SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3887-21

JERSEY BASKETBALL ASSOCIATION, LLC,

Plaintiff-Appellant,

v.

MITCH ARONSON, TOM CUSIMANO, and JERSEY BASKETBALL LEAGUE, LLC,

Defendants-Respondents,

and

MITCH ARONSON,

Defendant/Third-Party Plaintiff-Respondent,

v.

JOHN ZAYANSKOSKY and TOM PETRUZZELLI,

Third-Party Defendants.

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Argued June 7, 2023 – Decided August 23, 2023

Before Judges Vernoia and Natali.

On appeal from the Superior Court of New Jersey, Chancery Division, Somerset County, Docket No. C-012057-20.

Philip B. Vinick argued the cause for appellant.

Amy E. Gasiorowski argued the cause for respondents Mitch Aronson and Jersey Basketball League, LLC (Frieri Law Group LLC, attorneys; Amy E. Gasiorowski, on the brief).

Robert Mahoney argued the cause for respondent Thomas Cusimano (Norris McLaughlin, PA, attorneys; Robert Mahoney, on the brief).

PER CURIAM

Plaintiff Jersey Basketball Association (Association) appeals two Law Division orders. The first granted summary judgment to defendants Jersey Basketball League (League), Mitch Aronson and Tom Cusimano, and dismissed plaintiff's two-count complaint with prejudice. The second denied plaintiff's motion for reconsideration.

Before us, plaintiff argues the court improperly dismissed its complaint prior to the completion of discovery. It further argues that, for the same reason, the court abused its discretion in denying its motion for reconsideration and also that the court improperly characterized the second count of its complaint as

alleging the same claim as the first count. After considering the parties' arguments in the context of the record and applicable law, we reject plaintiff's argument with respect to the court's dismissal of count one, but reverse its dismissal of count two and remand for further proceedings consistent with this opinion.

I.

The Association was formed on August 15, 2014, as a limited liability company to "organize, conduct, and administer basketball leagues" and tournaments. Aronson, Cusimano, Pierre LeDrappier, Tom Petruzzelli, Alice Stout and John Zayanskosky served as founding members of the Board of Directors of the organization and owned part of the company.

On August 21, 2014, the founding members executed an operating agreement. Article X, entitled Management Duties and Restrictions, provided, among other provisions, that "[n]o members shall . . . do any act detrimental to the best interests of the [c]ompany or which would make it impossible to carry on the ordinary purpose of the company." Also on August 21, 2014, the organization held an incorporation meeting, during which its members allegedly adopted several resolutions. One resolution officially designated Aronson, Cusimano, LeDrappier, Tom Meddler, Petruzzelli, Stout, and Zayanskosky as

members of the Board of Directors, and another resolution bound the parties to restrictive covenants, including non-compete and non-disclosure provisions. In the resolution's non-compete provision each "[d]irector agree[d] [they] will not enter in any independent business . . . with [t]owns/[o]rganizations who are existing or prospective participants in the [Association]," and further provided no director "will attempt to start nor operate a sports league of any kind or assist any sports league in adding new participants, teams or [t]owns/[o]rganizations for a period of five years . . . from the latest date of [their] participation in the [Association]."

In the resolution's non-disclosure provision, each director agreed to treat "all written and oral communications between and among [Association] [d]irectors" as confidential information "whether delivered before or after the creation of this [a]greement." The provision defined as confidential "all information pertaining to the [Association], its business and league operations, intellectual property, participant and [t]own/[o]rganization information, computer and information technology, marketing and development information, financial and accounting information, service information, and any other data and information relating to the business and management of the [Association]." Finally, a document designated as "minutes" for the Association's September 25,

2014 meeting summarily stated, "[m]inutes of the August 21, 2014 meeting were unanimously approved by those in attendance."[1]

On March 24, 2020, the League was formed as a limited liability company. Although the record before us does not clearly identify individuals involved in the League's incorporation, it is undisputed that Aronson and Cusimano were a part of the League's creation. As a result of plaintiff's discovery of Aronson's and Cusimano's involvement in the League, they were terminated from the Association on August 24, 2020. Both individuals continued their involvement in the League, although the Association notified Aronson and Cusimano that their participation violated the restrictive covenants in the aforementioned resolutions. Cusimano communicated to plaintiff in September 2020 and denied any violation of the Association resolution, maintained he resigned from the Association's Board in July 2020, and also demanded a return of $16,000, which he contended represented his share of the Association assets.

On November 5, 2020, plaintiff filed its two-count complaint against defendants. The first count claimed defendants violated their non-disclosure and non-compete obligations set forth in the resolutions and sought preliminary

[1] As discussed infra p. 9, defendants contend the provided minutes do not represent the minutes from the authorized secretary of the Association.

restraints enjoining the League from "advertising, soliciting, operating, and/or conducting activities with regard to basketball leagues, basketball tournaments, basketball programs, etc., . . . prohibiting defendants from utilizing, in any fashion and for any purpose, proprietary information formulated, established, and implemented by plaintiff." Plaintiff also requested "monetary damages in an amount to be determined by this [c]ourt."

In plaintiff's second count, it alleged defendants "maliciously, wantonly, intentionally, in bad faith and for the express purpose to harm plaintiff . . . and to unlawfully and maliciously enrich defendant[s], . . . to the direct detriment of plaintiff," "intentionally selected a corporate name and . . . identity so substantially similar to . . . plaintiff . . . so as to intentionally mislead former clients/customers, present clients/customers, and potential . . . client/customers of plaintiff into believing that . . . [the League] is . . . either affiliated with or an extension of plaintiff." As in count one, plaintiff sought preliminary restraints enjoining the League from "advertising, soliciting, operating, and/or conducting activities with regard to basketball leagues, basketball tournaments, basketball programs, etc., . . . prohibiting defendants from utilizing, in any fashion and for any purpose, proprietary information formulated, established, and implemented by plaintiff." Plaintiff also sought monetary damages "in an amount to be

determined " as well as "punitive damages as a result of [defendants] malicious, wanton, willful, and intentional actions."

After hearing oral argument,[2] on January 8, 2021, the court denied plaintiff's request for injunctive relief because plaintiff failed to satisfy the four-prong test detailed in Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982).[3] In its statement of reasons, the court briefly addressed plaintiff's second count. Specifically, the court determined it could not "find any cognizable cause of action" in the second count that was "separate and distinct" from the first. Specifically relying on the fact that plaintiff requested "the same relief," the court concluded plaintiff "failed to state any other cognizable claim . . . other than its claim for breach of the [r]esolutions."

On May 26, 2021, Cusimano filed an answer and counterclaim in which he denied receiving notice of any restrictive covenants in the resolutions and also claimed the alleged covenants were "overbroad and legally unenforceable."

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[2] The parties have not included in the record the transcript for the oral argument regarding plaintiff's request for injunctive relief.

[3] To obtain injunctive relief a party must establish: (1) whether the relief is "necessary to prevent irreparable harm"; (2) whether the "legal right underlying [the] claim is unsettled"; (3) whether defendant made a "preliminary showing of a reasonable probability of ultimate success on the merits"; and (4) "the relative hardship to the parties in granting or denying relief." Crowe, 90 N.J. at 132-34.

On October 13, 2021, Aronson and the League filed an amended answer and third-party complaint against Zayanskosky and Petruzzelli alleging: (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; and (3) tortious interference with a prospective economic advantage.

On March 2, 2022, following a status conference, the court issued an order requiring the parties to serve deposition notices by March 14, 2022. The order also required depositions to be concluded no later than April 15, 2022, which would also serve as the discovery deadline, and directed the parties to file dispositive motions by May 13, 2022, with a June 10, 2022 return date.

Two days later, Aronson and the League filed their summary judgment application, which Cusimano joined. Defendants supported their motion with plaintiff's responses to defendants' interrogatories and certifications from Aronson, Cusimano, LeDrappier, Stout, and Meddler. Notably, when defendants requested plaintiff describe its damages in those interrogatories, plaintiff responded it was unable to "provide a specific answer with any degree of certainty" because the Association had not "contacted, or attempted to contact" each participant of the League, and further stated the "actual monetary damages suffered by the [Association] are not subject to precise quantification."

In his certification, Aronson stated he "never signed nor discussed, at any time, a non-compete agreement." He also attested the documents presented by plaintiff as the September 2014 minutes were "not prepared by [Stout] the authorized recording secretary."

Cusimano certified he did not sign, discuss or receive any correspondence regarding a non-compete provision. LeDrappier similarly attested that although he was a founding director and partner of the Association, he was "never asked to sign a non-compete," and he denied any discussion of the existence of a non-compete. In Stout's certification, she stated she was the recording secretary of the Association and therefore "responsible for all meeting minutes and . . . would circulate official notes" following its meetings. She further attested that at no point did she take any minutes regarding a non-compete agreement, and also stated "[n]o such agreement exists."

Finally, Meddler certified he was a founding director of the Association, although not a partner. He also denied the existence of a non-compete agreement, stated he did not sign any such agreement, and was not privy to any discussion regarding such a provision. Meddler further attested Stout never circulated meeting minutes which described a non-compete provision.

On March 17, 2022, plaintiff noticed and scheduled the depositions of Aronson and Cusimano. That same day, Cusimano requested depositions for the Association's corporate representative, as well as for Zayanskosky and Petruzzelli.

On March 22, 2022, plaintiff filed opposition to defendants' motion for summary judgment, supported by a counterstatement of material facts, as well as certifications from Zayanskosky and Petruzzelli. Plaintiff argued there were genuine issues of material fact as to the existence of the disputed restrictive covenants based on the parties' competing certifications. Further, plaintiff claimed that if Aronson and Cusimano agreed to the covenants, their creation and participation in the League violated those covenants. Plaintiff also argued in its responses to defendants' interrogatories that it provided a "specific mathematical formula/breakdown for the computation of its monetary damages," which included an attached spreadsheet identifying 450 teams "solicited away from the [Association] to the [League]."

Zayanskosky confirmed the directors of the Association entered into a resolution that the directors "would not compete with the [Association] directly while [Association] was in operation; and/or agreed not to start, attempt to start, or operate a sports league of any kind for a period of five years from the latest

date of that [d]irector's participat[ion] in the [Association]." He also attested to the fact the directors adopted a non-disclosure resolution precluding them from disclosing confidential information such as "business and league operations, information regarding participants in leagues operated by [the Association], client lists of the [Association], referees utilized by the [Association], [and] organization templates devised and utilized by the [Association]."

Petruzzelli certified the non-compete and non-disclosure provisions of the resolutions were "clearly and unequivocally" agreed to by Aronson and Cusimano. He also stated there was no designated recording secretary of the Association.

Defendants replied to plaintiff's opposition and argued plaintiff failed to establish the existence of a genuine issue of material fact because it provided no other evidence of the purported resolutions which included the restrictive covenants other than the aforementioned certifications. Defendants further argued plaintiff failed to provide any support for its damages claim.

After considering the parties' written submissions, and without hearing oral arguments, the court granted defendants' summary judgment motion. It also dismissed plaintiff's complaint with prejudice and issued a written statement of reasons.

The court first determined there was a "genuine dispute" as to the restrictive covenants' existence, as evidenced by the parties' competing certifications, but nonetheless, concluded the provisions were deficient as a matter of law under the Solari/Whitmyer test.[4] The court further noted even if it were to assume the covenants were enforceable, summary judgment was appropriate because plaintiff failed to provide any support it suffered any damages as a result of defendants' actions.

In its analysis of the non-compete provision, the court determined the language precluding defendants from "enter[ing] into any independent or related

[4] Our Supreme Court developed the Solari/Whitmyer test, based on its decisions in Solari Indus., Inc. v. Malady, 55 N.J. 571, 576 (1970), and Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 32-33 (1971), to determine if a restrictive covenant is reasonable. An agreement is deemed reasonable under that test if it (1) protects legitimate interests of the party seeking to enforce the covenant; (2) does not impose an undue hardship on the party to be restricted; and (3) is not injurious to the public. Maw v. Advanced Clinical Commc'ns, Inc., 179 N.J. 439, 447 (2004). Further, courts "will not enforce a restrictive agreement merely to" prevent competition. Ingersoll-Rand Co. v. Ciavatta, 110 N.J. 609, 635 (1988). As we recognized in ADP, LLC v. Kusins, 460 N.J. Super. 368, 402 (App. Div. 2019), after a court analyzes the relevant factors, a restrictive covenant may be "given 'total or partial enforcement to the extent reasonable under the circumstances.'" (quoting Whitmyer, 58 N.J. at 32). Our Supreme Court replaced a void per se rule in favor of a rule which allows courts to "limit or 'blue-pencil' the application of [a restrictive covenant] in terms of the geographical area, period of enforceability, and scope of prohibited activity." Ibid.

agreements of any kind whatsoever with [t]owns/[o]rganizations who are existing or prospective" with Association participants was "overbroad and excessive." It also reasoned this section of the non-compete provision failed to limit the "duration to the period of time which defendants [were] barred from conducting any business" with Association participants.

The court also found the provision was unenforceable based on its geographic scope and concluded it was not "narrowly tailored," and "fail[ed] to define 'prospective participant' . . . and [therefore] could reference towns/organizations anywhere in New Jersey." The court further determined the provision unenforceable because it "prevent[ed] defendants from considering any business with existing participants, indefinitely."

In addition, the court found the prohibition against starting or operating "a sports league of any kind or assisting any sports league in adding new participants . . . for a period of five . . . years," unreasonable as it barred defendants from taking a job related to any sport, not just basketball, going as far as to prevent defendants from "recruiting any athlete, whether or not they are participants of the [Association], for any sport." The court further explained "such a broad scope of activity restriction [did] not serve any legitimate interest

of [the Association]" but "only serve[d] to threaten each defendant with [the] undue burden in . . . finding new work should he or she leave the [Association]."

In its further examination of the five-year duration of this restriction, the court determined its length, combined with the overly broad limitations, failed to protect a legitimate business interest. Rather, the court concluded this only aimed to lessen competition, relying on the abundance of clientele in the area, as well as the amount of youth basketball leagues in the region as support for its determination.

As to the non-disclosure provision, the court found it also unenforceable, relying on its lack of a finite temporal application, as well as its failure to limit its scope to information acquired during an employee's affiliation with the Association. Specifically, the court referenced a section of the provision which characterized all written and oral communications between and among Association directors as confidential and explained it improperly restricted "any information already known to defendants" then shared with directors of the Association "or information that is publicly available." Finally, although the court acknowledged its ability to "blue pencil" the overbroad restrictive covenants, it determined the covenants were "not deserving of modification," reasoning their "outrageous scope . . . reveal[ed] [an] improper motive."

The court also held that, even assuming the restrictive covenants were enforceable, defendants were still entitled to summary judgment because plaintiff failed to establish "with any degree of certainty that it suffered damages as a result of defendants' breach of the alleged restrictive covenants," explaining any supporting evidence offered was "threadbare, at best." Specifically, the court rejected plaintiff's argument that because the League consisted of 450 teams it was entitled to lost revenue for every team, as it failed to provide evidence that any of those teams were recruited from the Association by the League, or "whether any of the non-[Association] teams would have joined [the Association] but for the conduct of defendants."

The court also rejected plaintiff's damages calculations because plaintiff assumed, without support, that its organization would receive all of the League's business despite the presence of sixteen other youth basketball leagues in the region. Further, the court concluded plaintiff failed to demonstrate damages suffered by defendants' actions, as it did not provide any support that the League utilized confidential Association business models. Although plaintiff provided a list of teams committed to the League, plaintiff did not establish how the list violated the non-disclosure provision, and how this violation resulted in any damages incurred by the Association.

Finally, the court determined some of defendants, such as Aronson, already possessed knowledge of youth basketball leagues prior to plaintiff's formation and were permitted to use this previously acquired knowledge in their future endeavors. Further, the court found the use of this knowledge by way of advertisements or recruitments for the League was not evidential of damages suffered by plaintiff. The court also dismissed Cusimano's request for attorney's fees.

Plaintiff filed a motion for reconsideration and principally argued the court prematurely granted summary judgment prior to plaintiff's opportunity to depose necessary parties, specifically regarding the August 2014 meeting and the adoption of the restrictive covenants at issue. Plaintiff also claimed, for the first time, it wished to depose defendants as to possible violations of N.J.S.A. 42:2C-39(b)(2) and (b)(3).[5] As best we can discern, plaintiff did not specifically

[5] N.J.S.A. 42:2C-39(b) provides:

> the fiduciary duty of loyalty of a member in a member-managed limited liability company includes the duties:
>
> > (2) to refrain from dealing with the company in the conduct or winding up of the company's activities as or on behalf of a person having an interest adverse to the company; and

cite to allegations of a violation of Article X of the operating agreement in its motion for reconsideration.

After considering the parties' submissions and oral argument, the court denied plaintiff's motion for reconsideration, detailing its reasoning in an oral opinion. First, the court acknowledged while there was a dispute as to the existence of the restrictive covenants, it ultimately did not base its decision on that disputed fact. Rather, the court stated its decision rested "primarily" on its conclusion that any alleged restrictive covenants as described by plaintiff are unenforceable. The court denied plaintiff the opportunity to offer arguments regarding alleged violations of N.J.S.A. 42:2C-39(b) because plaintiff was "making a new argument" that was not "in [its] papers" and that was "unfair and improper because [defendants] ha[d] [not] had the opportunity to address it."

The court further noted plaintiff failed to address the "validity or enforceability of these restrictive covenants," and instead requested reconsideration because it contended the court improperly decided defendants' application without discovery, which the court concluded was unnecessary to

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> (3) to refrain from competing with the company in the conduct of the company's activities before the dissolution of the company.

resolve the legal issue regarding the enforceability of the covenants. The court also reaffirmed its conclusion plaintiff failed to establish defendants caused its alleged damages, a fact that would not be remedied by the depositions of Aronson and Cusimano. Finally, the court explained any alleged damages would be "meaningless" as it determined the restrictive covenants were unenforceable. This appeal followed.

II.

We initially note before us plaintiff does not challenge the court's substantive decision regarding the enforceability of the restrictive covenants under the Solari/Whitmyer test, nor do they contend the court should have blue penciled the restrictive covenants. We therefore view any arguments on those points waived, and explicitly limit our discussion to plaintiff's arguments that the court prematurely granted summary judgment prior to the completion of discovery. See Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2023) ("[A]n issue not briefed is deemed waived."); Telebright Corp. v. Dir., N.J. Div. of Taxation, 424 N.J. Super. 384, 393 (App. Div. 2012) (deeming a contention waived when the party failed to include any arguments supporting the contention in its brief).

What remain, therefore, are plaintiff's procedural challenges to the court's summary judgment order. As noted, plaintiff maintains the court erred in granting defendants' summary judgment application before it had an opportunity to engage in meaningful discovery. Specifically, plaintiff claims it was denied the opportunity to depose Aronson and Cusimano and thus unable to question them regarding "all matters relevant to the subject matter involving this action."

Plaintiff further argues, contrary to the court's interpretation, its complaint includes not only allegations of breach of the restrictive covenants detailed in count one, but also breach of its operating agreement, specifically Article X, and also a violation of defendants' fiduciary duties to the Association. According to plaintiff, "the facts . . . revealed at [these] depositions" could have been utilized to oppose defendants' application and "perhaps . . . cross-move for summary judgment." Finally, plaintiff claims it was not required to offer more detailed and "specific information" as to what they would have discovered at these depositions regarding its claims and damages because the court's March 2, 2022 order "was already in place," "binding" and its interrogatories "reference[d] . . . the depositions plaintiff expected and was permitted by [the] court order to take."

The gravamen of plaintiff's argument with respect to count two is that the court's refusal to permit argument during reconsideration regarding defendants' violations of N.J.S.A. 42:2C-39(b) and to allow "depositions to be taken with respect to all of plaintiff's claims" amounted to an abuse of its discretion. Specifically, plaintiff claims that although it failed to "highlight[] [c]ount II or the [o]perating [a]greement in its [written] opposition to defendants' summary judgment motion, or specifically cite to N.J.S.A. 42:2C-39" plaintiff did not waive these claims as it "fully expected to question defendants at the soon to be taken [and] court authorized depositions about facts relating to both Article X . . . and N.J.S.A. 42:2C-39." As such, plaintiff argues the court's proper course would have been to grant its motion for reconsideration and hold in abeyance its decision regarding summary judgment until discovery was concluded, allowing plaintiff the opportunity to file supplemental opposition against defendants' motion for summary judgment if necessary.

III.

We review a grant of summary judgment de novo, using the same standard as the trial court. Turner v. Wong, 363 N.J. Super. 186, 198-99 (App. Div. 2003). Thus, we must determine whether a genuine issue of material fact is present and, if not, evaluate whether the trial court's ruling on the law was

correct. See Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995); Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167-68 (App. Div. 1998).

Generally, summary judgment is premature when the opposing party has not yet had an opportunity to conduct discovery and develop facts on which it intends to base its claims. Friedman v. Martinez, 242 N.J. 449, 472 (2020) (cautioning against granting summary judgment when discovery is incomplete and "critical facts are peculiarly within the moving party's knowledge" (quoting James v. Bessemer Processing Co., 155 N.J. 279, 311 (1998))). However, "'summary judgment is not premature merely because discovery has not been completed, unless' the non-moving party can show 'with some degree of particularity the likelihood that further discovery will supply the missing elements of the cause of action.'" Ibid., (first quoting Badiali v. N.J. Mfrs. Ins. Grp., 220 N.J. 544, 555 (2015); then quoting Wellington v. Estate of Wellington, 359 N.J. Super. 484, 496 (App. Div. 2003)).

We review the denial of a motion for reconsideration to determine whether the trial court abused its discretion. Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996). "A court abuses its discretion when a decision 'is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Terranova v. Gen. Elec. Pension Tr., 457

N.J. Super. 404, 410 (App. Div. 2019) (quoting U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012)).

Reconsideration should only be granted in "those cases which fall into that narrow corridor in which either (1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence[.]" Cummings, 295 N.J. Super. at 384 (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). The party seeking reconsideration "must initially demonstrate that the [c]ourt acted in an arbitrary, capricious, or unreasonable manner, before the [c]ourt should engage in the actual reconsideration process." D'Atria, 242 N.J. Super. at 401.

As noted, plaintiff argues the court erred both in its grant of summary judgment and its denial of plaintiff's motion for reconsideration because it rendered its decision prior to the conclusion of discovery, specifically prior to its opportunity to depose Aronson and Cusimano. After conducting a de novo review of the record, we are satisfied the court correctly granted defendants summary judgment with respect to count one but agree with plaintiff's arguments that the court improvidently granted summary judgement with respect to count two.

With respect to count one, simply put, plaintiff has failed to establish how the depositions of Aronson and Cusimano, or any other discovery it propounded, were necessary to address the legal sufficiency of the restrictive covenants the court found unenforceable. See Badiali, 220 N.J. at 555; see also Pressler & Verniero, cmt. 2.3.3 on R. 4:46-2 (2023) ("Clearly mere conclusory statements [regarding incomplete discovery] are inadequate."). Contrary to its obligations under Friedman, 242 N.J. at 472, before the motion court, plaintiff offered only conclusory statements regarding the information it sought to obtain from its outstanding discovery demands.

Instead, as it does before us, plaintiff merely stated in summary fashion the depositions would permit the questioning of Aronson and Cusimano as to "all matters relevant to the subject matter involving this action." Plaintiff failed and fails to establish how any information to be obtained from discovery would be peculiarly within defendants' knowledge, or how any information that might be gleaned from the depositions would have altered the court's dispositive determination, which plaintiff does not challenge on appeal, that the restrictive covenants on which the claim in count one is based are unenforceable. We find those failures particularly significant as plaintiff was a party to all relevant agreements and therefore could easily identify how the additional discovery

would undermine the legal sufficiency of the court's Solari/Whitmyer findings, which as noted, plaintiff does not challenge. See Friedman, 242 N.J. at 472.

Accordingly, we discern no error in the court's decision to grant defendants' motion for summary judgment prior to the completion of discovery. For the same reasons we conclude the court did not abuse its discretion in denying plaintiff's application for reconsideration on this basis as to the first count of the complaint.

IV.

As noted, plaintiff also argues the court erred in dismissing the second count of its complaint. In dismissing count two, the only explanation supporting the court's dismissal is found in its January 8, 2021 decision denying plaintiff's request for injunctive relief. In that decision, the court determined plaintiff failed to plead a cognizable cause of action within that count and appeared to seek the same relief as in count one.

Although we recognize plaintiff certainly could have been clearer when drafting count two of the complaint, we are satisfied it asserted claims distinct from those asserted in count one. Indeed, plaintiff's first count alleged violations of the restrictive covenants, whereas in count two, plaintiff alleged defendants improperly elected to name its competing company the League in an effort to

confuse plaintiff's clients "for the express purpose" of harming plaintiff or detrimentally affecting it. Those claims appear to assert violations of Article X of the operating agreement, as well as violations of defendants' fiduciary duties. We also note, at oral argument on plaintiff's motion for reconsideration, plaintiff's counsel attempted to clarify the claims in count two, and even attempted to cite to N.J.S.A. 42:2C-39(b) as a basis for the second count claim, but the court did not permit plaintiff to do so.

Under the circumstances presented, we are convinced the most appropriate course is to reverse the court's decision as to count two and remand for further proceedings as to that claim only. On remand, the court should convene a conference with the parties to discuss, among other relevant case management issues, an appropriate schedule to address the completion of discovery, as well as the filing of dispositive and non-dispositive motions.

To the extent we have not addressed plaintiff's arguments, it is because we have determined they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed in part, reversed in part, and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.