SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1576-23

STRATEGIC DEVELOPMENT GROUP, LLC,

Plaintiff-Respondent,

v.

NEW JERSEY CITY UNIVERSITY,

Defendant-Appellant.

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Argued June 4, 2024 – Decided June 26, 2024

Before Judges Mayer, Enright and Paganelli.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-2319-23.

Ryan J. Silver, Deputy Attorney General, argued the cause for appellant (Matthew J. Platkin, Attorney General, attorney; Sookie Bae-Park, Assistant Attorney General, of counsel; Colin G. Klika, Deputy Attorney General, and Ryan J. Silver, on the briefs).

Denis F. Driscoll argued the cause for respondent (Inglesino Taylor, attorneys; Denis F. Driscoll and John

P. Inglesino, of counsel and on the brief; Joseph M. Franck and Vidhaath Sripathi, on the brief).

PER CURIAM

Defendant New Jersey City University (the University), on leave granted, appeals from a December 19, 2023 order denying its motion to dismiss plaintiff's, Strategic Development Group, LLC (Strategic), complaint for failure to state a claim upon which relief could be granted under Rule 4:6-2(e). We vacate the part of the order denying Strategic's request to dismiss the breach of contract and unjust enrichment claims, and remand for the trial court to dismiss those claims. In addition, because the judge failed to explain his reasons for denying Strategic's claim—for lack of notice regarding the fraudulent misrepresentation—we remand that issue for further proceedings consistent with this opinion.

Since this appeal arose from the University's Rule 4:6-2(e) motion to dismiss the complaint in lieu of an answer, we recite the facts alleged in Strategic's complaint.[1] Strategic was appointed as the Special Advisor to the

[1] "In deciding whether to grant dismissal, the complaint's allegations are accepted as true and with all favorable inferences accorded to plaintiff." Mac Prop. Grp. LLC & The Cake Boutique LLC v. Selective Fire & Cas. Ins. Co., 473 N.J. Super. 1, 16 (App. Div. 2022) (citing Watson v. N.J. Dep't of Treasury, 453 N.J. Super. 42, 47 (App. Div. 2017)).

President and Board of Trustees (Board) to perform real estate development consulting services on behalf of the University for projects involving its Blocks 1, 2, 3, 4, 5B, and 6.

The projects involving Blocks 1, 2, 3, 5B, and 6 were completed and "the agreed upon [one percent] Success Fee as compensation for [Strategic's] services related to each project[] . . . w[as] paid to [Strategic] by [the University] upon the full execution of each of the four (4) ground leases in August 2015."

As to Block 4, the University was obligated to pay Strategic a Success Fee of one percent of the total Project costs. The Success Fee was deemed "earned and payable upon the occurrence of any one of several milestone events, one of which was the execution of a long-term lease of property and/or facilities owned by an unaffiliated third party."

"On or about August 1, 2019, [Strategic] earned the Success Fee [as to Block 4] by executing a facility lease . . . [with] an unaffiliated third party, and the University. The lease was memorialized and later amended at the April 27, 2020 meeting of the" Board.

The University did not pay Strategic the outstanding Success Fee as to Block 4. Strategic made several "good faith" attempts to reach out to the

University's counsel regarding payment of the Success Fee, but the University "was silent."

The University was "grappling with longstanding financial difficulties, which had come to a head due to a combination of the COVID-19 pandemic's effect on the [University's] enrollment, and the Administration's severe mismanagement and fraudulent appropriation of federal funds, causing the University to declare a financial emergency on June 27, 2022." Three days later, the University terminated the contract, "citing its lack of available funds to continue with Strategic's services." The termination letter indicated that "effective August 1, 2022, payments w[ould] not be issued by the University to" Strategic.

On July 8, 2022, the University sent Strategic a letter that "characterized the vested Success Fee as an 'unwarranted contractual benefit' . . . as a clear and unequivocal statement of [the University]'s intention to breach its contract with [Strategic] and abrogate its obligation to pay [Strategic] its due Success Fee." In response, Strategic sent a July 20, 2022 letter, acknowledging the University's intention to terminate the contractual relationship, so long as the University paid out its outstanding obligations to Strategic. "Specifically, [Strategic] 'reminded [the University] that . . . [the University] owe[d] a one percent . . . success fee

in the amount of $1,750,000[]." Strategic included an "invoice summarizing the outstanding Success Fee, . . . [an] acknowledgment of [the University's] strained financial situation, [and] granted 'an additional thirty . . . days for payment.'"

In addition, Strategic advised that "in the event that [the University] attempt[ed] to breach its contractual obligation to pay [Strategic] the said [S]uccess [F]ee, [Strategic] advise[d] that [it] respectfully reserve[d] all legal and equitable rights, claims, causes of action, remedies, and the like in connection with [the University's] payment obligations."

"Despite [Strategic]'s reservation of its rights to file an action such as the instant [c]omplaint compelling [the University]'s payment of the outstanding Success Fee, [Strategic] continued to reach out in good faith to [the University] for resolution of the dispute." In March 2023, Strategic emailed the University's counsel proposing arbitration as an alternative dispute resolution process to settle the matter. The University did not respond to Strategic's request for arbitration. In May 2023, "counsel for [Strategic] reached out to the new University [c]ounsel . . . regarding potential arbitration of the instant dispute." The University's counsel "indicated the Board would need to approve an arbitration agreement between [the University] and [Strategic] prior to execution." In June 2023, the Board voted against arbitration with Strategic.

In late June 2023, Strategic filed a three-count complaint against the University alleging: (1) breach of contract; (2) unjust enrichment; and (3) fraudulent misrepresentation.

The University filed a motion to dismiss Strategic's complaint, pursuant to Rule 4:6-2(e), in lieu of filing an answer. The University argued: (1) Strategic's breach of contract claim was barred because Strategic failed to timely provide notice of its claim pursuant to the New Jersey Contractual Liability Act (CLA), N.J.S.A. 59:13-1 to -10; (2) the CLA barred Strategic's claim for unjust enrichment; and (3) Strategic's claim of fraudulent misrepresentation was barred because Strategic failed to provide notice of its fraudulent misrepresentation claim under the New Jersey Tort Claims Act (TCA), N.J.S.A. 59:1-1 to :12-3.

The judge denied the motion to dismiss. In an oral opinion accompanying the order, the judge concluded: (1) Strategic's CLA notice was timely through the application of the discovery rule, stating the New Jersey Supreme Court did not "issue a blanket rule that all contract cases under the [CLA] are exempt from the discovery rule"; (2) he was "not going to dismiss the complaint . . . so th[e complaint could] be cleaned up and more specifically ple[]d [as to] unjust enrichment or fraud"; and (3) Strategic's letter of July 20, 2022 constituted

substantial compliance with notice requirements of the TCA. The University argues the judge erred in each of these respects.

We begin our discussion with a review of the principles governing our analysis. Rule 4:6-2(e) provides:

> Every defense, legal or equitable, in law or fact, to a claim for relief in any complaint[] . . . shall be asserted in the answer thereto, except that the following defenses[] . . . may at the option of the pleader be made by motion, with briefs: . . . (e) failure to state a claim upon which relief can be granted[] . . . . If, on a motion to dismiss based on defense (e), matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by R[ule] 4:46, and all parties shall be given reasonable notice of the court's intention to treat the motion as one for summary judgment and a reasonable opportunity to present all material pertinent to such a motion.[2]

Rule 4:6-2(e) "permits dismissal of the complaint if on its face it fails to state a claim on which relief may be granted." CKC Condo. Ass'n, Inc. v. Summit Bank, 335 N.J. Super. 385, 387 n.1 (App. Div. 2000). "There is authority for the proposition that where the relevant facts are not in dispute on

[2] It is apparent the judge considered matters outside the pleadings in determining that the discovery rule applied to Strategic's claim under the CLA. Consequently, the judge should have applied the summary judgment standard in reviewing the University's motion. We conclude the omission is of no moment because the discovery rule was inapplicable.

that issue, a statute of limitations defense is sufficiently akin to failure to state a claim as to permit its disposition by way of a motion under R[ule] 4:6-2(e)." Ibid. (citing O'Connor v. Altus, 67 N.J. 106, 116 (1975); Rappeport v. Flitcroft, 90 N.J. Super. 578, 580-81 (App. Div. 1966); Henry V. Vaccaro Const. Co. v. A.J. DePace Inc., 137 N.J. Super. 512, 513-14 (Law Div. 1975)).

"A statute of limitations is what its name indicates: a statute enacted by the Legislature to limit the time period in which a lawsuit can be filed." Barron v. Gersten, 472 N.J. Super. 572, 576 (App. Div. 2022) (citing Poetz v. Mix, 7 N.J. 436, 447 (1951) (referring to a statute of limitations as "the time prescribed by the Legislature in which actions may be instituted")). "Statutes of limitations, by their nature, are intended to compel plaintiffs to file their lawsuits within a prescribed time to allow defendants a fair opportunity to respond and safeguard their interests." Palisades At Fort Lee Condo. Ass'n, Inc. v. 100 Old Palisade, LLC, 230 N.J. 427, 443 (2017) (citing Gantes v. Kason Corp., 145 N.J. 478, 486 (1996)).

"Rule 4:6-2(e) motions to dismiss for failure to state a claim upon which relief can be granted are reviewed de novo." Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021) (citing Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019)). Thus, "we

owe no deference to the trial judge's conclusions." State ex rel. Comm'r of Transp. v. Cherry Hill Mitsubishi, Inc., 439 N.J. Super. 462, 467 (App. Div. 2015) (citing Rezem Fam. Assocs., LP v. Borough of Millstone, 423 N.J. Super. 103, 114 (App. Div. 2011)).

Under Rule 1:7-4(a), a "court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon." "Meaningful appellate review is inhibited unless the judge sets forth the reasons for his or her opinion." Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990).

We apply these well-established principles to the matter here, and vacate the motion judge's denial of the Rule 4:6-2(e) dismissal as to Strategic's breach of contract and unjust enrichment claims under the CLA. Additionally, we remand the matter for the judge to provide findings of fact and conclusions of law as to Strategic's substantial compliance with the notice requirements for the material misrepresentation claim under the TCA.

A.

The CLA governs claims for breach of contract against the University. Under the CLA, the State of New Jersey, "waive[d] its sovereign immunity from

liability arising out of an express contract or a contract implied in fact" but not "for claims based . . . upon contracts implied in law." N.J.S.A. 59:13-3.

The CLA provides that "[i]t shall be the responsibility of parties contracting with the State to promptly notify the State in writing of any situation or occurrence which may potentially result in the submission of a claim against the State." N.J.S.A. 59:13-5. Therefore,

> all parties contracting with the State who wish to file a breach of contract suit against the government [must] file a notice of claim with the contracting agency within ninety days of the accrual of their claim. Failure to file a notice of claim within the appropriate time period results in a permanent bar against recovery . . . . The claimant will also be barred from recovering if he fails to file suit within two years of accrual of his claim or within one year after completion of the contract giving rise to the claim.
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> [Cty. of Morris v. Fauver, 153 N.J. 80, 106-07 (1998) (citing N.J.S.A. 59:13-5).]

The "'accrual of claim' shall mean the date on which the claim arose." N.J.S.A. 59:13-2. "A cause of action 'accrues' on the date when 'the right to institute and maintain a suit' first arose." White v. Mattera, 175 N.J. 158, 164 (2003) (quoting Rosenau v. City of New Brunswick, 51 N.J. 130, 137 (1968)). "'Accrual' is a technical term found in statutes of limitations to denote the date on which the

statutory clock begins to run." Ibid. (quoting Ali v. Rutgers, 166 N.J. 280, 286 (2000)).

In its complaint, Strategic alleged that "on or about August 1, 2019, [Strategic] earned the Success Fee [as to Block 4] by executing a facility lease . . . [with] an unaffiliated third party, and the University. The lease was memorialized and later amended at the April 27, 2020 meeting of the" Board. Therefore, according to Strategic's complaint, it earned the Success Fee as of August 1, 2019 or, giving leeway for the Board's action, no later than April 27, 2020. Strategic's allegation tracked the language of the parties' agreement that provided the "Success Fee was deemed earned and payable upon the occurrence of any one of several milestone events, one of which was the execution of a long-term lease of property and/or facilities owned by an unaffiliated third party." Because the Success Fee was "earned and payable," but not paid, Strategic was aware of a "situation or occurrence which may [have] potentially result[ed] in the submission of a claim against the State." N.J.S.A. 59:13-5. Therefore, Strategic was required, within ninety days thereafter, to give notice to the University. Strategic failed to do so.

We reject Strategic's assertion that it was only after receiving the University's letter of June 30, 2023, "terminating the contract" and stating

"payments w[ould] not be issued" that its claim to the Success Fee accrued. Instead, we are convinced the claim to the Success Fee accrued in August 2019, or at the latest, April 2020, because that was when Strategic's Success Fee was "earned and payable." Absent payment by the University, Strategic could have provided the required notice and upon the expiration of the statutory grace period, filed its complaint. "A cause of action 'accrues' on the date when 'the right to institute and maintain a suit' first arose." White, 175 N.J. at 164 (citing Rosenau, 51 N.J. at 137).

Strategic argues the discovery rule applies to the CLA, and therefore its breach of contract claim did not accrue until it was advised in June 2022 that the University would not make payment. "The discovery rule provides that, 'in an appropriate case, a cause of action will not accrue until the injured party discovers, or by exercise of reasonable diligence and intelligence should have discovered, facts which form the basis of a cause of action.'" Fauver, 153 N.J. at 110 (quoting O'Keeffe v. Snyder, 83 N.J. 478, 491 (1980)).

However, "[t]he rationale for employing the discovery rule . . . does not carry over to most contract actions, and therefore, the discovery rule generally has not been applied in such suits." Ibid. The discovery rule's applicability to CLA claims has been rejected because:

> [(1)] most contract actions presume that the parties to a contract know the terms of their agreement and a breach is generally obvious and detectable with any reasonable diligence[; and (2)] . . . the discovery rule imposes on plaintiffs an affirmative duty to use reasonable diligence to investigate a potential cause of action, and thus bars from recovery plaintiffs who had "reason to know" of their injuries . . . .
>
> [Ibid.]

This reasoning similarly applies to this matter because the University's failure to pay the Success Fee, that was earned and payable upon the execution of the lease, was "obvious and detectable" to Strategic and Strategic's "reasonable diligence" would have revealed its cause of action.

Notwithstanding the similarity in reasoning, the New Jersey Supreme Court has more directly confirmed the discovery rule's inapplicability to CLA claims when it held it "need not evaluate the argument concerning [the discovery rule's] potential application . . . because [the Court] ha[d] previously rejected the assertion that the discovery rule applies to claims made pursuant to the [CLA]." Cty. of Hudson v. State Dep't of Corr., 208 N.J. 1, 15-16 (2011) (citing Fauver, 153 N.J. at 110-11).

Therefore, since we are convinced Strategic's breach of contract claim accrued in August 2019 or April 2020, we are satisfied Strategic's CLA claim was barred because it failed to timely file its CLA notice. Moreover, the

discovery rule is not applicable here. Thus, Strategic's breach of contract claim was barred by the CLA and should have been dismissed.

B.

In Strategic's complaint, it asserted a claim for unjust enrichment. However, as a matter of law, the claim cannot stand against the University because the CLA did not waive sovereign immunity for contracts implied in law.

In Cherry Hill Mitsubishi, we explained:

> In relevant part, the [CLA] provides that "[t]he State of New Jersey hereby waives its sovereign immunity from liability arising out of an express contract or a contract implied in fact . . . provided, however, that there shall be no recovery against the State . . . for claims based upon . . . contracts implied in law." (emphasis added). A "contract implied in fact" is merely one kind of "express contract," while the terms "contract implied in law" and "quasi-contract" are nearly synonymous. The implied-in-law contract is an equitable remedy for unjust enrichment.
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> "[T]he [CLA] effects a limited waiver of sovereign immunity" in contract disputes. The CLA does not, however, waive sovereign immunity except as to those "suits based on an express contract or contracts implied in fact."
>
> [Cherry Hill Mitsubishi, 439 N.J. Super. at 470-71. (citations omitted) (all but first alteration in original).]

Because the CLA specifically did not waive sovereign immunity for implied-in-law claims, Strategic's claim for unjust enrichment failed as a matter

of law. Therefore, Strategic's claim for unjust enrichment was barred under the CLA and should have been dismissed.

C.

The TCA "require[s] a complaining party to give a public entity notice of '[a] claim relating to a cause of action for death or for injury or damage to person or to property' against a public entity or public employee." Velez v. City of Jersey City, 180 N.J. 284, 293 (2004) (second alteration in original) (quoting N.J.S.A. 59:8-8). "Otherwise, '[t]he claimant shall be forever barred from recovering against a public entity or public employees.'" Ibid. (alteration in original) (quoting N.J.S.A. 59:8-8).

"The substantial compliance doctrine 'operates to prevent barring legitimate claims due to technical defects.'" H.C. Equities, LP v. Cty. of Union, 247 N.J. 366, 386 (2021) (quoting Cty. of Hudson, 208 N.J. at 21).

In considering a substantial compliance claim, a court must analyze the following factors:

> (1) the lack of prejudice to the defending party; (2) a series of steps taken to comply with the statute involved; (3) a general compliance with the purpose of the statute; (4) a reasonable notice of petitioner's claim, and (5) a reasonable explanation why there was not a strict compliance with the statute.

> [Ibid. (quoting Galik v. Clara Maas Med. Ctr., 167 N.J. 341, 353 (2001)).]

"In [TCA] cases, the doctrine of substantial compliance 'has been limited carefully to those situations in which the notice, although both timely and in writing, had technical deficiencies that did not deprive the public entity of the effective notice contemplated by the statute.'" Ibid. (quoting D.D. v. Univ. of Med. & Dentistry of N.J., 213 N.J. 130, 159 (2013)). "In that setting, 'substantial compliance means that the notice has been given in a way, which though technically defective, substantially satisfies the purposes for which notices of claims are required.'" Ibid. (quoting Lebron v. Sanchez, 407 N.J. Super. 204, 216 (App. Div. 2009)).

The motion judge concluded that Strategic's letter of July 20, 2022 substantially complied with the notice provisions of the TCA. However, the judge's conclusion omitted the analysis under H.C. Equities. In other words, the judge never explained how the July 20, 2022 letter "substantially satisfie[d] the purposes for which notices of claims [we]re required." Ibid. In the absence of this analysis, we cannot conduct meaningful appellate review. Thus, we remand the issue of Strategic's substantial compliance with the notice requirements of the TCA for further proceedings.

To the extent we have not specifically addressed any of the parties' remaining contentions, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Vacated as to Strategic's breach of contract and unjust enrichment claims with direction to the trial court to enter orders of dismissal as to those claims, and remanded as to Strategic's TCA claim. We do not retain jurisdiction.