SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2569-16T3

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Plaintiff,

v.

GRACE FOSTER, GREGORY FOSTER, and SHARON FOSTER-GAUTIER,

Defendants/Third-Party Plaintiffs-Appellants.

v.

NEW JERSEY TURNPIKE AUTHORITY, COUNTY OF BURLINGTON,

Third-Party Defendant-Respondent.

Argued March 1, 2018 – Decided May 16, 2018

Before Judges Simonelli and Rothstadt.

On appeal from Superior Court of New Jersey, Law Division, Burlington County, Docket No. L-2868-14.

Patrick F. McAndrew argued the cause for appellants.

Michael K. Plumb argued the cause for respondent (Chiesa Shahinian & Giantomasi, PC, attorneys; Michael G. Gordon and John A. McKinney, Jr., on the brief).

PER CURIAM

Defendant Grace Foster, and her adult children, defendants Sharon Foster and Gregory Foster, appeal from the Law Division's order dismissing their third-party complaint under Rule 4:6-2(e) for failing to state a claim upon which relief could be granted against third-party defendant the New Jersey Turnpike Authority (NJTA). Defendants' claim arose from a complaint filed against them by plaintiff the New Jersey Department of Environmental Protection (NJDEP) under the Solid Waste Management Act (SWMA), N.J.S.A. 13:1E-1 to -227, relating to the environmental cleanup of defendants' property where Grace's[1] late husband, Asa Foster, operated a tire salvage and retreading business for many years. The NJTA was a long-time customer of the business that delivered tires to Asa's business for disposal. Defendants alleged that NJTA should be liable for any cleanup costs because of its delivery of tires to the family business. In response to the NJTA's Rule 4:6-2(e) application to dismiss, the motion judge concluded that

[1] We refer to defendants by their first names to avoid confusion and for clarity. No disrespect is intended.

there was no legal basis to hold the NJTA liable for the claims made by defendants.

On appeal, defendants contend that the judge incorrectly determined that the NJTA was not liable under the SWMA's Tire Management and Clean Up Act (TMCUA), N.J.S.A. 13:1E-225(c). We disagree and affirm.

The facts derived from the motion record are summarized as follows. Asa purchased a 93-acre tract located in Tabernacle, New Jersey in the early 1950's. In 1955, Grace purchased the property from Asa. Thirty years later, Gregory purchased a portion of the property from Grace, and in 1994, Sharon purchased a portion of the property as well.

Asa operated a tire salvage and retreading business on the property from 1950 through 1977 until he passed away and the business was terminated. Throughout that time, the NJTA continuously brought tires to the property for disposal.

The NJDEP began investigating the property in 1985, and issued an Administrative Order to Grace for the unlawful disposing and storing of solid waste "in the form of millions of discarded automobile tires at the [property]." Two years later, the NJDEP issued an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA), ordering Grace to "comply with the 1985 Administrative Order and assessing a $5000 penalty." Ten

years later, Grace entered into a Stipulation of Settlement with the NJDEP to resolve the AONOCAPA, and "agreed to remove 250,000 tires from the [property] every six months until all" tires (approximately one million) were removed. Despite that settlement, Grace remained noncompliant, and in 1998, the NJDEP instituted an action to enforce the settlement. A court found Grace liable for the tire removal and ordered her "to comply with the Stipulation of Settlement." Despite the court order, Grace still failed to comply.

Because Grace remained noncompliant, during approximately 2002 through 2005, third-party defendant Burlington County Waste Management (Burlington) proceeded to shred the tires and remove them from the property. In 2004, Burlington made a request to the NJDEP pursuant to the TMCUA, N.J.S.A. 13:1E-225(a), for $300,000 to recover the cost of the partial cleanup it completed and for its continued performance. The NJDEP approved the request and paid Burlington that amount.

After several years of defendants' continued inaction, on November 26, 2014, the NJDEP filed a complaint against defendants, pursuant to the TMCUA, to recover the amount it paid to Burlington and for future costs associated with the tire removal and cleanup of defendants' property. In their complaint, the NJDEP alleged that defendants were jointly and severally liable for the cost of

removing the tires because the property constituted an illegal waste tire site.

Defendants filed an answer, denying their legal obligation to remediate the property, and a third-party complaint. In their complaint, defendants claimed the NJTA was liable for dumping tires on the property, and Burlington was liable for performing an incomplete cleanup.

Burlington and the NJTA moved to dismiss the third-party complaint. Defendants did not oppose Burlington's motion, but filed opposition to the NJTA's motion and cross-moved for leave to amend their third-party complaint. The proposed amended pleading alleged that defendants were entitled to "contribution and damages" from the NJTA because it delivered the tires that accumulated on defendants' property, making it a "responsible" person under the TMCUA. They also argued that the NJTA rather than Grace was "more legal[ly] and moral[ly] responsible" for the accumulated tires and, therefore, should be held liable. They further contended that because the NJDEP failed to pursue the NJTA as a responsible party, defendants could do so under the Environmental Rights Act (ERA), N.J.S.A. 2A:35A-1 to -14.

At oral argument, defendants advanced the arguments set forth in their proposed amended third-party complaint. The NJTA argued that it only delivered tires to Asa who "ran a tire business" and

his "business was to accept tires." It also pointed out that defendants' could not pursue a claim under the TMCUA as the act was for the benefit of the NJDEP only, and the NJTA was not a responsible party because it "had no right to enter the [property] to control what happens with the tires."

The motion judge considered counsels' oral arguments on October 9, 2015, and granted defendants' cross motion to amend its pleading, but granted Burlington's and the NJTA's motions to dismiss the amended third-party complaint with prejudice. The judge found that under N.J.S.A. 13:1E-225, the NJTA did not meet the definition of an "[o]wner . . . or the person responsible for the accumulation of tires . . . ." He explained that the "fair meaning" of the person responsible for accumulating tires is the "person operating" the site.

After the judge granted the NJTA's and Burlington's motions, the NJDEP and defendants entered into a settlement and a consent order. Pursuant to the settlement, the NJEP's complaint against defendants was withdrawn; however, a $300,000 lien remained on Grace's property to secure payment when the property was sold. This appeal followed.

On appeal, defendants argue that their third-party complaint should not have been dismissed because it stated a viable claim

against the NJTA based upon the plain language of the TMCUA, the remedial purpose of the act, and the equities. We disagree.

We review de novo a trial court's order dismissing a complaint under Rule 4:6-2(e), applying the same standard as the trial court. Stop & Shop Supermarket Co. v. Cty. of Bergen, 450 N.J. Super. 286, 290 (App. Div. 2017). That standard requires us to examine the challenged pleadings to determine "whether a cause of action is 'suggested' by the facts." Teamsters Local 97 v. State, 434 N.J. Super. 393, 412 (App. Div. 2014) (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)). We must search the pleading "in depth and with liberality to determine whether a cause of action can be gleaned even from an obscure statement." Seidenberg v. Summit Bank, 348 N.J. Super. 243, 250 (App. Div. 2002). "[I]t is the existence of the fundament of a cause of action . . . that is pivotal[.]'" Teamsters Local 97, 434 N.J. Super. at 412-13 (second alteration in original) (quoting Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005)).

"A pleading should be dismissed if it states no basis for relief and discovery would not provide one." Rezem Family Assocs., LP v. Borough of Millstone, 423 N.J. Super. 103, 113 (App. Div. 2011). Ordinarily, dismissal for failure to state a claim is without prejudice, and the court has discretion to permit a party to amend the pleading to allege additional facts in an

effort to state a claim. See Hoffman v. Hampshire Labs, Inc., 405 N.J. Super. 105, 116 (App. Div. 2009).

We conclude from our de novo review that the motion judge correctly determined that the NJTA was not liable under the TMCUA for any cleanup costs related to defendants' property. The plain language of the act, under which defendants sought to impose liability against the NJTA, simply does not apply to patrons or suppliers of their family's business that was conducted from the property.

We begin our analysis of the statute in accordance with the "well settled [principle] that the goal of statutory interpretation is to ascertain and effectuate the Legislature's intent." State v. Olivero, 221 N.J. 632, 639 (2015). The court's "analysis of a statute begins with its plain language, giving the words their ordinary meaning and significance." In re Estate of Fisher, 443 N.J. Super. 180, 190 (App. Div. 2015); see also Bridgewater-Raritan Educ. Ass'n v. Bd. of Educ., 221 N.J. 349, 361 (2015). "Statutory language is to be interpreted 'in a common sense manner to accomplish the legislative purpose.'" Olivero, 221 N.J. at 639 (quoting N.E.R.I. Corp. v. N.J. Highway Auth., 147 N.J. 223, 236 (1996)). "When that language 'clearly reveals the meaning of the statute, the court's sole function is to enforce the statute in accordance with those terms.'" Ibid. (quoting

McCann v. Clerk of Jersey City, 167 N.J. 311, 320 (2001)). Courts "need not look beyond the statutory terms to determine the Legislature's intent when the statutory terms are clear." In re Rogiers, 396 N.J. Super. 317, 324 (App. Div. 2007). "Only if a statute is ambiguous do [courts] resort to extrinsic aids to ascertain the Legislature's intent." Ibid.

The TMCUA states in pertinent part:

> The [NJDEP] shall recover to the use of the Tire Management and Cleanup Fund from the site owner or the person responsible for the accumulation of tires at the site, jointly and severally, all sums expended from the fund to manage tires at an illegal waste tire site, except that the department may decline to pursue such recovery if it finds the amount involved too small or the likelihood of recovery too uncertain.
>
> [N.J.S.A. 13:1E-225(c) (emphasis added).]

The plain language of the TMCUA does not indicate any intention by Legislature to permit anyone other than the NJDEP to recover under the act. Similarly, it limits liability only to the "site owner" or anyone who permits "the accumulation of tires at the site[.]" Ibid. The TMCUA makes no provision for a private cause of action or any other means for a responsible person to recover from third parties or any right to contribution.

Applying the clear intent of the act here, the NJTA was not a responsible party from whom the NJDEP or defendants could recover

under the act. The fact that the NJTA delivered tires to Asa for disposal did not make it responsible for the accumulation of tires at the site, as it had no control of what happened there after it properly delivered the tires for disposal, and there was no evidence that it directed Asa, in any fashion, as to what to do with the tires once delivered. It is apparent that Asa and his business, until his death, were the sole "person[s] responsible for the accumulation of [the NJTA's] tires at the site" while Grace was the "site owner[.]" Ibid.

Even if defendants could establish that the NJTA was a responsible party under the TMCUA, the statute does not provide for a private cause of action that would support defendants' claim under the act. Contrary to defendants' arguments, no such right can be inferred from the statute. When a statute does not expressly authorize private enforcement actions, our courts "have been reluctant to infer a statutory private right of action where the Legislature has not expressly provided for such action." R.J. Gaydos Ins. Agency, Inc. v. Nat'l Consumer Ins. Co., 168 N.J. 255, 271 (2001). We apply a three-part test for determining whether a statute implies a private cause of action:

> To determine if a statute confers an implied private right of action, courts consider whether: (1) plaintiff is a member of the class for whose special benefit the statute was enacted; (2) there is any evidence that

> the Legislature intended to create a private right of action under the statute; and (3) it is consistent with the underlying purposes of the legislative scheme to infer the existence of such a remedy.
>
> [Id. at 272.]

The undisputed facts in this case do not satisfy the test. There is nothing in the act's language that indicates defendants, as property owners, were intended to benefit from the TMCUA, or suggests a private cause of action, or leads us to conclude that the purpose of the act was to create a remedy for businesses to pursue their customers or suppliers for contribution under the circumstances presented in this case. Rather, it is clear that the purpose of the act was to enable the NJDEP to recover for funds expanded to remedy problems that, as here, property owners ignored.

Turning to defendants remaining arguments, we find them to be without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We only observe that as to the argument relating to the ERA, even if it was applicable, it was undisputed that defendants failed to comply with the statutory notice requirements that are a condition to bringing an action under that act. N.J.S.A. 2A:35A-11.

Affirmed.