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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1748-16T2

JERSEY CITY MUNICIPAL
UTILITIES AUTHORITY,

Plaintiff-Appellant,

v.

NJ TRANSIT CORPORATION,

Defendant-Respondent,

and

STV GROUP, INC., BET ENGINEERING
CONSULTANTS, INC., PERINI/SLATTERY
JOINT VENTURE and 21st CENTURY RAIL
CORPORATION,

Defendants.

Argued February 13, 2018 – Decided April 5, 2018

Before Judges Gilson and Mayer.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Docket No.
L-2439-16.

Patrick M. Metz argued the cause for appellant
(Dario, Albert, Metz & Eyerman, LLC,
attorneys; Patrick M. Metz, on the brief).

Scott E. Reiser argued the cause for respondent (Lum, Drasco & Positan, LLC, attorneys; Paul A. Sandars, III and Scott E. Reiser, of counsel and on the brief).

PER CURIAM

In 1997, defendant New Jersey Transit Corporation (NJ Transit) installed a light rail line in Jersey City. In 2014, a major water leak occurred in a sewage pipe that NJ Transit had relocated and modified when installing the rail line. The question presented on this appeal is whether the ten-year statute of repose set forth in N.J.S.A. 2A:14-1.1 precludes the claims brought by plaintiff Jersey City Municipal Utilities Authority (JCMUA) seeking damages from NJ Transit relating to the sewage leak. We hold that the statute of repose precludes those claims and, thus, we affirm a November 18, 2016 order dismissing with prejudice the complaint of JCMUA against NJ Transit.

I.

We accept the facts as pled by JCMUA. Beginning in 1997, NJ Transit undertook a project to install a light rail line that ran through Jersey City. To do the work, NJ Transit hired a general contractor and subcontractors. The portion of the project that ran through Jersey City was completed by 2000.

As part of the project, NJ Transit relocated and modified a main sewage line that served Jersey City. JCMUA is a municipal

agency that manages the utilities serving Jersey City, including the sewage system.

In November 2014, JCMUA learned of a major water leak originating from the area under a section of the light rail line. An investigation revealed that the source of the water leak and discharges was a main sewage pipe. The emergency response to the water discharge required a pump station to be shut down, which caused sewage to be discharged into the Hudson River. The leak also caused damage to properties around the leak and discharges. After excavating the area around the leak, and following further investigation, JCMUA concluded that line stops installed in the section of pipe modified and relocated by NJ Transit had deteriorated and caused the leak and discharges. Thus, JCMUA had to repair and replace three twenty-foot sections of the main sewage line.

In November 2015, JCMUA filed a complaint against NJ Transit seeking damages caused by the water leak and discharges. The first complaint alleged eight causes of action, including claims for negligence and gross negligence. NJ Transit moved to dismiss certain counts, for more definitive statements on the remaining counts, including the counts alleging negligence and gross negligence, and to strike the claim for punitive damages.

Following oral arguments, the trial court entered an order on March 22, 2016, granting NJ Transit's motion.

Instead of filing a more definitive statement or otherwise amending the complaint in the first action, on June 13, 2016, JCMUA filed a second complaint. The second complaint named as defendants NJ Transit and its general contractor and subcontractors. The second complaint is the basis of this appeal.

The factual allegations in the second complaint are based on the same facts alleged in the first complaint. JCMUA, however, did not assert a claim for gross negligence. Instead, the complaints against NJ Transit were based on two causes of action: negligence and breaches of contractual duties.

NJ Transit and some of the co-defendants moved to dismiss the complaint under Rule 4:6-2(e), contending it was barred by the statute of repose. After hearing oral argument, the trial judge granted those motions and entered several orders on November 18, 2016. The claims against defendants other than NJ Transit were either dismissed by stipulation or in separate orders.

The trial court explained the reasons for the dismissal against NJ Transit on the record on November 18, 2016. Specifically, the court found that the statute of repose set forth in N.J.S.A. 2A:14-1.1(a) precluded the claims that JCMUA sought to assert. The court also found that JCMUA's claims were not

within the exceptions to the statute of repose that allowed certain actions by "a governmental unit" to be brought beyond the ten-year limitation. See N.J.S.A. 2A:14-1.1(b). In that regard, the court noted that JCMUA had not asserted a claim for gross negligence. Indeed, during oral argument on the motion, the court questioned counsel for JCMUA, and counsel acknowledged that gross negligence had not been asserted. Counsel went on to argue that JCMUA should be given an opportunity to conduct discovery to see if it could uncover facts to support a claim for gross negligence.

JCMUA appealed. Initially, JCMUA appealed the orders dismissing the claims against NJ Transit, the general contractor, and subcontractors. Thereafter, JCMUA withdrew all of the appeals concerning the dismissal of the claims against the general contractor and subcontractors. Thus, the only order on this appeal is the November 18, 2016 order dismissing with prejudice the claims against NJ Transit.

II.

On appeal, JCMUA argues the trial judge erred in dismissing its claims based on the statute of repose because it was entitled to the gross negligence exception available to governmental units. JCMUA also argues that it should have been allowed to amend its complaint to plead a cause of action for gross negligence against

NJ Transit. Finding neither of those arguments persuasive, we affirm.

We use a de novo standard when reviewing an order dismissing a complaint for failure to state a claim. State ex rel. Campagna v. Post Integrations, Inc., 451 N.J. Super. 276, 279 (App. Div. 2017). "When reviewing a motion to dismiss under Rule 4:6-2(e), we assume that the allegations in the pleadings are true and afford the pleader all reasonable inferences." Sparroween, LLC v. Twp. of W. Caldwell, 452 N.J. Super. 329, 339 (App. Div. 2017) (citation omitted). "Where, however, it is clear that the complaint states no basis for relief and that discovery would not provide one, dismissal of the complaint is appropriate." Ibid. (quoting J.D. ex. rel. Scipio-Derrick v. Davy, 415 N.J. Super. 375, 397 (App. Div. 2010)).

The statute of repose imposes a ten-year limitation on construction claims. N.J.S.A. 2A:14-1.1(a). Specifically, the statute states:

No action . . . to recover damages for any deficiency in the design, planning, surveying, supervision or construction of an improvement to real property . . . shall be brought against any person performing or furnishing the design, planning, surveying, supervision of construction or construction of such improvement to real property, more than [ten] years after the performance or furnishing of such services and construction.

[Ibid.]

"The Legislature enacted the statute of repose in construction-defect cases . . . to insulate construction professionals . . . from indefinite liability through operation of the discovery rule." Palisades at Fort Lee Condo. Ass'n v. 100 Old Palisade, LLC, 230 N.J. 427, 453 (2007) (citing Town of Kearny v. Brandt, 214 N.J. 76, 93 (2013)). The statute of repose "is unlike the typical statute of limitation [because t]he time within which suit may be brought under [the statute of repose] is entirely unrelated to the accrual of any cause of action." Daidone v. Buterick Bulkheading, 191 N.J. 557, 564 (2007) (alterations in original) (quoting Rosenberg v. Town of N. Bergen, 61 N.J. 190, 199 (1972)). The ten-year statute of repose "sets the outer limit for the filing of a construction-defect claim" and "begins at the date of a project's substantial completion." Palisades, 230 N.J. at 453. "Unlike a statute of limitations, the [s]tatute of [r]epose 'does not bar a cause of action; its effect, rather, is to prevent what might otherwise be a cause of action[] from ever arising.'" Daidone, 191 N.J. at 564-65 (quoting Rosenberg, 61 N.J. at 199).

There are limited exceptions from the statute of repose for governmental units. The statute of repose creates four categories of actions that are exempt from the statute so long as they are

brought by "a governmental unit." N.J.S.A. 2A:14-1.1(b). Those four exceptions are for claims brought by a governmental unit based on (1) a written warranty, guaranty, or other contract; (2) willful misconduct, gross negligence, or fraudulent concealment; (3) an environmental remediation law or contract for carrying out responsibilities under an environmental remediation law; or (4) any contract for the application, enclosure, removal, or encapsulation of asbestos. Ibid.

Here, JCMUA qualifies as a governmental unit under the statute of repose. See N.J.S.A. 2A:14-1.1(c); Lacey Mun. Utils. Auth. v. N.J. Dep't of Env'tl. Prot., 312 N.J. Super. 298, 305-06 (App. Div. 1998). JCMUA contends it is entitled to the exception from the statute of repose for a claim of gross negligence. There are several flaws with that contention.

First, JCMUA did not plead a claim of gross negligence against NJ Transit. Moreover, this is not a case where JCMUA should be afforded another opportunity to assert such a claim. JCMUA filed its first complaint and asserted a claim for gross negligence. In response, NJ Transit moved for a more definitive statement and the court granted that motion. JCMUA did not provide a more definitive statement, nor did it amend its complaint in the first action. Instead, JCMUA filed a second action without asserting a claim for gross negligence. We can only logically assume that JCMUA candidly


recognized it had no factual basis for asserting a claim of gross negligence and, therefore, properly elected not to do so.

Second, given the facts pled by JCMUA, there are no facts that would support a claim of gross negligence against NJ Transit without including claims against the general contractor or subcontractors. NJ Transit did not perform the work. Instead, it contracted to have a general contractor and subcontractors perform the work. Therefore, JCMUA would have to show that the contractor or subcontractors were grossly negligent in performing the work. It would not be enough to claim that NJ Transit failed to supervise the work of the general contractor and subcontractors unless JCMUA could show that the actual work by the general contractor and subcontractors was grossly negligent. Indeed, here, JCMUA alleges that the negligence was in the installation of the stop lines. JCMUA's claims against the general contractor and subcontractors, however, have been dismissed with prejudice. JCMUA did not appeal those dismissals and, therefore, they are final orders.

In short, the statute of repose precludes the claims JCMUA asserted against NJ Transit and no exception to the statute of repose is available.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


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