SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2937-15T2

ARAGON PARTNERS LP and
AMIR ROSENTHAL,

Plaintiffs-Appellants,

v.

HDOX BIOINFORMATICS, INC.,

Defendant-Respondent.

Argued February 13, 2018 – Decided March 19, 2018

Before Judges Hoffman and Mayer.

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-6758-15.

Mark F. Heinze argued the cause for appellants (Ofeck & Heinze, LLP, attorneys; Mark F. Heinze, on the briefs).

Kenneth R. Rush argued the cause for respondent (DiLorenzo & Rush, attorneys; Kenneth R. Rush, of counsel and on the brief).

PER CURIAM

Plaintiffs Aragon Partners LP (Aragon) and Amir Rosenthal (Amir)[1] appeal from a February 5, 2016 Law Division order, dismissing with prejudice their action against defendant HDOX Bioinformatics, Inc. (HDOX). Plaintiffs' complaint sought repayment of a $120,000 loan HDOX received in 2006. In 2012, Zvi Rosenthal (Amir's father) sued HDOX on the same loan transaction, basing his claim upon a promissory note (Note) bearing a date of August 31, 2006. The case went to trial in May 2013. The jury returned a verdict in favor of HDOX, after finding the Note did not constitute a binding agreement.[2]

In 2015, plaintiffs filed suit in the matter under review. In their complaint, plaintiffs asserted the following claims against HDOX: 1) breach of contract; 2) unjust enrichment; 3) quantum meruit; 4) rescission; and 5) declaratory judgment. Notwithstanding these alternative theories, plaintiffs based their claim on the same loan transaction Zvi relied upon in his 2012 suit. Before filing an answer to the complaint, HDOX filed a

[1] For ease of reference, and intending no disrespect, we refer to Amir and his family members by their given names.

[2] Zvi appealed, arguing the trial court erred in denying various pre-trial and post-trial motions and providing incorrect jury instructions. We rejected those arguments and affirmed. Rosenthal v. HDOX Bioinformatics, Inc., No. A-5402-12 (App. Div. Feb. 3, 2015) (slip op. at 15), certif. denied, 221 N.J. 565 (2015).

motion to dismiss. The motion judge granted dismissal, concluding that res judicata, collateral estoppel, judicial estoppel, and the entire controversy doctrine (ECD) all applied, thus providing multiple bases for barring plaintiffs from pursuing their claims for repayment of the loan. This appeal followed, with plaintiffs arguing the motion judge mistakenly dismissed their complaint because the Note and the oral agreement for the same loan are independent and unrelated. We affirm.

I

We begin by setting forth the relevant facts as summarized in our 2015 opinion:

> [Zvi] has three sons, Amir . . ., Ayal . . ., and Oren . . . . The Rosenthal sons operated [Aragon], which pooled and invested the family's money. Amir became personally acquainted with Meenashki Degala, the founder and [CEO] of HDOX, and Pejman Delshad, technical director and part-owner of HDOX. . . .
>
> In January 2006, Amir became aware that the Securities and Exchange Commission ("SEC") had launched an investigation into the Rosenthal family for insider trading regarding an unrelated investment.[3] Soon thereafter,

[3] Amir, Ayal, and [Zvi] ultimately pled guilty to securities fraud, and served varying prison sentences. In Zvi's suit, Amir testified that the trade "we pled guilty to was for a little over $900,000." He claimed he never considered the possibility that the government could take the position that the $120,000 loaned to HDOX was tainted money.

Amir began distributing funds from Aragon to individual members of the Rosenthal family[;] the partnership was voided as a business entity in its home jurisdiction of Delaware on June 1, 2006.[4]

In August 2006, the parties began discussing a loan to HDOX. On August 29, 2006, Amir provided HDOX with a check from Aragon for $120,000. While the money came from an Aragon checking account, [Zvi] was listed as the payee in the Note. Amir told Degala that "all of Aragon is Zvi's money[,]" and that after Amir drafted a written contract they would exchange "original signed copies with . . . signatures of [both Degala] and Zvi.

Then, on August 31, 2006, Amir prepared and sent HDOX a "Promissory Note" ("Note"), which Degala signed, scanned, and emailed back to Amir. The signature page mistakenly identified [Zvi] as the "maker" of the Note and HDOX as the "payee." The last paragraph of the Note required that the parties must cause the Note to be signed and delivered by their respective authorized officers. The parties never exchanged original signatures, and there is no evidence that [Zvi] ever signed the Note.

Shortly after receiving the scanned copy of the Note bearing Degala's signature, Amir advised by email that the first draft had to be changed, because the signatures of both parties had to appear on the same page. Amir then sent a revised draft of the Note, which was identical to the first version except that

[4] As noted in our prior opinion, "Aragon was formed on July 7, 2003. No annual reports were ever filed and the limited partnership owed $2715.50 in taxes when it was "cancelled-voided" by the State of Delaware on June 1, 2006." Rosenthal, slip op. at n.3.

> the signature lines of both parties were on the same page.
>
> The Note required HDOX to pay interest monthly, at an annual rate of eighteen percent, on the first business day of every month, with the principal due as a lump sum on August 31, 2008. . . .
>
> According to HDOX, in addition to the mistaken identifications on the signature page, the Note materially altered the terms of the agreement between the parties by including a provision that impermissibly linked HDOX's monthly repayments to funds it would receive from a contract with the Center for Disease Control ("CDC"). The Note also failed to include a conversion provision, a critical term of the agreement from HDOX's point of view.
>
> The conversion provision would have allowed HDOX, at the end of the loan period, to satisfy any outstanding principal with an equity interest in HDOX. According to HDOX, neither Delshad nor Degala read the Note carefully, and both had wrongly assumed that the conversion provision was included in the document. Only after Degala signed and emailed the scanned Note did they realize that it did not contain the conversion provision. Delshad and Degala testified that HDOX asked Amir to draft an amended Note, omitting the CDC provision and including the conversion provision, but this was never done. As to this point, Amir testified that he never agreed to a conversion provision.
>
> [Rosenthal, slip op. at 1-5.]

After the judge dismissed plaintiffs' case, this appeal followed, with plaintiffs arguing that the bars cited by the trial court do not apply. As noted, plaintiffs assert their claim is

mutually exclusive and independent from the one Zvi previously brought. According to plaintiffs, they do not base their claims upon the Note, but rather the underlying oral agreement Amir reached with HDOX before the Note's signing. Notwithstanding the jury's determination that the Note did not constitute a binding agreement, plaintiffs assert the loan agreement remains enforceable based upon an oral contract between Amir and HDOX.

II

We apply a de novo standard of review to a trial court's order dismissing a complaint under Rule 4:6-2(e). See Stop & Shop Supermarket Co. v. Cty. of Bergen, 450 N.J. Super. 286, 290 (App. Div. 2017) (quoting Teamsters Local 97 v. State, 434 N.J. Super. 393, 413 (App. Div. 2014)). Under the rule, we owe no deference to the motion judge's conclusions. Rezem Family Assocs., LP v. Borough of Millstone, 423 N.J. Super. 103, 114 (App. Div. 2011). "[O]ur inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (citing Rieder v. Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987)). However, "[a] pleading should be dismissed if it states no basis for relief and discovery would not provide one." Rezem Family Assocs., LP, 423 N.J. Super. at 113 (citing Camden Cty.

Energy Recovery Assoc., LP v. N.J. Dep't of Envtl. Prot., 320 N.J. Super. 59, 64 (App. Div. 1999), aff'd, 170 N.J. 246 (2001)).

A. Res Judicata

"The application of res judicata is a question of law . . . ." Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 173, (App. Div. 2000). Thus, we review its application de novo. Walker v. Choudhary, 425 N.J. Super. 135, 151 (App. Div. 2012).

"The term 'res judicata' refers broadly to the [common law] doctrine barring [re-litigation] of claims or issues that have already been adjudicated." Velasquez v. Franz, 123 N.J. 498, 505 (1991). "[T]he doctrine of res judicata provides that a cause of action between parties that has been finally determined on the merits by a tribunal having jurisdiction cannot be [re-litigated] by those parties or their privies in a new proceeding." Ibid. This doctrine was created to avoid burdening the parties and the courts with re-litigation, and to prevent inconsistent decisions on the same matters. Ibid. The principle "contemplates that when a controversy between parties is once fairly litigated and determined it is no longer open to re-litigation." Lubliner v. Bd. of Alcoholic Beverage Control, 33 N.J. 428, 435 (1960) (citations omitted).

To decide if two causes of action are the same, the court must determine:

> (1) whether the acts complained of and the demand for relief are the same (that is, whether the wrong for which redress is sought is the same in both actions); (2) whether the theory of recovery is the same; (3) whether the witnesses and documents necessary at trial are the same (that is, whether the same evidence necessary to maintain the second action would have been sufficient to support the first); and (4) whether the material facts alleged are the same.
>
> [Wadeer v. N.J. Mfrs. Ins. Co., 220 N.J. 591, 606-07 (2015) (citation omitted).]

In 2013, Zvi's claim was fully adjudicated and rejected on the merits. Although plaintiffs asserted alternative theories of recovery in their 2015 complaint, they essentially sued on the same claim that Zvi previously advanced, that is, nonpayment of the loan. To wit: Zvi's 2012 claim and the instant action both sought the same recovery — full payment of the loan.

If we were to reverse, and allow plaintiffs to proceed with this second suit, plaintiffs would use the same documents and the same witness, Amir, as Zvi used in his suit. Such a result would burden the parties and the trial court with re-litigation and create the risk of an inconsistent outcome. Accordingly, we discern no basis to disturb the judge's application of the res judicata doctrine to bar plaintiffs' claims in this second suit.

B. Collateral Estoppel

Plaintiffs next argue collateral estoppel does not preclude their claims because the matters raised in their complaint were not litigated in Zvi's lawsuit. Plaintiffs assert the issue decided in Zvi's claim related to the Note, not the oral agreement. Additionally, plaintiffs again deny the existence of privity between themselves and Zvi.

Defendant counters by arguing the breach of the loan agreement was litigated in 2013. That prior adjudication therefore bars Amir from asserting any claims because he was in privity with Zvi.

"The doctrine of collateral estoppel . . . bars [re-litigation] of any issue actually determined in a prior action generally between the same parties and their privies involving a different claim or cause of action." Selective Ins. Co., 327 N.J. Super. at 173 (citation omitted). For the collateral estoppel doctrine to apply,

> the party asserting the bar must show that: (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.

> [Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 521 (2006) (quoting In re Estate of Dawson, 136 N.J. 1, 20 (1994)).]

Collateral estoppel is distinguishable from res judicata in "that it alone bars re-litigation of issues in suits that arise from different causes of action." Selective Ins. Co., 327 N.J. Super. at 173. Thus, "[r]es judicata applies when either party attempts to relitigate the same cause of action[, whereas c]ollateral estoppel applies when either party attempts to relitigate facts necessary to a prior judgment." T.W. v. A.W., 224 N.J. Super. 675, 682 (App. Div. 1988). Because collateral estoppel is an equitable doctrine, "it should only be applied when fairness requires." Pivnick v. Beck, 326 N.J. Super. 474, 486 (App. Div. 1999), aff'd, 165 N.J. 670 (2000). In determining whether to apply collateral estoppel, courts should consider the following factors: "conservation of judicial resources; avoidance of repetitious litigation; and prevention of waste, harassment, uncertainty and inconsistency." Ibid. Conversely,

> factors disfavoring application of collateral estoppel include: the party against whom preclusion was sought could not have obtained review of the judgment in the initial action; the quality or extensiveness of the procedures in the two actions were different; it was not foreseeable at the time of the initial action that the issue would arise in subsequent litigation; and the party sought to be precluded did not have an adequate opportunity

> to obtain a full and fair adjudication in the first action.
>
> [Ibid. (internal citations omitted).]

In the matter before us, plaintiffs assert the same claim that Zvi presented in his lawsuit — HDOX's nonpayment of the loan. The matter went to trial and the court issued a final judgment after the jury rendered a verdict. Determining whether any basis existed to support the validity of the loan was central to the previous lawsuit. Furthermore, as noted, the parties were in privity because they shared the same interest with Zvi, and both plaintiffs and Zvi contend they were aggrieved and injured by the same transaction. See, e.g., Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 339 (1996) (citation omitted) ("Generally, one person is in privity with another[,] and is bound by . . . a judgment as though he [or she] was a party[,] when there is such an identification of interest between the two as to represent the same legal right . . . .").

Notably, it was foreseeable before the previous trial began that the jury might find the Note unenforceable, in light of HDOX's claim that the Note did not reflect the parties' final agreement; as a result, the need for an alternative basis to enforce the loan should not have come as a surprise. Based on that potential outcome, alternative claims regarding the oral agreement's

validity could have been asserted in the original litigation. Moreover, plaintiffs had an opportunity to seek relief by joining Zvi's suit.

Allowing a new lawsuit would undermine the principles of judicial efficiency and avoidance of repetitive, piecemeal litigation. Accordingly, we discern no basis to disturb the judge's application of collateral estoppel to bar plaintiffs' claims in this second suit.

C. Judicial Estoppel

Plaintiffs argue that judicial estoppel does not bar their claim because they were not parties to the previous action. Citing Cummings v. Bahr, 295 N.J. Super. 374, 386 (App. Div. 1996), plaintiffs argue that for judicial estoppel to apply, a party must have succeeded in a previous claim, which they did not. They argue the jury's finding that the Note was not binding has no effect on Amir's claim. Additionally, plaintiffs argue that even if judicial estoppel bars Amir's claim, it does not bar Aragon's claim because Aragon suffered a monetary loss from HDOX's failure to pay the loan.

HDOX counters that judicial estoppel applies because in the 2012 suit, Amir testified at trial that he negotiated the loan between HDOX and his father. Amir now maintains a contrary position, alleging he entered into a transaction with defendant

through an oral agreement. HDOX emphasizes the undeniable privity between the plaintiffs in both suits. Finally, HDOX contends that plaintiffs misinterpret Cummings, 295 N.J. Super. at 387, in concluding that a prior inconsistent position is only prohibited when successful; instead "[p]rior success does not mean that a party prevailed in the underlying action, it only means that the party was allowed by the court to maintain the position." Ibid.

The motion judge found that the judicial estoppel doctrine "forecloses these [plaintiffs] from making any factual assertion when they have made contrary assertions in the prior proceedings." The judge reasoned that the doctrine applies because Amir's assertions were presented and rejected at the trial level, and again "on the Appellate level."

"Judicial estoppel is an equitable doctrine precluding a party from asserting a position in a case that contradicts or is inconsistent with a position previously asserted by the party in the case or a related legal proceeding." Tamburelli Props. Ass'n v. Borough of Cresskill, 308 N.J. Super. 326, 335 (App. Div. 1998). The doctrine is "meant to protect the integrity of the judicial system, designed to prevent litigants from 'playing fast and loose with the courts.'" Ibid. (quoting Scarano v. Cent. R.R. Co., 203 F.2d 510, 513 (3d Cir. 1953)).

"The purpose of the judicial estoppel doctrine is to protect 'the integrity of the judicial process.'" Kimball Int'l, Inc. v. Northfield Metal Prods., 334 N.J. Super. 596, 606 (App. Div. 2000), (quoting Cummings, 295 N.J. Super. at 387). The theory is based on the principle that if a litigant's position in one matter is true, then the contrary position in the subsequent matter cannot be. Id. at 606-07. Judicial estoppel "should be invoked only 'when a party's inconsistent behavior will otherwise result in a miscarriage of justice.'" Kimball Int'l, Inc., 334 N.J. Super. at 608 (quoting Ryan Operations GP v. Santiam-Midwest Lumber Co., 81 F.3d 355, 365 (3d Cir. 1996)); see also State Farm Fire & Cas. Co. v. Connolly, 371 N.J. Super. 119, 125 (App. Div. 2004).

We agree with HDOX that our Cummings decision fully supports the trial court's holding that judicial estoppel also bars plaintiffs' claims. Plaintiffs' complaint asserts alternative claims based upon an implicit premise — that Zvi's Note was indeed invalid — a position opposite to what Amir previously asserted in sworn testimony in Zvi's suit. Thus, we discern no basis to disturb the judge's application of judicial estoppel to bar plaintiffs' claims in this second suit.

D. Entire Controversy Doctrine

Plaintiffs argue that they were neither required to join nor were they required to intervene in Zvi's litigation. Specifically,

they contend that the mandatory joinder of claims rule does not apply because they were not parties to the previous claim; they further assert that the joinder of parties rule does not apply because they were not indispensable parties to the previous lawsuit. Plaintiffs also argue that even though the jury found the Note unenforceable in Zvi's lawsuit, the verdict did not establish that HDOX does not owe any money. Finally, plaintiffs assert that because they were not parties to the previous claim, their obligation to join all claims pursuant to the ECD was not triggered.

HDOX asserts we should reject these arguments, citing Vision Mortg. Corp. v. Patricia J. Chiapperini, Inc., 307 N.J. Super. 48, 51-52 (App. Div. 1998), aff'd, 156 N.J. 580 (1999), and emphasizing that under the ECD, parties are required to present all aspects of a controversy that might be litigated. As for the joinder rule, HDOX argues that like the ECD, this rule requires identification or joinder of all indispensable parties in the original litigation. The instant facts warrant dismissal because plaintiffs' claim of a breach of an alleged oral contract directly relates to the prior Note litigation. Plaintiffs may have been entitled to relief in the previous action; therefore, they should have been included pursuant to the joinder of parties rule.

Concerning the ECD, the trial court concluded the "doctrine requires . . . joinder in an action of . . . legal and equitable claims related to a single, underlining transaction. . . . exactly what we have here." To allow such "piecemeal litigation . . . . would be . . . unduly prejudicial" to HDOX, "to go through another litigation over the same debt with the same exact parties, with the exact same witness against them that testified" in the first trial. In addition, a second trial here would result in "a waste of judicial resources."

The ECD is codified in Rule 4:30A and requires all parties to an action to raise all transactionally-related claims in that action. R. 4:30A; see also Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 4:30A (2018). "Underlying the [ECD] are the twin goals of ensuring fairness to parties and achieving economy of judicial resources." Kent Motor Cars, Inc. v. Reynolds & Reynolds, Co., 207 N.J. 428, 443 (2011). The Supreme Court has articulated the goals of the doctrine to include "the needs of economy and the avoidance of waste, efficiency and the reduction of delay, fairness to parties, and the need for complete and final disposition through the avoidance of 'piecemeal decisions.'" Ibid. (quoting Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7, 15 (1989), superseded by statute on other grounds as stated in Ricketti v. Barry, 775 F.3d 611, 613-14 (3d Cir. 2015)).

The court, rather than the parties, retains the ultimate authority to control the joinder of parties and claims. Kent Motor Cars, 207 N.J. at 446. Application of the ECD is "left to judicial discretion based on the factual circumstances of individual cases." Oliver v. Ambrose, 152 N.J. 383, 395 (1998) (quoting Brennan v. Orban, 145 N.J. 282, 291 (1996)). The doctrine's joinder requirements may be relaxed on the grounds of "equitable considerations." Id. at 395.

The doctrine applies to successive suits with related claims. DiTrolio v. Antiles, 142 N.J. 253, 268 (1995). "In determining whether successive claims constitute one controversy for purposes of the doctrine, the central consideration is whether the claims against the different parties arise from related facts or the same transaction or series of transactions." Id. at 267. It is the factual context "giving rise to the controversy itself, rather than a commonality of claims, issues or parties, that triggers the requirement of joinder to create a cohesive and complete litigation." Mystic Isle Dev. Corp. v. Perskie & Nehmad, 142 N.J. 310, 323 (1995); see also DiTrolio, 142 N.J. at 267-68 ("It is the core set of facts that provides the link between distinct claims against the same or different parties and triggers the requirement that they be determined in one proceeding.").

Our Supreme Court has recognized the interplay between Rule 4:5-1(b)(2) and Rule 4:30A, stating:

> Taken together, both Rule 4:30A and Rule 4:5-1(b)(2) advance the same underlying purposes. As it relates to claims and to parties, they express a strong preference for achieving fairness and economy by avoiding piecemeal or duplicative litigation. Both, however, recognize that the means of accomplishing those goals rests with the court. That is, Rule 4:30A requires joinder of claims but grants authority to a trial judge to create a safe harbor in an appropriate case. Similarly, Rule 4:5-1(b)(2) requires that names of potentially liable or relevant parties be disclosed to the court, leaving to it the decision about whether to join them or not.
>
> [Kent, 207 N.J. at 445.]

According to that standard, a slight variation in the proposed legal theory is not sufficient to justify a failure to join related claims pursuant to the ECD. As with res judicata, the purpose of the ECD is to avoid waste and piecemeal decisions. Allowing litigation of the instant claim would go against those principles.

Similarly, concerning the joinder of parties, Amir and Aragon should have been named in the original claim; their joinder was not permissive because they held a stake in the matter's resolution. Aragon issued the check for the loan, and therefore was eligible for recovery. Amir negotiated the loan for his father, but now claims an interest in the recovery of the monies.

For these reasons, the court correctly barred plaintiffs' claim based on by both joinder and the ECD.

Zvi could have joined all claims and all parties in the earlier action. If Zvi had presented the issue of the oral agreement in his action, the jury could have been asked to resolve any inconsistencies between the written Note and the oral agreement. Zvi made a tactical decision to litigate only the enforceability of the written Note, without pursuing any alternative theories. Thus, this second suit represents an improper attempt to litigate a claim that plaintiffs should have presented as part of Zvi's suit. In light of the fact the Rosenthal sons controlled Aragon, and Amir is Zvi's son who acted on behalf of his father, the record fully supports the application of the EDC to plaintiffs' suit. We discern no basis to disturb the judge's application of the EDC to bar plaintiffs' claims in the matter under review.

Affirmed.