SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1804-21

CORANET CORP.,

Plaintiff-Appellant,

v.

DAVID M. BERLIN,

Defendant-Respondent.

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Argued February 15, 2023 – Decided July 17, 2023

Before Judges Currier and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Somerset County, Docket No. L-0559-21.

Andrew R. Turner argued the cause for appellant (Turner Law Firm, LLC, attorneys; Andrew R. Turner, of counsel and on the brief).

Matthew I. W. Baker argued the cause for respondent (Genova Burns, LLC, attorneys; Daniel M. Stolz, of counsel; Matthew I. W. Baker, of counsel and on the brief).

PER CURIAM

Plaintiff Coranet Corp. appeals from a January 7, 2022 Law Division order dismissing with prejudice its complaint against defendant David Berlin under Rule 4:6-2(e). We affirm.

This action's procedural history is straightforward. Defendant, a New Jersey resident and principal of Video Corporation of America (VCA), subcontracted with plaintiff to install audio and visual equipment for projects owned by VCA's clients. Plaintiff provided services to several of VCA clients between 2017-2019. VCA did not pay all of the bills and $379,411.65 remained outstanding. (New York Projects). Plaintiff alleged VCA was paid for the work on the three New York projects; but VCA never paid plaintiff.

In a December 2019 email to plaintiff, defendant acknowledged "VCA owed $377,977.73 on the Wells Fargo Project." He also stated, as you know for the first time in my [thirty-two] years VCA is in a really tight [c]ash [sic] position at the moment." Defendant promised to "'start paying down our debt at a rate of $16,900.00 a week starting on Monday, 12-23.'"

Shortly thereafter, VCA filed a petition for Chapter 11 bankruptcy. Plaintiff submitted a proof of claim in the bankruptcy action, seeking payment of $685,033.54. During the bankruptcy proceeding, a third party paid $305,621.89 to plaintiff which left a balance of $379,411.65 still due.

On April 21, 2021, plaintiff filed a Law Division complaint seeking payment of $379,411.65. According to the complaint, plaintiff detrimentally relied on defendant's acknowledgment of the outstanding balances for the New York projects. The complaint did not allege that any of the payments made to VCA for the projects included money paid by any New Jersey governmental body under New Jersey's Construction Trust Fund Act (CTFA), N.J.S.A. 2A:44-148, or money paid for the purchase of a dwelling house under New Jersey's Building Trust Fund Act (BTFA), N.J.S.A. 2A:29A-1 to -4.

On July 8, 2021, defendant moved to dismiss the complaint with prejudice under Rule 4:6-2(e) for failure to state a claim. In an August 27, 2021order accompanied by a statement of reasons, the trial judge granted the motion and dismissed the complaint without prejudice. Specifically, the trial court concluded that plaintiff could not "state a claim under the CTFA nor the BTFA for a diversion of funds under New Jersey law," since the complaint did not allege any of the three projects were New Jersey public construction projects, paid by a New Jersey governmental entity, or New York dwellings or houses. The court further concluded plaintiff failed "to advance any New Jersey cause of action that [allowed] it to sue the principal of a corporation for the corporation's debt" and failed to "allege any reason why New York's one-year

statute of limitations for claims brought under [the] Trust Fund Act [NYTFA], New York Lien Law §§ 70-79a, should not apply [to plaintiff]." Additionally, the trial court also determined plaintiff's failure to assert facts to support the piercing of VCA's corporate veil was "fatal" and a "belated attempt" to claim that it properly asserted common law claims for conversion and unjust enrichment. Based on its findings, the trial court ruled the complaint failed to state a claim under New Jersey law.

On November 17, 2021, plaintiff moved to restore the case and for leave to file a proposed amended complaint which asserted additional claims for improper diversion of funds under New York and New Jersey Lien Law, unjust enrichment, conversion, fraud, and breach of fiduciary duty. Plaintiff alleged defendant's promise in December 2019 to "'start paying down our debt at a rate of $16,900.00 a week starting on Monday, 12-23'" equitably tolled the time for it to file suit. In response, defendant cross-moved to dismiss the proposed amended complaint.

On January 7, 2022, the trial court denied plaintiff's motions to restore the case to the active trial calendar and for leave to file an amended complaint.

The trial court granted defendant's cross-motion to dismiss with prejudice the proposed amended complaint, finding it failed to state a cause of action.

Citing to plaintiff's original complaint and subsequent dismissal without prejudice, the trial court reiterated that "whether [p]laintiff's claims arose under New Jersey or New York law, any right to recover funds allegedly diverted by [d]efendant from VCA belongs to VCA, and not [p]laintiff." The court determined plaintiff's "novel and clever" theory of the case was "fatally defective."

The trial court also found the trust fund diversion claims were likewise fatally defective. Noting plaintiff restated the claim from the original complaint, the trial court determined such a claim is not cognizable under New Jersey law for construction funds related to private non-housing construction. The court further determined the proposed amended complaint failed to add new allegations that brought plaintiff's claims within the "purview of either the BTFA or CTFA." Thus, the claims were dismissed with prejudice.

As to plaintiff's allegation that defendant was contractually liable, the court found the allegations in the amended complaint "virtually identical" to the original complaint. The judge concluded the original complaint pleaded facts that did not support piercing VCA's corporate veil and were nothing more than "conclusory allegations" which did not support imposing liability on defendant for "unjust enrichment[,] conversion or any other legal theory." The trial court

concluded plaintiff's failure to allege any facts that "support[ed] or justifi[ed] piercing VCA's corporate veil was "fatal" to the claims in the amended complaint for unjust enrichment, fraud, and breach of fiduciary duty and dismissed plaintiff's claims with prejudice.

The trial court found plaintiff's common law claims were a reassertion of the claims presented in the original complaint. The court determined each of the common law claims were "fatally defective." The trial court stated unjust enrichment is not recognized as an independent cause of action in tort in New Jersey and plaintiff did not contract with defendant.

As to plaintiff's conversion claim, the court concluded that a right to payment for services rendered, as a matter of law, cannot be the basis for a conversion claim.

Plaintiff's fraud claim was reliant on defendant's December 2019 email. The court concluded plaintiff's allegations that defendant was planning to file for bankruptcy was "conclusory," plaintiff's element of reasonable reliance fell "flat" because the services were already rendered, and the amended complaint lacked sufficient detail regarding the "potential additional action or services" allegedly withheld. Thus, as a matter of law, defendant's email did not equitably toll plaintiff's "deadline" to file suit.

Lastly, plaintiff failed to allege to whom defendant owed a fiduciary duty and lacked the standing to enforce a duty. Assuming plaintiff had standing, plaintiff was precluded from asserting the claim based on the same facts as the claim for diversion of funds.

On appeal, plaintiff argues the trial court erred in dismissing its amended complaint.

In our de novo review, we apply the same standard under Rule 4:6-2(e) that governed the trial court in granting a motion to dismiss for failure to state a claim. Wrenden v. Twp. of Lafayette, 436 N.J. Super. 117, 124 (App. Div. 2014). The court's review "'is limited to examining the legal sufficiency of the facts alleged on the face of the complaint[,]' and in determining whether dismissal under Rule 4:6-2(e) is warranted, the court should not concern itself with plaintiff['s] ability to prove [its] allegations." Id. at 124-25 (alteration in original) (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)).

Simply stated, the issue is "whether a cause of action is suggested by the facts." Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988). We must "assume the facts as asserted by plaintiff are true" and give plaintiff "the benefit of all inferences that may be drawn in [its] favor." Banco Popular N. Am. v.

Gandi, 184 N.J. 161, 166 (2005) (quoting Velantzas, 109 N.J. 189 at 192). Plaintiff must plead "facts and . . . some detail of the cause of action[,]" something more than conclusory allegations to support its complaint. Printing Mart-Morristown, 116 N.J. at 768. "Obviously, if the complaint states no basis for relief and discovery would not provide one, dismissal is the appropriate remedy." Banco Popular, 184 N.J. at 166.

Here, any claims for diversion of funds belonged to VCA. The claims were not cognizable in New Jersey under the CTFA nor the BTFA. Plaintiff also failed to plead facts to pierce the corporate veil and the complaint lacked cognizable claims of unjust enrichment, conversion, and breach of fiduciary duty. Plaintiff's amended complaint failed to articulate a legally sufficient basis entitling it to relief which could not have been cured through discovery. There is no error in the court's dismissal of the amended complaint under Rule 4:6-2(e).

Affirmed.