MURPHY v. AMERICAN HOME PRODUCTS CORPORATION
58 N.Y.2d 293, 448 N.E.2d 86, 461 N.Y.S.2d 232
Court of Appeals of New York, 1983

JONES, Judge.

. . . Plaintiff, Joseph Murphy, was first employed by defendant, American Home Products Corp., in 1957. He thereafter served in various accounting positions, eventually attaining the office of assistant treasurer, but he never had a formal contract of employment. On April 18, 1980, when he was 59 years old, he was discharged.

Plaintiff claims that he was fired for two reasons: because of his disclosure to top management of alleged accounting improprieties on the part of corporate personnel and because of his age. As to the first ground, plaintiff asserts that his firing was in retaliation for his revelation to officers and directors of defendant corporation that he had uncovered at least $50 million in illegal account manipulations of secret pension reserves which improperly inflated the company's growth in income and allowed high-ranking officers to reap unwarranted bonuses from a management incentive plan, as well as in retaliation for his own refusal to engage in the alleged accounting improprieties. He contends that the company's internal regulations required him to make the disclosure that he did. He also alleges that his termination was carried out in a humiliating manner.

As to the second basis for his termination, plaintiff claims that defendant's top financial officer told him on various occasions that he wished he could fire plaintiff but that, because to do so would be illegal due to plaintiff's age, he would make sure by confining him to routine work that plaintiff did not advance in the company. Plaintiff also asserts that a contributing factor to his dismissal was that he was over 50 years of age.

On April 14, 1981, plaintiff filed a summons in the present action with the New York County Clerk . . . The summons described the action as a suit "to recover damages for defendant's wrongful and malicious termination of plaintiff's employment". . . . The complaint set up four causes of action. As his first cause of action, plaintiff alleged that his discharge "was wrongful, malicious and in bad faith" and that defendant was bound "not to dismiss its employees for reasons that are contrary to public policy". In his second cause of action, plaintiff claimed that his dismissal "was intended to and did cause plaintiff severe mental and emotional distress thereby damaging plaintiff". His third claim was based on an allegation that the manner of his termination "was deliberately and viciously insulting, was designed to and did embarrass and humiliate plaintiff and was intended to and did cause plaintiff

severe mental and emotional distress thereby damaging plaintiff". In his fourth cause of action, plaintiff asserted that, although his employment contract was of indefinite duration, the law imposes in every employment contract "the requirement that an employer shall deal with each employee fairly and in good faith". On that predicate he alleged that defendant's conduct in stalling his advancement and ultimately firing him for his disclosures "breached the terms of its contract requiring good faith and fair dealing toward plaintiff and damaged plaintiff thereby". Plaintiff demanded compensatory and punitive damages.

. . . defendant moved on July 27, 1981 to dismiss the complaint on the grounds that it failed to state a cause of action and that the fourth cause of action was barred by the Statute of Frauds. Defendant contended that plaintiff was an at-will employee subject to discharge at any time, that New York does not recognize a tort action for abusive or wrongful discharge, and that the prima facie tort and intentional infliction of emotional distress claims were unavailable and insufficient. . . .

Special Term [the trial court] denied defendant's motion to dismiss the wrongful discharge tort claim but granted the motion as to the causes of action for breach of contract, prima facie tort, intentional infliction of emotional distress, and age discrimination. Although the court noted that New York had not yet adopted the doctrine of abusive discharge, it declined to put plaintiff out of court before he had had opportunity by means of disclosure procedures to elicit evidence which might put his claim on firmer footing. Special Term held the cause of action for breach of contract barred by the Statute of Frauds. As to the second and third causes of action the court ruled that plaintiff's allegations as to the manner of his dismissal were not sufficient to support causes of action for intentional infliction of emotional distress or for prima facie tort. . . .

On cross appeals, the Appellate Division modified, to the extent of granting the motion to dismiss the first cause of action, and otherwise affirmed the order of Special Term. The court noted that it does not appear that New York recognizes a cause of action for abusive discharge and that, in any event, plaintiff had failed to show the type of violation of penal law or public policy that has been held sufficient in other jurisdictions to support a cause of action for abusive discharge. According to the appellate court, plaintiff's charge that the corporation's records were not kept in accordance with generally accepted accounting principles appeared to involve a dispute over a matter of judgment as to the proper accounting treatment to be given the terms involved and not a dispute over false book entries. As to the other causes of action, the court ruled that Special Term had properly dismissed them either for failure to state a cause of action, failure to comply with the Statute of Frauds . . . .

With respect to his first cause of action, plaintiff urges

that the time has come when the courts of New York should recognize the tort of abusive or wrongful discharge of an at-will employee. To do so would alter our long-settled rule that where an employment is for an indefinite term it is presumed to be a hiring at will which may be freely terminated by either party at any time for any reason or even for no reason. Plaintiff argues that a trend has emerged in the courts of other States to temper what is perceived as the unfairness of the traditional rule by allowing a cause of action in tort to redress abusive discharges. He accurately points out that this tort has elsewhere been recognized to hold employers liable for dismissal of employees in retaliation for employee conduct that is protected by public policy. Thus, the abusive discharge doctrine has been applied to impose liability on employers where employees have been discharged for disclosing illegal activities on the part of their employers, where employees have been terminated due to their service on jury duty, and where employees have been dismissed because they have filed workers' compensation claims. Plaintiff would have this court adopt this emerging view. We decline his invitation, being of the opinion that such a significant change in our law is best left to the Legislature.

Those jurisdictions that have modified the traditional at-will rule appear to have been motivated by conclusions that the freedom of contract underpinnings of the rule have become outdated, that individual employees in the modern work force do not have the bargaining power to negotiate security for the jobs on which they have grown to rely, and that the rule yields harsh results for those employees who do not enjoy the benefits of express contractual limitations on the power of dismissal. Whether these conclusions are supportable or whether for other compelling reasons employers should, as a matter of policy, be held liable to at-will employees discharged in circumstances for which no liability has existed at common law, are issues better left to resolution at the hands of the Legislature. In addition to the fundamental question whether such liability should be recognized in New York, of no less practical importance is the definition of its configuration if it is to be recognized.

Both of these aspects of the issue, involving perception and declaration of relevant public policy (the underlying determinative consideration with respect to tort liability in general) are best and more appropriately explored and resolved by the legislative branch of our government. The Legislature has infinitely greater resources and procedural means to discern the public will, to examine the variety of pertinent considerations, to elicit the views of the various segments of the community that would be directly affected and in any event critically interested, and to investigate and anticipate the impact of imposition of such liability. Standards should doubtless be established applicable to the multifarious types of employment and the various circumstances of discharge. If the rule of nonliability for termination of at-will employment is to be tempered, it should be accomplished through a principled

statutory scheme, adopted after opportunity for public ventilation, rather than in consequence of judicial resolution of the partisan arguments of individual adversarial litigants.

Additionally, if the rights and obligations under a relationship forged, perhaps some time ago, between employer and employee in reliance on existing legal principles are to be significantly altered, a fitting accommodation of the competing interests to be affected may well dictate that any change should be given prospective effect only, or at least so the Legislature might conclude.

For all the reasons stated, we conclude that recognition in New York State of tort liability for what has become known as abusive or wrongful discharge should await legislative action.

Plaintiff's second cause of action is framed in terms of a claim for intentional infliction of emotional distress. To survive a motion to dismiss, plaintiff's allegations must satisfy the rule set out in Restatement of Torts, Second, which we adopted in Fischer v. Maloney . . . that: "One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress". . . . "Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community". The facts alleged by plaintiff regarding the manner of his termination fall far short of this strict standard. Further, in light of our holding above that there is now no cause of action in tort in New York for abusive or wrongful discharge of an at-will employee, plaintiff should not be allowed to evade that conclusion or to subvert the traditional at-will contract rule by casting his cause of action in terms of a tort of intentional infliction of emotional distress.

Plaintiff's third cause of action was also properly dismissed. As with the intentional infliction of emotional distress claim, this cause of action cannot be allowed in circumvention of the unavailability of a tort claim for wrongful discharge or the contract rule against liability for discharge of an at-will employee.

Plaintiff's fourth cause of action is for breach of contract. Although he concedes in his complaint that his employment contract was of indefinite duration (inferentially recognizing that, were there no more, under traditional principles his employer might have discharged him at any time), he asserts that in all employment contracts the law implies an obligation on the part of the employer to deal with his employees fairly and in good faith and that a discharge in violation of that implied obligation exposes the employer to liability for breach of contract. Seeking then to apply this proposition to the present case, plaintiff argues in substance that he was

required by the terms of his employment to disclose accounting improprieties and that defendant's discharge of him for having done so constituted a failure by the employer to act in good faith and thus a breach of the contract of employment.

No New York case upholding any such broad proposition is cited to us by plaintiff (or identified by our dissenting colleague), and we know of none. New York does recognize that in appropriate circumstances an obligation of good faith and fair dealing on the part of a party to a contract may be implied and, if implied will be enforced. In such instances the implied obligation is in aid and furtherance of other terms of the agreement of the parties. No obligation can be implied, however, which would be inconsistent with other terms of the contractual relationship. Thus, in the case now before us, plaintiff's employment was at will, a relationship in which the law accords the employer an unfettered right to terminate the employment at any time. In the context of such an employment it would be incongruous to say that an inference may be drawn that the employer impliedly agreed to a provision which would be destructive of his right of termination. The parties may by express agreement limit or restrict the employer's right of discharge, but to imply such a limitation from the existence of an unrestricted right would be internally inconsistent. In sum, under New York law as it now stands, absent a constitutionally impermissible purpose, a statutory proscription, or an express limitation in the individual contract of employment, an employer's right at any time to terminate an employment at will remains unimpaired.

Of course, if there were an express limitation on the employer's right of discharge it would be given effect even though the employment contract was of indefinite duration. . . . There is here no evidence of any such express limitation. Although general references are to be found in his brief in our court to an employer's "manual", no citation is furnished to any provision therein pertinent to the employer's right to terminate his employment, and the alleged manual was not submitted with his affidavit in opposition to the motion to dismiss his complaint.

Accordingly, the fourth cause of action should have been dismissed for failure to state a cause of action.[1]

We reject the view of the dissenter that a good faith limitation should now be judicially engrafted on what in New York has been the unfettered right of termination lying at the core of

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[1] Both courts below dismissed this cause of action under the Statute of Frauds. This appears to have been error, inasmuch as the contract of employment was not one which by its terms could not have been performed within one year (General Obligations Law, § 5-701, subd. a, par. 1) and does not otherwise come within the reach of the Statute of Frauds . . . .

an employment at will . . . . We do so for precisely the reasons which persuade him as well as the other members of the court that we should now refrain from judicial recognition of the tort action for abusive discharge. As the dissenter is at pains to note, there has been much criticism of the traditional conception of the legal obligations and rights which attach to an employment at will. It may well be that in the light of modern economic and social considerations radical changes should be made. As all of us recognize, however, resolution of the critical issues turns on identification and balancing of fundamental components of public policy. Recognition of an implied-in-law obligation of good faith as restricting the employer's right to terminate is as much a part of this matrix as is recognition of the tort action for abusive discharge. We are of the view that this aggregate of rights and obligations should not be approached piecemeal but should be considered in its totality and then resolved by the Legislature. . . .

MEYER, Judge (dissenting in part).

The harshness of a rule which permits an employer to discharge with impunity a 30-year employee one day before his pension vests or for no other reason than that he filed a compensation claim, the bizarre origin of the termination-at-will rule, the change of economic and constitutional philosophy that has occurred since its adoption, the exclusion of a substantial segment of the working community from its effects through "just cause" limitations upon the right to fire resulting from collective bargaining, and the inconsistency of the rule not only with the common law of England and with earlier New York decisions but also with the law of most industrial countries of the world, have caused an outpouring of judicial and scholarly writings intended to ameliorate, if not abolish, the rule. I agree with the majority that we should not now adopt the tort remedies proposed in those writings, because such remedies are essentially grounded in public policy, the declaration of which is a function of both the Legislature and the courts, because the New York Legislature has not been reticent in the area, and because of the difficulty encountered by the courts adopting such remedies in articulating the exact nature of the public policy which will bring them into play. . . .

I agree also with so much of the majority opinion as holds the fourth cause of action not barred by the Statute of Frauds . . . . I cannot, however, accept the majority's refusal to follow precedent decisional law recognizing an implied-in-law obligation on the part of the employer not to discharge an employee for doing that which the employment contract obligated him to do or to differentiate between that existing contract obligation and the public policy laden tort of abusive discharge. Plaintiff's complaint alleges that "defendant's internal regulations * * * required that plaintiff report any deviation from proper accounting practice to defendant's top management" and that he was dismissed as a result of his doing just that. Because those

allegations sufficiently state a cause of action for breach of contract not only under decisions of other States but as a matter of New York law as well, I dissent from the majority's affirmance of the dismissal of the fourth cause of action. . . .

There is, moreover, no compelling policy reason to read the implied obligation of good faith out of contracts impliedly terminable at will. To do so belies the "universal force" of the good faith obligation which, as we have seen, the law reads into "all contracts." Nor can credence be given the in terrorem suggestion that to limit terminable-at-will contracts by good faith will drive industry from New York. That is no more than speculation and hardly appears acceptable in the face of . . . the recognition without apparent industrial exodus of the even more burdensome tort remedy for discharge of at-will employees by such industrial States as California, Connecticut, Illinois, Indiana, Maryland, Massachusetts, Michigan, New Jersey, Pennsylvania and Wisconsin . . . The more particularly is this so because collective bargaining "just cause" provisions, which impose a greater burden on employers than does a good faith limitation have not done so, and because employers can obtain a large measure of protection by expressly reserving in the employment contract the right to terminate without cause.

. . . The at-will rule was created by the courts and can properly be changed by the courts but, more importantly, as demonstrated above, the rule has for at least a century been subject to the "universal force" of the good faith rule. The Legislature, therefore, had no reason before the present decision to believe that action on its part was required.

Nor ought we succumb to any "floodgates" argument. "This court has rejected as a ground for denying a cause of action that there will be a proliferation of claims. It suffices that if a cognizable wrong has been committed that there must be a remedy, whatever the burden on the courts". . . .

It may well be that plaintiff's fourth cause of action will not survive a motion for summary judgment or, if it does, will not succeed before a jury. To dismiss it at this stage, on the pleadings alone, is, however, wholly inconsistent with the prior holdings of this and other courts with respect to the implied-in-law obligation of good faith. I therefore, cannot vote for doing so.

COOKE, C.J., and JASEN, WACHTLER, FUCHSBERG and SIMONS, JJ., concur with JONES, J.

MEYER, J., dissents in part and votes to further modify by reinstating the fourth cause of action in a separate opinion.