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MIN WU, Plaintiff; v. JAFCO FOODS, INC., JOY LOGISTICS, LLC, CHRIS CHOI, CURATE FOODSERVICE, ABC CO. (1-5) and JOHN DOES (1-5); Defendants.	**SUPERIOR COURT OF NEW JERSEY** LAW DIVISION – BERGEN COUNTY DOCKET NO. **BER-L-7317-20** Civil Action **OPINION**

Argued: **February 18, 2022**
Decided: **February 25, 2022**

HONORABLE ROBERT C. WILSON, J.S.C.

Howard Masia, Esq. appearing on behalf of Plaintiff Min Wu

Kenneth L. Winters, Esq. appearing on behalf of Defendant Jafco Foods, Inc. d/b/a Curate Foodservice (from Jardim Meisner & Susser, P.C.)

FACTUAL BACKGROUND

THE INSTANT MATTER is an action in which Min Wu ("Plaintiff") has twice previously sued defendants Chris Choi ("Choi") and Joy Logistics, LLC ("Joy"), over a dispute regarding the operation of Joy Logistics, LLC. Both suits were brought in the Superior Court, Chancery Division, Passaic County. The first suit, docket number C-126-18, commenced in October 2018 and settled in May 2019. Defendant Jafco Foods, Inc., d/b/a Curate Foodservice ("Jafco") was not joined as a party to the lawsuit. The second suit commenced in Passaic County on December 19, 2019, under docket number C-133-19, and sought specific performance of the settlement and alleged many of the same causes of action as asserted in the previous action. Now, Plaintiff brings suit in this Court against the two prior defendants and also includes Jafco as a defendant.

Jafco is a Massachusetts corporation that does business under the tradename "Curate Foodservice." Jafco is a vendor in the business of selling food products to the food service industry. Some sales are made to purchasers directly by Jafco employees, while others are made through independent contractors acting as brokers of the products. Prior to 2020, Choi had been employed by Jafco as a commissioned salesperson. Thereafter, Choi ceased his employment with Jafco, and was involved in the creation of Joy without knowledge, consultation, or advice from Jafco or any of its officers or employees. Joy is an independent company engaged in the storage and arranging for transportation of supplies to the food service industry. Plaintiff was a 32.7% owner of Joy, and the largest single shareholder of Joy.

As part of the supply chain in the foodservice industry, it is common for the owner of the product ("Vendor") to use various locations as storage facilities for food products. These facilities operate as a warehouse and shipping point. They may be operated by an independent contractor who then can fulfill sales made by the Vendor transporting the product which the Vendor has stored with them, or they may seek to arrange sales of the product on a commission basis. Joy operated as an independent contractor which sought to arrange sales of food products of Jafco and others on a commission basis and also to fulfill sales made by Jafco by arranging for the transportation of the Jafco products stored with Joy.

Jafco had, and has, no ownership interest in the premises, fixtures, assets, or equipment used by Joy. While Jafco did store some goods and product at Joy's premises, which Jafco had purchased from other companies for resale by Jafco, all such goods and products were owned by Jafco. Jafco was and remained the owner of those goods and products while they were located at Joy's premises, and title to those products was not transferred to Joy at any point. When sales were made, whether by Jafco alone or if brokered by Joy, the transportation of those products

would be arranged by Joy and title to such products would pass directly from Jafco to the ultimate purchaser.

Plaintiff alleges that Jafco is liable on the Passaic County consent judgment that Plaintiff obtained against Joy and demands possession of all inventory located at Joy's facility, including the inventory owned by Jafco. Plaintiff also alleges that Jafco merged with and/or became "affiliated" with Joy. The public records of the New Jersey Secretary of State do not show that Joy has merged with any entity, and the public records of the Massachusetts Secretary of State also do not show that Jafco has merged with any entity.

For the reasons set forth below, Jafco's Motion to Dismiss is hereby **GRANTED** without prejudice, and Plaintiff's Motion to Compel is hereby **DENIED**.

MOTION TO DISMISS STANDARD UNDER RULE 4:6-2(e)

On a motion to dismiss pursuant to R. 4:6-2(e), the Court must treat all factual allegations as true and must carefully examine those allegations "to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim. . . ." Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989). After a thorough examination, should the Court determine that such allegations fail to state a claim upon which relief can be granted, the Court must dismiss the claim. Id. It is simply not enough for a party to file mere conclusory allegations as the basis of its complaint. See Scheidt v. DRS Techs., Inc., 424 N.J. Super. 188, 193 (App. Div. 2012); see also Camden Cty. Energy Recovery Assocs., L.P. v. New Jersey Dept. of Envtl. Prot., 320 N.J. Super 59, 64 (App. Div. 1999), aff'd o.b. 170 N.J. 246 (2001) ("Discovery is intended to lead to facts supporting or opposing an asserted legal theory; it is not designed to lead to formulation of a legal theory.").

Under the New Jersey Court Rules, a complaint may only be dismissed for failure to state a claim if, after an in-depth and liberal search of its allegations, a cause of action cannot be gleaned

from even an obscure statement in the Complaint, particularly if additional discovery is permitted. R. 4:6-2(e); see Pressler, Current N.J. Court Rules, Comment 4.1.1. to Rule 4:6-2(e), at 1348 (2010) (citing Printing Mart, 116 N.J. at 746). Thus, a Court must give the non-moving party every inference in evaluating whether to dismiss a Complaint. See NCP Litigation Trust v. KPMG, LLP, 187 N.J. 353, 365 (2006); Banco Popular No. America v. Gandi, 184 N.J. 161, 165-66 (2005); Fazilat v. Feldstein, 180 N.J. 74, 78 (2004). The "test for determining the adequacy of a pleading [is] whether a cause of action is suggested by the facts." Printing Mart, 116 N.J. at 746. However, "a court must dismiss the plaintiff's complaint if it has failed to articulate a legal basis entitling plaintiff to relief." Sickles v. Carbot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005).

RULES OF LAW AND DECISION

I. Insufficiency of Service of Process

Rule 4:4-4(a) requires that service on an individual be made in the State of New Jersey by "delivering a copy of the summons and complaint to the individual personally" or in the alternative, "by leaving a copy thereof at the individual's dwelling place or usual place of abode with a competent member of the household . . . ." With respect to a corporation, Rule 4:4-4(a) provides:

> (6) Upon a corporation, by serving a copy of the summons and complaint in the manner described by paragraph (a)(1) of this rule on . . . any person authorized by appointment or by law to receive service of process on behalf of the corporation, or on a person at the registered office of the corporation in charge thereof, or, if service cannot be made on any of those persons, then on a person at the principal place of business of the corporation in this State in charge thereof, or if there is no place of business in this State, then on any employee of the corporation within this State acting in the discharge of his or her duties, provided, however, that

> a foreign corporation may be served only as herein prescribed subject to due process of law.

The Rule requires service in the State of New Jersey.

Jafco was not served in New Jersey. There is no affidavit from any person allegedly making service on Jafco in New Jersey identifying the individual on whom service was made. While personal service outside the State my be made on a person not found within the State, the filing of an affidavit of inquiry is required before the out-of-state service may be undertaken. Rule 4:4-4(b)(1), Rule 4:4-5(b). The very language of Rule 4:4-4(b)(1) indicates that only if an affidavit of inquiry is made and filed, "then" the person out-of-state service can be made. The filing of the affidavit of inquiry prior to service is a jurisdictional requirement. See, Camden County Db. Of Social Services on Behalf of Boyle v. Yocavitch, 251 N.J. Super. 24 (Ch. Div. 1991); Modan v. Modan, 327 N.J. Super. 44, 47 (App. Div. 2000); J.C. v. M.C., 438 N.J. Super. 325, 330 (Ch. Div. 2013).

Here, no affidavit of merit was filed before the out-of-state service was resorted to. Plaintiff's position that he engaged in out-of-state service and later created an affidavit or inquiry is contrary to the process as set in the Rules. Moreover, Plaintiff has presented no evidence whatsoever to establish that Ms. Doyle was authorized to accept service of process. Rather, Plaintiff relies on what is necessarily inadmissible hearsay from a person without personal knowledge. Thus, not only was service in Massachusetts not authorized by the Rules, but in addition service was not made on a person authorized to be served on behalf of Jafco.

II. Failure to State a Claim

Merely reciting the elements of a cause of action without setting forth supporting facts does not state a claim on which relief may be granted. Printing Mart, 116 N.J. at 768; Nostrame v. Santiago, 420 N.J. Super. 427, 436 (App. Div. 2011), aff'd in part and modified in part, 213 N.J.

109 (2013). Simply alleging the existence of rights or obligation is insufficient to state a cause of action when essential facts are missing from the complaint. See, e.g., Glass v. Suburban Restoration CO., 317 N.J. Super. 574, 582 (App. Div. 1998). Under the New Jersey Court Rules, a pleading that sets forth a claim for relief "shall contain a statement of the facts on which the claim is based, showing that the pleader is entitled to relief." Cusseaux v. Pickett, 279 N.J. Super. 574, 582 (App. Div. 1998); see also Schantz v. Rachlin, 101 N.J. Super. 334 (Ch. Div. 1968). "[T]he essential facts supporting [a claimant's] cause of action must be presented in order for the claim to survive; conclusory allegations are insufficient in that regard." Scheidt v. DRS Techs., Inc., 424 N.J. Super. 188, 193 *App. Div. 2012). This test is consistent with longstanding New Jersey law. "New Jersey is a 'fact' rather than a 'notice' pleading jurisdiction, which means that a [claimant] must allege facts to support his or her claim rather than merely reciting the elements of a cause of action." Nostrame, 420 N.J. Super. at 436; see also Printing Mart, 116 N.J. at 768.

The Amended Complaint in this action is devoid of any facts relating to Jafco that are sufficient to state a claim. Plaintiff's asserts legal conclusions as opposed to pleading facts. The allegation that Jafco is "affiliated" with Joy fails to state a basis for a claim in two respects. First, by failing to state any facts relating to what constitutes such "affiliation" it fails to state a claim. It is a basic principle of law that the mere existence of "affiliation", without more, does not establish that one entity is liable for another. See, e.g., McColley by McColley v. Edison Corp. Ctr., 303 N.J. Super. 420, 429 (App. Div. 1997). Even a parent corporation is not routinely liable for the torts of the subsidiary. State, Dept. of Environmental Protection v. Ventron Corp., 94 N.J. 473, 500 (1983). Likewise, merely having the same street address does not establish the existence of a claim to relief, particularly when a single building can provide space that is used by multiple lessees, or where goods may present on a bailment. Second, the Amended Complaint, while seeking to enforce the consent judgment against "Joy" fails to provide any reasonable legal basis

as to how and why an alleged undescribed "affiliation" between Jafco and defendant Joy Logistics LLC renders Jafco liable on a consent judgment against Joy Foodservice LLC, a different legal entity.

Further, lumping separate defendants into collective allegations and not addressing their conduct individually fails to state a claim against the individual defendants and is impermissible. See, Gross v. Waywell, 628 F. Supp. 2d 475, 495 (S.D.N.Y. 2009). A plaintiff does not sustain its burden by alleging actions by defendants in the aggregate; to state a claim, the plaintiff must factually allege what each defendant did or did not do. See, Luce v. Edelstein, 802 F.2d 49, 54 (2d Cir. 1986); P. Schoenfeld Asset Mgmt. LLC v. Cendant Corp., 142 F. Supp. 2d 589, 619 (D.N.J. 2001).

The policy for the pleading rules is to give the individual defendant notice of what is specifically claimed against it. This is required because a complaint must state a claim for relief against the specific defendant named in the complaint, and not some other defendants. Plaintiff's failure to state a claim is made clear by the very ambiguity used in the Amended Complaint as to whom the claim is against. The use of "Defendant(s)" is nothing more than an attempt by the Plaintiff to circumvent the requirement of Rule 1:4-8 that the pleader have a reasonable basis in fact for the claim asserted.

The deficiencies in the Amended Complaint are highlighted by the complete lack of factual specificity in the pleading. Plaintiff asserts a claim for breach of contract without identifying the contract, with whom it was with, and how Jafco is liable in contract to Plaintiff. Plaintiff also attempts to assert a claim of conversion, without identifying the property that was allegedly converted or facts establishing Plaintiff's ownership of and entitlement to, possession of such unidentified property. Plaintiff asserts a claim of unjust enrichment without identifying the benefit Jafco unjustly received or stating facts to show that Plaintiff expected remuneration from Jafco at

the time Plaintiff performed or conferred a benefit upon Jafco, "and that the failure of remuneration enriched defendant beyond its contract rights." VRG Corp. GKN Realty Corp., 135 N.J. 539, 554 (1994). Similarly, Plaintiff asserts a private claim under a Bulk Sales Act without identifying facts establishing a sale. For the aforementioned reasons, Plaintiff's Amended Complaint is dismissed.

III. Plaintiff's Motion to Compel

Generally, "parties may obtain discovery regarding any matter, *not privileged*, which is relevant to the subject matter involved in the pending action." R. 4:10-2(a) (emphasis added). The New Jersey Rules of Court provide that "[a] party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery . . . ." R. 4:23-1. "If a deponent fails to answer a question propounded or submitted under R. 4:14 or 4:15 . . . the discovering party may move for an order compelling an answer or designation in accordance with the request." Id. Furthermore, "there must be a substantial showing that [the discovery sought] contain[s] evidence relevant and material to the issue. If the specification is so broad and indefinite as to be oppressive and in excess of the defendant's necessities," then the Motion should be denied. State v. Cooper, 2 N.J. 540, 556 (1949).

As to Jafco, Plaintiff's motion to compel is DENIED as moot due to the dismissal of Plaintiff's claims. As to Defendants Joy and Choi, Plaintiff's motion to compel is DENIED. This matter involves alleged fraudulent transfers. The documents sought by Plaintiff do not go to this issue. Rather, the documents sought by Plaintiff only would be appropriate if Plaintiff already obtained a judgment. Any proper requests made by Plaintiff were responded to by the Defendants.

CONCLUSION

For the aforementioned reasons, Jafco's Motion to Dismiss is **GRANTED WITHOUT PREJUDICE** and Plaintiff's Motion to Compel is **DENIED.**