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As of: September 5, 2018 5:00 PM Z

## **Abbamont v. Piscataway Twp. Bd. of Educ.**

Supreme Court of New Jersey

October 12, 1999, Argued ; December 16, 1999, Decided

A-47 September Term 1998

### **Reporter**

163 N.J. 14 \*; 746 A.2d 997 \*\*; 1999 N.J. LEXIS 1644 \*\*\*

JOSEPH P. **ABBAMONT**, JR., PLAINTIFF-  
RESPONDENT, v. **PISCATAWAY**  
TOWNSHIP BOARD OF EDUCATION,  
DEFENDANT-APPELLANT.

**Prior History:** [\*\*\*1] On appeal from the Superior Court, Appellate Division, whose opinion is reported at [314 N.J. Super. 293, 714 A.2d 958 \(1998\)](#).

### **Core Terms**

public entity, punitive damages, law of the case, revisit, join

### **Syllabus**

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

**Abbamont v. Piscataway** Board of Ed. (A-47-98)

(NOTE: The Court wrote no full opinion in this case. Rather, the judgment

is based on the majority opinion of Judge Skillman of the Appellate Division.)

Argued October 12, 1999 -- Decided December 16, 1999

### **PER CURIAM**

The issue in this case is whether this Court's prior affirmance by an equally divided court of the Appellate Division's judgment, which judgment held that a punitive damage claim may be maintained against a public entity under the Conscientious Employee Protection Act (CEPA), is binding on the lower courts on remand by the "law of the case doctrine."

Joseph **Abbamont** is an industrial arts teacher formerly employed by defendant **Piscataway** Township Board of Education [\*\*\*2] (the Board). After the Board failed to renew his contract for the 1988-89 year, Abbamont filed this CEPA action, claiming that the nonrenewal was in retaliation for his numerous complaints to superiors about unhealthy and dangerous conditions in his classroom. The case was tried over seven days before a jury, which returned a verdict finding that the Board violated CEPA and awarding Abbamont \$ 60,000. The trial court subsequently granted the Board's motion to set aside the verdict and dismiss the complaint on the ground that the evidence did not establish a violation of CEPA.

On appeal, the Appellate Division held unanimously that the trial court erred in determining that **Abbamont** failed to prove a violation of CEPA. [Abbamont v. Piscataway Township Board of Ed., 269 N.J. Super. 11, 634 A.2d 538, \(App.Div.1993\)](#). By a two-to-one vote, the Appellate Division also held that a



claim for punitive damages under CEPA is maintainable against a public entity, and that that claim was triable before a jury. The Appellate Division majority remanded to the trial court for a trial on the issue of punitive damages.

This Court unanimously affirmed the Appellate Division judgment except [\*\*\*3] for that part of the majority decision dealing with the maintainability of a punitive damage claim against a public entity under CEPA. Abbamont v. Piscataway Township Board of Ed., 138 N.J. 405, 650 A.2d 958 (1994)(Abbamont I). The Court divided three-to-three with respect to the maintainability of Abbamont's claim for punitive damages, thereby affirming the Appellate Division's majority decision remanding the punitive damage claim for trial.

Notwithstanding the Appellate Division's judgment in respect of the punitive damage claim and this Court's affirmance of that judgment, on remand the trial court granted the Board's motion to dismiss the punitive damage claim. It concluded that an award of punitive damages against a board of education must be predicated on the conduct of its members, rather than upper level management, and that the record did not contain the slightest evidence indicating that any member of the Board had actual or constructive knowledge of the hidden, illegal and improper motive of the Superintendent of Schools and the principal of the school in which Abbamont taught.

Abbamont subsequently moved for reinstatement to his former position. The trial [\*\*\*4] court denied the motion, relying in substantial part on the fact that Abbamont was now a tenured industrial arts teacher in another school district earning a higher salary than he would be receiving if still employed by the Board. Abbamont also moved for an award

of \$ 633,357 in attorneys' fees and costs. The trial court awarded Abbamont \$ 169,451, placing substantial reliance on the fact that Abbamont had recovered only \$ 60,000 in compensatory damages and that his claims for punitive damages and reinstatement were ultimately denied.

Abbamont appealed the dismissal of his punitive damage claim, the denial of his motion for reinstatement, and the amount of the award of attorneys' fees. The Board cross-appealed, challenging one portion of the fee award. The Appellate Division reversed in a split decision, Judge Skillman writing for the majority. Abbamont v. Piscataway Board of Ed., 314 N.J. Super. 293, 714 A.2d 958 (App.Div.1998). The majority held that although this Court's affirmance by an equally divided Court in *Abbamont I* has no precedential weight in another case, it represents the controlling law of this case under the "law of the case" doctrine. The majority concluded [\*\*\*5] that the trial court's view that punitive damages may be imposed on a board of education solely for the wrongful conduct of its members is inconsistent with *Abbamont I*. It noted that the prevailing opinion in *Abbamont I* had clearly stated that the Board "could be liable for punitive damages based upon a showing 'of actual participation by upper management or wilful indifference' to especially egregious conduct." The Appellate Division majority concluded that based on this language, a board of education may be liable for punitive damages for the egregious misconduct of its superintendent and other high level administrators. It remanded for a jury trial on the issue of punitive damages.

On the reinstatement issue, the Appellate Division held that the Board was required to offer Abbamont appointment to the next available position in the industrial arts department. The Appellate Division also vacated the trial court's order awarding



attorneys' fees and remanded for reconsideration and redetermination at the conclusion of the remand proceedings.

One member of the Appellate Division dissented, expressing the view that neither of the opinions of this Court in *Abbamont* [\*\*\*6] / resolved the question of the liability of public entities for punitive damages under CEPA or constituted the law of the case. The dissent would have addressed the issue on the merits and resolved it finally on the appeal.

The Board appealed to this Court based on the dissenting opinion in the Appellate Division.

**HELD:** This Court's affirmance by an equally divided Court constituted the controlling law under the "law of the case" doctrine and therefore was binding on the lower courts in this case.

1. The judgment of the Appellate Division is affirmed substantially for the reasons set forth in Judge Skillman's majority opinion below.

**JUSTICE VERNIERO, concurring,** writes separately to emphasize that this Court's opinion in *Abbamont I* has no precedential weight in subsequent cases involving the underlying issue of whether punitive damages are available against public entities under CEPA.

**CHIEF JUSTICE PORITZ and JUSTICES O'HERN, GARIBALDI, STEIN, COLEMAN, LONG, and VERNIERO join in the Court's per curiam opinion. JUSTICE VERNIERO has also filed a separate, concurring opinion, in which CHIEF JUSTICE PORITZ and JUSTICE GARIBALDI join.**

**Counsel:** David [\*\*\*7] B. Rubin, argued the cause for appellant.

*Frank M. Ciuffani*, argued the cause for respondent (*Wilentz Goldman & Spitzer*,

*attorneys; Mr. Ciuffani and Christopher W. Hager*, on the brief).

*Richard A. Friedman*, argued the cause for *amicus curiae*, New Jersey Education Association (*Zazzali, Zazzali, Fagella & Nowak*, attorneys).

**Judges:** VERNIERO, J., concurring. Chief Justice PORITZ and Justice GARIBALDI join in this concurring opinion. Chief Justice PORITZ and Justices O'HERN, GARIBALDI, STEIN, COLEMAN, LONG and VERNIERO.

## Opinion

[\*14] [\*\*997] PER CURIAM.

We affirm the judgment of the Appellate Division substantially for the reasons set forth in Judge Skillman's opinion below, [314 N.J. Super. 293, 300-03, 714 A.2d 958 \(1998\)](#). Judge Skillman concluded that this Court's affirmance of [Abbamont v. Piscataway Township Board of Education, 238 N.J. Super. 603, 570 A.2d 479 \(App.Div.1990\)](#), by an equally divided Court on the question whether a punitive damage claim under the Conscientious Employee Protection Act (CEPA), [N.J.S.A. 34:19-1](#) to -8, may be maintained against a public entity, [138 N.J. 405, 650 A.2d 958 \(1994\)](#), [\*\*\*8] (*Abbamont I*), constituted the controlling law under the "law of the case" doctrine, and therefore was binding on the lower courts in this case. [314 N.J. Super. at 301-303](#).

Having so recently addressed in [Cavuoti v. New Jersey Transit Corp., 161 N.J. 107, 735 A.2d 548 \(1999\)](#), the question whether a public entity may be liable for punitive damages under the New Jersey Law Against Discrimination (LAD), [N.J.S.A. 10:5-1](#) to -49, we decline at this time to revisit the issue

raised in *Abbamont I* [\*15] whether a public entity may be liable under CEPA for punitive damages.

**Concur by:** VERNIERO

### **Concur**

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VERNIERO, J., concurring.

I join the Court in affirming the judgment of the Appellate Division on the narrow question involving the "law of the case" doctrine. I write separately to emphasize that under that doctrine, the Court's opinion in *Abbamont v. Piscataway Township Bd. of Educ.*, 138 N.J. 405, 650 A.2d 958 (1994) [\*\*\*9] (*Abbamont I*), would have no precedential weight in subsequent cases involving the underlying issue of whether punitive damages are available against public entities under the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to -8. *Abbamont*, 314 N.J. Super. 293, 301, 714 A.2d 958 (*App.Div.1998*).

In my view, the Legislature did not clearly express its intention to subject public entities to liability for punitive damages under CEPA. As Justice Pollock stated in *Abbamont I*, "[t]he best solution would be for the Legislature to revisit the issue and resolve it definitively." 138 N.J. at 436, 650 A.2d 958 (Pollock, J., concurring and dissenting).

Chief Justice PORITZ and Justice GARIBALDI join in this concurring opinion.

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