NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

FIRST ENVIRONMENT INC.,

Plaintiff,

DELTA ENVIRONMENTAL SERVICES, LLC; NORTHSTAR ENVIRONMENTAL SERVICES, LLC; NORTHSTAR MARINE, INC. d/b/a NORTHSTAR ENVIRONMENTAL SERVICES; LAZCO ENVIRONMENTAL SERVICES, INC.; DAVID DEGHETTO; DANIEL LATTANZI; JOSEPH LAZAZZRA; THOMAS BAMBRICK; PAUL DEBLASIO; ET ALS.,

Defendants,

DAVID DEGHETTO, DANIEL LATTANZI, JOSEPH LAZAZZERA, THOMAS BAMBRICK, and PAUL DEBLASIO,

Third-Party Plaintiffs,

v.

BERNARD T. DELANEY and ELIZABETH DELANEY,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : MORRIS COUNTY

DOCKET NO. MRS-L-700-24

CIVIL ACTION - CBLP

OPINION

Argued: March 21, 2025

Decided: March 25, 2025

William H. Healey, Esq. and Lance N. Olitt, Esq. of Kluger Healey, LLC, attorneys for the Plaintiff.

Nancy A. Del Pizzo, Esq. and Catherine R. Salerno, Esq. of Rivkin Radler LLP, attorneys for the Plaintiff, First Environment Inc. (as to the Counterclaims only) and Third-Party Defendants, Bernard T. Delany and Elizabeth Delaney.

Ivan R. Novich, Esq. of Littler Mendelson, P.C., attorneys for the Defendants/Third-Party Plaintiffs, David DeGhetto, Daniel Lattanzi, Joseph Lazazzera, Thomas Bambrick, and Paul DeBlasio.

Frank J. DeAngelis, P.J. Ch.,

I. BACKGROUND INFORMATION

This matter comes before the Court by way of Plaintiff and Third-Party Defendants' Motion to Dismiss. By way of background, Plaintiff First Environment Inc. ("Plaintiff") is in the business of providing environmental remediation, consulting, and engineering service. Defendants David DeGhetto ("DeGhetto"), Daniel Lattanzi ("Lattanzi"), Jospeh Lazazzera ("Lazazzera"), and Thomas Bambrick ("Bambrick"), (collectively, "Employee Defendants") are the former employees of Plaintiff. Specifically, Employee Defendants are Licensed Site Remediation Professionals ("LSRPs"), or the agents of LSRPs. The LSRP's job is to oversee the remediation of contaminated sites in accordance with New Jersey's Department of Environmental Protection's (the "NJDEP") applicable standards and regulations for the responsible parties. LSRPs are subject to a strict code of conduct established by statute and regulation and must ensure that remediations are protective of public health, safety and the environment. The conduct of LSRPs is overseen by the Site Remediation Professional Licensing Board.

The underlying dispute arises from Plaintiff's allegations of unfair competition wherein Employee Defendants improperly aided competing companies, including Defendants Delta Environmental Services, LLC ("Delta"), Northstar Environmental Services, LLC ("Northstar"), and Lazco Environmental Services, Inc. ("Lazco") (collectively, "Company Defendants") in providing services to Plaintiff's customers. Defendant Paul DeBlasio ("DeBlasio") (collectively with Employee Defendants, "Individual Defendants") is employed by Northstar.

Plaintiff commenced this action on or around April 10, 2024, with the filing of its Complaint against Defendants, alleging, among other things, that Defendants violated the New

Jersey Trade Secrets Act, misappropriated confidential information or trade secrets, breached the fiduciary Duty of loyalty, and tortiously interfered with business relations and economic gain. On December 6, 2024, Individual Defendants filed a Third-Party Complaint against Third-Party Defendants Bernard and Elizabeth Delaney (the "Delaneys") who serve as the owners, principals, operators, and/or agents of Plaintiff, alleging among other things, a violation of the Conscientious Employee Protection Act ("CEPA"). In the instant application, the Delaneys and Plaintiff ("Movants") seek dismissal of Individual Defendants' Third-Party Complaint and Counterclaims.

II. STANDARD OF REVIEW

A motion to dismiss for failure to state a claim upon which relief can be granted is governed by R. 4:6-2(e) of the New Jersey Court Rules. The rule "permits litigants, prior to the filing of a responsive pleading, to file a motion to dismiss an opponent's complaint, counterclaim, cross-claim, or third-party complaint" Malik v. Ruttenberg, 398 N.J. Super. 489, 493 (App. Div. 2008).

The proper analytical approach to such motions requires the motion judge to (1) accept as true all factual assertions in the complaint, (2) accord to the nonmoving party every reasonable inference from those facts, and (3) examine the complaint "in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim." Id. at 494 (quoting Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989)).

The motion to dismiss should be approached with great caution and should only be granted in the rarest of instances. Sickles v. Cabot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005). The allegations are to be viewed "with great liberality and without concern for the plaintiff's ability to prove the facts alleged in the complaint." Ibid. The plaintiff's obligation on a motion to dismiss is "not to prove the case but only to make allegations, which, if proven, would constitute a valid

cause of action." Ibid. (quoting Leon v. Rite Aid Corp., 340 N.J. Super. 462, 472, (App. Div. 2001)).

III. ANALYSIS

Movants seek dismissal of Individual Defendants' claim under CEPA, claim for tortious interference, and claim for unfair competition. First, Movants argue that Individual Defendants fail to state a claim against Plaintiff or the Delaneys for unlawful retaliation under CEPA. Individual Defendants allege that they "objected to and/or refused to participate in First Environment's efforts to stop them from preserving and maintaining documents as required by the Regulations;" "from communicating with clients as required by the Regulations;" and "from servicing and updating clients as required by the Regulations." Third-Party Compl. ¶¶ 53-55. Movants take issue with Defendants' subsequent conclusions that their alleged "whistle-blowing activity" was a "a determinative and/or motivating factor in First Environment's decision to file this lawsuit" and "First Environment and the Delaneys have retaliated against" them by bringing suit. Id. at ¶¶ 89-94.

As a preliminary matter, Movants argue that DeBlasio in not a former employee of Plaintiff and therefore, has no basis for a CEPA claim against Plaintiff or the Delaneys. Movants maintain that the remaining Individual Defendants fail to allege the requisite elements of a cause of action pursuant to CEPA, warranting dismissal of the claim.

Movants submit that CEPA is remedial legislation designed "to protect and encourage employees to report illegal or unethical workplace activities and to discourage public and private sector employers from engaging in such conduct." Sauter v. Colts Neck Volunteer Fire Co. No. 2, 451 N.J. Super. 581, 588 (App. Div. 2017). Movants elaborate that the statute prohibits an employer from retaliating "against an employee who discloses, threatens to disclose, or refuses to

participate in an activity of the employer 'that the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law.'" Id. at 587 (quoting N.J.S.A. 34:19-2 to - 3). As to the elements of a CEPA claim, Movants provide that "[t]o establish a prima facie CEPA action, a plaintiff must demonstrate that: (1) he or she reasonably believed that his or her employer's conduct was violating either a law, rule, or regulation promulgated pursuant to law, or a clear mandate of public policy; (2) he or she performed a 'whistle-blowing' activity described in N.J.S.A. 34:19-3(c); (3) an adverse employment action was taken against him or her; and (4) a causal connection exists between the whistle-blowing activity and the adverse employment action." Lippman v. Ethicon, Inc., 222 N.J. 362, 380 (2015). Movants assert that Individual Defendants fail to establish a prima facie CEPA claim against Plaintiff and/or the Delaneys as they fail to allege: (i) the performance of a whistle-blowing activity; (ii) that an adverse employment action was taken against any of them; or (iii) that there is a causal connection between the alleged whistle-blowing activity and the alleged adverse employment action.

Movants provide that under the second prong of a CEPA claim, a whistle-blowing activity "refers to notification, or threatened notification, to an outside agency or supervisor . . . and also permits a claim to be supported by evidence that the employee objected to or refused to participate in the employer's conduct." Tartaglia v. UBS PaineWebber Inc., 197 N.J. 81, 106 (2008). Moreover, Movants explain that the whistle-blowing activity must reflect a "threat of public harm, not merely a private harm or harm only to the aggrieved employee." Maw v. Advanced Clinical Commc'n Inc., 179 N.J. 439, 445 (2004).

Here, Movants maintain that Individual Defendants fail to allege "a whistle-blowing activity" taken at the time of their respective employment with Plaintiff. Movants take issue with Individual Defendants' claim that they "objected to and/or refused to participate in First

Environment's efforts to stop them from preserving and maintaining documents as required by the Regulations;" "from communicating with clients as required by the Regulations;" and "from servicing and updating clients as required by the Regulations." Movants contend that these allegations are too vague to survive a motion to dismiss as the Individual Defendants fail to specify how they "objected to and/or refused to" participate in the employer's conduct, when these alleged objections and refusals took place and whether they were even at the time of their respective employment. See Battaglia v. United Parcel Serv., Inc., 214 N.J. 518, 529-31 (2013) ("Vague and conclusory complaints, complaints about trivial or minor matters, or generalized workplace unhappiness are not the sort of things that the Legislature intended to be protected by CEPA."). Furthermore, Movants claim that the alleged "whistle-blowing activity" took place after Individual Defendants resigned from Plaintiff's employment.

Next, Movants argue that there are no allegations of adverse action while Employee Defendants were employed by Plaintiff. Movants assert that the third CEPA prong requires a claimant to demonstrate that "an adverse employment action" was taken against them. Lippman, 222 N.J. at 380. Movants submit that in the Counterclaim and Third-Party Complaint, Individual Defendants allege that Movants "unlawfully retaliated against [them] by causing First Environment to take legal action against them and filing the Complaint in this matter." Movants contend that this allegation does not constitute retaliation under CEPA. Movants cite to N.J.S.A. 34:19-2(e), in which retaliatory action is defined as "the discharge, suspension or demotion of any employee, or other adverse employment action taken against an employee in the terms and conditions of employment." Further, Movants offer that "[w]hat constitutes an 'adverse employment action' must be viewed in light of the broad remedial purpose of CEPA, and [a court's] charge to liberally construe the statute to deter workplace reprisals against an employee

speaking out against a company's illicit or unethical activities." Donelson v. DuPont Chambers Works, 206 N.J. 243, 257-58 (2011). Movants maintain that for an action to be adverse, it must be completed and have had a significantly negative effect on the employee's terms and conditions of employment. See Beasley v. Passaic Cnty., 377 N.J. Super. 585 (App. Div. 2005).

Movants allege that there are no allegations of adverse action while Employee Defendants were employed by Plaintiff. Instead, Movants claim that Individual Defendants allege that as a result of their whistle-blowing activity, Movants unlawfully retaliated against them by filing a lawsuit. Movants provide that DeGhetto was employed with Plaintiff from June 1, 2013 until his resignation on April 14, 2023 (Compl., at ¶ 19); Lattanzi was employed with Plaintiff from September 7, 2010 until his resignation on July 31, 2023 (Id. at ¶ 37); Lazazzera was employed with Plaintiff from August 5, 2016 until his resignation on March 23, 2023 (Id. at ¶ 54); and Bambrick was employed with Plaintiff from September 1, 1988 until his resignation on July 28, 2023 (Id. at ¶ 62). Movants assert that Plaintiff filed the Complaint on April 10, 2024. As such, Movants argue that this alleged "adverse employment action" and/or retaliation against Employee Defendants, in the form of the filing of a lawsuit, did not occur while they were employees of Plaintiff and instead took place at least eight months after their respective employment. See Beck v. Tribert, 312 N.J. Super. 335, 344 (App. Div. 1998) (holding that the term "employee" under CEPA only applies to current employees).

Movants also contend that Individual Defendants fail to allege a causal connection between the purported whistle-blowing activity and the adverse employment action. Movants provide that to satisfy the fourth prong of a CEPA claim, Individual Defendants must demonstrate that "a causal connection exists between the whistle-blowing activity and the adverse employment action." Lippman, 222 N.J. at 380. Movants submit that "[t]he temporal proximity of employee conduct

protected by CEPA and an adverse employment action is one circumstance that may support an inference of a causal connection." Maimone v. City of Atl. City, 188 N.J. 221, 237 (2006).

Movants take issue with Individual Defendants' failure to allege facts as to: (i) when the alleged whistle-blowing activity took place; (ii) that it took place while they were still employees of First Environment, i.e., prior to their respective resignations; and (iii) the connection between the whistle-blowing activity and the adverse employment action. Based on this purported deficiency, Movants assert that Individual Defendants have not adequately alleged that there is a causal connection between the alleged whistleblowing activity and the alleged retaliatory action (i.e., the filing of a lawsuit), which took place after their respective employments with Plaintiff voluntarily ended.

Regardless of the merits of the CEPA claim, Movants additionally argue that the claim should be dismissed as untimely. Movants explain that the statute of limitations for filing a CEPA claim is one year, and the accrual date for the retaliatory adverse employment decision is the date on which it happens. See N.J.S.A. 34:19-5; Roa v. Roa, 200 N.J. 555, 567 (2010). Movants maintain that by July 31, 2023, all Employee Defendants had left their employment with Plaintiff. Accordingly, Movants claim that Individual Defendants had to assert their CEPA claims by July 31, 2024. However, Individual Defendants did not make their CEPA claims against Plaintiff until November 18, 2024 and against the Delaneys until December 6, 2024. Thus, Movants allege that the statute of limitations has passed, and the claims are untimely. Movants also note that the Delaneys never filed a Complaint against Individual Defendants, only Plaintiff.

Movants then argue that Individual Defendants fail to state a claim for tortious interference. Movants submit that to establish a claim of tortious interference with business relationships, Individual Defendants must prove four elements: "(1) a protected interest; (2) malice—that is,

defendant's intentional interference without justification; (3) a reasonable likelihood that the interference caused the loss of the prospective gain; and (4) resulting damages." Vosough v. Kierce, 437 N.J. Super. 218, 234 (App. Div. 2014). Movants elaborate that the pleading "must allege facts claiming that the interference was done intentionally and with 'malice,'" and that malice, in this context, "is not used in the literal sense requiring ill will toward the plaintiff" but means that "the harm was inflicted intentionally and without justification or excuse." Printing Mart-Morristown, 116 N.J. at 751.

Movants contend that Individual Defendants have alleged that (1) they have business relationships with clients; (2) Movants, by filing the Complaint, intentionally interfered with their business relationships with these clients; (3) there was no legitimate purpose for filing the Complaint; and (4) Movants "are intentionally, maliciously, and without justification interfering with [Individual Defendants'] business relationships. See Countercl., at ¶¶ 64-71; Third-Party Compl., at ¶¶ 99-106.

Movants claim that while Individual Defendants state the "elements" of a tortious interference cause of action, they do so without alleging any factual allegations as to how Plaintiff and/or the Delaneys interfered with the alleged "business relationships with clients" or even which act or acts demonstrated malice. Movants assert that to survive a motion to dismiss, a claimant must present "the essential facts" of the cause of action; "conclusory allegations are insufficient…." Scheidt v. DRS Techs., Inc., 424 N.J. Super. 188, 193 (App. Div. 2012). Movants additionally cite to the unpublished case, Foxtons, Inc. v. Cirri Germain Realty, wherein the Appellate Division denounced conclusory pleadings with respect to claims for tortious interference. Foxtons, Inc. v. Cirri Germain Realty, 2008 WL 465653, at *7 (App. Div. Feb. 22,

2008). Movants maintain that Individual Defendants have failed to make the requisite factual allegations, and thus, their claim for tortious interference should be dismissed.

Moreover, Movants assert that Individual Defendants' claim for unfair competition should be dismissed. Movants submit that unfair competition consists, in essence, of the misappropriation of a business's property by another business. See N.J. Optometric Ass'n v. Hillman-Kohan Eyeglasses, Inc., 144 N.J. Super. 411, 427 (Ch. Div. 1976), aff'd, 160 N.J. Super. 81 (App. Div. 1978). Movants explain that "[t]here is no distinct cause of action for unfair competition. It is a general rubric which subsumes various other causes of action." C.R. Bard, Inc. v. Wordtronics Corp., 235 N.J. Super. 168, 172 (1989).

Movants provide that in the instant action, Individual Defendants have alleged that the filing of the Complaint constitutes interference and falls "below the minimum standard of fair play and dealing acceptable in the commercial arena and thus constitute unfair competition." Countercl., at ¶ 73; Third-Party Compl., at ¶ 108. Movants argue that Individual Defendants fail to allege any connection between the filing of a complaint and unfair competition. Further, Movants contend that the filing of a complaint is not supportive of a viable unfair competition claim. Thus, Movants maintain that the claim for unfair competition should be dismissed.

In opposition, Individual Defendants submit that they have sufficiently pled all causes action and allege that their claims should survive the Motion to Dismiss. Individual Defendants first respond to Movants' CEPA arguments. Individual Defendants do not contest the elements of a CEPA claim as provided by Movants. However, Individual Defendants elaborate that "… N.J.S.A. 34:19-3c does not require a plaintiff to show that a law, rule, regulation or clear mandate of public policy actually would be violated if all the facts he or she alleges are true. Instead, a plaintiff must set forth facts that would support an objectively reasonable belief that a violation

has occurred." Dzwonar v. McDevitt, 177 N.J. 451, 464 (2003). Individual Defendants summarize Movants' CEPA arguments as follows: (1) Individual Defendants did not engage in whistleblowing activity; (2) Individual Defendants did not experience an adverse action; (3) there is no causal connection between Individual Defendants' whistleblowing activity and an adverse action; and (4) DeBlasio is an independent contractor who is not afforded legal protections under CEPA. Individual Defendants contend that the aforementioned arguments fail because they are not supported by the law and that the Court should deny Movants' application.

Individual Defendants take issue with Movants' claim that Individual Defendants fail to allege a whistleblowing activity "taken at the time of their respective employment," and that a whistleblowing activity cannot take place after an employee resigns or their working relationship ends. Individual Defendants submit that the Third-Party Complaint alleges that the Delaneys are the principals and owners of Plaintiff, that they are upper management, and that they make the business decisions for First Environment regarding personnel. Third-Party Compl. at ¶¶11-19. Moreover, Individual Defendants maintain that the Third-Party Complaint alleges that the Individual Defendants objected to and refused to participate in Plaintiff's alleged unlawful practices regarding LSRPs and that Plaintiff and that the Delaneys decided to retaliate against them by filing this action. Id. ¶¶ 59-61, 70.

In further support of the Delaneys' liability under CEPA, Individual Defendants provide that CEPA allows for individuals to be held directly liable. Espinosa v. Cont'l Airlines, 80 F.Supp.2d 297, 305-06 (D.N.J. 2000) (individual defendants may be held individually liable under CEPA); Palladino v. VNA of S.N.J., Inc., 68 F.Supp.2d 455, 474 (D.N.J.1999) ("the imposition of individual liability for offending conduct furthers CEPA's protective and remedial purposes"). Further, Individual Defendants offer that the definition of "employer" under CEPA includes "any

individual, partnership, association, corporation or any person or group of persons acting directly or indirectly on behalf of or in the interest of an employer with the employer's consent and shall include all branches of State Government, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board or any other agency or instrumentality thereof." N.J.S.A. 34:19-2.

With respect to timing of the whistleblowing activity, Individual Defendants argue that that they have alleged that they objected to and/or refused to participate in Plaintiff's purported unlawful activity and practices regarding LSRPs, which the Delaneys implemented and enforced, and that Individual Defendants did so both during and after their employment. Third-Party Compl. at ¶¶ 59-60. Individual Defendants acknowledge that they may not have alleged the specific date and time when the whistle-blowing activity occurred during the Individual Defendants' employment, but explain that they are not required to do so at this nascent stage of litigation because New Jersey state court rules simply require notice pleading. See Velop, Inc. v. Kaplan, 301 N.J. Super.32, 56 (App. Div. 1997). Individual Defendants contend that Movants can request more specific information in discovery.

Next, Individual Defendants argue that the filing of the instant action against them constitutes an adverse action under CEPA. Individual Defendants submit that the in Roa v. Roa, 200 N.J. 555, 561 (2010), the New Jersey Supreme Court held that a discrete post-discharge act of retaliation is independently actionable even if it does not relate to present or future employment: "We likewise hold that a discrete post-discharge act of retaliation is independently actionable even if it does not relate to present or future employment." Individual Defendants rely on an unpublished decision issued by the U.S. District Court of New Jersey wherein Judge Sheridan held that "…the

filing of a lawsuit may be considered a retaliatory act. Specifically, a lawsuit no doubt may be used by an employer as a powerful instrument of coercion or retaliation' and can have a chilling effect ... upon an employee's willingness to engage in protected activity." Cognizant Technology Solutions Corporation v. Franchitti, 2023 WL 7221244, *4 (D.N.J. 2023).

As to the causal link element of a CEPA claim, Individual Defendants assert that that an employee's allegations of retaliation are evaluated under the now familiar three-step burden-shifting framework first articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 (1973). Individual Defendants provide that the McDonnell Douglas framework permits the plaintiff to make use of circumstantial or indirect proof to establish that his protected conduct was a substantial or motivating basis for his adverse action. Individual Defendants explain that in determining whether a plaintiff has produced prima facie evidence of causation, courts have generally focused on two indicia: timing and evidence of ongoing antagonism. See Woodson v. Scott Paper Co., 109 F.3d 913, 920–21 (3d Cir.1997); Watkins v. Nabisco Biscuit Company, 224 F.Supp.2d 852, 871 (D.N.J. 2002). Individual Defendants set out that in cases where the timing of an employer's adverse action is, by itself, inconclusive, an employee may demonstrate the requisite causal link by producing circumstantial evidence of "ongoing antagonism" or "retaliatory animus" in the intervening period between his protected activity and the adverse action. See Kachmar v. SunGard Data Systems, Inc., 109 F.3d 173, 177 (3d Cir. 1997); Woodson, 109 F.3d at 921. However, Individual Defendants maintain that an employer's action, together, with "other types of circumstantial evidence," may also suffice to support an inference of causation. Farrell v. Planters Lifesavers Co., 206 F.3d 271, 281 (3d Cir. 2000).

Here, Individual Defendants allege that their claimed statutorily protected conduct – i.e., personally maintaining and preserving the documents, data, and records related to the remediation

sites that they worked on and are responsible for under the Regulations and the SRRA and contacting and servicing clients and customers that they serviced while employed by Plaintiff – was the determinative or substantial motivating factor in Movants' decision to file this lawsuit against them. Donofry v. Autotote Systems, Inc., 350 N.J. Super. 276, 296, (App. Div. 2001). Further, Individual Defendants claim that Movants have alleged that Individual Defendants engaged in this conduct during their employment. Compl. at ¶ 155 ("Upon information and belief, DeGhetto, Lattanzi, Lazazzera and/or Bambrick, during and since the end of their employment at First Environment, have misappropriated First Environment's confidential, proprietary and trade secret information, including, but not limited to, project-related information, by, among other things, forwarding such information and related documents to their personal email accounts.") Individual Defendants argue that the allegations in this case, when viewed in light most favorable to the Individual Defendants, the non-moving parties, contains "direct" evidence that the lawsuit was filed on the grounds that the Individual Defendants are retaining the documents that the statute compels them to retain and that they refused to return to First Environment. Schlichtig v. Inacom Corp., 271 F. Supp. 2d 597, 612-13 (D.N.J. 2003).

Individual Defendants additionally address Movants' assertion that DeBlasio has no claim under CEPA due to his lack of employment under Plaintiff. Individual Defendants provide that CEPA defines "employee" as "any individual who performs services for and under the control and direction of an employer for wages or other remuneration." N.J.S.A. 34:19-2. Individual Defendants claim that DeBlasio worked as an independent contractor for Plaintiff, and that independent contractors are covered by CEPA. See D'Annunzio v. Prudential Insurance Co., A-119-05 (July 25, 2007); Stomel v. City of Camden, A-45/46-06 (July 25, 2007) (holding that workers hired as independent contractors may be entitled to CEPA's protections).

Individual Defendants then contest Movants' allegation that their CEPA claim is barred by the statute of limitations. Individual Defendants assert that that CEPA has a one-year statute of limitations, which runs from the date of the retaliatory action – not the date whistleblowing activity occurred nor the date when the Individual Defendants ended their working relationship with Plaintiff. See Roa v. Roa, 200 N.J. 555, 567 (2010). Because Individual Defendants allege that the filing of the lawsuit constitutes a retaliatory act against the Individual Defendants, they contend that the statute of limitations would bar any CEPA claims made after April 10, 2025, one year after the commencement of this suit. As such, Individual Defendants submit that the CEPA claim is timely.

Next, Individual Defendants argue that the have sufficiently pled a claim for tortious interference. Individual Defendants provide that tortious interference contains four elements: (1) a protected interest; (2) malice—that is, defendant's intentional interference without justification; (3) a reasonable likelihood that the interference caused the loss of the prospective gain; and (4) resulting damages. DiMaria Const., Inc. v. Interarch, 351 N.J. Super. 558, 567 (App. Div. 2001). Individual Defendants elaborate that malice is defined to mean that the interference was inflicted intentionally and without justification or excuse.

As applied to the instant action, Individual Defendants maintain that accepting the allegations in the Counterclaim and Third-Party Complaint as true, Movants intentionally interfered with the Individual Defendants' protected interests without justification or excuse. Individual Defendants contend that the law is clear that an employer cannot restrict an LSRP's ability to retain and utilize documentation, property, and information from remediation projects on which they worked to serve their clients. Individual Defendants claim that by attempting to enforce the alleged unlawful restrictive covenants, Movants have interfered with their ability to conduct

their business. Individual Defendants submit that the Counterclaim and Third-Party Complaint allege that the Individual Defendants have been in pursuit of business and business relations, and that Movants have interfered with those relations thereby causing damages. Accordingly, Individual Defendants contend that their claim for tortious interference should survive the motion to dismiss.

Finally in opposition, Individual Defendants argue that they have pled a cognizable claim for unfair competition. Individual Defendants assert that the law of unfair competition is an amorphous area of jurisprudence, but generally, it consists of the misappropriation of one's property by another—property which has some sort of commercial or pecuniary value. New Jersey Optometric Ass'n v. Hillman-Kohan Eyeglasses, Inc., 144 N.J. Super. 411, 427 (Ch. Div. 1976). Individual Defendants maintain that they compete against Movants in the same line of business. Individual Defendants claim that this lawsuit restricts the Individual Defendants from using their property, i.e., the files, documentation, data, and information in their possession pertaining to remediation projects they worked on, such that it constitutes unfair competition.

In reply, Movants allege that Individual Defendants fail to provide a legal basis for the claim that filing a complaint constitutes a retaliatory action under CEPA. Movants acknowledge that Roa sets forth that a "post-discharge act of retaliation is independently actionable even if it does not relate to present or future employment." Roa, 200 N.J. at 561 (2010). However, Movants distinguish Roa from the instant matter as in Roa, the alleged "post-discharge act of retaliation" that the Court held did not need to be related to the workplace was the post-termination cancellation of the plaintiff's insurance after he reported the vice president of his company for sexual harassment. Id. at 561. Movants assert that the cancellation of the plaintiff's insurance policy is

not analogous to the filing of Plaintiff's Complaint, as Plaintiff filed the Complaint to pursue its legal claims against Defendants, which it was entitled to do.

Furthermore, Movants claim that because Individual Defendants concede that LAD claims are analogous to CEPA claims (Defs.' Br. in Opp. at 10), this Court can dismiss on that basis too as the New Jersey Appellate Division has held that the litigation privilege applies to the filing of claims in the context of a LAD claim. See Peterson v. Ballard, 292 N.J. Super. 575, 589 (App. Div. 1996) (affirming dismissal of LAD claim based on the filing of a complaint and collecting New Jersey cases holding that the litigation privilege bars claims for tortious conduct and interference with one's business on the basis of a lawsuit as well as lawsuits filed for defamation and intentional infliction of emotional distress); see also Flores v. City of Trenton, 2011 WL 812469, at *17 (App. Div. March 10, 2011) (no evidence that counterclaim was filed in retaliation where "actions taken … during the courts of litigation clearly played no part in [plaintiff]s] termination and could not constitute adverse employment actions under the LAD. . .[since Plaintiff] has already been terminated by that juncture."). Movants take issue with Individual Defendants' reliance on the unreported case, Cognizant Tech. Solutions as the case: (1) is not precedent, (2) is not binding, (3) was not properly submitted, see N.J. Rule 1:36-3[1], and (4) does not overturn the dispositive reported New Jersey Appellate Division decision of Peterson. Moreover, Movants allege that the facts in Cognizant Tech. Solutions inapposite to the instant matter. Movants provide that in Cognizant Tech. Solutions, defendants filed no fewer than six discrimination lawsuits and EEOC complaints before they were sued for breaching their non-disclosure agreements during discovery in one of those discrimination cases. Movants submit that the court there noted that the filing of

[1] Per Rule 1:36-3, "no unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel." Individual Defendants failed to serve the Court with copies of the unpublished cases cited in their submission.

that complaint could have a chilling effect on the defendants' willingness to engage in their various discrimination actions. Cognizant Tech. Solutions Corp. v. Franchitti, No. 21-cv-16937, 2023 WL 7221244 (D.N.J. Nov. 2, 2023). Here, Movants contend that there are no pre-litigation discrimination complaints and no nexus between the allegations in the Complaint and the purported wrongs.

Movants also argue that the none of the other cases cited in the Defs.' Br. in Opp. at pages 9, and 11 (Point C) are binding or apposite. See, e.g. Lloyd v. Augme Techs., Inc., No. 11-4071, 2012 WL 2952451 (D.N.J. July 19, 2012) (unreported federal matter allowing Plaintiff to amend complaint asserting retaliation based on defendant filing a counterclaim in response to Plaintiff's discrimination complaint); Carmona v. Resorts Int'l Hotel, Inc., 189 N.J. 354, (2007) (where retaliatory act regarded personnel file); McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) (discussing a Title VII claim for unlawful employment termination); Schlichtig v. Inacom Corp., 271 F.Supp.2d 597 (D.N.J. 2003) (termination of employment claimed as the retaliation); Woodson v. Scott Paper Co., 109 F.3d 913 (3d Cir. 1997) (Title VII claim of wrongful discharge); Watkins v. Nabisco Biscuit Co., 224 F.Supp.2d 852 (D.N.J. 2002) (finding no evidence of discharge based on race and granting summary judgment to defendant); Kachmar v. SunGard Data Sys., Inc., 109 F.3d 173 (3d Cir. 1997) (dealing with retaliatory discharge claim under Title VII); Abramson v. William Paterson College of N.J., 260 F.3d 265 (3d Cir. 2001) (hostile work claim and wrongful termination); Farrell v. Planters Lifesavers Co., 206 F.3d 271 (3d Cir. 2000) (Title VII wrongful termination claim); Donofry v. Autotote Sys., Inc., 350 N.J. Super. 276 (App. Div. 2001) (wrongful termination under CEPA after employee blew whistle about unlicensed technicians working in tote room). Here, Movants explain that all of the former employees left

their employment at will, and there are no allegations that they suffered any adverse employment action.

Movants further maintain that there is no nexus between the complaint and the purported wrongs. Movants recognize that in Cognizant Tech. Solutions, there was a causal link between the protected activity – the filing of the EEOC and related lawsuits – and the adverse employment action – the employer filing its action, as the employer's complaint was based on the allegation that defendants breached their NDAs during discovery in one of the discrimination matters they had filed against their employer. Cognizant Tech. Solutions Corp. v. Franchitti, No. 21-cv-16937, 2023 WL 7221244 (D.N.J. Nov. 2, 2023). Thus, Movants submit that the court noted that the employer there filed suit directly based upon the employees' protected activity. Id. However, Movants allege that there is no such nexus in the matter at hand.

Movants reference the Counterclaim and Third-Party Complaint wherein Individual Defendants allege that at some unidentified time and to some unidentified person they "object[ed] to and/or refus[ed] to participate in First Environment's efforts to stop them from preserving and maintaining documents as required by the Regulations;" "from communicating with clients as required by the Regulations;" and "from servicing and updating clients as required by the Regulations." Countercl., ¶¶53-55; Third-Party Compl., ¶¶86-88. Movants contend that these claims are vague in that they fail to specify when Individual Defendants made these purported objections, how and Plaintiff required them to violate such regulations, and that they fail to cite to any portion of the Complaint that seeks to require Individual Defendants to violate any of these regulations. Movants claim that the only time Individual Defendants made these objections was in the Answer, Counterclaim, and Third-Party Complaint. Regardless of the timing of the alleged objections, Movants argue that the objections are not related to the claims against Individual

Defendants because there is nothing in the cited regulations that allow an LSRP to retain and use its employer's proprietary information and trade secrets, much less use them to compete against the former employer. Movants explain that the basis of the Complaint is the alleged misappropriation of Plaintiff's confidential and proprietary information. Therefore, Movants assert that there is no nexus between the CEPA allegations and the allegations in the Complaint.

Additionally, Movants contend that the Delaneys cannot be liable for the CEPA claim because they did not file the Complaint, nor can they be subject to liability under the Complaint. Movants assert that the issue is not whether the Delaneys, as individuals, can be held liable under CEPA, but rather, whether Individual Defendants have sufficiently pled that the Delaneys took an adverse action against them in retaliation for their protected "whistleblowing activity." Movants submit that regardless of whether the Delaneys are considered "employer[s]" for purposes of CEPA, there are no allegations supporting that either of them targeted any employee for retaliation or that there was any protected activity to be targeted. Movants contest Individual Defendants' claim that the Delaneys "retaliated" against them by "authorizing, directing and or/participating in the filing of the Complaint," as none of the Individual Defendants were employees at the time of the filing of the Complaint, and Plaintiff, not the Delaneys, filed the Complaint. Movants provide that "a corporation has a separate and distinct legal identity apart from that of its shareholders, officers, and directors." Sidman v. Director, Div. of Taxation, 19 N.J. Tax 484, 492 (App. Div. 2001).

With respect to DeBlasio, Movants allege that Individual Defendants have admitted that DeBlasio is neither an employee nor contractor of Plaintiff. While Individual Defendants may have correctly argued that CEPA can apply to non-employees including independent contractors, Individual Defendants failed to allege that DeBlasio is an independent contractor. Movants explain

that Individual Defendants instead alleged that "DeBlasio is an employee of Northstar, which is a contractor/subcontractor of First Environment." Countercl., ¶ 5; Third-Party Compl., ¶ 25. Movants contend that DeBlasio may be under the direction and control of some employer, but it is not Plaintiff – it is Northstar, as alleged by Individual Defendants.

Next, Movants address the claims for tortious interference and unfair competition. Movants argue that both claims are unsustainable. Movants claim that the basis for the unfair competition and tortious interference claims is the filing of the Complaint. However, Movants emphasize that Plaintiff, not the Delaneys, filed the Complaint, and as such, the claims cannot be sustained against them. With respect to Plaintiff, Movants submit that New Jersey courts have long held that claims made within a lawsuit cannot sustain an intentional interference in business relationships or unfair competition claim. See, e.g., Rainier's Dairies v. Raritan Val. Farms, 19 N.J. 552, 564 (1955) (litigation privilege bars action for tortious conduct); Middlesex Concrete Prods. & Excavating Corp. v. Carteret Indus. Ass'n, 68 N.J. Super. 85, 91 (App. Div. 1961) (litigation privilege bars tortious interference claim); Devlin v. Greiner, 147 N.J. Super. 446, 455 (Law Div. 1977) (privilege bars claims that arise from conduct of parties or witnesses in connection with a judicial proceeding); see also, Waterloov Gutter Prot. Sys. Co., Inc. v. Absolute Gutter Prot., L.L.C. 64 F.Supp.2d 398 (D.N.J. 1999) (New Jersey's absolute privilege defeats an unfair competition claim based on the filing of a lawsuit).

Finally, Movants assert that neither the LSRP regulations nor case law render restrictive covenants executed by LSRPs invalid, nor allow Individual Defendants to use Plaintiff's proprietary information and trade secrets to compete against them. Movants claim that Individual Defendants fail to cite to any LSRP regulations or case law making it unlawful for an employer to enter into a restrictive covenant with an employee who is working under an LSRP license. Further,

Movants maintain that Individual Defendants do not cite to any regulation or law allowing LSRPs to use their employers' proprietary information and trade secrets to compete against them. Movants dispute Individual Defendants' contentions that "notice pleading" is sufficient to sustain their claims and that they "need not allege an actual violation of a law, rule, regulation, or clear mandate of public policy." Defs.' Br. in Opp. at 5. Movants submit that "to sustain a cause of action under CEPA's anti-retaliation provisions, it is not enough that the employee 'blow any whistle.' A CEPA plaintiff must show that 'he or she reasonably believed that his or her employer's conduct was violating either a law, rule, or regulation promulgated pursuant to law, or a clear mandate of public policy." See Carmona, 189 N.J. at 371. Movants further explain that "an unreasonable, frivolous, bad-faith, or unfounded complaint cannot satisfy the statutory prerequisite necessary to establish liability for retaliation under the LAD." Id. at 373.

The Court will first address Individual Defendants' CEPA claim. After making all inferences in favor of the non-party and taking all allegations in the Third Pary Complaint and Counterclaim as true, the Court finds that Individual Defendants have failed to adequately plead a claim under CEPA. In order to bring a claim pursuant to CEPA an employee must demonstrate that: 1) they reasonably believed that his or her employer's conduct was violating a law, regulation promulgated pursuant to law, or a clear mandate of public policy; (2) performed a whistle-blowing activity described in N.J.S.A. 34:19-3c; (3) suffered an adverse employment action; and (4) that a causal connection exists between the whistle-blowing activity and the adverse employment action. See Dzwonar v. McDeviit, 177 N.J. 451, 464-65 (2003); N.J.S.A. 34:19-3. The Legislature enacted CEPA to "protect and encourage employees to report illegal or unethical workplace activities and to discourage public and private sector employers from engaging in such conduct." Dzwonar v. McDevitt, 177 N.J. 451, 461 (2003) (quoting Abbamont v. Piscataway Township Bd. of Educ.,

138 N.J. 405, 431 (1994). Where a defendant submits a non-retaliatory and legitimate reason for the alleged retaliatory conduct, the plaintiff must raise a genuine issue of material fact in response to the explanation in a summary judgment motion scenario. Donofry v. Autotote Sys., Inc., 350 N.J. Super. 276, 290-93 (App. Div. 2001). The plaintiff need not allege facts that, if true, actually would violate that statute, rule, or public policy. Dzwonar, 177 N.J. at 463; see also Maw v. Advanced Clinical Commc'ns, Inc., 179 N.J. 439 (2004)(holding that unlawful activity must threaten the public interest and not merely inflict a private harm to the employee).

CEPA defines "retaliatory action" as "the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment." N.J.S.A. 34:19-2e; Hancock v. Borough of Oaklyn, 347 N.J. Super. 350, 359 (App. Div. 2002). Although, retaliatory action does not encompass actions taken to effectuate the discharge, suspension, or demotion; actions that fall short of discharge, suspension or demotion, may nonetheless constitute an adverse employment action. Nardello v. Twp. of Voorhees, 377 N.J. Super. 428, 433-434 (App. Div. 2005). However, retaliation does not include each and every minor disciplinary action, but rather "formal disciplinary actions having effect on either compensation or job rank. Hancock, 347 N.J. Super. at 360 (citing Pierce v. Ortho Pharm. Corp., 84 N.J. 58 (1980)); see also Young v. Hobart W. Grp., 385 N.J. Super. 448, 455 (Super. Ct. App. Div. 2005)(summary judgment properly granted where plaintiff's position was eliminated due to wide spread layoffs implemented as a cost reduction measure).

A plaintiff is required to establish a factual nexus between the protected activity under CEPA and the alleged retaliatory conduct. Hancock, 347 N.J. Super. at 361. "Temporal proximity, standing alone, is insufficient to establish causation." Id. In some cases, causation may be inferred if the plaintiff became the subject of disciplinary charges after the whistle blowing was discovered.

Id. Notably, causation does not exist were an employer or management does not know of plaintiff's whistleblowing behavior. Caver v. City of Trenton, 420 F. 3d 243, 258 (3d Cir. 2005). If a plaintiff establishes a prima facie case of retaliatory discharge, the defendant must then come forward and advance a legitimate reason for discharging plaintiff. Massarano, 400 N.J. Super. at 492. If such reasons are proffered, the plaintiff must raise a genuine issue of material fact that the proffered explanation is pretextual. Klein v. Univ. of Med. And Dentistry of N.J., 377 N.J. Super. 28, 38-39 (App. Div. 2005) cert. den. 185 N.J. 39 (2005).

Individual Defendants claim that the filing of the Complaint constitutes an adverse action taken in retaliation for their objection to signing a restrictive covenant. While in some instances the filing of a complaint may be considered a retaliatory action, here it cannot be considered such. Individual Defendants rely on the unpublished case, Cognizant Tech. Solutions Corp. v. Franchitti, No. 21-cv-16937, 2023 WL 7221244 (D.N.J. Nov. 2, 2023) to support their argument. However, this case is easily distinguishable from the present action. In Cognizant Tech. Solutions, the employer's complaint was predicated on the allegation that defendants breached their NDAs during discovery in one of the discrimination matters they had filed against their employer. Id. As such, there was a clear nexus between the filing of the complaint and the alleged whistleblowing activity. There is no such nexus instantly. The Complaint was filed eight months after Employee Defendants willingly left their employment. Moreover, there are no pre-litigation allegations of discrimination and no allegations of any adverse employment action taken by Movants.

The purported whistleblowing activity, as alleged by Individual Defendants, is that they "object[ed] to and/or refus[ed] to participate in First Environment's efforts to stop them from preserving and maintaining documents as required by the Regulations;" "from communicating with clients as required by the Regulations;" and "from servicing and updating clients as required

by the Regulations." Countercl., ¶ ¶53-55; Third-Party Compl., ¶¶86-88. Individual Defendants provide no specifics with respect to time or method of the objections and fail to connect these allegations to the Complaint, which is based on allegations of misappropriation and improper use of Plaintiff's proprietary information. Regardless of whether Individual Defendants actually engaged in a whistleblowing activity, a claim which is attenuated based on the pleadings, there is no apparent nexus between the filing of the Complaint and the alleged whistleblowing.

Moreover, Individual Defendants do not adequately plead a CEPA claim against the Delaneys. The Delaneys are shareholders of Plaintiff. However, such does not mean that Plaintiff filing the Complaint was therefore an act committed by the Delaneys. The Complaint was filed by Plaintiff, as a separate entity, not on behalf of the Delaneys. Individual Defendants fail to allege any discriminatory or retaliatory act performed by the Delaneys in their individual capacity.

With respect to DeBlasio, the Court will note that DeBlasio is not afforded any protections under CEPA, because he is employed by Northstar, as alleged by Individual Defendants. DeBlasio has never been employed by Plaintiff, and Individual Defendants did not allege that he was an independent contractor in the Third-Party Complaint or the Counterclaim. Instead, DeBlasio is an employee of Northstar, which as an entity is a contractor for Plaintiff. Therefore, the CEPA claim must be dismissed.

"Unfair competition is a business tort. Generally it consists of the misappropriation of one's property by another -- property which has some sort of commercial or pecuniary value." New Jersey Optometric Assoc. v. Hillman-Kohan Eyeglasses, Inc., 144 N.J. Super. 411, 428 (Ch. Div. 1976). The tort of unfair competition is not rigidly defined, but rather "the concept is as flexible and elastic as the evolving standards of commercial morality demand." Id. The law of unfair competition is an "amorphous area of jurisprudence" with no clear boundaries. Id. at 427. The

tendency of the court is to promote and advocate higher ethical standards in the business world. Id. When a party pursues a claim of unfair competition, it must be considered in light of a policy which "encourages employees to seek better jobs from other employers or to go into business for themselves." Sun Dial Corp. v. Rideout, 16 N.J. 252, 260 (1954).

Individual Defendants allege that by "filing this lawsuit and interfering with the Counterclaimant's legal obligations as LSRPs, First Environment has fallen below the minimum standard of fair play and dealing acceptable in the commercial arena and thus constitute unfair competition." Third-Party Compl., ¶ 73. However, Individual Defendants have provided no precedent that would indicate that filing a lawsuit can be form of unfair competition. Most common law claims of unfair competition are limited to: "(1) passing off one's goods or services as those of another; or (2) unprivileged imitation." SK&F, Co. v. Permo Pharm. Lab., Inc., 625 F. 2d 1055, 1062 (3d Cir. 1980). There is no New Jersey precedent that supports Individual Defendants' claim that commencing litigation can constitute unfair competition. Therefore, Individual Defendants' unfair competition claim cannot be sustained and is dismissed.

Finally, after taking all allegations as true, the Court finds that Individual Defendant have not adequately pled a claim for tortious interference. The essential elements of a claim for tortious interference with economic relationship, under which the above counterclaims fall, are (1) the plaintiff had a reasonable expectation of economic advantage, (2) the defendant acted maliciously in the sense that the harm inflicted was intentional and without justification, (3) the interference caused the loss of the prospective gain, or there was reasonable probability that the plaintiff would have obtained the anticipated economic benefit, and (4) the injury caused the plaintiff damage. Mandel v. UBS/PaineWebber, 373 N.J. Super. 55, 79-80 (App. Div. 2004). Where the alleged

tortious interference is based on defamatory statements, those statements must be identified. Russo v. Nagel, 358 N.J. Super. 254, 269 (App. Div. 2003).

Malice in this context does not mean "ill will" but rather is defined to mean that "the harm was inflicted intentionally and without justification or excuse." Velop, Inc. v. Kaplan, 301 N.J. Super. 32, 49 (App. Div. 1997). Malice is determined on an individual basis and the standard is flexible in viewing the defendant's actions within the context of the facts presented. Lamorte Burns & Co. v. Walters, 167 N.J. 285, 306 (2001). The defendant's conduct must be injurious and "transgressive of generally accepted standards of common morality or of law." Id. The line is drawn at conduct that is fraudulent, dishonest, or illegal and, as a result, interferes with a competitor's economic advantage. Id. at 307. As to causation, the plaintiff must prove that had there been no interference, there was a "reasonable probability that the victim of the interference would have received the anticipated economic benefits." Velop, 301 N.J. Super. at 49.

Individual Defendants allege that Movants "engaged in improper conduct for the primary, if not sole, purpose of intentionally interfering with [Individual Defendants'] business relationships with these clients," and that Movants' "affirmative, tortious actions include filing this lawsuit." Countercl., ¶¶ 67-68. Individual Defendants fail to allege any other instance of interference other than the filing of the Complaint and fail to provide any precedent for the filing of a complaint constituting tortious interference. Similar to the claim for unfair competition, without precedent or persuasive caselaw, this Court will decline to find that the filing of the Complaint can be considered tortious interference. Thus, the tortious interference claim is dismissed.

IV. CONCLUSION

Accordingly, Movants' motion to dismiss the Third-Party Complaint and Counterclaim is granted in its entirety. Based on the statements made at oral argument that unpled whistleblowing activity occurred while the Individual Defendants, other than DeBlasio, were employed by Plaintiff, the CEPA claims against Plaintiff and the Delaneys are dismissed without prejudice, subject to repleading within twenty days. The remainder of the Third-Party Complaint and Counterclaim are dismissed with prejudice.