Salsberg, C., Aplt. v. Mann, D., et al.

2024 | Cited 0 times | Supreme Court of Pennsylvania | February 21, 2024

[J-4-2023] IN THE SUPREME COURT OF PENNSYLVANIA EASTERN DISTRICT

TODD, C.J., DONOHUE, DOUGHERTY, WECHT, MUNDY, BROBSON, JJ.

CARA SALSBERG,

Appellant

v.

DONNA MANN AND DREXEL UNIVERSITY,

Appellees : : : : : : : : : : : : No. 7 EAP 2022

Appeal from the Judgment of Superior Court entered on September 15, 2021, at No. 623 EDA 2019 affirming the Order entered on January 17, 2019, in the Court of Common Pleas, Philadelphia County, Civil Division at No. 170603584

ARGUED: March 7, 2023

OPINION

JUSTICE BROBSON DECIDED: February 21, 2024 This discretionary matter concerns a claim brought by Cara Salsberg (Salsberg), a former at-will employee of Drexel University (University), against her former supervisor,

contractual relationship with firing. While recognizing that Pennsylvania law permits claims of intentional interference

with the performance of contracts by third parties, the Court of Common Pleas of Philadelphia County (trial court) and our Pennsylvania Superior Court concluded that Mann was nonetheless entitled to summary judgment because governing law further

dictates that, in the context of an existing at-will employment relationship, an employee has no contractual or legally enforceable right to continued employment with which a third party can

interfere. Upon review, we hold that the lower courts erred in reaching that

[J-4-2023] - 2 conclusion. We further hold, however, that an at-will employee cannot recover on a claim for intentional interference with an existing at-will employment relationship against her

supervisor under the circumstances of this case, where Mann was acting within the scope of her employment with Drexel and, thus, was not a third party to the relationship as required to establish the tort in Pennsylvania judgment, albeit on alternative grounds. 1

I. BACKGROUND A. RELEVANT LAW

To provide better context for the current dispute, we set forth a brief summary of the relevant law. This Court has recognized claims for intentional interference with contractual relations as far back as the 1800s. See Adler, Barish, Daniels, Levin &

Creskoff v. Epstein, 393 A.2d 1175, 1182 n.12 (Pa. 1978) (citing, inter alia, Vanarsdale v. Laverty, 69 Pa. 103 (1871), in support), appeal dismissed,

442 U.S. 907 (1979). Our Court has done so in an array of factual scenarios, including those which involve: (1) the employment context as well as other unrelated contexts; (2) interference with existing contractual relations and interference with prospective

contractual relations; and (3) various third-party entities as defendants. 2 Moreover,

1 This Court may affirm the order of the court below if the result reached is correct without regard to the grounds relied upon by that court, iscretionary authority to affirm In re Adoption of C.M., 255 A.3d 343, 347 n.1, 363 (Pa. 2021) (quoting Ario v. Ingram Micro, Inc., 965 A.2d 1194, 1200 (Pa. 2009)). 2 See, e.g., Vanarsdale, 69 Pa. at 109 (affirming judgment against citizens who, without cause, petitioned school board not to employ teacher seeking reappointment for upcoming school term cannot surely be the right of any citizen where it actually results in harm to the object of

; Birl v. Phila. Elec. Co., 167 A.2d 472, 473-75 (Pa. 1960) (concluding that plaintiff stated cause of action against his former employer and its sales

[J-4-2023] - 3 throughout the development of the law in this area, the Court has adopted or otherwise relied upon various iterations of the provisions and attendant commentary in the

Restatement (Second) of Torts (Restatement) as to such claims, including Section 766 of the Restatement. 3 More to this point, our Court cited to Section 766 of the Restatement (First) of Torts with approval in two cases 4

manager for intentional interference with contractual relations, where plaintiff alleged that former employer, through sales manager, current employer to fire plaintiff); Adler, 393 A.2d at 1177, 1181-86 (reinstating award of injunctive relief in favor of law firm on claim intentionally interfered with existing contractual relationships between law firm and its clients); Glenn v. Point Park College, 272 A.2d 895, 896-98 (Pa. 1971) (recognizing cause of action for intentional interference with prospective contractual relationship in case where real estate brokers brought suit negotiation of direct purchase of real estate from vendor, depriving brokers of anticipated commissions); Thompson Coal Co. v. Pike Coal Co., 412 A.2d 466, 469-72 (Pa. 1979) (collecting Pennsylvania cases that have examined alleged interferences with both existing contracts and prospective business relations but denying relief on both claims in dispute concerning whether defendants interfered with leasehold interest in, and ongoing attempts to purchase, property from owners). 3 See, e.g., Birl, 167 A.2d at 474 (adopting prior version of Section 766 of Restatement and relying upon special note to comment m to describe concept of malice); Adler, 393 authority for the elements of a cause of action for intentional interference with existing

Glenn, 272 A.2d at 897, 899 [Section] 766A of the

Walnut St. Assocs., Inc. v. Brokerage Concepts, Inc., 20 A.3d 468, 469- [Section] 772(a) applies in Pennsylvania to preclude an action for tortious interference with contractual relations ing [t]he Restatement commentary [the Court] set forth [previously] amply

explain[ed] why the conveyance of truthful information cannot reasonably be deemed to ; see also Thompson Coal Co., 412 A.2d at 470 (noting then-recent trend of separating claims of interference with existing contract rights pursuant to Section 766 of Restatement and interference with prospective contractual relations pursuant to Section 766B of Restatement). 4 Bloom v. Devonian Gas & Oil Co., 155 A.2d 195, 196 (Pa. 1959); Bright v. Pittsburgh , 108 A.2d 810, 814 (Pa. 1954).

[J-4-2023] - 4 Birl v. Philadelphia Electric Company. Adler, 393 A.2d at 1181-82 & n.12. We explained in

Birl: At least since Lumley v. Gye, (1853) 2 Ell. & Bl. 216, 1 Eng.Rul.Cas. 706, the common law has recognized an action in tort for an intentional, unprivileged interference with contractual relations. It is generally recognized that one has the right to pursue his business relations or employment free from interference on the part of other persons except where such interference is justified or constitutes an exercise of an absolute right: Restatement, Torts, Section 766. . . . . The elements of this tort of inducing breach of contract or refusal to deal, which must be averred in the complaint, are set forth in the Restatement, Torts, Section 766, which says, . . . one who, without a privilege to do so, induces or otherwise purposely causes a third person not to (a) perform a contract with another, or (b) enter into or continue a business relation with another is liable to the other for the harm caused In other words, the actor must act (1) for the purpose of causing this specific type of harm to the plaintiff, (2) such act must be unprivileged, and (3) the harm must actually result. Furthermore, where

the defendant is alleged to have induced another to discharge his employee by false statements, the substance of such statements should be set out in the complaint. Moran v. Dunphy, [59 N.E. 125 (Mass. 1901)]. Birl, 167 A.2d at 474. Almost two decades later, in recognition of the effort to provide the judicial system orderly and accurate restatements of the common

constantly seeks to harmonize common law rules, the Court in Adler chose to examine the case before it in light of the most current version

of Section 766 available at the time. Adler, 393 A.2d at 1183. This version, then contained in Tentative Draft Number 23 of Section 766 of the Restatement, is virtually the

same as the version currently set forth in the Restatement, which provides:

[J-4-2023] - 5 Intentional Interference with Performance of Contract by Third Person One who intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract. Section 766 of the Restatement. 5

Notwithstanding the above, there is a dearth of case law from this Court explicitly addressing the precise scenario here i.e., where an at-will employee claims that a supervisor intentionally interfered with the at-will employment relationship between the

employee and employer or the question of whether our common law recognizes such claims pursuant to Section 766 of the Restatement or otherwise. It appears that the only case from this Court that touches upon this discrete question is Menefee v. Columbia

Broadcasting System, Inc., 329 A.2d 216 (Pa. 1974), where this Court summarily concluded that certain higher-level employees could not be found liable for

the employer because they the employer on handling its employees and cause the termination of the employee. Menefee, 329 A.2d at 217, 221.

5 By way of further background, prior to Adler, our Court had elaborated on the elements of the tort as concerns both existing contracts and prospective contractual relations by requiring: contractual relation[ship] ication on the part of the

actor . . . and (4) the occurrence of actual harm or damage to plaintiff as a result of the Glenn, 895 A.2d at 898. Of further note, Adler highlighted the then- focus[ing] upon whether conduct is roper, rather than privileged, and used the factors set forth in Section 767 of the Restatement to determine Adler, 393 A.2d at 1184 & n.17.

[J-4-2023] - 6 In contrast, the Superior Court has addressed this scenario on multiple occasions. Most relevant here, in Curran v. Child Service Center, 578 A.2d 8 (Pa. Super. 1990),

appeal denied, 585 A.2d 468 (Pa. 1991), the Superior Court considered whether a psychologist who worked for an organization as an at-will employee could assert against the clinical director who terminated him a claim for intentionally interfering with his

contractual relationship with the organization. Curran, 578 A.2d at 9. In answering the question, the Superior Court observed that [a] cause of action for intentional interference with a contractual relationship may be sustained even though the employment

relationship is at-will. Id. at 13. Notably, in support, the Curran Court cited to Yaindl v. Ingersoll-Rand Co. Standard Pump-Aldrich Division, 422 A.2d 611 (Pa. Super. 1980) (abrogation on other grounds as recognized in Yetter v. Ward Trucking Corp., 585 A.2d

1022 (Pa. Super. 1991)), which in turn relied on Comment g of Section 766 of the Restatement 6 performance of a contract lies even though the contract interfered with is terminable at

6 Comment g to Section 766 of the Restatement provides: g. Contracts terminable at will. A similar situation exists with a contract that, by its terms or otherwise, permits the third person to terminate the agreement at will. Until he has so terminated it, the contract is valid and subsisting, and the defendant may not improperly interfere with it. The fact that the contract is terminable at will, however, is to be taken into account in determining the damages that the plaintiff has suffered by reason of its breach. (See § 774A). t in a contract terminable at will is primarily an interest in future relations between the parties, and he has no legal assurance of them. For this reason, an interference with this interest is closely analogous to interference with prospective contractual relations. (See § 766B). If the defendant was a competitor regarding the business involved in the contract, his interference with the contract may be not improper. (See § 768, especially Comment i).

[J-4-2023] - 7 Yaindl, 422 A.2d at 618 n.6. 7 The Superior Court in Curran nonetheless concluded that the psychologist was unable to state a cognizable claim for

Curran, 578 A.2d at 13. The Superior Court explained that, a corporation can act only psychologist identified the clinical director who terminated his

employment as an agent of organization-employer in the complaint, party against whom an action for intentional interference with a contractual relationship

Id. As a result, the Superior Court affirm summary judgment in favor of the clinical director and organization.

Following Curran, the Superior Court decided Hennessy v. Santiago, 708 A.2d 1269 (Pa. Super. 1998), and Haun v. Community Health Systems, Inc., 14 A.3d 120 (Pa.

Super. 2011), both of which restricted the application of Section 766 of the Restatement to prospective at-will contracts, seemingly in the face of the prior decision in Curran. In Hennessy, a doctor employed at-will a habilitative counselor to counsel

at a corporation that the doctor controlled in part and which provided community living arrangements for county residents pursuant to county contracts. Hennessy, 708 A.2d at 1272. The doctor fired the counselor after the

counselor, upon receiving a report of a rape that occurred at the community living facility, investigated the report and aided the victim in reporting the rape to authorities. Id. instructed the doctor to terminate the counselor in retaliation for helping the rape victim,

the counselor brought a claim against the assistant county administrator for tortious

7 Yaindl, which involved claims for wrongful discharge and intentional interference with a prospective employment relationship, made the above observation in connection with its particularized instance of a more inclusive tort of intentional interference with the

Yaindl, 422 A.2d at 618.

[J-4-2023] - 8 . Id. In considering whether the counselor could bring such a claim against the county administrator, the Superior

Court ultimately held that of a contract in the employment context applies only to interference with a prospective employment relationship whether at-will or not, not a presently existing at-will employment

relationship Id. at 1279. While the counselor relied upon the above-quoted language from Yaindl relating to at-will contracts in support of her position that an action lies against a third party for intentional interference with an at-will employment relationship, the

Superior Court concluded that the language in Yaindl was dicta and that the counselor [the] doctrine [relating to intentional interference with contracts terminable at-will] has been extended to the ambit of at- Id.

at 1278. county preliminary objection in the nature of a demurrer as to intentional-interference claim. Id. at 1272, 1279.

In Haun, a chief financial officer (CFO) filed a medical malpractice action against a hospital where he worked as an at-will employee and others in connection with injuries that his son sustained following birth at the hospital. Haun, 14 A.3d

at 121-22. Shortly thereafter, an executive for and related subsidiary companies (Companies) instructed the chief executive officer (CEO) of the hospital to consider terminating the CFO. Id. at 122. Subsequently, t CEO

and human resources director advised the CFO that he was being terminated given that he had become an adversary and the attendant risk involved. Id. The CFO then filed suit against the hospital and Companies, alleging, inter alia, that the Companies tortiously

interfered with employment contract. Id. In a divided opinion, a majority of the Superior Court observed that it was constrained by Hennessy to conclude that the CFO

[J-4-2023] - 9 could not successfully assert a cause of action for intentional interference with a contractual relationship in the foregoing context because his employment relationship

was at-will and not prospective. Id. at 125. In a footnote, the majority recognized that Hennessy remained the prevailing law on the matter unless and until an en banc decision of the Superior Court or decision of this Court overturned it. Id. at 125 n.1. The majority

added that, insofar as the CFO relied upon language from Yaindl and Curran to support decisions ha[d] Hennessy precedential value. Id.

Based on the foregoing, th to the extent that it overruled preliminary objections in the form of a demurrer relative to this cause of action. Id. at 125.

In a concurring and dissenting opinion in Haun, then-Judge, now-Justice Mundy disagreed that Hennessy was the prevailing decisional law . In so doing, she explained that her review of

[d] made contradictory an action for intentional interference with a contractual relationship in an at-will employment context. Haun, 14 A.3d at 126 (Mundy,

J., concurring and dissenting). Preliminarily, while she agreed that the language cited from Yaindl, recognizing intentional interference claims in the context of contracts terminable at will, was dicta, she concluded that Curran that such

claims were cognizable in the at-will employment context was not. Id. at 126 (Mundy, J., concurring and dissenting). Then-Judge Mundy reasoned that Curran relationship may be sustained even though the employment relationship is at- was

essential to Curran Curran panel would never had to have reached

[J-4-2023] - 10 the question of whether the supervisor was an appropriate third-party otherwise. Id. (Mundy, J., concurring and dissenting) (quoting Curran, 578 A.2d at 13). Then, after

conced that the Hennessy panel follow the precepts of Comment g, then-Judge Mundy

nevertheless found it notable that the Hennessy panel failed to address Section 766,

Comment g, or the Curran decision, which referenced Comment g. Id. at 127 (Mundy, J., concurring and dissenting). Furthermore, g - was incumbent upon the panel in Hennessy to explain its departure from the path

Id. (Mundy, J., concurring and dissenting). Then-Judge Hennessy decision not only contradict[ed]

a prior panel of th[e Superior] Court, but . . . also commit[ted] enunciating a new precept of law a task left for this Court through its departure from

Comment g. Id. (Mundy, J., concurring and dissenting). Finding that Hennessy was not

nd believing that the Superior it was in conflict, then-Judge Mundy would

intentional-interference claim. Id. (Mundy, J., concurring and dissenting).

B. THIS MATTER

Having set forth the relevant legal precedent under which the present controversy arose, we now turn to the underlying facts and procedural history of this case. Salsberg worked as an at-will employee for October 2011 until June 2017, when she was fired for unsatisfactory job performance

[J-4-2023] - 11 employment with Drexel as a senior tax accountant in the Office of Tax Compliance (Tax Office). Salsberg received consistently positive annual performance reviews from Mann

through 2016. In the interim, in March 2015, Salsberg was promoted to manager of tax/compliance. Then, beginning sometime in late 2016 or early 2017, the relationship between Salsberg and Mann began to deteriorate. The parties dispute the reasons for

this decline in their relationship and the circumstances . Generally, according to Salsberg, Mann started exhibiting erratic workplace behavior and imposing increased work demands on Salsberg, which prompted Salsberg to meet with

, David Rusenko (Rusenko), about these concerns. Salsberg further claims that, in response, Mann manufactured performance issues specifically placing (PIP) and then used the performance

issues as a pretext for firing in retaliation for meeting with Ruse animus toward Salsberg. In retort, Mann

Following her termination, Salsberg filed suit against Mann and Drexel, asserting, inter alia relationship with Drexel. After a period of discovery, Mann and Drexel filed a motion for

summary judgment seeking dismissal of all claims, which Salsberg opposed. In the context of these filings and subsequent litigation on the motion, the parties disputed the

following pertinent issues : (1) whether a contractual relationship existed between Salsberg and Drexel with which Mann could interfere, given the at-

was a third party to the contract (assuming one existed) and otherwise engaged in privileged and/or justified conduct;

[J-4-2023] - 12 and (3) whether Pennsylvania law only recognizes a claim for intentional interference with a prospective at-will employment relationship and not a presently existing at-will

employment relationship. Ultimately, the trial court issued an order granting the motion for summary Salsberg then appealed

to the Superior Court. In its Pennsylvania Rule of Appellate Procedure 1925(a) opinion, the trial court explained that it granted summary judgment as a matter of law pursuant to Hennessy and Haun. In doing so, however, the trial

court noted that Comment g to Section 766 of the right to initiate a cause of action by an at-will employee such as []Salsberg, further citing

Adler and Curran. (Trial Ct. 1925(a) Op., 3/20/2019, at 5.) The trial court added that it

was persuaded by the minority opinion authored by then-Judge Mundy in Haun. (Id.) in favor of Mann accordingly. 8

(Id. at 5-6.) Upon review, the Superior Court affirmed in a divided, published, en banc opinion. Salsberg v. Mann, 262 A.3d 1267 (Pa. Super. 2021) (en banc). Before the Superior Court,

Salsberg argued that the trial court erred in granting summary judgment relative to her intentional interference claim because Pennsylvania law permits intentional interference claims in the context of

contracts terminable at will, and Section 766 of the Restatement

and federal case law permit such claims in the context of at-will employment contracts. Writing for the majority, President Judge Panella observed that Hennessy was the

8 Notwithstanding its conclusion above, the trial court also commented on the issue of , 3/20/2019, at 6.)

[J-4-2023] - 13 prevailing decisional law in holding that an intentional interference claim is cognizable in Pe relationship whether at-will or not, not a presently existing at-will employment

Id. at 1271 (quoting Hennessy, 708 A.2d at 1279). The majority pointed out that the Hennessy between prospective and existing at-will employment relationships Id.

nnsylvania law distinguishes between claims for intentional interference majority observed that, unlike in the case of existing contractual relationships, prospective

contractual relationships a claim for interference with a prospective contractual

relationship requires merely a showing of the probability of a future contractual Id. (quoting Thompson Coal Co., 412 A.2d at 471). The majority explained but that, instead, Salsberg had an existing at-will

employment contract, Id. In this regard, the majority opined: Id. (quoting Mikhail v.

Pa. Org. for Women in Early Recovery, 63 A.3d 313, 316 (Pa. Super. 2013)). As such, Id. Rather, -will employment is nothing

Id. provides a remedy for interference with expectations that Id. at 1272 (quoting Thompson Coal, 412 A.2d at 471). The majority added that,

[J-4-2023] - 14 termination of an at-will e circumstances, where discharges of at-will employees would threaten clear mandates of

-will Id. at 1271-72 (quoting McLaughlin v. Gastrointestinal Specialists, Inc.,

750 A.2d 283, 287 (Pa. 2000), and Weaver v. Harpster, 975 A.2d 555, 562-63 (Pa. 2009)). Thus, while Hennessy between existing at-will employment contracts and prospective ones, and though

request to overturn Hennessy, the majority declined to do so, opining that the decision precedent. Id. at 1272.

Judge Stabile authored a dissenting opinion, which Judges Dubow and King joined. Therein, Judge Stabile concluded for intentional interference with an at-will employment contract and that a genuine issue

Id. at 1272 (Stabile, J., dissenting). In reaching this conclusion, Judge Stabile first opined that this Court adopted

Section 766 of the Restatement in its entirety in Adler and that Section 766 and unambiguously applies to contracts terminable at[ ] by virtue of Comment g. Id.

(Stabile, J., dissenting). Next, Judge Stabile agreed with then-Judge opinion in Haun that the Haun majority opinion and Hennessy were in tension with Curran,

holding that a cause of action for intentional interference with a contractual relationship may be brought in the context of an at-will employment relationship under Section 766 of

the Restatement. Id. at 1273 (Stabile, J., dissenting). Suggesting that the en banc panel should revisit Haun and Hennessy given the inconsistency, Judge Stabile further opined

[J-4-2023] - 15 that both decisions contravened Section 766 as adopted by this Court, Comment g, and the weight of authority from the United States Supreme Court and many other

jurisdictions. Id. at 1273-74 (Stabile, J., dissenting) (relying upon, inter alia, Truax v. Raich respectively, does not make it one at the will of others. The employee has manifest

interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion and, by the weight of authority, the unjustified interference of third persons is actionable although the employment is at[]

Positing that Haun and Hennessy declined to follow Section 766 and adopted the minority added as at-will employment clearly is contractual. That is, the employee continues to work and

Id. at 1274-7 [Section] 766, the at-will employee is to be free of third-party interference with his or her

Id. at 1275 (Stabile, J., dissenting) (quoting upon Frank J. Cavico, Tortious Interference With Contract in the At-Will Employment Context, 79 U. Det. Mercy L. Rev. [T]he gravamen of the tort is interference with the employment

contract irrespective of the term of that contract. The Restatement . . . also maintains that a contract terminable at will is nonetheless a valid and subsisting contract for purposes of an interference with contract tort cause of action; and thus one cannot

(footnote and internal quotation marks omitted)). Judge Stabile observed that the majority was misguided not only in adhering to Haun and Hennessy but also in relying upon Weaver and McLaughlin -will employment. Id. (Stabile,

J., dissenting) (quoting Salsberg, 262 A.3d at 1272). Noting that Weaver and McLaughlin

[J-4-2023] - 16 pertained to wrongful discharge claims arising against a former employer, Judge Stabile explained that, by contrast, claims of intentional interference with contractual relations

arise against a third party either a stranger to the employment relationship or another employee acting outside the scope of his employment who purportedly interfered with -will employment. Id. at 1275-76 (Stabile, J., dissenting). Judge Stabile

opined that McLaughlin and Weaver of at-will employees to sue their former employers for wrongful termination Id. at 1275 (Stabile, J., dissenting). Accordingly,

employment relationship (as opposed to a prospective relationships [sic], as per Haun

and Hennessy) from third- Hennessy and Haun remanded the case for further proceedings. Id. at 1276 (Stabile, J., dissenting) (emphasis

omitted).

II. ISSUE We granted discretionary review to resolve the following issue, as stated by Salsberg: to an

[i]ntentional [i]nterference claim by an employee at will against a supervisor who acted against that employee, not as an agent on behalf of her employer, but ultra vires and pursuant to Salsberg v. Mann, 275 A.3d 964 (Pa. 2022) (per curiam).

This issue comes to this Court by way of an order granting summary judgment and implicates a question of law. de novo, and our Gallagher v. GEICO Indem. Co., 201 A.3d 131, 137

(Pa. 2019); Khalil v. Williams, 278 A.3d 859, 871 (Pa. 2022).

[J-4-2023] - 17 III. Before this Court, Salsberg reiterates that the trial court erred in granting summary

judgment in favor of Mann on the basis that a claim for intentional interference with at-will employment relationship. In support, Salsberg relies upon Yaindl, Section 766 of the

Restatement, Comment g, and federal authority to argue that the at-will nature of her employment relationship does not defeat her claim. Salsberg also echoes then-Judge Haun and notes that federal

courts have predicted that this Court

would recognize a claim for intentional interference with an at-will employment relationship. Salsberg additionally claims that case law makes clear that Mann, as relations as a third party to the employment relationship by engaging in conduct that is

intentional, improper, without privilege, and outside the scope of her authority. quoting Yaindl, 422 A.2d at 619 n.8 (observing that t is widely

held that an agent is liable if he intentionally and improperly induces his principal to break its contract with a third person Salsberg submits that, as demonstrated by the record, in that regard,

position, Salsberg requests that we recognize her claim against Mann under

Section 766 of the Restatement, reverse the decisions below, and remand the matter for

further proceedings. Mann counters that the trial court did not err in granting summary judgment in her favor. Mann argues that, as an at-will employee, Salsberg did not possess the contractual

relationship needed to establish an intentional interference claim. Mann submits that our -will employment as the inverse of a co

[J-4-2023] - 18 and argues that recognizing intentional interference claims in this context would -settled law of this Commonwealth that employees do not have

contractual rights in [the] at- at 11-12 (emphasis omitted).) Further observing the precep interference in the at-will employment context risks opening the floodgates of litigation,

thereby forcing Pennsylvania -personnel board to review any workplace conflict. (Id. at 13-14 (quoting Scott v. Extracorporeal, Inc., 545 A.2d 334, 336

(Pa. Super. 1988)).) Mann adds that recogni long-standing principles of at- [a]ny further erosion of the at-will

presumption in Pennsylvania Id.)

Mann also disputes any suggestion by Salsberg that this Court has adopted Comment g to Section 766 of the Restatement and argues that we are under no obligation to adopt Comment g here. Base and adopt the reasoning of the Hennessy and Haun Id. at 13.)

Assuming, arguendo, that this Court allows claims of intentional interference with contractual

relations in the context of existing at-will employment relationships as a matter

Mann at all times acted properly within the scope of her authority as an agent of Drexel as demonstrated by the record. As such, Mann submits, her conduct was privileged and/or justified, and

there was no third-party interference with the employment relationship, as Mann and the University were one and the same. In support, Mann argues that, in Pennsylvania, a Menefee, 329 A.2d at 221).)

Pennsylvania is that a . . .

[J-4-2023] - 19 management level agent is not personally liable for inducing breach of contract unless sole motive in causing the corporation to breach a contract is actual malice

corporation. (Id. at 16 (emphasis in original) (citing, inter alia, Geary v. U.S. Steel Corp.,

319 A.2d 174 (Pa. 1974)).) Arguing that there is no record evidence from which a jury

could infer that Mann acted solely with actual malice when e to the record or otherwise misrepresenting the record in support of her claim. Mann further notes that

mere suspicion of improper or malicious conduct is insufficient to establish that an agent acts outside the scope of her authority and submits that her conduct was proper as demonstrated by application of the six-factor test established for making such

determinations. 9 Further relying upon cases that denied intentional interference claims for want of a third party, 10 IV. ANALYSIS

We begin our analysis by clarifying whether our common law recognizes claims for intentional interference with existing at-will employment relationships as a general matter. In doing so, we again set forth the relevant provisions of Section 766 of the

Restatement, which, as noted, we have relied upon previously in addressing claims for intentional interference with contracts by third parties:

9 See Adler, 393 A.2d at 1184 (relying upon Section 767 of Restatement for following factors to consider in determining whether conduct is improper: (a) The nature of the conduct interferes, (d) The interests sought to be advanced by the actor, (e) The proximity

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10 Maier v. Maretti, 671 A.2d 701, 707 (Pa. Super. 1995), appeal denied, 694 A.2d 622 (Pa. 1997); Nix v.

Temple Univ. of Commonwealth Sys. of Higher Educ., 596 A.2d 1132, 1137 (Pa. Super. 1991); Daniel Adams Assocs., Inc. v. Rimbach Pub., Inc., 519 A.2d 997, 1002 (Pa. Super.), appeal denied, 535 A.2d 1056-57 (Pa. 1987).

[J-4-2023] - 20 One who intentionally and improperly interferes with the performance of a contract . . . between another and a third person by inducing or otherwise causing the third person not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract. It is true that, by its plain language, Section 766 does not limit the type of contract that falls within its ambit and, accordingly, would appear to encompass claims of intentional

interference with existing at-will employment contracts. Moreover, as illustrated above, Comment g certainly lends further credence to the conclusion that Section 766 comprises such claims. Nonetheless, insofar as these observations are akin to an exercise in

statutory construction, while notable, they do not provide a sufficient basis in and of themselves upon which to conclude that claims for intentional interference with at-will employment contracts are to be recognized in Pennsylvania. This Court has explained

that adoption of Restatement principles into our common law is distinct in concept and application from words have intrinsic significance because their purpose is to explain the

legal principle clearly, they are not entitled to the fidelity due a legislative court generally is obligated to effectuate, absent constitutional infirmity. The

language of a restatement, as a result, is not necessarily susceptible to -type construction or parsing. An effective and valuable restatement of the law offers instead a pithy articulation of a principle of law which, in many cases, including novel or difficult ones, represents a starting template for members of the judiciary, whose duty is then to employ an educated, candid, and common-sense approach to ensure dispensation of justice to the citizenry. The common law relies in individual cases upon clear iterations of the facts and skillful advocacy, and evolves in principle by analogy, distinction, and reasoned explication. This is the essence of justice at common law. Tincher v. Omega Flex, Inc., 104 A.3d 328, 399-400 (Pa. 2014) (citation omitted); see also Brunier v. Stanert, 85 A.2d 130, 134 (Pa. 1951) (observing that never held that Comment c. of [Section] 44 of the Restatement of Trusts was accepted in

toto comment as a correct enunciation of the law in Pennsylvania would necessitate judicial assumption of the legislative

[J-4-2023] - 21 - . We have made similar

observations in addressing claims of intentional interference with contractual relations. See Walnut St. Assocs., Inc., 20 A.3d at 478- Restatement contains [a] refinement [relative to claims for intentional interference with

contractual relations by virtue of Section 722 of the Restatement and its commentary, relating to truthful information and honest advice], and explicitly provides that the conveyance of truthful inform of Pennsylvania law.

We adopt the provision, instead, because we believe the formation is consistent with the very nature o

We, nonetheless, conclude that recognition of a claim for intentional interference with an existing at-will employment contract or relationship against a third party to the relationship not only is consistent with and a logical application or extension of the

very nature of the tort . . . and . . . Pennsylvania law, but also justice. Walnut St. Assocs., Inc., 20 A.3d at 479; Tincher, 104 A.3d at 355. Our Court

has already recognized right to pursue his business relations or

employment free from interference on the part of other persons except where such interference is justified or constitutes an exercise of an absolute right Birl, 167 A.2d at 474 (emphasis added). At-will employment though generally characterized by the

ability of the parties to the employment relationship to terminate the relationship at any time and for any reason or no reason 11 is employment nonetheless. Moreover, while we acknowledge that at-will employment does not confer a contractual employment as between the parties to the employment relationship, it does not follow that

11 See infra at pages 30-31.

[J-4-2023] - 22 an employee has no protectable interest whatsoever in the continuance of that employment relationship vis-à-vis third parties: The fact that the employment is at the will of the parties . . . does not make it one at the will of others. The employee has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion and, by the weight of authority, the unjustified interference of third persons is actionable although the employment is at will. Truax, 239 U.S. at 38. Furthermore, insofar as this Court has looked to the approach of other jurisdictions in determining whether to apply common law rules, 12 the weight of authority indeed appears to be aligned with our decision to recognize such claims based

on similar reasoning. 13

12 See, e.g., Bilt-Rite Contractors, Inc. v. The Architectural Studio, 866 A.2d 270, 285 (Pa. 2005) (explaining that Court was persuaded by decisions of sister jurisdictions to formally adopt restatement provision as applied by those jurisdictions in particular scenario); Tincher, 103 A.3d at 355 & n.7 (providing th should consider whether the application [of a general common law principle as set forth in restatement provision] is logical and serves the interests of justice, and whether the general principle has been But see id. at 355 n.7 (dispute regarding the essential nature of the modern Restatements and whether

uniformity among jurisdictions is necessary and wise 13 See, e.g., , 571 N.E.2d 282, 284-85 [-]will employment relationships cannot form the basis of a claim for interference with a -will employment contracts are unenforceable ; Mendelson v. Blatz Brewing

Co., 101 N.W.2d 805, 807 (Wis. 1960) Wisconsin has aligned itself with the majority in holding that a cause of action is maintainable for unlawful interference with an employment contract terminable at will ; Wagenseller v. Scottsdale Me l Hosp., 710 P.2d 1025, 1041-42 (Ariz. 1985) (relying upon, inter alia, Truax and Comment g to at- -will employment contract), superseded in part by statute

on other grounds as stated in Galati v. Am. W. Airlines, Inc., 69 P.3d 1011, 1013 (Ariz. Ct. App. 2003); RTL Dist., Inc. v. Double S Batteries, Inc., 545 N.W.2d 587, 590 (Iowa Ct. App. 1996) (explaining that [t]he existence of an at-will contract of employment . . . does not insulate a defendant from liability for tortious interferences is terminated, it remains valid and subsisting, and third persons may not improperly

[J-4-2023] - 23 In view of the above, we find the Superior Court decisions in Hennessy, Haun, and the instant matter to be in error in categorically barring intentional interference claims

relative to existing at-will employment relationships. rationale was premised on a distin at-will employment contracts, observing that intentional interference claims were

permitted contractual relationship hich is a protectable interest) but denying such claims in the

continue (which is not a protectable interest). See Salsberg, 262 at 1270-72. This

distinction ignores the expectation interest a party to the at-will employment relationship has in continued employment absent unlawful interference by a third party, identified

above. It also fails to recognize the parallel between t interest in future relations implicated in the context of prospective contractual relations 14 i.e., that there is contractual relationship would have come to fruit

; Nordling v. Northern States Power Co., 478 N.W.2d 498, 505 (Minn. 1991) (a tortious interference

claim will lie for an at-will employment -will employment subsists at the will of the employer and employee, not at the will of a third[-]party meddler who wrongfully interferes with the); Lewis v. Oregon Beauty Supply Co., 733 P.2d 430, 433 (Or. 1987) (noting that parties in at-will employment relationship have same interest in integrity and security of their contract as parties to any other contract and that until party to at-will contract terminates same, it is valid and third party is prohibited from improperly interfering therewith); Forrester v. Stockstill, 869 S.W.2d 328, 330 (Tenn. 1994) (observing that intentional interference with at-will employment by a third party, without privilege or justification, is actionable). 14 O nterest in future relations between the parties, and he has no legal assurance of them. For this reason, an interference with this interest is closely analogous to interference with prospective contractual relations. (See [Section 766B of the Restatement].) Section 766 of the Restatement, Comment g.

[J-4-2023] - 24 interference which our Court has already deemed to be protected in this Commonwealth. Glenn, 272 A.2d at 898-99; Thompson Coal, 412 A.2d at 471. Indeed,

in Glenn, this Court saw whatever why an intentional interference with a prospective business relationship which results in economic loss is not as actionable as where the relation[ship] is presently existing Glenn, 272 A.2d at 897. Similarly, where

our common law permits claims for intentional interference with existing contractual relations and prospective contractual relations, we find no compelling reason to bar in toto a cause of action that is, in essence, a permutation of those two claims.

Accordingly, insofar as we have never before explicitly recognized a claim for intentional interference with an existing at-will employment relationship by a third party, we do so today. 15 This conclusion, however, does not end our inquiry, as ourts around

the country are not in complete agreement over how such an action should be pleaded when the tort involves an employer officer, agent, or employee as the purported third party interfering with the employment relationship. Gruhlke v. Sioux

Empire Fed. Credit Union, Inc., 756 N.W.2d 399, 404 n.1 (S.D. 2008). Nonetheless, it is beyond cavil that any claim for intentional interference with a contractual relationship by a third party requires, inter alia, the existence of an identifiable third-party actor who is

interfering with the relationship between two other parties. To illustrate, in Glazer v. Chandler, 200 A.2d 416 (Pa. 1964), this Court addressed a situation in which the plaintiff sued the defendant in tort for inducing breach of contract and refusing to deal with third

parties. Glazer, 200 A.2d at 417. However, the disclose[d] that [the] defendant breached his contracts with [the] plaintiff and that as an

15 We note our agreement with Mann that this Court has never formally adopted Comment g to Section 766 of the Restatement. Nor do we see a compelling reason to adopt Comment g or elaborate on any particular standards or elements relative to the instant claim asserted beyond what is necessary to and prescribed by our analysis herein.

[J-4-2023] - 25 in ha[d] Id. at 418. This Court explained that, under these circumstances,

ial damages Id. In support, the Court recognized that all successful claims for the tort, whether involving existing or prospective

st[] between third parties and a Id. (footnote omitted). The Court continued: To permit a promisee to sue his promissor in tort for breaches of contract inter se would erode the usual rules of contractual recovery and inject confusion into our well[-]settled forms of actions. Most courts have been cautious about permitting tort recovery for contractual breaches and we are in full accord with this policy. The methods of proof and the damages recoverable in actions for breach of contract are well established and need not be embellished by new procedures or new concepts which might tend to confuse both the bar and litigants. Id. (citations omitted).

Stated another way, Glazer makes clear that a party cannot interfere with its own contract. Gruhlke, 756 N.W.2d at 410 (quoting Latch v. Gratty, Inc., 107 S.W.3d 543, 545 (Tex. 2003)). Moreover, while satisfaction of the left

unquestioned in many scenarios e.g., those that involve a true stranger to the contractual relationship it cannot be in the present context, where the plaintiff has brought a claim against a coworker. It is generally accepted . . . that a corporation can only act through its officers, agents, and employees. See Weatherly Area Sch. Dist. v. Whitewater Challengers, Inc., . . . 616 A.2d 620, 621 ([Pa.] 1992) (noting that governmental agencies, political subdivisions, and private corporations can act only Maier[, 671 A.2d at 707] (concluding employees, agents, and officers of a corporation may not be regarded as separate parties when acting in their official capacity). Indeed, under the doctrine of vicarious liability, the corporation, not the employee, is liable for acts committed by the employee in the course of employment. See Travelers Cas. & Sur. Co. v. Castegnaro, . . . 772 A.2d 456, 460 ([Pa.] 2001) (concluding a principal is

[J-4-2023] - 26 liable for the negligent acts and torts of its agents, as long as those acts occurred within the agent s scope of employment). Tayar v. Camelback Ski Corp., Inc., 47 A.3d 1190, 1196 (Pa. 2012); see also BouSamra v. Excela Health, 210 A.3d 967, 984 n.13 (Pa. 2019) (quoting Petrina v. Allied Glove

Corp., 46 A.3d 795, 799 (Pa. Super. 2012) (which can act or speak only through its officers, directors, or other agents. Where a

representative for a corporation acts within the scope of his or her employment or agency,

the representative and the corporation are one and the same entity, and the acts As noted, the Superior Court has already recognized the import of these pronouncements in circumstances similar to those

here. Curran, 578 A.2d at 13 and that, because clinical director who terminated employee was agent of

organization- no third party against whom an action for intentional

); Maier, 671 A.2d at 707 (rejecting ;

officers, and such agents or officers cannot be regarded as third parties when they are

Martin v. Cap. Cities Media, Inc., 511 A.2d 830, 845 (Pa. Super. 1986) -will status as a broad type of contract which could be interfered with, we hold that this allegation is improper in light of

the fact that the claim is made by an employee against the publisher of the newspaper

[J-4-2023] - 27 where she worked. There was no third[-]party (emphasis in original)), appeal denied, 523 A.2d 1132 (Pa. 1987). 16

Thus, it is clear that a plaintiff cannot sue a coworker for the tort of intentional interference with contractual relations between the plaintiff and her employer unless the alleged misconduct of the coworker falls outside of the scope of

employment or authority. Finally, while not heretofore mentioned by this Court in relation to intentional interference claims, we have McGuire ex rel. Neidig v. City of Pittsburgh, 285 A.3d 887, 892

(Pa. 2022). Pursuant thereto: (1) Conduct of a servant is within the scope of employment if, but only if: (a) it is of the kind he is employed to perform;

16 The Superior Court has also rejected claims in this context for both want of a third party and, in line with our decision in Menefee, the existence of a privilege. Rimbach, 519 A.2d at 1002-03 corporation, and that contract is terminated by a corporate agent who has acted within

the scope of his or her authority, the corporation and its agent are considered one so that be [the defendant], acting within the scope of his authority as its corporate officer, was

f corporation did not give rise to claim for intentional interference); Nix, 596 A.2d at 1137 (rejecting

claim because defendants were administrative officers acting on behalf of university when employee was discharged and, thus, were not third parties; further concluding that alleged

employees, by virtue of the responsibilities of their offices, are permitted to take action which would have the effect of interfering with a contractual relationship between the ; Rutherfoord, 612 A.2d at 508 (holding that no third party existed for purposes of intentional interference claim because defendants were acting as agents for hospital and further rejecting claim that defendant can be liable for intentional and improper inducement even though defendant is not a separate entity on grounds that defendants were privileged to cause corporate employer to terminate employee). Given t of the tort and our ultimate conclusion discussed below that Salsbergfor lack of a third party, we need not proceed to address

[J-4-2023] - 28 (b) it occurs substantially within the authorized time and space limits; (c) it is actuated, at least in part, by a purpose to serve the master, and (d) if force is intentionally used by the servant against another, the use of force is not unexpectable by the master. (2) Conduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time or space limits, or too little actuated by a purpose to serve the master. We likewise find it appropriate to conduct analysis through use of these factors.

In sum, we reiterate that a third party can be liable for intentional interference with an at-will employment relationship between an employee and employer in Pennsylvania. In the case of an employee asserting the tort against a coworker, the coworker cannot be

held liable unless, at a minimum, the coworker is acting outside the scope of her employment pursuant to Section 228 of the Restatement (Second) of Agency such that she qualifies as a true third party, or stranger, to the contractual relationship. This

conclusion is in accord with our common law and the law of other jurisdictions, 17 and it

17 See, e.g., Gruhlke, 756 N.W.2d at 408 when corporate officers act within the scope of employment, even if those actions are only partially motivated to serve their employer s interests, the officers are not third parties to a contract between the corporate employer and another in compliance with the requirements for the tort of intentional); Latch, 107 S.W.3d at 545 corporate agent on behalf of his or her principal are ordinarily deemed to be the

contract, the plaintiff must prove the agent acted solely in furtherance of [his or her]

personal interests so as to preserve the logically necessary rule that a party cannot tortiously interfere with its own contract. (internal citations and quotation marks omitted) (alteration in original)); McGanty v. Staudenraus, 901 P.2d 841, 846-47, 849 (Or. 1995) (holding that employee acting within scope of employment is not third party to contract between employer and another for purpose of tort

of intentional interference with economic relations and); Reed v. Michigan Metro Girl Scout Council, 506 N.W.2d 231, 233 (Mich. Ct. App To maintain a cause of action for tortious interference, the plaintiffs must establish that the defendant was a third party to the contract or business relationship. . . . It is now settled law that corporate agents are not liable for tortious interference with the corporation s contracts .

[J-4-2023] - 29 serves the interests of justice. In this vein, we find the observations made by the Supreme Court of South Dakota, which has employed a similar analysis to that which we adopt

this specific tort, to be particularly apt as concerns Pennsylvania jurisprudence as well: In the employment context, we think a claim of tortious interference with contractual relations may be made against a corporate officer, director, supervisor, or co-worker, who acts wholly outside the scope of employment, and who acts through improper means or for an improper purpose. Such individuals should not stand immune from their independently improper acts committed entirely for personal ends. There are two reasons, however, why judicial vigilance is called for here. First, the tort should not be tolerated as a device to bypass South Dakota s at-will employment law. employment having no specified term may be terminated at the will of either

If we fail to hold the line on these types of tort actions, we put at stake converting at-will employment law into a rule requiring just cause for every employee termination. . . . . Second, use of the tort without adequate controls could chill the advantages of corporate formation. As the Minnesota Supreme Court wrote: If a corporation s officer or agent acting pursuant to his company duties terminates or causes to be terminated an employee, the actions are those of the corporation; the employee s dispute is with the company employer for breach of contract, not the agent individually for a tort. To allow the officer or agent to be sued and to be personally liable would chill corporate personnel from performing their duties and would be contrary to the limited liability accorded incorporation. Nordling v. N. States Power Co., 478 N.W.2d 498, 505-06 (Minn. 1991). Indeed, a rule allowing suits against corporate officers who act within the distinction between contract and tort would be blurred by the untrammeled

imposition of tort liability on contracting parties. Gruhlke, 756 N.W.2d at 405 (some internal citations omitted). This Court has likewise already cautioned against between tort-based and contract-based theories of recovery in the context of claims for

intentional interference with contractual relations. Glazer, 200 A.2d at 418. We similarly

[J-4-2023] - 30 acknowledge the concern that allowing the tort recognized here today risks eviscerating our at-will employment principles and stifling ability to structure and conduct

their businesses as they choose. Our Commonwealth operates not only under presumption [that] all non-contractual employment relations [are] at[ ]

pursuant to the well-settled rule that the parties to the at-will employment relationship may

terminate the relationship at any time, for any reason or no reason, except in the most limited of circumstances. Weaver, 975 A.2d at 562-63; McLaughlin, 750 A.2d at 286-87; Rothrock v. Rothrock Motor Sales, Inc., 883 A.2d 511, 512 n.1, 516 (Pa. 2005) (further

exceptions to at-will termination should be few and carefully sculpted so as to not erode

include instances in which the discharge of an at-will employee would violate a

Weaver, 975 A.2d at 556; McLaughlin, 750 A.2d at 287; Socko

v. Mid-Atlantic Sys., of CPA, Inc., 126 A.3d 1266, 1273 (Pa. 2015) general rule, there is no common law cause of action against an employer for termination

of an at- Clay v. Advanced Comp. Applications, Inc., 559 A.2d 917, 918 (Pa. 1989); see also Geary, 319 A.2d at 184-85 (holding that where

-will employment relationship and no clear mandate of public policy is violated thereby, an employee at will

These pronouncements exemplify the limited impact tort law has in the at-will employment arena in Pennsylvania, as the Superior Court correctly noted below in the

[J-4-2023] - 31 instant matter. Moreover, while our wrongful discharge the significant limitations on the ability of at-will employees to sue their former employers for wrongful

our discussion herein lays bare our respectful disagreement with the notion that Salsberg, 262 A.3d at 1275 (Stabile, J., dissenting). Rather, such concerns are directly implicated insofar as we recognize that

allowing the tort in this context breeds potential for parties to use it to around at- Gruhlke, 756 N.W.2d at 405. We, therefore, agree that

courts must remain vigilant against such a practice when addressing claims of intentional

interference with contractual relationships by third parties in the at-will employment context. Having set forth the above standards, we now turn to the circumstances of this

case. In doing so, we are mindful that the trial court decided this matter on a motion for summary judgment filed by Mann and Drexel. It is well settled that summary judgment should be awarded only

in cases where the record contains no genuine issue of material

fact, and the moving party is entitled to judgment as a matter of law. Williams, 278 A.3d at 871. As we are reviewing the Superior Court s order affirming the grant of summary judgment, we view the record in the light most favorable to Salsberg as the non-moving

party. Bourgeois v. Snow Time, Inc., 242 A.3d 637, 639 n.1 (Pa. 2020). Upon review, we conclude that the trial court did not err in granting the motion for summary judgment ractual relations,

albeit on different grounds. Specifically, we hold that Salsberg has failed to establish that there exists a genuine issue of material fact that Mann acted outside the scope of her employment such that Mann qualifies as a third party to the employment relationship

between Salsberg and Drexel.

[J-4-2023] - 32 Preliminarily, it is undisputed that Drexel employed Salsberg as an at-will employee in its Tax Department under the supervision of Mann at all times relevant

herein. Moreover, the record reveals that Mann supervisory duties encompassed the authority to evaluate and address job performance, and make employment, including recommendations on hiring, promoting, and firing Salsberg. 18

erformance annually through 2016, providing Salsberg

18 (See Original Record (O.R.), Item No. 24, Motion for Summary Judgment, Exhibit B, Policy (outlining PIP procedures and identifying termination upon consultation and approval with HR, and

preserving at-will nature of employment relationship); Exhibit F (letter dated September 26, 2011, from HR offering Salsberg position of senior tax a [u]pon of . March 19, 2015, from HR Compliance withi will work under

the direction of . . . Mann, providing that ; Exhibit I,

Policy (, coverage during

Drexel Business Hours so all Professional Staff Members of the work group are aware of Exhibit L (PIP issued by Mann to Salsberg on March 22, 2017, identifying performance issues); Exhibit O (email dated May 29, 2017, from Mann to HR Representative regarding May 26, 2017 meeting between Mann and Salsberg on PIP progress and setting forth continued performance issues); Exhibit P, (providing guidelines for termination of employment but preserving at-will status of professional staff members); Exhibit Q (letter dated June 2, was] being ter nsatisfactory

[Mann] has observed deficiencies and the lack of demonstrated improvement to meet

(See also Deposition at 54-56, 77-78, 121-22, 211-12, 216 (acknowledging that schedule and set work assignments, made recommendations promotion and discharge, and reviewed work).)

[J-4-2023] - 33 consistently positive reviews each year. (O.R., Item No. 27, Exhibit 2, at 29-30, 55.) In March 2015, Salsberg was promoted to Manager of Tax Compliance

upon Mann ecommendation. (O.R., Item No. 24, Motion for Summary Judgment, Exhibit H.) During Salsberg Office consisted of four people: Mann, Salsberg, Hillary Stein (Stein), and Kate Rosenberger (Rosenberger).

at 24-27, 128.) Mann supervised Stein (in addition to Salsberg), while Salsberg supervised Rosenberger. (Id.) account reveals as follows. Mann and Salsberg had a good working relationship up until

March 10, 2017. (at 113-14, 125.) On that date, Salsberg, Mann, and Stein had a meeting to discuss workload, the need to work overtime, and the need

to cover for Rosenberger while Rosenberger was out (Id. at 24-25, 28, 33-34.) Though Mann expressed the need for Salsberg and Stein to work overtime, Mann did not indicate how many hours were necessary when Salsberg asked.

(Id. at 33, 124.) Indeed, Salsberg it was necessary to work overtime 19 (Id. at 42, 114, 123.) Salsberg expressed these thoughts to Mann at the March 10, 2017 meeting, though

Salsberg did not say that she would or would not work the overtime because she did not know what was expected. (Id. at 114, 163-64.) Stein also did not believe overtime was necessary and apparently indicated that at the March 10, 2017 meeting as well. (Id. at

121.) In response, Mann explained that Rusenko University was going through changes . . .

19 Pertinently, while was working from 7:00 a.m. to 3:00 p.m. at the time leading up to her separation based on a request to and approval by -32.)

[J-4-2023] - 34 and Stein. (Id. at 114, 116, 124.) According to Salsberg, it seemed like Mann was using Rusenko as her reason for requiring the extra work. (Id. at 163.) Moreover, the meeting

on March 10, 2017, and (Id. at 123.) Based on the foregoing, on March 13, 2017, Salsberg took it upon herself to meet with Rusenko directly. (Id. at 24-25.) Salsberg did not consider her meeting with Rusenko

to be an official action pursuant to any policy; rather, Salsberg went to Rusenko hoping to help herself and Mann. (Id. at 139, 164-65.) In this regard, Salsberg sought the meeting for two specific reasons: (1) to obtain clarity as to the issues discussed at the

March 10, 2017 meeting, particularly as to how much overtime would be required to work; and (2) to discuss certain concerning behaviors that Salsberg had observed Mann exhibiting in the office. (Id. at 33-35, 44, 48-50, 56-57, 116, 124, 151.) With respect to

the overtime issue, Salsberg and Rusenko discussed certain alternative solutions to address the overtime demands an given her family responsibilities outside of work. (Id. at 49, 148.) worked hard during

hat [Mann] did nothing all Id. at 115, 123.) [Mann] e.g. Id. at 49-50.)

Salsberg and Rusenko speculated as to whether this behavior stemmed from

concussions Mann had previously suffered, and Rusenko i Id. at 143.) Ultimately, however,

Rusenko did not provide additional clarity on the amount of overtime that would be

required of Salsberg and said that Salsberg should discuss her concerns with Mann. (Id. at 35, 147-49.) While Salsberg asked Rusenko to accompany Salsberg in addressing

[J-4-2023] - 35 Id. at 148-49.) Salsberg also

expressed to Rusenko that she was afraid that Mann would retaliate against Salsberg for (Id. at 57-58.) While have that meeting with [Rusenko],

. . . [Salsberg] felt . . . , Id. at 138-39.) In

response, Rusenko told Salsberg not to worry because Drexel took retaliation very

seriously. (Id. at 65.) After meeting with Rusenko, and in accordance with his recommendations, Salsberg approached Mann. (Id. at 35, 170.) Mann, however, indicated that she would

not speak to Salsberg without the presence of HR. (Id. at 51, 170.) [p]retty did not speak with Salsberg in the absence of HR from the March 10, 2017 meeting until Salsberg was terminated on June 2, 2017. (Id. at 51-54, 120.) Mann did, however,

meet with Salsberg and an HR representative two or three times, including for purposes of issuing Salsberg a PIP on March 22, 2017, and discharging Salsberg. (Id. at 51-54, 120, 170-71, 179.) With

respect to the PIP in particular, Salsberg stated that the PIP was

the first time Mann indicated (Id. at 178-79.) Salsberg refused to sign the PIP because she did not agree with it. (Id. at 171-72.) As for the termination meeting, Salsberg explained that Mann and an HR

representative handed Salsberg a letter and said she was being terminated for performance issues. (Id. at 179-81.) Salsberg does not know who made the decision to discharge her. (Id. at 181.)

According to Salsberg, her fear that Mann would retaliate against her for meeting with Rusenko was borne out. (Id. at 59.) In furtherance of her position that Mann began

[J-4-2023] - 36 treating her differently after that meeting, Salsberg explained that Mann purposefully excluded Salsberg from a learning opportunity at work, refused to approve time off for

office. (Id. at 59-60, 140-43.) Salsberg also accused Mann of lying to Rusenko about

Salsberg screaming in the March 10, 2017 meeting. (Id. at 162.) Salsberg additionally

Specifically, Mann indicated in the PIP, inter alia expected in (2) needed to improve the quality

of [her] work as [her] final work product should have minimal/no errors, especially at the additional responsibilities the Tax Office is required to take on by working extra hours to

at the March 10, 2017 meeting, was disrespectful out where [she was]

needed. (O.R., Item No. 24, Exhibit L, PIP issued 3/22/2017, at 1.) In contrast, Salsberg thought that she was a good manager, and she worked the overtime requested of her. 172.) Salsberg also stated that the work she was producing

had only minimal errors while adding that the PIP, 20 but that Salsberg improved while on the PIP and tried her hardest because she loved her job and was a good employee. (Id. at 173-74.) Salsberg also emphasized that,

at the March 10, 2017 meeting, Salsberg only stated that overtime was unnecessary, not that she refused to work overtime. (Id. at 175.) Salsberg added that she worked extra

20 Mann provided Salsbe as to the tax returns Salsberg completed both before and after Mann placed Salsberg on the PIP. (at 53-56, 174 thought [Salsberg] needed to make a change or improve." (Id. at 56.)

[J-4-2023] - 37 hours but felt that Mann did not utilize her during that time, that she [she] , and that

Mann even thanked her for the overtime she put in

during still said it was not enough. (Id. at 44-47, 149-50, 177.) Given that Mann had never indicated that Salsberg was not putting in enough overtime up until that point, Salsberg believed that

Mann Salsberg so that she did not work enough. (Id. at 177.) Salsberg also indicated that her experience was not an isolated incident, as Mann also Stein, others left the office because of Mann, and Mann engaged in certain documentation

Id. at 119, 188-93.) in the light most favorable to Salsberg, we conclude that there is no genuine issue of material fact as to

whether Mann acted outside the scope of her authority such that Mann can be considered a third party that is liable for intentionally interfering wi -will employment relationship with Drexel. 21 As an initial matter, there is no dispute that Ma at

all relevant times fell within authorized time and space limits and that this matter does not

21 Justice Mundy expresses a preference for remanding this matter to allow the parties to employment. In support, Justice Mundy suggesting the allegation alone creates a genuine issue of material fact notwithstanding

the undisputed record evidence discussed above. (Concurring and Dissenting Op. at 2-3 (Mundy, J.) (quoting Complaint, 6/30/2017, ¶ 97 at 10).) In responding to a motion for Bank

of Am., N.A. v. Gibson, 102 A.3d 462, 464 (Pa. Super. 2014), appeal denied, 112 A.3d 648 (Pa. 2015). Instead, -moving party must adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof such that a jury Ertel v. Patriot-News Co., 674 A.2d 1038, 1042 (Pa. 1996) (emphasis added), cert. denied, 519 U.S. 1008 (1996). A non-mova Id. As explained

herein, our review reveals that there is no genuine issue of material fact on the scope-of- employment issue as demonstrated by the evidence of record, even when viewed in the light most favorable to Salsberg.

[J-4-2023] - 38 involve any use of force. See Section 228(1)(b), (d) of Restatement (Second) of Agency. supervising Salsberg (i.e., directing ing performance, and making).

See Section 228(1)(a) of the Restatement (Second) of Agency. Finally, we conclude that

there is no issue of genuine material fact that Mann ed, at least in Section 228(1)(c) of the Restatement (Agency). While this issue appears to be the most contested by the parties, Salsberg admitted that

she openly Off increased workload , by-passed Mann by raising the issue at a meeting own supervisor even though Salsberg knew the meeting would anger Mann,

and stated that Mann had mental health issues during that meeting. Salsberg also does not dispute that Mann was displeased with the amount of hours that Salsberg was working attitude and performance as a manager, including as it related to admitted

. As noted in Geary, decided in the wrongful discharge context but administr were good, and an employer can fire an at-will employee to advance that interest subject

to limitations not at issue here. Geary, 319 A.2d at 178-79. 22 Thus, even accepting that

22 In Geary, an at-will employee working for United States Steel Corporation (US Steel) repeatedly voiced concerns -passing his the product. Geary, 319 A.2d at 173, 180. While the product was ultimately reevaluated

and withdrawn from the market, Geary was fired. Id. at 173-74. This Court rejected - plausible and legitimate reason for terminating an at-will employment relationship and no

clear mandate of public policy is violated thereby, an employee at will has no right of Id. at 180. The Court reasoned that that

[J-4-2023] - 39 the additional hours were unnecessary, the expectations were not clear, Salsberg with her work, Salsberg met with Rusenko for the benefit of herself and Mann,

and Mann there is no genuine dispute that Salsberg was terminated at least in part for a purpose to serve Drexel. See, e.g., Gruhlke, 756 N.W.2d at 409-10 (rejecting claim that plaintiff sufficiently

] business relationship with

between the corporate employer and another if the actions of the officers were even plaintiff failed to allege that defendant ; see also Reed, 506 N.W.2d at 232-33 (rejecting claim

for intentional interference with economic relations against defendant serving as executive director and chief executive officer of girl scout council for failure to show when she allegedly persuaded

the council not to sell [property] to plaintiffs[; a]lthough plaintiffs alleged that [defendant] personally him, these allegations stem[med] from a prior real estate transaction in which [that plaintiff] ultimately sued the council[and,

thus, the [could] not be said to be strictly . Indeed, in light of Geary, and in exercising the

aforementioned judicial vigilance against attempts to circumvent our at-will employment doctrine, we view this case as such an

attempt and reject it accordingly.

[the employee] had made a nuisance of himself, and the company discharged him to Id. at 178.

[J-4-2023] - 40 V. CONCLUSION For the foregoing reasons, we hold that Pennsylvania does not categorically bar

claims for intentional interference with an at-will employment contract or relationship by a third party. 23 As such, we hold that the trial court and Superior Court erred to the extent

23 Chief Justice Todd opines that the Court should decline to recognize the above claim of third-party intentional interference in the at-will employment context because, in that context insofar as Pennsylvania law is concerned no contract exists with which a third party can interfere. The at-will employment doctrine as adopted in Pennsylvania provides that, gen Weaver, 975 A.2d at 557 n.3. From this

doctrine, however, it does not follow that the at-will aspect of the employment relationship renders the entirety of that relationship non-contractual. At a bare minimum, even in an at-will employment scenario, an employer offers to pay an employee for work performed, and the employee agrees to perform that work in exchange for that pay. Indeed, the recognition of at-will employment as contractual is not controversial; as the Chief Justice acknowledges, several jurisdictions recognize that at-will employment is contractual. (Concurring and Dissenting Op. at 3 n.3 (Todd, C.J.).) We fail to see how P at-will employment doctrine, which merely provides that the parties to the employment

relationship can terminate that relationship for any or no reason, negates the contractual context of the other aspects of the employment relationship. Relatedly, insofar as Chief Justice Todd disagrees with our decision on the ground that, because there is no contract for continued employment in the at-will employment context, there can be no breach for which a third party can be liable, we disagree that the absence of such a breach precludes recognition of the tort theory we adopt today. This Court has long recognized that recovery under this tort theory encompasses instances beyond those involving a breach of contract. See, e.g., Birl, 167 A.2d at 474 (explaining that tort applies when third party e explain above, an at-will employee

and her employer have an expectation interest in the continuance of the at-will employment relationship absent unlawful interference by a third party. That the employee or employer can terminate the at-will employment relationship without incurring liability themselves provides no defense for the third party against incurring liability for unlawfully causing the termination of that relationship because both an employer and employee have an expectation interest that a third party

will not so act. Finally, Chief Justice Todd theorizes that the multifactored standards applicable to, and fact-specific nature of, claims of third-party tortious interference with contractual relations will have a significant and detrimental impact on Pennsylvania law in the at-will employment realm. Preliminarily, we reiterate that our decision today recognizes a theory of tort recovery against a third party that unlawfully interferes with the at-will employment

[J-4-2023] - 41 that they reached the opposite conclusion in Hennessy and its progeny insomuch as they do the same. We further hold, however,

that an employee cannot successfully assert this type of claim against a coworker unless the employee demonstrates, inter alia, that the coworker acted outside the scope of her authority under the circumstances of the particular case, thereby rendering the coworker

a true third party, or stranger, to the at-will employment relationship. Finally, because Salsberg failed to establish a genuine issue of material fact as to whether Mann acted outside the scope of her authority such that Mann could be treated as a third party to

-will employment relationship with Drexel, the courts below did not err in concluding that Mann was entitled to summary judgment . We, therefore, affirm the order of the Superior Court, although we do so on different grounds.

Justices Donohue, Dougherty and Wecht join the opinion. Justice Wecht files a concurring opinion in which Justice Donohue joins. Chief Justice Todd files a concurring and dissenting opinion.

Justice Mundy files a concurring and dissenting opinion.

relationship between an employer and an employee. Our decision does not, and cannot, expose an employer or an employee to liability as parties to the employment relationship because, as demonstrated herein, neither the employer nor the employee can interfere with their own at-will employment relationship. Moreover, while our decision opens an avenue for recovery by an employee against another employee of the employer in the at-will employment context, such recovery is permitted only when that other employee is, inter alia, acting as a third party by engaging in conduct that falls outside the scope of her employment a concept not unfamiliar to the law or workplace. Respectfully, and for these reasons, we decline to forego recognition of the tort of third-party intentional interference with contractual relations in the at-will employment context based upon the concerns raised by the Chief Justice.