

I.

Two of the appellants were employed in the Union County Prosecutor's Office as assistant prosecutors; the other appellant served as a prosecutor's detective, each performing more than twenty-five years of service.[1] They retired between 2002 and 2003 in reliance upon an early retirement incentive program offered by the County of Union (County).

In 2000, the Legislature adopted N.J.S.A. 43:8C-2.1, which enabled county governments to offer their employees incentives in order to encourage retirement or voluntary termination of employment. The means of facilitating the purposes of the legislation were through:

> a. cash payments or the purchase of annuities;
>
> b. employer contributions to an approved employee deferred compensation program to the extent permitted by federal law;
>
> c. payment by the local unit for continuation of health benefits coverage after retirement for not more than five years or until the employee attains the age of eligibility for Medicare, whichever occurs first;
>
> d. payment by the local unit for health

[1] Plaintiff Richard P. Rodbart was an assistant prosecutor from December 1973 through June 2003. Plaintiff Kenneth N. Siegel was an assistant prosecutor from January 1970 until July 2003. Plaintiff Lawrence Wlazlo was a detective from March 1973 until July 2002.

> benefits coverage after retirement under the "New Jersey State Health Benefits Program Act," P.L. 1961, c. 49 (C. 52:14-17.25 et seq.), or under group insurance contracts pursuant to N.J.S. 40A:10-23, for employees and dependents in accordance with the law and rules governing the State Health Benefits Program or the law governing such group insurance contracts, as the case may be, for employees who fail to meet the service requirement for payment for such coverage after retirement by no more than five years, but who are otherwise eligible for employer payment for health benefits coverage after retirement; or
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> e. additional service credit for employees who are members of the Public Employees' Retirement System of New Jersey, pursuant to P.L. 1954, c. 84 (C. 43:15A-1 et seq.) or the Police and Firemen's Retirement System of New Jersey, pursuant to P.L. 1944, c. 255 (C. 43:16A-1 et seq.), or a county pension fund created under P.L. 1943, c. 160 (C. 43:10-18.1 et seq.), or a municipal retirement system created under P.L. 1954, c. 218 (C. 43:13-22.3 et seq.) or P.L. 1964, c. 275 (C. 43:13-22.50 et seq.), as provided in section 4 of P.L. 1999, c. 59 (C. 43:8C-4).
>
> [(N.J.S.A. 43:8C-2).]

All county incentive programs were required to be approved by the Director of the Division of Local Government Services in the Department of Community Affairs, N.J.S.A. 43:8C-2.1, and receive the imprimatur of the Director of the Division of Pensions and Benefits in the Department of the Treasury, N.J.S.A. 43:8C-3(e).

By mid-summer 2001, defendant County was already taking the necessary steps towards the implementation of a retirement

incentive program. It solicited the views of the intended beneficiaries of such a program to ascertain "the viability and potential cost effectiveness" of offering a plan to eligible employees. Among the incentives contemplated, as outlined in a letter dated August 7, 2001, were:

> a) a cash payment of $1,000 per year of service with Union County[;]
>
> b) payment for accumulated sick leave according to the following schedule:
>
> | Sick Days | Daily Rate | Max Payment |
> |---|---|---|
> | 100-200 | 50% | $10,000 |
> | 201-300 | 60% | $12,500 |
> | 301-400 | 70% | $15,000 |
> | over 401 | 80% | $18,000[;] |
>
> c) <u>full health benefits for life</u>.
>
> [(Emphasis added).]

The letter contained a non-binding survey by which eligible employees could express their interest or indifference in participating. The survey indicated that the proposed program would include:

> a) a cash payment of $1,000 per year of service with Union County,
>
> b) payment for accumulated sick time as described in the attached letter, and
>
> c) <u>fully paid health benefits for life (family, parent/child, husband/wife, or single as applicable)</u>[.]
>
> [(Emphasis added).]

After apparently receiving an encouraging response from potentially eligible participants, the County resolved to submit its application for the "Union County Retirement Incentive Program" to the Director of the Division of Local Government Services in the Department of Community Affairs. The County proposed to offer incentives to approximately 273 eligible employees,[2] meaning those at least fifty-five years of age with twenty-five years of service credit with PERS, or sixty-two years of age with fifteen years of service credit, or twenty years of service credit with PFRS. The application additionally estimated the costs of the program[3] together with the net savings to the County. Overall, the County expected to reduce its personnel costs by several million dollars.

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[2] The County's application reflected 181 "definitely or interested" eligible employees as follows: 147 PERS employees (Public Employees' Retirement System) and thirty-four PFRS (Police and Firemen's Retirement System) employees who were eligible for incentives. The plan envisioned leaving the 133 vacancies created by the program unfilled for an average of three months, filling thirty-seven vacancies, and permanently eliminating eleven positions. The remaining vacancies would be filled with "minimum-salary" employees.

[3] The application contains a line item for 2002-2006 costs of "Health Benefits (4)." The discrete amounts are not explained in detail, except with a cryptic footnote: "4. Represents additional cost over and above the County's existing retiree health benefit subsidy."

The "County Early Retirement Incentive Program Application," dated November 2, 2001, provided for four annual installment payments (instead of a single lump sum) to pay eligible employees $1,000 per year of service, payment of accumulated sick leave as indicated in the County's letter of August 7, 2001, and "[r]emoval of the existing cap on the retiree health benefit subsidy to provide fully paid health benefits for life."

The County had implemented——by resolution——a subsidy that it provided to retirees to supplement premiums for Blue Cross/Blue Shield and Horizon PPO health insurance plans.[4] The record reflects that since as early as 1988, this subsidy was capped at either a fixed dollar amount or a percentage of increased costs. In 2001, the County established fixed dollar subsidization rates for various categories of insureds.[5]

On April 2, 2002, the County communicated again with its employees about the proposed retirement incentive program. It advised them that its application for the program was pending review by the Department of Community Affairs. It noted that it

[4] The County referred to this program of subsidies as its Non-Contractual Employee Health and Retirement Benefit Package.

[5] For example, the County's subsidy for a single retired person over age sixty-five was $138.39 per month. For a married couple over age sixty-five, the subsidy was $276.77 per month.

expected the "additional pension liability for all 336[6] eligible employees" to be offset by the elimination of positions, consolidation of job responsibilities, and reduction in salaries.

The County's letter of April 2002 invited eligible employees who "would definitely participate in the program, retiring on July 1, 2002," to identify themselves. Both the letter and its attached check-off form included the following as part of the incentive package:

> d) Removal of the existing cap on the retiree health benefit subsidy to provide full paid health benefits for life.

The County subsequently set up a series of "retirement information sessions" in order for employees to learn more details about the program and to address questions. The record is murky at best as to the number of appellants who actually attended an information session.[7] What is clear, however, is that none of the appellants assert that a County representative made a direct, affirmative representation that retirees' Medicare Part B premiums would be paid in full by the County. Instead,

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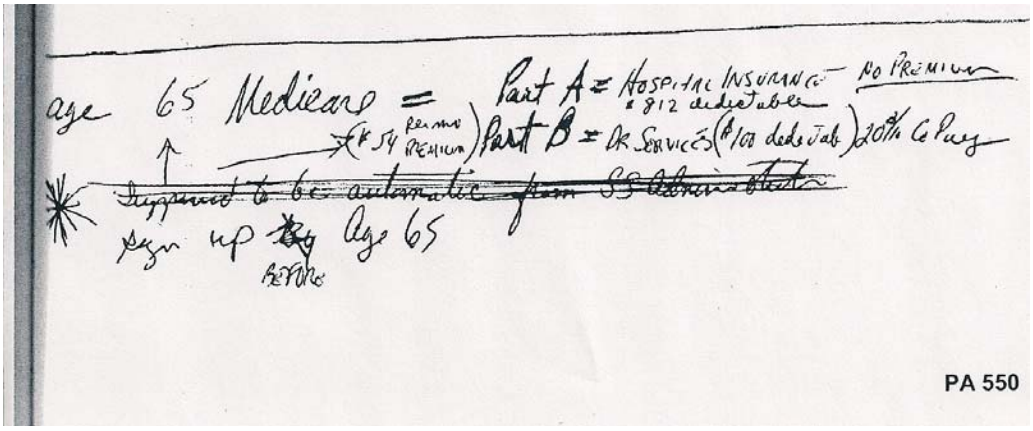
[6] The record is unclear how the application's reference to 273 eligible employees in November 2001 grew to 336 eligible employees by April 2002.

[7] It appears undisputed that at least one plaintiff (who is not an appellant), David F. Regal, attended an information session and took notes.

appellants assert only that the general costs of health insurance, including Medicare Part B, were discussed, and at some time during the session, the County's representative indicated that "no retiree would pay a premium."[8]

At one point, the County distributed a basic one-page document to eligible employees entitled, "Coordinating Your Retiree Benefits With Medicare." This document indicated that at age sixty-five, "Medicare becomes your primary insurance coverage. Your Horizon PPO plan acts as a supplement to your Medicare." The document further stated, "when you or your dependent become eligible, either through age or disability, and enroll in the Medicare program, it is vital that you notify the Union County Division of Personnel as quickly as possible." The

[8]In his handwritten notes regarding the meeting, Regal wrote:



Consistent with all of the other writings relevant in this appeal, Regal's notes attribute the $54 per month premium payment neither to the County nor to retirees.

document was silent about who was actually financially responsible for the payment of any Medicare Part B premiums.

Appellants further assert that the County made available to eligible employees a brochure published by the Social Security Administration entitled, "Social Security: Understanding the Benefits," published in February 2001. The brochure stated:

> Part B is an optional program that, in the year 2001, costs $50 per month if you choose to enroll. Most people sign up for this part of Medicare.

Understandably, the brochure published by the federal government made no mention of who was responsible to pay for monthly premiums pursuant to the Union County Retirement Incentive Program, as it just included general Medicare information.

By June 2002, the County received the requisite State approvals for its retirement incentive program. Wlazlo, who would retire effective July 1, 2002, received a letter in June 2002, outlining his particular benefits, including "[r]emoval of existing cap on the retiree health benefit subsidy to provide fully paid health benefits for life." Rodbart and Siegel, who each received a one-year extension enabling them to retire on July 1, 2003, received similar letters in April 2003, which outlined their particular individual benefits, including the identical phrase, "[r]emoval of existing cap on the retiree

health benefit subsidy to provide fully paid health benefits for life."

Eventually, each of the appellants came to learn that the County fully intended to fund their existing Horizon health insurance premiums without regard to the former cap on retirees' health insurance premium subsidies. However, when appellants turned age sixty-five, and were mandated to switch their primary health insurance coverage from Horizon to Medicare Part B, the County's position was that this event would result only in the County's continuation of payment for Horizon's now-supplementary insurance, not for the initiation of premium payments for Medicare Part B. Instead, the County expected that its retirees would pick up the tab for the Medicare Part B coverage.[9]

Believing that the County had anticipatorily breached the contract forged pursuant to the retirement incentive program,

[9] In 2002, when the retirement incentive program was implemented, the monthly Medicare Part B premium was $54, up from $50 in 2001. See http://www.hhs.gov/news/press/2001pres/20011019.html (last visited on Dec. 15, 2009). In 2007, when the complaint was filed, for the first time in the history of the Medicare program, the premium was income-based and the standard monthly premium was $93.50. See http://www.cms.hhs.gov/apps/media/press/release.asp?counter=1958 (last visited on Dec. 15, 2009).

plaintiffs filed suit seeking remedies for breach of contract.[10] The County and its Manager answered, discovery was exchanged, and cross-motions for summary judgment were filed. In an extensive written opinion, Judge Lisa F. Chrystal rejected all of plaintiffs' claims and granted summary judgment in favor of the County. Three plaintiffs still remained aggrieved, and this appeal ensued.

We fully subscribe to the careful and thorough analysis performed by Judge Chrystal. Although we affirm substantially for the reasons stated by the motion judge, we make the following brief amplification.

II.

Our review of a summary judgment ruling applies the same legal standard as the motion judge. Stoecker v. Echevarria, 408 N.J. Super. 597, 617 (App. Div. 2009). Because both parties filed motions for summary judgment, we consider the facts in a light most favorable to appellants. R. 4:46-2(c); Sahli v. Woodbine Bd. of Educ., 193 N.J. 309, 319 (2008). We consider "'whether the evidence presents a sufficient disagreement to

[10] One of the original plaintiffs had already turned sixty-five years old at the time the complaint was filed and alleged that he had "expended his own monies due to the Defendant, County of Union's failure to provide 'fully paid health benefits for life.'" The other plaintiffs' sixty-fifth birthdays were after the May 24, 2007 filing of the complaint. As of this writing, some of those birthdays have been already celebrated.

require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995)). Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). If there is no genuine issue of material fact, we then must decide whether the lower court's ruling on the law was correct. Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div.), certif. denied, 154 N.J. 608 (1998).

Notwithstanding appellants' claim that there remains a dispute over material facts that revolves around what the prospective retirees were told during the County's informational sessions, those representations are not material. The stray comments and representations made to prospective retirees cannot vary the plain terms of the writings and the County's submissions to Director of the Division of Local Government Services in the Department of Community Affairs. We thus reject the failsafe notion promoted by appellants: they moved for

summary judgment at the same time urging the existence of a genuine dispute of material facts as a basis to resist the County's summary judgment application. This is not a tolerable inconsistency.

The County's contracts with the individual appellants at issue in this appeal are identical. That is, the County promised each of the retiring employees only that the County would remove the existing cap on the retiree health benefit subsidy to provide fully paid health benefits for life. The record is empty of an express or implied promise for anything else.

The County did not agree to pay for appellants' primary health insurance coverage through Medicare Part B. The reference to lifetime health benefits is plainly modified by and subservient to the opening phrase dealing with the "[r]emoval of the existing cap on the retiree health benefit subsidy." It was not a blank check for free Medicare Part B health insurance for the retirees' lifetime. Appellants' view of their retirement contracts exalts a literal under-reading of the County's promise over the clear-cut words and intent of the retirement incentive program.

The vocabulary of these contracts is as plain as the appellants find them to be only if the last phrase of "fully paid health benefits for life" is read in misleading isolation.

The often-repeated admonition not to read a document literally requires that all of the words must be interpreted in the proper context within the operative documents. Schierstead v. Brigantine, 29 N.J. 220, 231 (1959). Moreover, "[d]isproportionate emphasis upon a word or clause or a single provision does not serve the purpose of interpretation." Newark Publishers' Ass'n v. Newark Typographical Union, 22 N.J. 419, 426 (1956). Furthermore, "[w]ords and phrases are not to be isolated but related to the context and the contractual scheme as a whole, and given the meaning that comports with the probable intent and purpose." Ibid.

In this context, we are fortified in our conclusion by reference to the enabling legislation that permitted the creation of the retirement incentive program in the first place. The statute, N.J.S.A. 43:8C-2(c), validates the County's payment of continued health benefits coverage, but only until Medicare Part B becomes available to the retiree:

> The incentive program may include one or more of the following:
>
> * * *
>
> c. payment by the local unit for continuation of health benefits coverage after retirement for not more than five years or until the employee attains the age of eligibility for Medicare, whichever occurs first[.]
>
> [N.J.S.A. 43:8C-2(c).]

The payments demanded by appellants would be beyond the authority of the County to pay as they would be ultra vires, and appellants make no claim of equitable estoppel on this record. But cf. Middletown Twp. PBA v. Twp. of Middletown, 162 N.J. 361 (2000) (defendant township equitably estopped from terminating post-retirement health benefits of a former municipal employee).

Even though equitable estoppel plays no role in this appeal, other general equitable principles may be at work. In numerous circumstances, we have said that the government must "turn square corners" in its dealings with others, and "comport itself with compunction and integrity." In re Martinez, 403 N.J. Super. 58, 79 (App. Div. 2008) (quoting F.M.C. Stores Co., supra, 100 N.J. at 426-27). As our Supreme Court has written, "even with respect to public entities, equitable considerations are relevant in evaluating the propriety of conduct taken after substantial reliance by those whose interests are affected by subsequent actions." Skulski v. Nolan, 68 N.J. 179, 198 (1975).

From our careful review of the record, we are unable to discern any conduct on the part of the County or its representatives, vis-à-vis putative lifetime health benefits, that had any meaningful capacity to confound or bamboozle. The sleight-of-hand that appellants attribute to the County is nothing more than their subjective desire to receive a windfall

far in excess of that for which they gave up their jobs. We have no occasion to intervene in the orderly performance of a retirement incentive program that was honestly implemented and faithfully applied.

We have considered all of the remaining arguments presented by appellants, and conclude that they lack sufficient merit to be discussed in a written opinion. R. 2:11-3(e)(1)(D) and (E).

Affirmed.