IN THE SUPREME COURT OF GUAM

EDGAR RAMOS,
Plaintiff-Appellant,

v.

DOCOMO PACIFIC, INC.,
Defendant-Appellee.

Supreme Court Case No. CVA11-019
Superior Court Case No. CV1414-09

OPINION

Cite as: 2012 Guam 20

Appeal from the Superior Court of Guam
Argued and submitted May 21, 2012
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

TORRES, J.:

[1] Plaintiff-Appellant Edgar Ramos appeals the Superior Court's order dismissing his complaint for wrongful termination and demand for jury trial. Ramos' complaint alleged that he was wrongfully terminated for reporting to the Federal Communications Commission that Defendant-Appellee Docomo Pacific, Inc. falsely informed the Commission that Docomo was in compliance with federal statutes and regulations designed to protect Customer Proprietary Network Information from disclosure. The Superior Court dismissed the complaint, finding that no relevant exception applies to a privately employed person under Guam law that would provide Ramos with relief for termination of his at-will employment. Ramos argues that the trial court erred in finding that Guam does not recognize a common law cause of action by an employee of a private employer who reports to governmental authorities an illegal act committed by the employer and as a result has his employment terminated by the employer.

[2] We join the overwhelming majority of jurisdictions who recognize that an at-will employee cannot be terminated if such termination would be counter to public policy. To prevail under this public policy exception, an employee must prove that:

1. [A] clear public policy existed and was manifested in a state or federal constitution, statute or administrative regulation, or in the common law (the clarity element);

2. [D]ismissing employees under circumstances like those involved in the plaintiff's dismissal would jeopardize the public policy (the jeopardy element);

3. The plaintiff's dismissal was motivated by conduct related to the public policy (the causation element); and

4. The employer lacked overriding legitimate business justification for the dismissal (the overriding justification element).

Henry H. Perritt, Jr., *The Future of Wrongful Dismissal Claims: Where Does Employer Self Interest Lie?*, 58 U. Cin. L. Rev. 397, 398-99 (1989).

[3] Although we recognize a public policy exception to the employment at-will doctrine exists, Ramos did not meet his burden of proving a clear public policy existed under Guam law or that a federal law or regulation accurately articulates Guam's public policy such that it provides a proper basis for his wrongful discharge claim. Accordingly, he did not satisfy the first prong, or "clarity" element, of the four-part test, justifying the adoption of a public policy exception, and we affirm the trial court's dismissal of the complaint on other grounds.

I. FACTUAL AND PROCEDURAL BACKGROUND

[4] Edgar Ramos filed a complaint in the Superior Court of Guam for wrongful termination and demand for jury trial. The complaint alleged Ramos, an at-will employee of Docomo Pacific, Inc. ("Docomo"), reported to the Federal Communications Commission ("FCC") that the company, through one of its officers, had falsely informed the FCC it was in compliance with statutes, regulations and/or rules aimed at protecting Customer Proprietary Network Information ("CPNI").[1] The complaint further alleged that as a result of Ramos' report to the FCC, Ramos'

[1] The term "customer proprietary network information" means,

> (A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and
>
> (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information.

47 U.S.C.A. § 222(h)(1) (Westlaw through Pub. L. 112-197 (2012)).

employment with Docomo was terminated, or Docomo intentionally created intolerable conditions that induced Ramos to leave his employment.[2]

[5] After Ramos amended his complaint and both parties engaged in discovery, Docomo filed a motion for judgment on the pleadings arguing that Ramos' wrongful termination claim in tort must be dismissed because Guam law does not recognize a public policy exception to the at-will employment doctrine. Ramos, in turn, argued the court should recognize a cause of action which encourages employees to report to the authorities when employers violate the law. The Superior Court of Guam issued a Decision and Order granting Docomo's motion for judgment on the pleadings. The court found "no relevant exception applying to a privately employed person under Guam [s]tatute that would provide [Ramos] with relief for his termination of an at-will employment." Record on Appeal ("RA"), tab 26 at 2 (Dec. & Order, Aug. 30, 2011). Ramos appeals.

II. JURISDICTION

[6] This court has jurisdiction over appeals from a final judgment. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 112-197 (2012)); 7 GCA §§ 3107, 3108(a) (2005).

III. STANDARD OF REVIEW

[7] In the federal courts, a motion for judgment on the pleadings pursuant to Federal Rules of Civil Procedure Rule 12(c) is subject to the same standard of review as a motion to dismiss under Rule 12(b)(6). *Warrior Sports, Inc. v. Nat'l Collegiate Athletic Ass'n*, 623 F.3d 281, 284 (6th Cir. 2010); *Buchanan–Moore v. Cnty. of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009); *Cleveland v. Caplaw Enters.*, 448 F.3d 518, 521 (2d Cir. 2006); *Dworkin v. Hustler Magazine,*

[2] It is not clear in the record whether Ramos was terminated or if he resigned.

Inc., 867 F.2d 1188, 1192 (9th Cir. 1989). In the past, this court has referenced federal case law when the Guam Rules of Civil Procedure are identical to the Federal Rules of Civil Procedure. *See Sananap v. Cyfred, Ltd.*, 2011 Guam 21 ¶ 14 n.13. *Compare* Guam R. Civ. P. 12(c), *with* Fed. R. Civ. P. 12(c). In Guam, "[p]ursuant to this court's power on appeal to convert a Rule 12(b)(6) motion to dismiss into a summary judgment motion, the appropriate standard to review the grant of a motion for summary judgment is . . . *de novo*." *Core Tech Int'l Corp. v. Hanil Eng'g & Constr. Co.*, 2010 Guam 13 ¶16; *see also Iizuka Corp. v. Kawasho Int'l (Guam), Inc.*, 1997 Guam 10 ¶ 7; *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996).

IV. ANALYSIS

[8] Ramos argues this court "has never determined whether Guam recognizes a cause of action for wrongful termination on the basis that an employer terminated its employee because the employee reported illegal activities of the employer to Governmental Authorities." Appellant's Br. at 7 (Jan. 30, 2012). Ramos rests his argument on the District Court of Guam's decision in *Hill v. Booz Allen Hamilton, Inc.*, in which the district court noted forty-three states recognize a public policy exception to the at-will employment doctrine. 2009 WL 1620403, at *11 (D. Guam June 9, 2009).

[9] Docomo argues the Superior Court correctly held that Guam does not recognize a public policy exception to the at-will doctrine for employees of private companies. Appellee's Br. at 6 (Feb. 29, 2012). It supports this argument by urging this court to uphold the existing Guam statutory scheme which provides for no exception to at-will employment for private employees, reminding this court that case law from other jurisdictions is not controlling and such law should not alter the Guam statutory scheme. *Id.* at 11. Docomo further contends that under the

separation of powers principle, the question of whether to create an exception to the at-will doctrine for private employees is a matter for the Guam Legislature, not for the court system. *Id.* at 15. Finally, Docomo argues that if this court recognizes a public policy exception, it should protect employers against bad faith actions and retaliation. *Id.* at 17.

A. Supreme Court's Authority to Create a Public Policy Exception to the Employment At-Will Doctrine

[10] We give great deference to the Guam Legislature. As we have previously held, "it is not this court's function to legislate those protections by implication." *Sky Enter. v. Kobayashi*, 2003 Guam 5 ¶ 11 (quoting *Paulino v. Biscoe*, 2000 Guam 13 ¶ 28); *see also Bank of Guam v. Reidy*, 2001 Guam 14 ¶ 22 ("[J]udicial legislation . . . is clearly not the prerogative of the courts."); *People v. Villapando*, 1999 Guam 31 ¶ 54 ("[I]t is within the purview of the Legislature to make statutory changes to an ill-conceived statutory scheme."); *People v. Palomo*, 1998 Guam 12 ¶ 17 ("Although a harsh result may occur, the problem exists not within the judicial system, but instead with the Legislature where the sole remedy lies in the amendment or repeal of [the statute in question].").

[11] We believe, however, that we would not be at odds with legislative intent if we were to adopt a public policy exception to the at-will employment doctrine. Docomo argues 18 GCA § 55404 (2005), Guam's at-will employment statute, is "plain, clear and unambiguous . . . [in not] provid[ing] an exception for whistleblowers working for private companies." Appellee's Br. at 6. Docomo adds:

> The Guam Legislature had the opportunity to add a whistleblower exception for private employees, but did not do so. Specifically, in 4 GCA §§ 4501, *et seq.* the Legislature enacted a narrow whistleblower protection scheme to shield *public employees working for the Government of Guam* who satisfy certain requirements before making public disclosures. The Legislature could have crafted the statute

> more broadly to cover employees working for private employers like Docomo, but did not. This decision should be deemed to have been deliberate.

Id. at 7 (footnote omitted). The legislature recently revised sections 4501-4508 and specifically amended the section entitled, "Public Employee Protection." 4 GCA §§ 4501-4508 (added by Guam Pub. L. 24-069:1 (Sept. 30, 1967) and Guam Pub. L. 31-138:3 (Nov. 17, 2011)). Title 4 applies only to public employees and the government. *See* 4 GCA § 4501. We, therefore decline to conclude, as Docomo suggests, that the omission of private employees from the public employee whistleblower statute indicates a decision on the part of the legislature to preclude whistleblower protection to private employees. Appellee's Br. at 7. The legislature would not insert a provision to protect private employees in a Title, Chapter, and Section dedicated exclusively to public officers and employees.

[12] Moreover, although we give great deference to the legislature, we are not stripped of our ability to create judicial exceptions when such exceptions are well-recognized and based on sound public policy. For centuries, judges across all fields created common law before, and in the absence of, legislation. This court also has jurisdiction over any cause in Guam decided by the Superior Court. Section 1424–1 of the Organic Act reads in relevant part:

> (a) The Supreme Court of Guam shall be the highest court of the judicial branch of Guam (excluding the District Court of Guam) and shall
>
> > (1) have original jurisdiction over proceedings necessary to protect its appellate jurisdiction and supervisory authority and such other original jurisdiction as the laws of Guam may provide;
> >
> > (2) have jurisdiction to hear appeals over any cause in Guam decided by the Superior Court of Guam or other courts established under the laws of Guam;
> >
> > . . . .

48 U.S.C.A. § 1424–1(a)(1)-(2). Furthermore, we have stated that in establishing the Supreme Court of Guam, "Congress adopted a model that puts Guam on a par judicially with the several States, which grants this court the authority to interpret Guam's laws." *People v. Quenga*, 1997 Guam 6 ¶ 13 n.4. Upon the passing of legislation that created the Supreme Court of Guam, the Guam Legislature itself espoused the same sentiment. Guam Pub. L. 21-147 (Jan. 14, 1993) ("Guam has sought since 1974 to establish its own judicial structure responsive to the people of Guam and similar to those of the several States of the Union."). Currently, forty-three jurisdictions have adopted a public policy exception to the at-will employment doctrine.[3] We believe it is time for Guam to adopt an at-will employment doctrine exception similar to the judicial exceptions found throughout most of the country.

B. The Public Policy Exception to the At-Will Employment Doctrine Four-Part Test

[13] We find helpful the four-part test laid out by Professor Henry Perritt in determining whether a clear mandate of public policy warrants the creation of a public policy exception. To prevail under the test, the employee must prove:

1. That a clear public policy existed and was manifested in a state or federal constitution, statute or administrative regulation, or in the common law (the *clarity* element);[4]

2. That dismissing employees under circumstances like those involved in the plaintiff's dismissal would jeopardize the public policy (the *jeopardy* element);

[3] Charles J. Muhl, *The Employment-at-will Doctrine: Three Major Exceptions*, 124 Monthly Lab. Rev. No. 1, 3, 4 (2001), http://www.bls.gov/opub/mlr/2001/01/art1full.pdf.

[4] *See generally United States ex rel. Sikkenga v. Regence BlueCross BlueShield of Utah*, 472 F.3d 702, 730 (10th Cir. 2006) ("A 'clear' public policy must be plainly defined by one of three sources: (1) legislative enactments, (2) constitutional standards, or (3) judicial decisions, and is 'substantial' only if it is of 'overreaching importance to the public, as opposed to the parties only.'" (quoting *Rackley v. Fairview Care Ctrs., Inc.*, 23 P.3d 1022, 1026 (Utah 2001))); *Weaver v. Harpster*, 885 A.2d 1073, 1076 (Pa. Super. Ct. 2005), *rev'd*, 975 A.2d 555 (Pa. 2009).

3. The plaintiff's dismissal was motivated by conduct related to the public policy (the *causation* element); and

4. The employer lacked overriding legitimate business justification for the dismissal (the *overriding justification* element).

Henry H. Perritt, Jr., *The Future of Wrongful Dismissal Claims: Where Does Employer Self Interest Lie?*, 58 U. Cin. L. Rev. 397, 398-99 (1989).[5] The clarity and jeopardy elements are questions of law to be determined by the court, while the causation and overriding justification factors are for the trier of fact. *Collins v. Rizkana*, 652 N.E.2d 653, 658 (Ohio 1995).

[14] The first step in determining whether the plaintiff has stated a cause of action for the tort of wrongful discharge in violation of public policy is to ascertain whether a clear, well-recognized public policy exists. *Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 283 (Iowa 2000). This step, the clarity element, requires close scrutiny of the public policy existing in state or federal law. The court in *Weaver v. Harpster* defined well-settled public policy as follows:

> It is only when a given policy is so obviously for or against the public health, safety, morals or welfare that there is a virtual unanimity of opinion in regard to it, that a court may constitute itself the voice of the community in so declaring. There must be a positive, well-defined, universal public sentiment, deeply integrated in the customs and beliefs of the people and in their conviction of what is just and right and in the interests of the public weal.

885 A.2d 1073, 1076 (Pa. Super. Ct. 2005), *rev'd*, 975 A.2d 555 (Pa. 2009) (citing *Mamlin v.*

[5] Perritt's article has been cited in a wide variety of court opinions and other articles. *See Lower v. Elec. Data Sys. Corp.*, 494 F. Supp. 2d 770, 775 (S.D. Ohio 2007); *Raymond v. U.S.A. Healthcare Ctr. Fort Dodge, L.L.C.*, 468 F. Supp. 2d 1047, 1057 (N.D. Iowa 2006); *Leininger v. Pioneer Nat'l Latex*, 875 N.E.2d 36, 40 (Ohio 2007); Michael J. Phillips, *Toward a Middle Way in the Polarized Debate over Employment at Will*, 30 Am. Bus. L.J. 441, 447 (1992); S. Elizabeth Wilborn, *Revisiting the Public/Private Distinction: Employee Monitoring in the Workplace*, 32 Ga. L. Rev. 825, 859 (1998); Marla J. Weinstein, Comment, *The Limitations of Judicial Innovation: A Case Study of Wrongful Dismissal Litigation in Canada and the United States*, 14 Comp. Lab. L.J. 478, 495 n.108 (1993). Perritt also wrote one of the first books on the subject of the employment-at-will rule and the common law of wrongful dismissal. *See* Henry H. Perritt, Jr., *Employee Dismissal Law and Practice* (2d ed. 1987 & Supp. 1989).

Genoe, 17 A.2d 407, 409 (Pa. 1941)).[6] In determining whether a clear, well-recognized public policy exists for purposes of a cause of action, other courts have primarily looked to their statutes. *Fitzgerald*, 613 N.W.2d at 283. We believe insistence on using only clear, well-recognized public policy to serve as the basis for the wrongful discharge tort emphasizes our continuing general adherence to the at-will employment doctrine and the need to carefully balance the competing interests of the employee, employer, and society. *See id.*

[15] As explained in *Fitzgerald*, state law provides the best foundation of public policy. Laws and regulations promulgated by the Guam Legislature serve as the soundest source for Guam's public policy. The legislature has expressed its intent to protect personal information. Title 9 GCA § 48.10 states:

> *I Liheslaturan Guåhan* finds that both public and private entities on Guam have a duty to safeguard personal information . . . it is incumbent upon all entities that are entrusted with such data to maintain strong security systems to ensure that the personal information will always be protected.

9 GCA § 48.10 (chapter 48 added by Guam Pub. L. 30-004:1, Mar. 13, 2009); *see also* 9 GCA § 48.30(a) ("An individual or entity that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach of the security of the system . . . ." (emphases omitted)). In addition, failure to comply with federal requirements in this area may constitute a breach of local law. *See* 9 GCA § 48.40(b)(2) ("An entity that complies with the notification requirements or procedures pursuant to the rules, regulations, procedures, or guidelines established by the entity's primary or functional Federal regulator shall be in compliance with this Chapter." (emphases omitted)).

[6] The California Supreme Court pronounced that "public policy" is "that principle of law which holds that no citizen can lawfully do that which has a tendency to be injurious to the public or against the public good." *Petermann v. Int'l Bhd. of Teamsters*, 344 P.2d 25, 27 (Cal. Dist. Ct. App. 1959) (citation omitted).

[16] As an entity that owns computerized data, including personal information, Docomo must disclose a breach of its security system under section 48.30. However, Ramos does not allege a breach of security by Docomo. The complaint asserts Docomo "falsely informed the FCC it was CPNI compliant." RA, tab 16 at 4 ¶ 11 (First Am. Compl., July 2, 2010). Therefore, section 48.30 would not apply as no breach was alleged. The language of section 48.10 is aspirational and imprecise in its desire to "safeguard personal information," so this particular statute is not definite enough, in itself, to create a clear, well-recognized public policy to serve as a foundation of Ramos' claim. Furthermore, even if the statute was exacting, Docomo's conduct does not fall within it. Making false statements to the FCC, as Ramos alleges, is plainly different from failing to safeguard personal information. *See* RA, tab 16 at 4 ¶ 11 (First Am. Compl.). As Guam law currently does not reflect a clear, well-recognized public policy against Docomo's actions, Ramos cannot meet the clarity element of the test under state law.

[17] Ramos may still meet the clarity element if he can show that federal law articulates Guam's public policy, and that the court should create a remedy. Federal law has statutes that could serve as a basis for Guam's public policy. *See, e.g.*, 47 U.S.C.A. § 222(a) (Westlaw through Pub. L. 112-197 (2012)) ("Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers . . . ."); Safeguards on the Disclosure of Customer Propriety Information, 47 C.F.R. § 64.2010 (2007) ("Telecommunications carriers must take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI.").

[18] While federal law can serve as a basis for public policy, its use must be carefully considered. The appellate court of Illinois believed federal law must have some impact on the state's citizens. *Pratt v. Caterpillar Tractor Co.*, 500 N.E.2d 1001, 1002-03 (Ill. App. Ct. 1986). According to the court, statutes that articulated "exclusively Federal concerns," such as the Foreign Corrupt Practices Act and Export Administration Act, would not support a claim. *Id.*; Nancy Modesitt, *Wrongful Discharge: The Use of Federal Law as a Source of Public Policy*, 8 U. Pa. J. Lab. & Emp. L. 623, 627-28 [hereinafter *Wrongful Discharge*]. In addition, a New Jersey appellate court determined the Occupational Safety and Health Act ("OSHA") could be the basis of the claim because "there is a strong public policy in New Jersey favoring safety in the workplace." Modesitt, *Wrongful Discharge*, at 628 (citing *Cerracchio v. Alden Leeds, Inc.*, 538 A.2d 1292, 1298 (N.J. Super. Ct. App. Div. 1988)). The court observed the policy was stated in New Jersey's own statutes. *Cerracchio*, 538 A.2d at 1298. At least five other courts have articulated limitations on when federal law can be the public policy of a state.[7]

[19] Given federal law's possible tenuous tie to a "well-defined, universal public sentiment, deeply integrated in the customs and beliefs of the people" and possible preemption issues in creating state tort law remedies by citing federal law, the reviewing court should not blindly rely on federal law as a champion of state public policy. *Weaver*, 885 A.2d at 1076. While federal law can serve as the basis for a claim where the plaintiff alleges an employer violates a federal law, and the violation contravenes the clear and substantial public policies of Guam, we must not treat federal and local law as fungible in terms of whether federal law could serve as the public

[7] *See, e.g., Hysten v. Burlington N. Santa Fe Ry. Co.*, 85 P.3d 1183 (Kan. 2004), *abrogated by* 108 P.3d 437 (Kan. 2004); *Kulch v. Structural Fibers, Inc.*, 677 N.E.2d 308 (Ohio 1997); *Griffin v. Mullinix*, 947 P.2d 177 (Okla. 1997); *McLaughlin v. Gastrointestinal Specialists, Inc.*, 750 A.2d 283, 288-89 (Pa. 2000); *Sedlacek v. Hillis*, 36 P.3d 1014 (Wash. 2001).

policy of Guam. Instead, the court should undertake the following analysis to determine whether federal law can fulfill the requirements for being the source of Guam's public policy for a wrongful discharge claim.

[20] If federal law does not preempt the wrongful discharge claim, the court should initially consider whether a particular federal law articulates the state's public policy by determining whether the state has an interest in promoting greater enforcement of that area of law. Modesitt, *Wrongful Discharge*, at 647. Where there is little or no state interest in the particular area of the law, the court should not rely on federal law as a basis for a public policy claim. *Id.*

[21] If Guam does have an interest in promoting greater enforcement of that area of law, the court must then determine whether it should create a new remedy in the absence of state law. *Id.* Being mindful of the difficulty of Congress to "correct" state court decisions that could be at odds with the court's opinion, the court should proceed prudently. Courts also need to be cautious about creating rights that may be inconsistent with the federal law on which the wrongful discharge claim is based. *Id.*

[22] It is true some courts that have addressed the issue of federal law serving as a basis for a public policy exception have determined such law is sufficient to satisfy the first prong of Perritt's four-part test. *See Faulkner v. United Tech. Corp.*, 693 A.2d 293, 297 (Conn. 1997) (holding federal law can serve as a source of public policy); *Wheeler v. Caterpillar Tractor Co.*, 485 N.E.2d 372, 377 (Ill. 1985) (finding public policy in federal nuclear safety statutes). However, a court should not simply rubber stamp federal law as a substitute for state law in providing a basis for public policy. As stated above, we believe the court should consider whether the federal law articulates a clear, well-recognized state public policy by determining

whether the state has an interest in promoting greater enforcement of that area of law and whether the court should create a remedy. Modesitt, *Wrongful Discharge*, at 647.

[23] Regulatory compliance with federal protocols is important for all private companies, but it does not articulate a deeply integrated custom and belief of Guam's public policy. *See Weaver*, 885 A.2d at 1076. Federal authorities have the discretion to enforce their regulations as they choose. While no doubt some federal law contains public policy Guam may want to endorse, administration of technical regulations concerning the telecommunications industry is not an area this court finds appropriate for greater state enforcement. Moreover, the federal government did not see fit to create whistleblower protection for private employees who reported that their employer had falsely informed the FCC it was in compliance with statutes, regulations and/or rules aimed at protecting CPNI. *See* 47 C.F.R. § 64.2010 (containing regulations on the safeguards on the disclosure of customer proprietary network information). We see no reason why Guam would have an interest in promoting greater enforcement of the federal law aimed at protecting this information. Even assuming arguendo that Guam had an interest in promoting greater enforcement in this area, the creation of a whistleblower remedy not provided for by Congress seems inconsistent with the federal statutory scheme. Maintaining this action under the public policy exception would infringe on the enforcement of a federal law in a way this court does not see fit. If state policy is clearly indicated in the federal law, courts have the ability to use it as a basis for the public policy exception. However, a remedy should not be created by using federal law which does not reflect state public policy in absence of state law.

[24] Finally, the Fourth Amendment right to privacy cannot, in this instance, serve as a basis for state public policy. This public policy is not clearly defined and "far too generalized to

support an argument to an exception to the at-will doctrine." *See Lloyd v. Drake Univ.*, 686 N.W.2d 225, 230 (Iowa 2004). More is required than vague proclamations, and "[a]ny effort to evaluate the public policy exception with generalized concepts of fairness and justice will result in an elimination of the at-will doctrine itself." *Id.* (citing *Fitzgerald*, 613 N.W.2d at 283).

[25] We find Ramos has not asserted conduct by Docomo on which to base a judicial public policy exception to the at-will employment doctrine. Guam law does not reflect a clear, well-recognized public policy against Docomo's alleged actions, and therefore allowing it to serve as a basis for a clear, well-recognized public policy exception would ring hollow. Federal law, which may serve as a basis for the exception, does not reflect Guam's public policy to the extent this court ought to use it to promote greater enforcement of telecommunications regulations. Ramos' failure to meet the first element of the test precludes us from analyzing the remaining three. Accordingly, we affirm the trial court's decision to dismiss the complaint even though we do not agree with the trial court's conclusion that a public policy exception to the employment at-will doctrine cannot exist under Guam law. *See People v. San Nicolas*, 2001 Guam 4 ¶ 29 ("An appellate court may affirm the judgment of a lower court on any ground supported by the record." (citation omitted)); *People v. Castagne*, 83 Cal. Rptr. 3d 37, 41 (Ct. App. 2008) ("[W]e may affirm the judgment on an alternative legal basis if the evidence supporting affirmance is not conflicting.").

IV. CONCLUSION

[26] While we extend great deference to the legislature in the enactment of laws, this deference does not strip the court of its ability to recognize judicial exceptions based on sound public policy. In order to limit situations in which we create such exceptions in the area of

private at-will employment, we adopt a four-part test that places a high burden on both parties before an exception is recognized.

[27] We find in this case that Ramos has not articulated a clear public policy manifested in our local laws, relevant federal statutes, or constitutional rights secured by the Organic Act to satisfy the clarity element of our test. For the reasons set forth above, we **AFFIRM** the trial court's dismissal of Ramos' complaint for wrongful termination.

Original Signed By: Robert J. Torres
ROBERT J. TORRES
Associate Justice

Original Signed By: Katherine A. Maraman
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: F. Philip Carbullido
F. PHILIP CARBULLIDO
Chief Justice