CHARLES REDMOND,

Plaintiff-Appellant

vs.

BDO USA, LLP, and HEIDE M. MOELLER,

Defendants-Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No. A-002310-24 T1

CIVIL ACTION

ON APPEAL FROM

SUPERIOR COURT, LAW DIVISION
PASSAIC COUNTY

Sat Below:
Honorable Scott J. Bennion, J.S.C.
Honorable Bruno Mongiardo, J.S.C.

AMENDED BRIEF FOR APPELLANT CHARLES REDMOND

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PRELIMINARY STATEMENT

This is an employment discrimination case in which Plaintiff-Appellant Charles Redmond ("Mr. Redmond") was terminated on July 7, 2020, by Defendant-Appellee BDO USA, LLP, after he complained about being discriminated against on the basis of his race. Mr. Redmond began his employment with Defendant in or about January 2018 as an Experienced Senior Tax Associate in the Core Tax Services (CTS) practice group in BDO's Stamford, Connecticut office. Mr. Redmond lived and worked in both New Jersey and Connecticut, and BDO has offices in both states. Mr. Redmond worked almost exclusively in New Jersey after March 2020 because of the COVID-19 pandemic.

In both 2018 and 2019, Mr. Redmond was rated as a "Very "Successful" employee. At the end of 2019, however, Defendant-Appellee Heide Moeller became office managing partner and began to discriminate against Mr. Redmond on the basis of race. After an incident in mid-March 2020, Moeller's discrimination reached a nadir, and Mr. Redmond submitted a complaint about Moeller's discriminatory behavior. Moeller and BDO retaliated against Mr. Redmond by placing him on a performance improvement plan in April 2020. When Mr. Redmond complained about being placed on a PIP in retaliation for

his discrimination complaint against Moeller, Defendants again retaliated against Mr. Redmond by terminating his employment on July 7, 2020.

Mr. Redmond timely filed a charge of discrimination with the Connecticut Commission on Human Rights and Opportunities, even while he lived and worked in New Jersey. Ultimately, the Commission issued a Release of Jurisdiction in 2022. Thereafter, Mr. Redmond timely commenced this action under the New Jersey Law Against Discrimination, the Connecticut Fair Employment Practices Act, and for wrongful discharge under the common law of both New Jersey and Connecticut.

PROCEDURAL HISTORY[1]

This action was commenced by the filing of the original complaint with the Clerk of Superior Court, Passaic County, on July 7, 2020. (Pa5) Thereafter, the summons and complaint were served upon Defendants BDO and Moeller. On November 4, 2022, Defendants moved to dismiss the complaint on several

[1] On this appeal, multiple volumes of transcripts have been submitted. For purposes of this amended appellant's brief, these transcripts are referred to herein using the following designations:

"1T" – Transcript of Hearing Before the Court (on January 6, 2023)
"2T" – Deposition Transcript of Heide M. Moeller (taken on May 9, 2023)
"3T" – Transcript of Decision by the Court (on September 26, 2023)
"4T" – Deposition Transcript of Charles Redmond, Part 1 (taken on September 9, 2024)
"5T" – Deposition Transcript of Heide M. Moeller (taken on September 10, 2024)
"6T" – Deposition Transcript of Mathew DeMong (taken on September 11, 2024)
"7T" – Deposition Transcript of Larisa Shevelenko (taken on September 11, 2024)
"8T" – Deposition Transcript of Meghan Joans (taken on September 12, 2024)
"9T" – Deposition Transcript of Charles Redmond, Part 2 (taken on September 12, 2024)
"10T" – Transcript of Decision by the Court (on February 18, 2025)
"11T" – Transcript of Oral Argument (on February 24, 2023)

grounds, including their contention that the court did not have personal jurisdiction over Moeller. (Pa66) On December 6, 2022, Mr. Redmond filed a cross-motion for leave to conduct jurisdictional discovery and to file an amended complaint. (Pa68) After hearing argument from counsel on January 6, 2023, the trial court entered an order granting permission for Mr. Redmond to conduct limited jurisdictional discovery, granted leave to amend the complaint, and held Defendants' open, pending the jurisdictional discovery. (1T; Pa2)

On February 23, 2023, Mr. Redmond filed the First Amended Complaint. (Pa 29) Defendants filed their answer with affirmative defenses on March 15, 2023. (Pa50) Defendant's answer does not include an affirmative defense relating to any statutes of limitations. (Pa60-Pa62)

Jurisdictional discovery ensued, which included the deposition of Moeller. (2T) Although Mr. Redmond requested an evidentiary hearing with respect to the jurisdictional issue, the trial court never did hold such a hearing. (Pa107; 11T:51) Instead, on September 26, 2023, after having permitted the parties to make additional submissions with respect to the question of personal jurisdiction (Pa79-106; Pa107-Pa159), the court rendered its decision to dismiss the complaint as to Moeller, on the grounds of lack of personal jurisdiction. (Pa3; 3T)

Regular discovery then ensued, after which Defendant BDO filed its motion for summary judgment on September 27, 2024. (Pa160-Pa588) Mr. Redmond opposed the motion on October 16, 2024, and filed an Amended Statement of Material Facts Precluding Summary Judgment on November 19, 2024. (Pa589-Pa802; Pa803-Pa815) BDO filed a Reply Statement of Facts on December 4, 2024. (Pa819-Pa866)

On February 18, 2025, the trial court rendered its decision to grant Defendant's motion for summary judgment and dismissed the complaint with prejudice. (10T; Pa1) Mr. Redmond filed his Notice of Appeal on April 3, 2025. (Pa875)

STATEMENT OF FACTS

Mr. Redmond began employment with BDO in January 2018. (Pa765) Mr. Redmond resided in New Jersey at all relevant times. (Pa737-Pa741) Mr. Redmond was one of two employees throughout all of BDO's tri-state offices to attend the 2018 National Association of Black Accountants on behalf of the company. (Pa766, ¶9) In 2019, Mr. Redmond was sponsored by the company to attend the 2019 NABA convention on its behalf. (Pa766, ¶10) In order to be selected to represent the company, Mr. Redmond was in good professional standing within the firm, had community involvement both inside and outside of BDO, and had active involvement within the NABA organization. (Pa766, ¶11) In 2019, Mr. Redmond

earned the NABA Baruch Award for his activism within BDO to foster awareness of the accounting profession. (Pa766, ¶ 12)

In the first year, Mr. Redmond was rated "Very Successful" for the period from January 2018 to June 30, 2018. (Pa614-Pa616) In his second year, Mr. Redmond also was rated "Very Successful" for the period between July 1, 2018 to June 30, 2019. (Pa618-Pa623) Rating an employee as "Very Successful" is a consensus decision. (7T:25)

Moeller joined BDO on August 1, 2019. (5T:5) Moeller did not work with Mr. Redmond initially. (5T:5) Moeller became office managing partner on September 1, 2019. (5T:6) Moeller first worked with Mr. Redmond directly in early October 2019. (5T:6,11) Moeller was not the office managing partner for all employees in the Stamford office. (5T:9) She only supervised 15 people. (5T:11) Moeller only worked with Mr. Redmond on the "Inceptua" project. (5T:12) As reflected in Mr. Redmond's calendars, there was no opportunity for Moeller to observe or evaluate Mr. Redmond's overall performance. (Pa633-Pa636; Pa768-Pa769, ¶¶27-35) Moeller didn't know about Mr. Redmond's performance review from June 2019, in which he was rated "Very Successful," before she recommended a PIP for Mr. Redmond. (5T:13) Moeller did not work on other projects in 2019 with Mr. Redmond other than Inceptua. (5T:17) Moeller did not review Mr. Redmond's performance from June 2019 to December 2019. (5T:18) Moeller never documented

that Mr. Redmond not performing well. (5T:20) Lei Wang, Mr. Redmond's career advisor, presented Mr. Redmond at the GROW meeting in December 2019. (5T:25)

The December 2019 GROW meeting was the first time there was any discussion about Mr. Redmond's performance. (7T:45-46) Moeller did not present Mr. Redmond at the GROW meeting in December 2019. (5T:25) Moeller does not recall Wang saying that Mr. Redmond's performance was deficient. (5T:27) Moeller recommended Mr. Redmond be placed on a PIP at the GROW meeting in December 2019. (5T:44) Moeller's recommendation was based on only one assignment with Mr. Redmond. (5T:47)

Moeller admits there was a big jump from being rated "Very Successful" to not meeting expectations. (5T:31) The fact that Mr. Redmond had been rated a "Very Successful" employee did not matter to Moeller. (5T:159) Without any basis, Moeller thought Mr. Redmond was not properly assessed in June 2019. (5T:159) Wang did not say that she agreed with Moeller about Mr. Redmond's performance. (5T:32) Moeller believed that Wang not providing feedback to Mr. Redmond. (5T:132) Wang requested to be transferred from Moeller's supervision. (5T:134) Mr. Redmond's request to be transferred to another office was never considered. (5T:139)

Moeller did not talk to Mr. Redmond after the GROW meeting in December 2019. (5T:34) Moeller did not tell Mr. Redmond that she believed his performance

was deficient or that she had recommended be placed on a PIP. (5T:62) Moeller was not at any follow-up meeting with Mr. Redmond. (5T:39-40) Moeller does not recall meeting with Mr. Redmond in January 2020. (5T:42,43,61)

There were no meetings with Mr. Redmond about his performance after January 2020. (5T:67) There were no meetings with Mr. Redmond about his performance in February 2020. (5T:69,70) There were no meetings with Mr. Redmond about his performance in March 2020. (5T:71) Moeller did not recall having any meetings with Mr. Redmond about his performance. (5T:71,72) Moeller never told Mr. Redmond that he was in danger of being terminated. (5T:75)

On Friday, March 13, 2020, Mr. Redmond was in the office with Brad Holmes, a Caucasian male employee of Defendants who was a Tax Associate, subordinate to Mr. Redmond, working on finishing documents for a new client. (Pa771) When Holmes decided prematurely to leave the office, Mr. Redmond reminded Holmes that he could not leave without first completing some additional work in order to meet the Monday deadline for this client. (Pa771) Holmes visibly reacted negatively, apparently taken aback at being instructed by an African American superior. (Pa771)

At one point, Holmes screamed at Mr. Redmond, causing Mr. Redmond to tell Holmes that he needed to calm down. (Pa35) Holmes' inappropriate conduct and Mr. Redmond's measured response were witnessed by other employees. (Pa35) Mr.

Redmond's co-employee, Helen Reyeg, confirmed Mr. Redmond's account of the incident. (Pa605)

After the Brad Holmes incident, when Moeller pulled Mr. Redmond into an office, she reacted negatively and with racial fear towards Mr. Redmond. (4T:116-120) Moeller took Mr. Redmond aside into a private office. (5T:78) Moeller talked to Mr. Redmond about the Brad Holmes incident. (5T:76) Moeller asserts that the conversation was "in passing," as she headed somewhere else. (5T:76,77) Moeller accused Mr. Redmond of intimidating other BDO employees. (9T:321-322) Moeller did a security check of Mr. Redmond's badge. (5T:168) Moeller knew Mr. Redmond was upset. (5T:78) Moeller downplayed why she was talking to Mr. Redmond about the incident at all. (5T:79) Moeller knew the Holmes incident was being investigated by HR. (5T:83) Moeller denies accusing Mr. Redmond of intimidating BDO employees. (5T:120)

Moeller interviewed three employees about whether they were present during the Holmes incident. (5T:122-131) Moeller did not do anything with the information she collected from these other employees. (5T:125) Moeller acknowledges that Mr. Redmond remembers the March 16 pull-aside meeting differently. (5T:173) Moeller asked Brad Holmes if everything was okay after the incident. (5T:170)

Mat DeMong, then the Northeast Regional Tax Partner, and Moeller's supervisor, told Moeller to let HR handle the matter. (6T:81) Moeller was not

supposed to be involved. (6T:81) Four days later, on March 20, 2020, Mr. Redmond complained to HR that Moeller had discriminated against him. (Pa772) Mr. Redmond followed this complaint with another complaint on March 24, 2020. (Pa772-Pa775) Mr. Redmond's complaints were about race discrimination. (9T:318) DeMong knew that Mr. Redmond had filed a discrimination complaint. (6T:68) Defendant never got back to Mr. Redmond about his race discrimination complaint. (9T:319,321)

On March 31, 2020, Moeller was interviewed by BDO's company attorney about Mr. Redmond's complaint against her. (Pa760-Pa763) Moeller was aware that the company's EEO policy is about discrimination (5T:146) Mr. Redmond was to be terminated pursuant to BDO's first decision to terminate him just after April 15, 2020. (7T:55) Shevelenko testified that the decision to place Mr. Redmond on a PIP occurred on March 19, 2020. (7T:69) Moeller does not recall discussing with DeMong in March 2020 that Mr. Redmond was going to be terminated in April 2020. (5T:89) Moeller does not recall discussing Mr. Redmond being terminated in April 2020. (5T:90) Moeller did not know of any financial reason for terminating Mr. Redmond. (5T:107-108)

Moeller did not tell Mr. Redmond that she believed his performance was deficient or that she had recommended he be placed on a PIP. (5T:62) Moeller testified that the discussion about placing Mr. Redmond on a PIP occurred sometime

in April 2020. (5T:86) The GROW meeting in April 2020 occurred in late April. (5T:99) In fact, Moeller believes the discussion about placing Mr. Redmond on a PIP occurred in connection with the GROW meeting in April 2020. (5T:87) Moeller was involved in writing Mr. Redmond's PIP. (5T:94) In fact, Moeller wrote the PIP, not Shevelenko. (5T:77-78)

On April 30, 2020, Mr. Redmond objected to the PIP in writing, showing specifically how it was inaccurate, inconsistent, and vague. (Pa642-Pa653) Moeller read Mr. Redmond's response to the PIP. (5T:95) Moeller read Mr. Redmond's response to the PIP, but didn't think of it as a complaint. (5T:84) Moeller discussed Mr. Redmond's response to PIP with Shevelenko. (5T:95,143) Shevelenko talked with Moeller about Mr. Redmond's response to PIP. (7T:83) Moeller is sure that she discussed Mr. Redmond's response to the PIP with DeMong. (5T:97)

Mr. Redmond specifically complained about being retaliated against. (9T:322,324) Shevelenko saw Mr. Redmond's complaint about being retaliated against. (7T:83) Defendant never investigated Mr. Redmond's retaliation complaint. (9T:324)

Catrin Griffin never provided feedback to Mr. Redmond as to whether he was complying with the PIP. (9T:317) Mr. Redmond did not receive feedback from anyone else either. (9T:318) No one told Mr. Redmond how he was doing on the PIP. (9T:105) Moeller did not review whether Mr. Redmond was progressing with

the PIP. (5T:98,100) The beginning of the discussion about BDO's second decision to terminate Mr. Redmond occurred in May or June 2020. (5T:90,92,102) Neither Griffin nor anyone else ever told Mr. Redmond that he was about to be terminated. (9T:323) The fact that no one told Mr. Redmond that his performance allegedly had declined precipitously was unusual. (6T:122-123)

The second decision to terminate Mr. Redmond was a consensus decision. (5T:180-181) No other employees in the Stamford office were on a PIP, except for Mr. Redmond. (5T:108) No one in the Stamford office was terminated other than Mr. Redmond. (5T:109) No one else in the Stamford office was terminated by PIP other than Mr. Redmond. (5T:182) Defendant discontinued use of the PIP after Mr. Redmond's termination on July 7, 2020. (5T:182-183)

Moeller hired comparator Nicole Ciampanelli in late September 2019. (5T:162) Moeller was not impressed with Ciampanelli's performance, but did not recommend that she be placed on a PIP. (5T:163,164) Ciampanelli was not terminated for performance reasons. (5T:166)

Facts Pertaining to the Court's Personal Jurisdiction Over Moeller

As for Moeller herself, BDO had brought her on as a Tax Partner on August 1, 2019 (2T:11), pursuant to which she executed the BDO partnership agreement (2T:44). Shortly after her arrival, Moeller was promoted to the Office Managing Partner for BDO's Stamford, Connecticut location. (2T:16) As an

Office Managing Partner, Defendant Moeller was responsible for communicating and collaborating with BDO's Northeast Region. (2T:17) BDO's Northeast Region included Boston, Massachusetts, Stamford, Connecticut, New York, New York, Long Island, New York, and Woodbridge, New Jersey. (2T:21) As a part of her role, Defendant Moeller would participate in conference calls involving the entire Northeast Region on a routine basis (Pa85, Moeller Tr. - p.21).

In her professional practice as a Tax Partner, Moeller primarily handles corporate tax matters for non-U.S. companies operating within the United States. (2T:56) In order to retain a client's business, Moeller completes a statement of work that describes her services and fees, and then provides that to the client for signature. (2T:59) Included in these statements of work are acknowledgements that Moeller will prepare and file New Jersey tax returns for the client. (2T:67) Although many of Moeller's clients are located outside the United States, she provides services to such clients having locations inside New Jersey. (2T:67) These tax services include preparing and submitting on her clients' behalf New Jersey state tax returns, which are then filed in New Jersey by BDO's administrative staff under Moeller's immediate supervision. (2T:52)

Under the BDO partnership agreement, Moeller is a Fixed Share

Partner, and she receives income from BDO as well as a fixed distribution based on BDO's profits and losses from that year. (Pa113; 2T:29) Moeller's income and her distribution shares are generated directly from clients of BDO. (2T:29-32) Said another way, the income Moeller earns simply passes through BDO due to its nature as a partnership. (2T:67)

Importantly, a portion of Moeller's income is attributable to the New Jersey clients for whom she performs services. (2T:67) Because Moeller receives income from New Jersey clients, BDO (and Moeller) is required to file a New Jersey composite tax return for its partners to pay their share of New Jersey taxes. (2T:53) Instead of simply joining the composite tax return, Moeller purposefully opts out of BDO's New Jersey composite return and files her own personal tax return in New Jersey. (2T:65)

According to Moeller, she purposefully opts out of the composite tax return in order to avail herself of New Jersey's lower taxation rate for individuals. (2T:65) Specifically, Moeller explained that the BDO New Jersey Composite Tax Return is taxed at a rate of 10.75%, as opposed to the personal rate she receives at 6.37%. (2T:65) Moeller has filed her own personal tax return in New Jersey, as opposed to BDO's composite return, for every year she has been a partner with BDO. (2T:65) Consequently, Moeller has taken advantage of New Jersey law in order to reduce her own

tax liability for income she receives from revenue generated in New Jersey.

ARGUMENT

Standard of Review

This Court reviews the trial court's rulings with respect to granting summary judgment *de novo*, including where the issues involve whether a cause of action is barred by a statute of limitations. Save Camden Pub. Schs. v. Camden City Bd. of Educ., 454 N.J. Super. 478, 487 (App. Div. 2018). Similarly, review is *de novo* when determining questions relating to choice of law and whether personal jurisdiction exists. Ginsberg ex rel. Ginsberg v. Quest Diagnostics, Inc., 441 N.J. Super. 198, 223 (App. Div. 2015); YA Glob. Invs., L.P. v. Cliff, 419 N.J. Super. 1, 8 (App. Div. 2011).

Under Rule 4:46-2(c), summary judgment is appropriate only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is *no genuine issue as to any material fact* challenged and that the moving party is entitled to a judgment or order as a matter of law." Friedman v. Martinez, 242 N.J. 449, 472 (2020)(emphasis supplied); Qian v. Toll Bros. Inc., 223 N.J. 124 (2015). To decide whether a genuine issue of material fact exists, the trial court must draw all legitimate inferences from the facts in favor of the non-moving party. Comprehensive Neurosurgical, P.C. v. Valley Hosp., 257 N.J. 33 (2024).

Summary judgment is properly granted only "when the evidence 'is so one-sided that one party must prevail as a matter of law." Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 406 (2014); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT DISMISSING THE COMPLAINT BECAUSE THE NEW JERSEY LAW AGAINST DISCRIMINATION APPLIES TO PLAINTIFF'S CLAIMS IN THIS ACTION (*Pa1; 10T*)

The NJLAD Applies

By its terms, the NJLAD covers both New Jersey residents and New Jersey employers. "The Legislature finds and declares that practices of discrimination against *any of its inhabitants*, because of race …are matters of concern to the government of the State…." N.J.S.A. § 10:5-3 (emphasis supplied). "The Legislature further declares its opposition to such practices of discrimination when directed against any person by reason of the race … of that person … in order that the economic prosperity and general welfare of *the inhabitants of the State* may be protected and ensured." N.J.S.A. § 10:5-3 (emphasis supplied). Defendant here is an admitted resident of New Jersey and Mr. Redmond is an uncontested resident of New Jersey. "[W]e detect no expression of legislative intent to limit the statute's protections to job applicants who live in New Jersey, or to those employees who perform all of their employment functions in New Jersey." Calabotta v. Phibro Animal Health Corp., 460 N.J. Super. 38, 64 (App.

Div. 2019). "[T]he LAD should be given liberal construction in order that its beneficent purposes may be accomplished." Royster v. NJ State Police, 227 N.J. 482, 500-501 (2017); Smith v. Millville Rescue Squad, 225 N.J. 373 (2016). For purposes of determining the applicability of the NJLAD, questions about whether personal jurisdiction exists are distinct from questions as to whether the NJLAD applies. *See* McDonnell v. Illinois, 319 N.J. Super. 324, 332 (App. Div. 1999), *aff'd on other grounds*, 163 N.J. 298 (2000), *cert. denied*, 531 U.S. 819, 121 S. Ct. 59, 148 L. Ed. 2d 26 (2000). The NJLAD's broad and strong language permits a plaintiff to bring claims under the statute, even if he lived and worked for defendants out-of-state. Calabotta, 460 N.J. Super. at 61. Although the court in Buccilli v. Timby, Brown & Timby, 283 N.J. Super. 6 (App. Div. 1995) held that where a person works can determine whether the NJLAD applies, this court has held that "Buccilli should not be misread to impose a bright-line choice-of-law principle that all employment discrimination claims must be governed by the law of the state where a plaintiff exclusively or principally worked. Although a plaintiff's place of work is surely an important consideration, it is not always dispositive. Other aspects of the case may at times override it." Calabotta, 460 N.J.Super. at 69.

Here, at the very least, there is a genuine issue of material fact about the physical location where Mr. Redmond worked for purposes of the application of the

NJLAD, in that he has consistently testified that he worked in New Jersey, especially at the time the discriminatory activity took place in March 2020, and certainly when he was terminated in July 2020. (Pa737-Pa741; 9T:263) Under the circumstances, the trial court was in error to conclude that the NJLAD did not apply. Consequently, its decision to grant Defendant's motion for summary judgment on this ground must be reversed.

There Is No Substantive Law Conflict Between the NJLAD and the CFEPA

"[W]hen New Jersey is the forum state, its choice-of-law rules control." Fairfax Fin. Holdings Ltd. V. S.A.C. Capital Mgmt., L.L.C., 450 N.J. Super. 1, 34 (App. Div. 2017); McCarrell v. Hoffmann-La Roche, Inc., 227 N.J. 569, 588 (2017); Calabotta, 460 N.J. Super. at 54. Courts have held that "choice-of-law decisions are made not only issue-by-issue, … but also, at times, party-by-party." Fairfax Fin. Holdings Ltd., 450 N.J. Super. at 33-34. New Jersey's Law Against Discrimination is no different in substance from Connecticut's Fair Employment Practices Act, as far as prohibiting racial discrimination and retaliation. The trial court erred to the extent it concluded otherwise, in that neither the trial court nor Defendant have indicated any specific way in which there is any substantive conflict between the NJLAD and the CFEPA. Therefore, in the absence of any conflict, the LAD applies. To the extent that the statute of

limitations may be different between the New Jersey and Connecticut statutes, such difference does not rise to a conflict because, as shown below, Mr. Redmond complied with both statutes' limitations periods, such that the statute of limitations of New Jersey, the forum state, applies. Further, the existence of a genuine issue of material fact about where Mr. Redmond actually worked for purposes of the NJLAD precluded summary judgment. The trial court committed reversible error when it dismissed the complaint on this basis, and this Court should reverse.

II. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT DISMISSING THE COMPLAINT BECAUSE THIS ACTION WAS TIMELY COMMENCED UNDER THE CONNECTICUT FAIR EMPLOYMENT PRACTICES ACT (*Pa1; 10T*)

This Action Was Timely Commenced Under New Jersey Procedural Law

Under choice-of-law analysis, even if the Court were to conclude that the substantive law of Connecticut (the foreign state) should apply to the claims in this case, the *procedural* rules of New Jersey (the forum state) will govern the disposition and administration of the case. "It is a virtually axiomatic principle of conflicts of law that the procedural law of the forum applies even to causes of action governed by a different jurisdiction's substantive law." Du-Wel Prods., Inc. v. U.S. Fire Ins. Co., 236 N.J. Super. 349, 362, 565 A.2d 1113, 1120 (Super. Ct. App. Div. 1989). The New Jersey Supreme Court has held:

> *Sound sense and practical reasons dictate that a suit on a foreign cause of action should be processed and tried according to the procedural rules of the forum state. It would be an impossible task for the court of such a state to conform to procedural methods and diversities of the state whose substantive law is to be applied. The determination of that law is a difficult enough burden to impose upon a foreign tribunal.*

Heavner v. Uniroyal, Inc., 63 N.J. 130, 136 (1973); *see also*, N. Bergen Rex Transp. v. Trailer Leasing Co., 158 N.J. 561, 569 (1999)("the procedural law of the forum state applies even when a different state's substantive law must govern").

Moreover, multiple state and federal courts in New Jersey have recognized this same rule. *See, e.g.,* Myron Corp. v. Atl. Mut. Ins. Corp., 407 N.J. Super. 302, 311, 970 A.2d 1083, 1088 (Super. Ct. App. Div. 2009); Robinson v. Port Auth. of NY & NJ, No. A-4720-16T4, 2018 N.J. Super. Unpub. LEXIS 2615, at *4 (Super. Ct. App. Div. Nov. 29, 2018); Helfand v. CDI Corp., No. A-3230-10T1, 2012 N.J. Super. Unpub. LEXIS 90, at *5 (Super. Ct. App. Div. Jan. 13, 2012)("[n]otwithstanding the application of the substantive laws of that state, we apply our own procedural rules"); Chin v. Chrysler LLC, 538 F.3d 272, 279 (3d Cir. 2008); Mitzel v. Westinghouse Elec. Corp., 72 F.3d 414, 418 (3d Cir. 1995); Dallis v. NJ Transit Corp., Civil Action No. 17-407, 2021 U.S. Dist. LEXIS 121287, at *7 (D.N.J. June 24, 2021)("even if New York law controlled

Plaintiff's substantive negligence claims, New Jersey procedural law still applies").

Thus, it is New Jersey's procedural rules that govern when and how an action is commenced. The relevant *substantive* law of Connecticut provides that "[a]ny action brought by the complainant in accordance with section 46a-100 [the CFEPA] shall be ***brought*** not later than ninety days after the date of the receipt of the release from the commission." Conn. Gen. Stat. § 46a-101(e).

An action is "brought" or commenced in New Jersey ***by the filing of the complaint*** under R. 4:2-2. *See* Farrell v. Votator Div. of Chemetron Corp., 62 N.J. 111, 120, 299 A.2d 394, 399 (1973)("the date of the filing of the complaint (R. 4:2-2) rather than the date of service (R. 4:4-1) was the crucial time fixing such commencement"); Cooke v. Yarrington, 62 N.J. 123, 128, 299 A.2d 400, 403 (1973). "In determining when an action is 'commenced,' the Court refers to New Jersey's Rules Governing Civil Practice, which state that a civil action is "commenced" when, pursuant to Rule 4:2-2, a complaint is filed with the court." Bader v. Schmidt Baking Co., No. 13-5697 (RBK/KMW), 2014 U.S. Dist. LEXIS 3171, at *4 (D.N.J. Jan. 10, 2014); *see also*, Am. Cas. Co. v. Continisio, Civil Action No. 91-5107, 1992 U.S. Dist. LEXIS 23120, at *8-9 (D.N.J. Sep. 11, 1992)("the procedure for commencement of a suit in the New Jersey state

courts is set forth in the Rules Governing Civil Practice, Rule 4:2-2, which reads: 'A civil action is commenced by filing a complaint with the court'").

Consequently, Connecticut's procedural law relating to when an action is "brought" or commenced is inapposite. Whereas Connecticut may require both filing and service to commence an action in a Connecticut court, New Jersey does not. Since New Jersey's procedural rule prevails with respect to when an action is brought or commenced, even if Connecticut's substantive law were to apply to the claims in this case, this action was timely for such purposes when it was filed on July 7, 2022, which was fewer than 90 days from May 10, 2022, when the Connecticut Release from Jurisdiction was issued. Thus, when the trial court granted summary judgment on this ground, it committed reversible error, which this Court should now reverse.

Defendant Has Waived Any Statute of Limitations Defense

Under New Jersey law, a statute of limitations defense must be affirmatively raised by the defendant in a timely manner, or it is deemed waived. Zaccardi v. Becker, 88 N.J. 245, 256 (1982); Fees v. Trow, 105 N.J. 330, 335 (1987); R. 4:5-4. "Statutes of limitations …are not self-executing. [T]he defense that a claim is time-barred must be raised by way of an affirmative defense, either in a pleading or by a timely motion, or it is waived." Notte v. Merchs. Mut. Ins. Co., 185 N.J. 490, 500 (2006)(internal punctuation omitted).

Here, Defendant did not assert a statute of limitations defense in its answer to the First Amended Complaint, and has not requested to amend its answer at any time. (Pa60-Pa62) By failing to do so, Defendant has waived any such defense as it pertains to the CFEPA statute of limitations. The trial court erred when it concluded that Defendant had not waived its statute of limitations defense. (10T:23). Thus, the trial court's decision dismissing the complaint must be reversed.

III. THE TRIAL COURT ERRED IN DISMISSING THE COMPLAINT BECAUSE THE EXISTENCE OF GENUINE ISSUES OF MATERIAL FACT PRECLUDED THE ENTRY OF SUMMARY JUDGMENT (*Pa1; 10T*)

There is Substantial Evidence in Support of Mr. Redmond's Discrimination Claims

Retaliation

a.) There Is Substantial Prima Facie Evidence Supporting Mr. Redmond's Claim

The trial court never considered the merits of Mr. Redmond's claims. This was error. To establish a prima facie case of retaliation under the NJLAD, a plaintiff must show: (1) that he engaged in a protected activity, (2) that he suffered an adverse employment action, and (3) that there is a causal connection between the protected activity and the adverse action. Battaglia v. United Parcel Serv., Inc., 214 N.J. 518 (2013). "The LAD makes it illegal '[f]or any person to take reprisals against *any* person because that person has opposed any practices or acts forbidden under this act[.]'" Id., at 546. Mr. Redmond's complaints about

racial bias constitute protected activity, as they were made in opposition to conduct prohibited under the NJLAD. The adverse actions, including the imposition of a Performance Improvement Plan ("PIP") and eventual termination, occurred shortly after Mr. Redmond's protected activity, creating a strong inference of retaliatory intent. Summary judgment is inappropriate when there are factual disputes regarding the employer's motive for adverse actions. Myers v. AT&T, 380 N.J. Super. 443, 455 (App. Div. 2005).

Here, Defendant's shifting explanations for Mr. Redmond's termination, coupled with the suspicious timing of the adverse actions, suggest that Defendant's true motive was retaliatory. Moreover, there is direct evidence of Defendant's discriminatory motive. Direct evidence of discrimination is evidence that allows a jury to find that the decision-makers placed substantial reliance on a plaintiff's inclusion in a protected class in reaching their decision. Wesley v. Palace Rehab. & Care Ctr., L.L.C., 3 F. Supp. 3d 221, 231 (D.N.J. 2014); Glanzman v. Metro. Mgmt. Corp., 391 F.3d 506 (3d Cir. 2004). Direct evidence leads to a logical inference of bias, as well as to the fact that the person was motivated by the bias when making an employment decision. The Third Circuit has explained that a statement that reflects a discriminatory animus and was made by an individual involved in the decision-making process is exactly

the type of evidence to qualify as direct discrimination. Id. (*quoting* Hook v. Ernst and Young, 28 F.3d 366, 374 (3d Cir. 1994).

Moreover, Heide Moeller displayed direct evidence of discriminatory animus when she reflexively believed that Mr. Redmond, an African American male supervisor, had somehow intimidated Brad Holmes, his Caucasian subordinate. Further, Moeller displayed direct evidence of discriminatory animus by confronting Mr. Redmond and accusing him of having intimidated Holmes *and other employees*. (9T:321-322) Moeller inappropriately and directly inserted herself into the incident involving Holmes, in contravention of company policy and of Mathew DeMong's (her supervisor) instructions and expectations. (6T:81-83)

Moeller further displayed discriminatory animus by conducting her own inquisition about Mr. Redmond, inquiring of other employees about whether Mr. Redmond was intimidating to them or anyone else in the office. (5T:122-131) Indeed, Moeller went so far as to accuse Mr. Redmond of lying when he told her he had been in the office on a Sunday afternoon. Moeller admittedly ordered another African American employee to conduct a security check of Mr. Redmond's identification badge to see if he had come in on that Sunday. (5T:168) The security check revealed that Mr. Redmond was telling the truth, but Moeller never apologized for the accusation. Moeller had not done such a

security check for a similarly situated white employee. Defendant vigorously contests that Moeller's actions, which were grounded in odious racial stereotypes about the "angry black male" had any racial tenor.

In addition, the close temporal proximity between Mr. Redmond's discrimination complaint against Moeller and his termination is compelling evidence of retaliatory intent and demonstrates the necessary causal connection. *See* Maimone v. City of Atl. City, 188 N.J. 221, 237 (2006)("The 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"). Accordingly, Mr. Redmond has met his prima facie burden with respect to his retaliation claim, and Defendant's motion for summary judgment should have been denied.

b.) Defendant's Conduct and Purported Explanations Constitute Pretext

Once a plaintiff establishes a prima facie case of retaliation, the burden shifts to the employer to articulate a legitimate, non-discriminatory reason for the adverse action. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). If the employer provides such a reason, the plaintiff must then demonstrate that the reason is pretextual. "The factfinder is, of course, free to reject defendants' nondiscriminatory reasons for the discharge, and infer the ultimate fact of intentional discrimination from all of the evidence presented in

a case…. The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination." DeWees v. RCN Corp., 380 N.J. Super. 511, 526 (App. Div. 2005)(internal quotations omitted).

Pretext can be shown by demonstrating "weaknesses, implausibilities, inconsistencies, incoherences, or contradictions" in the employer's proffered reasons for its actions. Id., at 528. Mr. Redmond has provided substantial evidence that the PIP was a sham, designed to concoct a record of performance issues. His prior performance evaluations were consistently positive, and no legitimate business reason justified his sudden decline in performance. Further, the lack of feedback or opportunity to improve further undermines Defendant's claim that the PIP was issued in good faith.

Mr. Redmond demonstrated that the PIP here was replete with weaknesses, implausibilities, inconsistencies, incoherences, or contradictions, as Mr. Redmond pointed out in his response and objection to the PIP on April 30, 2020. The PIP was a sham, in when Mr. Redmond attempted to address the issues raised in the PIP, Defendant criticized his efforts. And the fact that Defendant gave no feedback whatsoever as to whether Mr. Redmond was progressing with respect to the PIP demonstrates pretext. Retaliatory intent can

be inferred by the inconsistencies or implausibilities in the employer's explanation for the adverse action. *See* Fuentes v. Perskie, 32 F.3d 759 (3d Cir. 1994).

In other words, there is strong evidence that the PIP was not Defendant's true reason for terminating Mr. Redmond nor was it coincidental, occurring mere days after Moeller was interviewed about Mr. Redmond's discrimination complaint. Indeed, it is reasonable to infer that Moeller knew about Mr. Redmond's discrimination complaint by virtue of the fact that she was being interviewed about him by the company's attorney. It also was not coincidental that all of the performance problems alleged by Defendants occurred after Moeller became the office managing partner in Stamford. Of course, Defendant vigorously disputes that Mr. Redmond's complaint against Moeller was about racial discrimination.

Because there is substantial evidence that Defendant's alleged non-discriminatory explanations for its actions in placing Mr. Redmond on a PIP and in terminating his employment, Defendant's motion for summary judgment fails, and the trial court should have denied the motion.

Disparate Treatment

a.) Mr. Redmond Has Established a Prima Facie Case

To establish a prima facie case of disparate treatment under the NJLAD, a plaintiff must show: (1) he is a member of a protected class, (2) he was performing his job at a level that met the employer's legitimate expectations, (3) he suffered an adverse employment action, and (4) the employer sought someone else to perform the same work or treated others not in the protected class more favorably. Zive v. Stanley Roberts, Inc., 182 N.J. 436, 450 (2005). In proving the prima facie case, "[w]e hold that so long as the employee shows that he has been performing in the position from which he was terminated, the second prong is fulfilled[, and… w]e further hold that the quality of the employee's performance does not come into play on the plaintiff's *prima facie* case." Id., at 441. Further, "[u]nless a plaintiff is claiming reverse discrimination, it is unnecessary to show a replacement outside of the protected class in order to satisfy the fourth prong of the prima facie case." DeWees, 380 N.J. Super. at 525-526.

Here, Mr. Redmond is an African American male, placing him within a protected class under the NJLAD. There is no dispute that he was qualified for his job, and his performance prior to Moeller's arrival was consistently rated as "very successful," meeting or exceeding Defendant's expectations. As such, the adverse actions he suffered—being placed on a PIP and eventually terminated—occurred under circumstances that raise an inference of racial discrimination.

White comparators, including Nicole Ciampanelli and Brad Holmes, were not subjected to similar scrutiny or adverse actions, despite comparable performance issues. (Defendant contests that Ciampanelli and Holmes are comparators.)

Accordingly, Mr. Redmond has demonstrated his prima facia case, and Defendant's motion for summary judgment should have been denied.

b.) Defendant's Explanations Constitute Pretext

"[I]f the plaintiff has pointed to evidence sufficiently to discredit the defendant's proffered reasons, to survive summary judgment the plaintiff need not also come forward with additional evidence of discrimination beyond his or her prima facie case." Fuentes, 32 F.3d at 764. As discussed earlier, pretext can be shown by demonstrating that the employer's explanation for the adverse action is unworthy of credence. DeWees, 380 N.J. Super. at 528.

Here, Defendant essentially concedes that the PIP was a sham, in that DeMong had determined to terminate Mr. Redmond even before the imposition of the PIP. Further, Defendant has offered alternating explanations for terminating Mr. Redmond, including an assertion that the termination had to do with alleged cost reduction. Specifically, a white comparator, Nicole Ciampanelli, was not subjected to the demeaning treatment directed at Mr. Redmond, even though she openly failed and refused to perform *at all* but Defendant did not put her on a PIP.

Lei Wang, Mr. Redmond's direct supervisor and Career Advisor, never indicated that Mr. Redmond's performance was deficient warranting dismissal. It is reasonable to infer that Wang disputed Moeller about Mr. Redmond's performance at the December 2019 GROW meeting, as reflected by Moeller's disdain of Wang, and that shortly thereafter Wang was replaced as Mr. Redmond's Career Advisor.

In the light most favorable to Mr. Redmond, he was a very successful employee who found himself targeted by Moeller, aided by DeMong, where he was suddenly accused of performing poorly and was drummed out of his job based on a concocted set of circumstances, while Moeller directed racial animus at Mr. Redmond using odious racial stereotypes about African American men, such that a reasonable jury would be entitled to believe this was because of his race.

Accordingly, the trial court erred in concluding that summary judgment was warranted and this Court now should reverse.

1. Hostile Working Environment

a.) Prima Facie Case

To establish a hostile work environment claim under the NJLAD, a plaintiff must show that the discriminatory conduct was severe or pervasive enough to make a reasonable person believe that the conditions of employment

were altered and that the working environment had become hostile or abusive. Lehmann v. Toys 'R' Us, Inc., 132 N.J. 587, 603 (1993). Here, Defendant's conduct toward Mr. Redmond, including Moeller's baseless accusations of intimidation, public undermining of his authority, and disproportionate scrutiny, created an environment where Mr. Redmond was consistently treated as inferior to his white colleagues. The racial animus underlying Moeller's conduct is evident from her preferential treatment of Brad Holmes and her dismissive attitude toward Mr. Redmond's concerns.

b.) Severe and Pervasive

The hostile work environment Mr. Redmond experienced was both severe and pervasive. Moeller's repeated efforts to undermine Mr. Redmond's authority, coupled with her baseless allegations and failure to support him in his role, significantly altered the conditions of Mr. Redmond's employment. The New Jersey Supreme Court has recognized that an employer's reliance on stereotypes or biased assumptions can contribute to a hostile working environment. Smith v. Millville Rescue Squad, 225 N.J. 373 (2016), Moeller's behavior was rooted in racial animus, and her actions were severe enough to create an abusive work environment for Mr. Redmond.

c.) Pretext

As described above, Mr. Redmond has adduced more than sufficient evidence that Defendant's explanations for its abusive treatment of him are not worthy of credence, such that summary judgment is precluded and Defendant's motion for summary judgment should have been denied, and now should be reversed.

2. Wrongful Discharge

The NJLAD expressly prohibits employers from retaliating against employees who oppose discriminatory practices in the workplace. N.J.S.A. 10:5-12(d); Battaglia v. United Parcel Serv., Inc., 214 N.J. 518, 546 (2013). Mr. Redmond's termination was directly related to his opposition to the racially discriminatory conduct perpetrated by Moeller. After Mr. Redmond raised concerns about racial bias, Defendant retaliated by placing him on a PIP, denying him support, and ultimately terminating his employment. Mr. Redmond's termination followed closely after his complaints about racial discrimination, and Defendant's reliance on performance issues that arose after he engaged in protected activity suggests that the termination was retaliatory. The timing alone creates a strong inference of retaliation. As such, summary judgment should have been denied.

IV. THE TRIAL COURT SHOULD NOT HAVE DISMISSED THE COMPLAINT AS TO DEFENDANT HEIDE MOELLER BECAUSE PERSONAL JURISDICTION OVER HER EXISTED (*Pa3; 3T*)

Mr. Redmond contends that this Court has jurisdiction over the person of Defendant Moeller for two reasons: (1) because of Defendant BDO USA, LLP's ("BDO") territorial presence in New Jersey and Defendant Moeller's status as a partner and agent of BDO, and (2) because of Moeller's minimum contacts with New Jersey.

As delineated below, in New Jersey each partner of a partnership is an agent of the partnership and each other partner for purposes of personal jurisdiction. In this case, Defendants concede that the Court has personal jurisdiction over Defendant BDO in New Jersey. The question is whether Defendant Moeller, as a general partner and agent of BDO, is also subject to personal jurisdiction in New Jersey, applying agency principles.

At the time the Complaint was filed, BDO was a general partnership with limited liability characteristics. It is not a limited partnership, and Defendant Moeller is a general partner.

Importantly, Mr. Redmond contends that the trial court should have held a preliminary evidentiary hearing, as contemplated by Citibank, N.A. v. Estate of Simpson, 290 N.J.Super 519 (App. Div. 1996). Where the trial court failed to do so, this was error and this Court should reverse and remand.

It is undisputed that the Court has personal jurisdiction over Defendant BDO, the partnership. "Territorial presence in the forum is the basic prerequisite for subjecting a defendant to its *in personam* judgment." Citibank, N.A. v. Estate of Simpson, 290 N.J.Super. 519, 526 (1996). BDO, is a limited liability partnership, existing, operating, and doing business in Woodbridge, New Jersey, among other locations (Pa50, ¶2). This Court's jurisdiction over BDO, based on BDO's physical presence within New Jersey, alone satisfies due process because it is one of the traditions that define the standard of "traditional notions of fair play and substantial justice." Burnham v. Superior Ct. of California, 495 U.S. 604 (1990). Most important, BDO consented to this Court's jurisdiction in its Answer to the First Amended Complaint (Pa51, ¶4).

Under New Jersey law, a partner is an agent both of the partnership and of his or her other partners. N.J. Stat. Ann. § 42:1A-13 ("Each partner is an agent of the partnership for the purpose of its business."); Eule v. Eule Motor Sales, 34 N.J. 537, 542 (1961) ("It is elementary that each partner is the agent of the other and of the partnership."). Here, BDO is a limited liability partnership, of which Moeller is a partner (Pa52, ¶15; 2T:11). Since this Court indisputably has personal jurisdiction over BDO, and since Moeller is an agent of BDO, it follows that the Court has personal jurisdiction over Moeller as well. *See* Miller v. McMann, 89 F.Supp.2d 564, 568 (2000); Star Video Entertainment, L.P., v.

Video USA Associates 1 L.P., 253 N.J.Super. 216 (App. Div. 1992).

In Miller v. McMann, the court considered whether it had personal jurisdiction over a Maryland law firm partnership and its individual partners, one of whom (Jodlbauer) had contacts in New Jersey, and the other two of whom (Lidums and Scibinico) had no contacts with New Jersey. Concluding that Jodlbauer's conduct and contacts with New Jersey were sufficient to justify specific personal jurisdiction over him, the court went on to conclude that it also had jurisdiction over the law firm partnership as well, since "[j]urisdiction over one partner confers jurisdiction over the partnership." Id., *citing* Citibank, N.A. v. Estate of Simpson, 290 N.J.Super. 519, 530-531 (App. Div. 1996) and Donatelli v. National Hockey League, 893 F.2d 459, 466 (1st Cir. 1990) ("The general rule is that jurisdiction over a partner confers jurisdiction over the partnership"). As for the other individual partners (Lidums and Scibinico), the court concluded that it had jurisdiction over them, too, "through the contacts of Jodlbauer with the state," by virtue of their agency with him. Miller, 89 F. Supp. 2d at 568.

In Star Video, this Court considered whether it had personal jurisdiction over a limited partnership (*not* a limited *liability* partnership like BDO) and its general partners. Finding that it had personal jurisdiction over the limited partnership itself, the court went on to hold that it had *in personam* jurisdiction

over the general partners of the limited partnership because under New Jersey law, "[i]t is axiomatic that limited partnerships are passive entities which cannot act except through their general partners," and "[h]aving found that New Jersey has jurisdiction over the limited partnerships, the [trial] judge was compelled to find jurisdiction over the general partners as well." Star Video, 253 N.J.Super. at 222. Specifically, the court said that "[w]hile we are sensitive to the individual defendants' arguments that they have not set foot in New Jersey…, exercise of New Jersey jurisdiction over them would not offend traditional notions of fair play and substantial justice." 253 N.J.Super. at 226 (internal citations omitted).

Applying the rationale of Miller and Star Video to the case at bar, it is inescapable to conclude that Moeller is subject to this Court's jurisdiction. Both Miller and Star Video stand for the proposition that personal jurisdiction may be obtained through an agency relationship.

Here, BDO maintains a physical office in Woodbridge, New Jersey (Pa50-Pa51), which constitutes territorial jurisdiction. Moeller is a partner of BDO through her title and execution of a partnership agreement with BDO (Pa113; 2T:11). The Court's jurisdiction over BDO is uncontested. Moeller is an agent of BDO, and because the Court has jurisdiction over BDO, it necessarily has jurisdiction over Moeller.

Further, finding that Moeller is subject to New Jersey jurisdiction through

her agency relationship as a partner of BDO does not violate due process. Moeller admitted that she performs services for clients located within New Jersey. In order to retain the business of her New Jersey clients, Moeller provides them with a statement of work that describes the services she provides, which includes preparing and filing New Jersey tax returns. Moeller is also responsible for signing those statements of work. Even more, Moeller receives compensation for the services she provides directly from clients based in New Jersey. This is evidenced by the three years she has been a partner of BDO and has purposefully opted out of BDO's composite New Jersey tax return in order to take advantage of New Jersey's tax laws to pay a lower rate of taxes on the income she received directly from New Jersey. These facts clearly establish Moeller has purposefully availed herself of the benefits of New Jersey law. Thus, subjecting her to New Jersey's jurisdiction does not offend the traditional notions of fair play and substantial justice.

Purposeful Availment

Moeller is also subject to New Jersey jurisdiction through the traditional minimum contacts analysis. New Jersey's long-arm statute, New Jersey Civil Rule 4:4-4, permits jurisdiction over a non-resident defendant to the "uttermost limits permitted by the United States Constitution." Avdel Corp. v. Mecure, 58 N.J. 264, 268 (1971). The Due Process Clause of the Fourteenth Amendment

prevents a court from asserting personal jurisdiction over a defendant who does not have "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Providence Nat'l Bank v. California Fed. Sav. & Loan Ass'n, 819 F.2d 434, 436-437 (3d Cir. 1987). As discussed above, Moeller performs services for clients located in New Jersey, for which she receives compensation, through BDO, and she is required to pay New Jersey income taxes on those pass- through earnings (2T:53) What is more, Moeller strategically opted out of BDO's corporate composite tax return to take advantage of New Jersey taxation laws and for three years she has been taxed on her New Jersey income at a lower rate (2T:65) These contacts with New Jersey are, in and of themselves, sufficient to establish the minimum contacts necessary for New Jersey to subject Moeller to its jurisdiction. *Compare* Lebel v. Everglades Marina, Inc., 115 N.J. 317 (1989) (defendant's phone calls and use of mail to solicit contracts satisfied minimum contacts requirement).

When the trial court dismissed Moeller as a defendant on personal jurisdiction grounds, this was erroneous. Consequently, Mr. Redmond urges this Court to reverse and remand.

CONCLUSION

For all the foregoing reasons, the trial court should not have granted the motion for summary judgment, since the New Jersey LAD applies and this action otherwise was timely commenced under New Jersey law. Further, the trial court erroneously failed even to consider the merits of Mr. Redmond's claims. If it had done so, summary judgment would not have been warranted. And because this Court has personal jurisdiction over Defendant Heide M. Moeller, the trial court also should not have entered a dismissal as to her. In short, Mr. Redmond urges this Court to reverse the summary judgment and dismissal orders below and remand this case for a jury trial on the merits.

Respectfully submitted,

ZEMEL LAW, LLC
THE FULLER LAW FIRM, P.C.

Dated: July 7, 2025

By: s/ Daniel Zemel
Daniel Zemel (Bar No. 111402014)
Nicholas Linker (Bar No. 146732015)
Trevor M. Fuller (admitted *pro hac vice*)

Superior Court of New Jersey

Appellate Division

Docket No. A-002310-24 T1

CHARLES REDMOND,	:	CIVIL ACTION
	:	
	:	ON APPEAL FROM A
Plaintiff-Appellant,	:	FINAL OF THE
	:	SUPERIOR COURT
	:	OF NEW JERSEY,
vs.	:	LAW DIVISION,
	:	PASSAIC COUNTY
	:	
BDO USA, LLP, and HEIDE M. MOELLER,	:	DOCKET NO. PAS-L-001684-22
	:	
	:	Sat Below:
	:	
Defendants-Respondents.	:	HONORABLE SCOTT J. BENNION,
	:	J.S.C.
	:	HONORABLE BRUNO MONGIARDO, J.S.C.

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Date Submitted: September 12, 2025

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PRELIMINARY STATEMENT

Charles Redmond ("Redmond") brought employment discrimination claims against his former employer BDO USA ("BDO") under the Connecticut Fair Employment Practices Act ("CFEPA") and the New Jersey Law Against Discrimination ("NJLAD"). Both were properly resolved on summary judgment in favor of BDO.

Redmond lost his CFEPA claim because it was time-barred under Connecticut law. Redmond lost his NJLAD claim because it cannot be applied extraterritorially, as he worked in Connecticut and his alleged discrimination occurred in Connecticut. Redmond appeals both of those rulings.

Redmond also appeals conditionally the trial court's dismissal of an individual defendant for lack of personal jurisdiction: Heide Moeller ("Moeller"). Moeller, who was a partner at BDO and Redmond's supervisor, neither resided nor worked in New Jersey.

On each of those three issues, the trial court was correct.

PROCEDURAL HISTORY

Redmond filed a complaint against BDO with the Connecticut Commission on Human Rights and Opportunities ("CHRO"), alleging discrimination and retaliation. (**Pa502–03**). The CHRO issued a Release of Jurisdiction on May 10, 2022. (***Id.***).

Redmond then switched from Connecticut to New Jersey, filing a complaint in the Superior Court of New Jersey, Passaic County on July 7, 2022. (**Pa5–28**). That complaint had four counts: (1) violations of CFEPA and NJLAD; (2) wrongful discharge under both New Jersey and Connecticut law; (3) tortious interference with contractual relations; and (4) tortious interference with business relations. (***Id.***).

Moeller moved dismiss on the basis of a lack of personal jurisdiction; BDO moved to dismiss Redmond's tortious interference claims. (**Pa66–67**). Before the trial court ruled on these motions, Redmond amended his complaint, withdrawing his tortious interference claims. (**Pa29–49**).

Redmond requested and received discovery on the personal jurisdiction issue, including Moeller's deposition. (**Pa2; Pa68–70; Pa79**; **2T**). After reviewing the evidentiary record, as well as both parties' supplemental submissions, the trial court granted Moeller's motion to dismiss for lack of personal jurisdiction on September 26, 2023. (**Pa3; 3T**).

Subsequently, BDO moved for summary judgment. (**Pa160–61**). The trial court granted BDO's motion for summary judgment, in its entirety, on February 18, 2025. (**Pa1; 10T**). Redmond filed a notice of appeal in this Court on April 3, 2025, appealing the trial court's decisions to dismiss Moeller for lack

of personal jurisdiction and to grant summary judgment on his CFEPA and NJLAD claims.[1]

FACTUAL BACKGROUND

There is no need to address the factual details of Redmond's discrimination claims; those are not properly at issue on this appeal. Although Redmond's brief argues at length whether summary judgment might have been proper on the merits of his statutory claims (**Pb29–45**), the trial court never decided those issues. As a result, neither should this Court. *Berke v. Buckley Broad. Corp.*, 359 N.J. Super. 587, 591 (App. Div. 2003) ("Although defendant moved for summary judgment on the merits as well, the trial court's dismissal was based exclusively on the statute of limitations and the merits were not considered. We therefore do not address them.").

Here, the relevant facts are those concerning the locus of Redmond's employment and concerning Moeller's contacts with the forum state. The facts concerning the untimeliness of Redmond's CFEPA claim are undisputed.

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[1] Redmond's non-statutory wrongful discharge claims were rejected by the trial court (**10T 20:24–21:21**) but have been abandoned; Redmond's appellate brief nowhere challenges the trial court's ruling on those claims so those cannot be resurrected in his reply brief. *Borough of Berlin v. Remington & Vernick Eng'rs*, 337 N.J. Super. 590, 596 (App. Div. 2001) ("Raising an issue for the first time in a reply brief is improper").

A. Facts Concerning The Locus Of Redmond's Employment

Redmond was hired to work and assigned to work in BDO's Stamford, Connecticut office. (**9T 288:18–289:1**). Redmond reported to supervisors working in BDO's Connecticut and New York offices throughout his employment with BDO. (**9T 289:12–291:1**).

The alleged incident between Redmond and Brad Holmes in March 2020 occurred in BDO's Stamford, Connecticut office. (**4T 104:7–106:22; Pa420–431**). Heide Moeller, Mathew DeMong, and Larisa Shevelenko were involved in the decision to terminate Redmond, with Moeller and DeMong serving as the ultimate decision makers, in July 2020. (**6T 46:2–48:20, 131:25–132:21; 7T 124:9–125:2; Pa485–88 ¶¶ 14–18; Pa496–500 ¶¶ 13–15**). During Redmond's employment, none of those three resided or worked in New Jersey. (**Pa472–73 ¶ 3 [Moeller]; Pa485–88 ¶ 2–4 [DeMong]; Pa496–500 ¶¶ 2–3 [Shevelenko]**). Prior to COVID-19 contact limits, Redmond worked exclusively in-person at BDO's Stamford, Connecticut office and occasionally in BDO's New York, New York office. (**9T 291:11–292:11**). Due to those COVID-19 contact limits in the final few months of his employment, Redmond worked from home "either in New Jersey or Connecticut." (**9T 293:17-22**). BDO never instructed or required Redmond to work remotely from New Jersey. (**9T 294:11–295:24**).

Nor did Redmond request permission from BDO to work remotely from New Jersey during these months. (**9T 294:11–295:24**).

B. Facts Concerning Moeller's Lack of Contacts With New Jersey

Moeller currently resides in New Canaan, Connecticut; she has never resided in New Jersey. (**3T 15:11–15**). Moeller was hired as a tax partner in BDO's Stamford, Connecticut office in August 2019, and worked in that office throughout the period of Redmond's employment at BDO. (**3T 8:7–17**). Moeller was a Fixed Share Partner at BDO who was allocated a portion of the partnership's income. (**3T 12:23–13:23**). While all of the income apportioned to her is allocated to the Stamford, Connecticut office, she is required to file tax returns in over thirty different states and localities, including New Jersey. (***Id.***).

LEGAL ARGUMENT

This appeal presents only three issues.

First, did Redmond's claim under a Connecticut statute (CFEPA) require the application of Connecticut's statute of limitation?

Second, did Redmond's employment in Connecticut foreclose application of the NJLAD to discrimination in Connecticut?

Third, did the trial court properly dismiss Redmond's former supervisor in Connecticut (who was a Connecticut resident) for lack of personal jurisdiction?

The answers to those questions are YES, YES, and YES.

A. Redmond's Connecticut Law Claim Is Time-Barred

Redmond's protest against applying Connecticut's statute of limitations to his claim under Connecticut's Fair Employment Practice Act ("CFEPA") is meritless. By asking New Jersey's courts to adjudicate his Connecticut statutory claim, Redmond waived any objection to applying Connecticut law to determine the timeliness of that Connecticut statutory claim.[2]

So, the trial court rightly found the timeliness of Redmond's CFEPA claim was controlled by Connecticut law. That is the correct result: It is dictated by Redmond's own invocation of Connecticut law. But, even looking at conflicts principles, the result is the same: Connecticut's statute of limitation bars this claim.

1. CFEPA is an employment discrimination statute but with its own unique procedures. Individuals seeking to pursue a claim under that statute must first file a charge with the Connecticut Commission on Human Rights and Opportunities ("CHRO"). Conn. Gen. Stat. § 46a-100. And, suit is permitted

[2] Legitimate conflict of laws issues arise in a different context. For example, a plaintiff filing suit in New Jersey may allege a tort only to find a defendant asserting that Texas law, rather than New Jersey law, applies to that cause of action. This is not that case. Here, by voluntarily choosing to invoke a Connecticut statute as the basis for his claim, Redmond's resort to conflicts analysis is an inapposite and illegitimate use of that doctrine.

(1) only after receiving a release of jurisdiction from CHRO and (2) only if brought within 90 days of that release:

> Any action brought by the complainant in accordance with section 46a-100 shall be brought not later than ninety days after the date of the receipt of the release from the commission.

Conn. Gen. Stat. § 46a–101(e).

In Connecticut, statutes of limitation run **until** defendants are **served**: "[i]t is bedrock principle that, in Connecticut, an action is commenced not when the writ is returned but when it is served upon the defendant." *Sokolovsky v. Mulholland*, 213 Conn. App. 128, 147 (2022). And that "bedrock principle" applies fully to Redmond's CFEPA claim.

Sokolovsky v. Mulholland is directly on point, affirming dismissal of CFEPA claims where the plaintiff had filed, but not served the defendant, within that mandatory 90-day period. *Id.* at 148–49; *see also Farzan v. Bridgewater Assocs.*, 2017 WL 354685, at *8 (D. Conn. Jan. 24, 2017), *aff'd sub nom. Farzan v. Bridgewater Assocs., LP*, 699 F. App'x 57 (2d Cir. 2017) (same).

Here, Redmond (like the plaintiffs in *Solovsky* and *Fazan*) is also time-barred. Redmond received his CHRO release of jurisdiction on May 10, 2022 (**Pa502–03**); filed his complaint in Passaic County's Superior Court on July 7, 2022 (**Pa5–28)**; but only served his Complaint on September 19, 2022 (**Pa482**

¶¶ 4–5; Pa 505): 132 days after May 10 and, thus, far beyond the 90 days allotted under Connecticut law.

2. Redmond asks this Court to ignore that his filing of the Connecticut statutory claim required the application of Connecticut's limitation periods to that claim. To do so, Redmond misleadingly asserts that the procedural law of the forum state always applies even when a different state's substantive law governs.

However, that dichotomy has no application to statutes of limitation.[3]

Rather than default to local law on limitations, New Jersey has explicitly adopted Section 142 of the *Restatement (Second) of Conflict of Laws* as the

[3] None of Redmond's cited cases concerning that dichotomy involve applying statutes of limitations. *Du-Wel Prods., Inc. v. U.S. Fire Ins. Co.*, 236 N.J. Super. 349, 363 (App. Div. 1989) (applicability of N.J. Ct. R. 4:42-9 on attorney fees); *N. Bergen Rex Transp., Inc. v. Trailer Leasing Co.*, 158 N.J. 561 (1999) (applicability of N.J. Ct. R. 4:42-9 and 11 on attorney fees and costs); *Myron Corp. v. Atl. Mut. Ins. Corp.*, 407 N.J. Super. 302 (App. Div. 2009) (applicability of N.J. Ct. R. 4:42-9 on attorney fees); *Robinson v. Port Auth. of NY & NJ*, 2018 WL 6205089 (App. Div. Nov. 29, 2018) (applicability of N.J. Ct. R. 4:46-2(c) on summary judgment); *Helfand v. CDI Corp.*, 2012 WL 95591 (App. Div. Jan. 13, 2012) (applicability of New Jersey law on pleadings); *Chin v. Chrysler LLC*, 538 F.3d 272 (3d Cir. 2008) (applicability of N.J. Ct. R. 4:42-9(a) on attorney fees); *Mitzel v. Westinghouse Elec. Corp.*, 72 F.3d 414 (3d Cir. 1995) (applicability of N.J. Ct. R. 1:21-7(c) on attorney fees); *Dallis v. NJ Transit Corp.*, 2021 WL 2651032 (D.N.J. June 28, 2021) (applicability of notice requirements on suits against New Jersey public entities).

"operative choice-of-law rule for resolving statute-of-limitations conflicts[.]" *McCarrell v. Hoffmann-La Roche, Inc.*, 227 N.J. 569, 574 (2017).

That Restatement rule dictates that Connecticut's limitation law applies here:

> [A] claim will not be maintained if it is barred by the statute of limitations of the state which … is the state of most significant relationship to the occurrence and the parties…

Pitcock v. Kasowitz, Benson, Torres & Friedman, L.L.P., 426 N.J. Super. 582, 588 (App. Div. 2012) (quoting §142 Comment (e); applying New York's statute of limitations to tort claim filed in New Jersey by New Jersey resident).

In *Pitcock*, the plaintiff was a New Jersey resident whose tort claim related to his employment in New York and to prior lawsuits in New York. This Court held that "allowing plaintiff to maintain this claim in New Jersey [under its longer statute of limitations] 'would serve no substantial interest of [New Jersey].'" *Id.* at 589.[4]

[4] Subsequent Appellate Division cases likewise apply the statute of limitations of other states where, as here, "(a) maintenance of the claim would serve no substantial interest of the forum; and (b) the claim would be barred under the statute of limitations of a state having a more significant relationship to the parties and the occurrence." *JZS Madison, LLC v. Kramer Levin Naftalis & Frankel, LLP*, 2024 WL 4112555, at *2 (App. Div. Sept. 9, 2024) (applying New York tort statute of limitations despite plaintiff's New Jersey residence); *MTK Food Servs., Inc. v. Sirius Am. Ins. Co.*, 455 N.J. Super. 307, 314 (App. Div. 2018) (applying Pennsylvania statute of limitations in legal malpractice case; "[t]he only pertinent connection to New Jersey – that Grungo, a New Jersey

This case is even stronger than *Pitcock* because Redmond's choice of suing under a Connecticut statute—the CFEPA—is an admission that Connecticut has the more significant relationship to this claim. But, if more is needed, the record facts provide much more:

- Redmond was hired to work in BDO's Stamford, Connecticut office, was assigned to that office, and was never assigned to any other office. (**9T 288:18–289:1**).
- BDO never instructed Redmond to work remotely from New Jersey nor did Redmond request permission to work remotely from New Jersey. (**9T 294:11–295:24**).
- Redmond chose to file his administrative complaint of employment discrimination with the Connecticut CHRO. (**Pa502–03**).
- Redmond's First Amended Complaint asserts that his employment and his employment claims are covered by Connecticut's Fair Employment Practices Act. (**Pa29–49 ¶¶ 81– 82**).

So, the trial court's conclusion determining that Connecticut has the "most significant relationship" to Redmond's CFEPA claim is unimpeachable. (**10T**

licensed attorney, worked in a New Jersey office – falls short of establishing a substantial interest for New Jersey to apply its statute of limitations here").

22:4–27:1). Under the Restatement, that requires the application of Connecticut's law on timeliness to bar Redmond's CFEPA claim.[5]

3. Redmond also asserts that his undisputed failure to press his Connecticut statutory claim consistent with Connecticut law on timeliness cannot be considered because this dilatory conduct was raised at summary judgment rather than via answer. (**Pb28–29**). But, that assertion is contradicted by his own cited case.

A statute of limitations defense is properly raised **either** in an answer **or** in summary judgment. *Fees v. Trow*, 105 N.J. 330, 335 (1987) stated that rule clearly: "[B]ecause that affirmative defense was neither pleaded in defendant's answer nor raised in defendant's motion for summary judgment, and because it has not been adverted to by either party at any stage of these proceedings, we treat it as having been waived."[6]

---

[5] There is, of course, no distinction between Connecticut's rule that an action is commenced only on service and its 90-day limit for so commencing claims under CFEPA. Under the Restatement, the choice of Connecticut law "**also determines all matters involving the application of the statute of limitations**." *Restatement (Second) of Conflict of Laws*, §142, Comment (a) (emphasis added).

[6] Redmond's other cases offer nothing more. *Notte v. Merchants Mut. Ins. Co.*, 185 N.J. 490, 500 (2006), after reciting that same quote from *Fees*, focused only on relation-back; it did not find waiver. Nor did *Zaccardi v. Becker*, 440 A.2d 1329, 1335 (1982) which merely applied equitable estoppel to foreclose that defense due to the defendant's conduct in causing that case to be late filed.

So, trial courts have discretion to determine whether to accept and address defenses on summary judgment. *Dalal v. Keefe Commissary Network, LLC*, 2023 WL 192670, at *2 (App. Div. Jan. 17, 2023) (affirming trial court's exercise of discretion to decide immunity issue that was initially raised on summary judgment).

Redmond's brief is silent on whether there was an abuse of discretion.[7] And, for good reason: There was none. The trial court rightly recognized that there were public policy reasons to rule on this defense: to ignore the statute limitations "would encourage what this Court would believe to be forum shopping…." (**10T 26:12–15**).

Applying the facts and the law here, Redmond's Connecticut statutory claim is indeed properly time-barred.

B. Redmond's New Jersey Statutory Claim Is Unsustainable

Despite avowing that his employment discrimination occurred in Connecticut and is governed by Connecticut's employment discrimination statute, Redmond asks that New Jersey's Law Against Discrimination

[7] There is no assertion by Redmond that he was caught by surprise or otherwise prejudiced by having this defense heard on summary judgment, or that he lacked an adequate factual record to respond. *Cf. Dalal*, 2023 WL 192670, at *2 ("[P]laintiff has not shown any prejudice or a deprivation of a right to fully respond to the summary judgment motion, even if the assertion of [affirmative defense] was not asserted by Keefe until moving for summary judgment.").

("NJLAD") be applied to those Connecticut-based employment decisions. That is untenable: "New Jersey law does not regulate conduct outside the state." *D'Agostino v. Johnson & Johnson, Inc.*, 133 N.J. 516, 539 (1993).

Here, the trial court correctly held that Redmond cannot maintain claims under the NJLAD because none of the alleged adverse employment actions itemized in Redmond's Complaint occurred in New Jersey: "There is nothing in plaintiff's complaint that relates to New Jersey at all beyond the fact that plaintiff chose to reside in New Jersey and commute to BDO's Stamford office." (**3T 19:21–24**). And, so, there is no basis to apply the NJLAD here.

Buccilli v. Timby, Brown & Timby, 283 N.J. Super. 6, 10 (App. Div. 1995) is on point. There, like here, the plaintiff's "employment began and ended in [the foreign state]. She worked exclusively in that state and the conduct which she alleges was unlawful occurred there." *Id.* Even though Bucilli had lived in New Jersey throughout that employment, this Court determined that "[o]nly Pennsylvania, not New Jersey, substantive law governs her [discrimination] claims." *Id.*

Here too, there is no nexus to New Jersey beyond partial residence. And, Redmond has even less claim to residence than Bucilli, choosing to reside in New Jersey during only a small subset of his employment at BDO's Stamford, Connecticut office. (*Compare* **Pb 23–24** *with* **9T 293:17-22** (Redmond

acknowledging residing "either in New Jersey or Connecticut" during this time)). So, there is no basis for applying the NJLAD.

Redmond nonetheless seeks to ground his claim to NJLAD jurisdiction on *Calabotta v. Phibro Animal Health Corp.*, 213 A.3d 210 (App. Div. 2019). But, there is no traction for Redmond there. *Calabotta* expressly reaffirmed *Buccilli*'s central holding: A plaintiff's New Jersey residence is insufficient to permit the extraterritorial application of the NJLAD. *Id.* at 227.

Calabotta involved discrimination claims by a non-New Jersey resident with an employment contract that dictated the application of New Jersey law who claimed (1) a denial of promotional opportunity to a job located in New Jersey and (2) a termination decision made by New Jersey-based executives at Phibro's New Jersey corporate headquarters.

Redmond's case is the antithesis of *Calabotta*.

Calabotta involved the alleged denial of a job **in New Jersey**. That alone dictated that application of the NJLAD. *Id.* at 228–29. But, there are no comparable allegations in Redmond's complaint. Indeed, his workplace (like that of the plaintiff in *Bucilli*) was in another state and there is no issue of promotion:

> Q. And you were hired to work out of BDO Stamford, Connecticut office; is that correct?
>
> [Redmond:] Yes.

> Q. Were you mapped to BDO's Stamford, Connecticut office during the entirety of your employment?
>
> [Redmond:] Yes, but I also worked out of New York as well.
>
> …
>
> Q. Have you ever been to BDO's Woodbridge, New Jersey office?
>
> [Redmond:] No.

(**9T 288:18–289:11**).

Calabotta also arrived on appeal of a motion to dismiss. Because the details to confirm whether the discharge decision was indeed made in New Jersey by New Jersey executives, remand was necessary because "[t]he state with the most significant relationship to that particular claim [was] not yet readily apparent." *Calabotta,* 213 A.3d at 229.

This case, in contrast, arrives on appeal of a summary judgment record documenting that Redmond's termination decision was made elsewhere and by individuals working and residing in Connecticut, Massachusetts, and New York, respectively:

> Q. Did you also report to Ms. Moeller?
>
> [Redmond:] Yes.
>
> Q. And what office was she located in?
>
> [Redmond:] Stamford, Connecticut.

> …
>
> Q. … [W]hat is [Mathew DeMong's] primary office which he is mapped to?
>
> [Redmond:] I believe it's either New York or Boston.

(**9T 288:18–289:11**; *see also* **6T 46:2–48:20, 131:25–132:21; 7T 124:9–125:2; Pa485–88 ¶¶ 14–18; Pa496–500 ¶¶ 13–15**).

The proper integration of *Bucilli* and *Calabotta* is illustrated in *Kunkle v. Republic Bank*, No. 21-20245, 2023 WL 4348688 (D.N.J. July 5, 2023). There, plaintiff was a New Jersey resident employed in Pennsylvania by a bank that also maintained office locations in New Jersey. *Id.* at *1–3. The plaintiff was based exclusively out of her employer's Pennsylvania office but, during the COVID-19 pandemic, worked remotely from her New Jersey home. *Id.*

Kunkle held that "*Calabotta* is inapposite" and held that the plaintiff was "precluded from seeking recovery under the NJLAD because she was not 'employed' in New Jersey." *Id.* at *7. Remote work in New Jersey for a job located in another state is wholly insufficient:

> [T]he mere fact that [the plaintiff] pursued and was granted the ability to spend what amounts to a proportionately minimal portion of her time working from her home in New Jersey, does not entitle her to the protections of the NJLAD.

Id.

So too, Redmond's New Jersey statutory claim is unsustainable.

C. There Is No Basis For Personal Jurisdiction Over Heide Moeller

If this Court upholds the trial court and likewise finds that Redmond's claim under CFEPA is time-barred and that his NJLAD claim is barred, then this issue of personal jurisdiction becomes moot. If neither of Redmond's claims is sustainable against BDO, those claims are equally barred against Moeller for the same reasons. This issue is, accordingly, only a conditional appeal.

Redmond asserts that the trial court erred in dismissing his claims against Heide Moeller for lack of personal jurisdiction. Redmond posits jurisdiction on (1) her minimal contacts with New Jersey (which are unrelated to any of Redmond's charging allegation of employment discrimination) and (2) her status as a partner at BDO. Neither suggested basis for personal jurisdiction is legally viable.

1. Moeller was and is a Connecticut resident and exclusively worked out of BDO's Stamford, Connecticut office. (**Pa472–73 ¶ 3**; **3T 15:11–15, 16:6-9**). Redmond nonetheless argues for personal jurisdiction because "Moeller performs services for clients located in New Jersey, for which she receives compensation through BDO, and she is required to pay New Jersey income taxes on those pass-through earnings." (**Pb45**).

That is wholly insufficient to sustain personal jurisdiction here.

Courts can only exercise such specific jurisdiction, absent a defendant's territorial presence in the state, if that defendant **both** has sufficient minimum contacts within the forum state **and** those contacts directly give rise to the claims at issue. *Patel v. Karnavati Am., LLC*, 437 N.J. Super. 415, 424 (App. Div. 2014). Here, Moeller meets neither of those requirements.

Those asserted New Jersey contacts for Moeller are too attenuated. *Baanyan Software Servs., Inc. v. Kuncha*, 433 N.J. Super 466, 478 (App. Div. 2013) ("The fact defendant received payment from [a New Jersey-based company] … does not support a finding of personal jurisdiction"); *Fairfax Fin. Holdings Ltd. v. S.A.C. Cap. Mgmt., L.L.C.*, 450 N.J. Super. 1, 69–71 (App. Div. 2017) (defendants not subject to jurisdiction in New Jersey despite the fact that partnership had New Jersey clients and filed partnership tax returns in New Jersey).

Those New Jersey contacts are also disconnected from Redmond's allegations of employment discrimination in Connecticut. And, that is fatal to his attempt to hail Moeller into a New Jersey court on those claims. *Dutch Run-Mays Draft, LLC v. Wolf Block, LLP*, 450 N.J. Super. 590, 598, 603 (App. Div. 2017) (affirming dismissal for lack of personal jurisdiction because actions

forming plaintiff's cause of action "did not arise from defendant's contacts with New Jersey").[8]

2. Contrary to Redmond's assertions, Moeller's role in a **limited liability partnership** fails to create a basis for personal jurisdiction in this case. In assessing personal jurisdiction, context matters; in fact, it is outcome dispositive (which is perhaps why Redmond seeks to gloss over the specifics).

Moeller was a Fixed Share Partner at BDO: A limited liability partnership (LLP), not a general partnership ("GP"). (**3T 12:23-13:23**). That distinction is critical. "Without LLP status, 'all partners are liable jointly and severally for all obligations of the partnership....'" *Mortg. Grader, Inc. v. Ward & Olivo, LLP*, 438 N.J. Super. 202, 210 (App. Div. 2014), *aff'd*, 225 N.J. 423 (2016) (quoting N.J.S.A. 42:1A–18a). By contrast, a partner in an LLP "is not personally liable, directly or indirectly … for such an obligation solely by reason of being or so acting as a partner." N.J. Stat. Ann. § 42:1A-18.[9]

---

[8] Redmond's proffered legal authority only confirms this defect. His brief cites *Lebel v. Everglades Marina, Inc.*, 115 N.J. 317, 326 (1989) for the proposition that "phone calls and use of mail to solicit contracts" will suffice, but neglects to share that was the case only because the cause of action arose directly from those fraudulent communications. Redmond's other cited cases likewise offer no support for his argument.

[9] Redmond's brief erroneously states that "BDO was a general partnership … and Defendant Moeller is a general partner." (**Pb40**). That misdescription is belied by the uncontroverted record. (**2T 11:8-13**).

Because the LLP form shields its partners from individual liability, a limited liability partner would not and should not anticipate being haled into court in a foreign jurisdiction based solely on her status as a partner. Neither of Redmond's proffered cases suggest a different result.

Miller v. McMann, 89 F. Supp. 2d 564 (D.N.J. 2000) involved a general partnership: a three-person general partnership. Plus, there, the exercise of specific personal jurisdiction was warranted because the case arose from conduct in New Jersey: A partner had sent agents to New Jersey to fraudulently collect plaintiff's signature. *Id*. at 567.

So, both with respect to the type of partnership and the targeted misconduct occurring in New Jersey, *Miller* is doubly inapposite. The trial court correctly sussed out that *Miller* provides no traction for Redmond:

> Here by contrast, plaintiff's claims arise out of facts that he himself alleges occurred in Connecticut. Absolutely nothing relative to his claim occurred in New Jersey.
>
> Also it is quite interesting to note that in paragraph two of his amended complaint, plaintiff also references the Connecticut Fair Employment Practices Act.
>
> Additionally, as a distinction from *Miller*, this partnership -- the partnership in *Miller* consisted of just three partners in a traditional partnership arrangement, while the facts here involve a large, limited liability partnership with offices across the country.

(**3T 29:12–19**).

Star Video Ent., L.P. v. Video USA Assocs. 1 L.P., 253 N.J. Super. 216 (App. Div. 1992) is equally unavailing. There too, the underlying dispute was New Jersey-centered: An agreement for purchase of video tapes that had been negotiated in New Jersey with all tapes subsequently mailed from New Jersey. *Id*. at 222–23. There too, the entity involved was far different, concerning a question of personal jurisdiction of limited partnerships that were "the functional *alter egos* and personal investment vehicles of [two of the individual defendants]." *Id.* at 222.

So, nothing in *Star Video* suggests that extending personal jurisdiction is appropriate here. That case did not involve an out of state partner in a limited liability partnership. Plus, those alter ego findings for a contract negotiated and performed in New Jersey were the linchpin for concluding that personal jurisdiction there comported with due process. Here, as the trial court recognized, it is just the opposite:

> Fairness is the essential due process inquiry…. Now it's important to note that this … [Ms. Moeller] did not seek nor derive benefits from any contact with New Jersey or the Woodbridge office.
>
> Now plaintiff has provided no support for his claim that a partner in an LLP should be subject to general jurisdiction without more in every state where any partner in the LLP does business. Such a theory of jurisdiction would certainly violate, "traditional notions of fair play and substantial justice."

(**3T 33:14–34:4** (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945))).

Neither *Miller* nor *Star Video* support Redmond. Nothing does: "To compel an individual employee to defend against a New Jersey lawsuit, where that employee was hired to work in [a separate state], and never lived in, worked in, or visited New Jersey, violates principles of 'fair play and substantial justice.'" *Baanyan Software Servs., supra*, 433 N.J. Super at 476 (citation omitted).[10]

CONCLUSION

For these reasons, this Court should affirm the trial court.

[10] Redmond also asserts in a single sentence that the trial court erred in failing to hold an evidentiary hearing. (**Pb40**). That is baseless. Redmond identified no material issues of fact in dispute concerning jurisdiction, but only a legal debate. So, the trial court properly held that such a hearing was unnecessary:

> Now plaintiff has requested a preliminary evidentiary hearing to establish the facts supporting the Court's exercise of personal jurisdiction over defendant Heide Moeller. However, the Court will reject that request since the parties have had ample opportunity to expand the record on the jurisdiction issue, including the taking of Ms. Moeller's deposition. There is a factual record sufficient for the Court to rule on the issue.

(**3T 5:17–6:4**). *See Kacherian v. Mirzoyan*, 2012 WL 2428115, at *4 (App. Div. June 28, 2012) ("Unless there are material facts in dispute pertaining to the exercise of jurisdiction, the court may rule without an evidentiary hearing.").

Specifically, this Court should confirm the trial court's rulings [A] that Redmond's CFEPA claim is time-barred; [B] that his NJLAD claim is unsustainable given out-of-state employment; and [C] that there is no basis for personal jurisdiction in New Jersey over Moeller.

Dated: September 12, 2025

Respectfully submitted,
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CHARLES REDMOND,

Plaintiff-Appellant

vs.

BDO USA, LLP, and HEIDE M. MOELLER,

Defendants-Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No. A-002310-24 T1

CIVIL ACTION

ON APPEAL FROM

SUPERIOR COURT, LAW DIVISION
PASSAIC COUNTY

Sat Below:
Honorable Scott J. Bennion, J.S.C.
Honorable Bruno Mongiardo, J.S.C.

REPLY BRIEF OF APPELLANT CHARLES REDMOND

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PROCEDURAL HISTORY[1]

Mr. Redmond hereby incorporates by reference and relies upon the Procedural History set forth in his Opening Brief.

STATEMENT OF FACTS

Mr. Redmond hereby incorporates by reference and relies upon the Statement of Facts contained in his Opening Brief.

REPLY ARGUMENT

I. THE TRIAL COURT ERRED IN DISREGARDING FACTS SHOWING THAT PLAINTIFF WORKED IN NEW JERSEY AND THAT THE DISCRIMINATION OCCURRED IN NEW JERSEY (*Pa1; 10T*)

As Defendant emphasizes, the trial court determined that the New Jersey Law Against Discrimination ("NJLAD") should not apply in this case because the court found as a fact that Mr. Redmond did not work in New Jersey. (10T:22-23). But to conclude that the NJLAD does not apply, the trial court had to make a factual determination: where did Mr. Redmond work and where did the discrimination occur? The parties vigorously contest where Mr. Redmond worked and where the discrimination occurred, but the trial court resolved that factual dispute against Mr. Redmond. These determinations should have been left to the factfinders. Summary judgment was precluded because of the

[1] For purposes of completeness, Mr. Redmond submits as a Reply Appendix the Transcript of Heide M. Moeller (taken on May 9, 2023) – designated as "2T" – which is a complete version of this transcript.

existence of these disputed facts concerning Mr. Redmond's work location and the location of the discrimination.

Application of the Calabotta factors requires factual determinations to be made because "[m]any other facts and factors may also bear upon the calculus." Calabotta v. Phibro Animal Health Corp., 460 N.J. Super. 38, 73, 213 A.3d 210, 229 (Super. Ct. App. Div. 2019). Defendant may be regarded as a New Jersey employer for purposes of applying the NJLAD. *See* Id., at 61 ("Furthermore, N.J.S.A. 10:5-5(e) declares that the definition of the term 'employer' broadly includes 'all persons as defined in subsection (a) of the section unless otherwise specifically exempt.'"). The court in Law v. Virtus Partners Holdings, LLC,[2] found that "[t]he choice-of-law analysis in employment-related matters can be particularly intricate at times, such as now, where 'employees and their supervisors more often perform their work tasks remotely in multiple locations rather than in a traditional common physical location.'" Law, *supra* at *10. There, the court denied the defendant's motion to dismiss because the specific facts had to be established. Law, *supra* at *10-11 ("Plaintiff and Defendants dispute the primary locations of Plaintiff's employment").

[2] Civil Action No. 22-2329 (GC) (RLS), 2023 U.S. Dist. LEXIS 32414, at *10 (D.N.J. Feb. 27, 2023).

Here, Mr. Redmond reiterates his contention that he physically worked in New Jersey during the time the discriminatory acts occurred, including when he specifically requested, while in New Jersey, to be transferred to a different office because of Defendant's discrimination and retaliation – which Defendant refused. (Pa653; Pa807; 5T:139). Indeed, although the trial court held otherwise, "a state may regulate conduct occurring outside its borders" under certain circumstances. Blakey v. Cont'l Airlines, 164 N.J. 38, 66, 751 A.2d 538, 554 (2000).

In any event, the trial court did not view, in the light most favorable to Mr. Redmond, the facts relating to the location of Mr. Redmond's work or where the discrimination occurred. For this reason, the dismissal of the NJLAD claim must be reversed.

II. THE TRIAL COURT ERRED IN REFUSING TO APPLY NEW JERSEY'S RULES OF COURT WITH RESPECT TO THE CFEPA CLAIM (*Pa1; 10T*)

A. Mr. Redmond Complied with the Statute of Limitations

"A court usually applies its own local law rules prescribing how litigation shall be conducted even when it applies the local law rules of another state to resolve other issues in the case." *Restatement (Second) of Conflict of Laws*, § 122. This principle governs Mr. Redmond's claim under the Connecticut Fair Employment Practices Act ("CFEPA"). The New Jersey Supreme Court in

Heavner v. Uniroyal, Inc., 63 N.J. 130 (1973), identified the policy reasons for this rule, including because "[i]t would be an impossible task for the court of [the forum] state to conform to procedural methods and diversities of the state whose substantive law is to be applied. The determination of that law is a difficult enough burden to impose upon a foreign tribunal." Id., at 136. Defendant offers no countervailing policy reasoning for why a New Jersey court should apply Connecticut's procedural rules.[3]

The relevant statute of limitations is contained in Conn. Gen. Stat. § 46a-101(e), which provides:

> "Any action brought by the complainant in accordance with section 46a-100 [the CFEPA] ***shall be brought*** not later than ninety days after the date of the receipt of the release from the commission."

(Emphasis supplied). By its terms, this statute *does not* require a summons and complaint to be filed and served in order for the CFEPA claim to be "brought." Mr. Redmond has commenced this action in a New Jersey court. There does not appear to be any case holding that when a CFEPA claim is brought in a New Jersey court that the Connecticut court rules should apply to determine when the

[3] In any event, the CFEPA's statute of limitations is not jurisdictional. "neither the language of the statute nor its legislative history evinces a clear intent by the legislature to impose a jurisdictional bar to claims brought outside of the time limitation contained in § 46a-101 (e)… [and the] antidiscrimination provisions should be 'liberally construed in favor of those whom the legislature intended to benefit.'" Sokolovsky v. Mulholland, 213 Conn. App. 128, 139, 141 (2022).

case was commenced. No case seems to hold that a New Jersey court is compelled to apply another state's court rules in order adjudicate a claim based on the foreign state's substantive law. Thus, when the trial court refused to apply New Jersey's court rules relating to when Mr. Redmond's CFEPA claim was brought, its dismissal of such CFEPA claims on statute of limitations grounds was not warranted and should be reversed.

B. Defendant Cannot Escape Waiver

Rule 4:5-4 provides:

> A responsive pleading shall set forth specifically and separately a statement of facts constituting an avoidance or affirmative defense including but not limited to accord and satisfaction, arbitration and award, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, frustration of purpose, illegality, impossibility of performance, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, ***statute of limitations***, and waiver.

(Emphasis supplied). "It is well settled that an affirmative defense is waived if not pleaded or otherwise timely raised." Brown v. Brown, 208 N.J. Super. 372, 384, 506 A.2d 29, 35 (Super. Ct. App. Div. 1986)(citing R. 4:6-7). Defendant does not dispute this authority, and there is no evidence in the record (and Defendant cites none) as to why Defendant should be relieved of its obligation

to have asserted the statute of limitations affirmative defense in its answer.[4] The mandate of Rule 4:5-4 should have been followed, and Defendant has made no argument (even on this appeal) to justify the relaxation of this rule or excuse Defendant's failure to have complied with it.

The trial court erroneously concluded that Defendant's statute of limitations affirmative defense was not waived; therefore, its order granting summary judgment on statute of limitations grounds should be reversed.

III. THE TRIAL COURT ERRED IN CONCLUDING THAT THE COMMON LAW WRONGFUL DISCHARGE CLAIMS WERE PREEMPTED (*Pa1; 10T*)

The trial court dismissed Mr. Redmond's common law wrongful discharge claims, concluding that they were subsumed by the NJLAD. (10T:21).[5] This was error because "[c]ontrary to defendants' argument, the LAD does not 'preempt' supplementary common law causes of action." Kwiatkowski v.

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[4] Defendant misstates the standard of review with respect to its statute of limitations defense. Whether a cause of action is barred by a statute of limitations is reviewed *de novo*, not under an abuse of discretion standard. Save Camden Pub. Schs. v. Camden City Bd. of Educ., 454 N.J. Super. 478, 487 (App. Div. 2018).

[5] As an initial matter, although Defendant argues to the contrary, Mr. Redmond has not and does not abandon his common law wrongful discharge claims. If the Court regards these claims as abandoned because Mr. Redmond did not refer to them in his initial brief, Mr. Redmond specifically requests and moves this Court to relax the rule of abandonment, pursuant to R. 1:1-2, which provides that "[u]nless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice." Insofar as Mr. Redmond asserted error with respect to the dismissal of his common law wrongful discharge claims in the Civil Case Information Statement (*Answer to Question #9*) filed on this appeal, he urges that an injustice would result if his arguments regarding the viability of these claims is not considered herein.

Merrill Lynch, No. A-2270-06T1, 2008 N.J. Super. Unpub. LEXIS 3023, at *44 (Super. Ct. App. Div. Aug. 13, 2008). "The Legislature did not intend to abrogate all common law causes of action with the enactment of the LAD." Dale v. BSA, 160 N.J. 562, 604 (1999), *reversed on other grounds*, *sub nom* Boy Scouts of America v. Dale, 530 U.S. 640 (2000). "[T]he LAD cause of action does not either codify or co-opt these common-law causes of action. Indeed, the LAD preserves other legal bases that might exist on which a discrimination claim may be brought." Shaner v. Horizon Bancorp, 116 N.J. 433, 453 (1989)(internal citation omitted).

Whereas "supplementary common law causes of action may not go to the jury *when a statutory remedy under the LAD exists*," Catalane v. Gilian Instrument Corp., 271 N.J. Super. 476, 492 (Super. Ct. App. Div. 1994), implicit in such a holding is that the statutory claim must still exist. Here, Mr. Redmond pled the common law wrongful discharge claims in the alternative. When the trial court concluded that Mr. Redmond's NJLAD statutory claim fell away, there no longer remained any duplicative claim for relief. Under such circumstances, the trial court erred in dismissing Mr. Redmond's common law wrongful discharge claims, even as it dismissed his claim under the NJLAD. Thus, the trial court's order of dismissal should be reversed.

CONCLUSION

For all the foregoing reasons, and for the reasons set forth in Mr. Redmond's Opening Brief, Mr. Redmond urges this Court to reverse the summary judgment and dismissal orders below and remand this case for a jury trial on the merits.

Respectfully submitted,

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Dated: September 26, 2025 By: s/ Daniel Zemel
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