NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1463-15T1

STATE OF NEW JERSEY
ex rel. LEONARD M.
CAMPAGNA,

Plaintiff-Appellant,

v.

POST INTEGRATIONS, INC.,
EBOCOM, INC., and MARY
GERDTS,

Defendants-Respondents.

**APPROVED FOR PUBLICATION**

**July 19, 2017**

**APPELLATE DIVISION**

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Argued March 28, 2017 – Decided July 19, 2017

Before Judges Reisner, Rothstadt and Sumners.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-6341-14.

Luis G. Zambrano (Miller, Egan, Molter & Nelson, LLP) of the Texas bar, admitted pro hac vice, argued the cause for appellant Leonard M. Campagna (Clayton Giles (Law Offices of Joshua Parkhurst) and Mr. Zambrano, attorneys; Mr. Giles and Mr. Zambrano, of counsel and on the briefs).

Carla S. Pereira, Deputy Attorney General, argued the cause for respondent State of New Jersey (Christopher S. Porrino, Attorney General, attorney; Andrea M. Silkowitz, Assistant Attorney General, of counsel; Joan Karn and Marlene G. Brown, Deputy Attorneys General, on the brief).

John L. Sinatra, Jr. (Hodgson Russ LLP) of the New York bar, admitted pro hac vice, argued the cause for respondents Post Integrations, Inc., Ebocom, Inc., and Mary Gerdts (Jacquelyn R. Trussell (Hodgson Russ LLP) and Mr. Sinatra, attorneys; Daniel C. Oliverio, Mr. Sinatra, and Ms. Trussell, on the brief).

The opinion of the court was delivered by

ROTHSTADT, J.A.D.

In this qui tam action, we are asked to determine whether a claim against a corporation arising from its alleged failure to pay certain statutory obligations owed to the State relates to taxes that are expressly excluded from the purview of the New Jersey False Claims Act (NJFCA or the Act), N.J.S.A. 2A:32C-1 to -18. For the reasons stated herein, we hold that such obligations are taxes and, therefore, the Law Division properly dismissed plaintiff's complaint.

Plaintiff, Leonard M. Campagna, the relator, appeals from the Law Division's November 6, 2015 order allowing the Attorney General to appear in support of defendants' motion to dismiss and from the order of the same date dismissing his complaint. The complaint alleged that defendants, Post Integrations, Inc., Ebocom, Inc., and Mary Gerdts, were out-of-state credit card processors who served New Jersey based hotels, and that they violated the NJFCA by making false statements in order to avoid

paying New Jersey "assessments, fees, license costs and other charges." In response to plaintiff's complaint, the Attorney General filed a notice of his decision not to intervene in the action and defendants filed a motion to dismiss the complaint for failure to state a cause of action upon which relief could be granted, R. 4:6-2(e), and for failing to plead a fraud claim with particularity, R. 4:5-8(a). The State sought leave to file a statement of interest and to participate in oral argument in further support of defendants' motion. Judge Michelle Hollar-Gregory allowed the State to participate, over plaintiff's objection, even though Attorney General had declined to intervene in the action.

After considering the parties' and the State's arguments, Judge Hollar-Gregory dismissed the complaint, concluding that plaintiff's allegations related to false statements that were made to avoid paying taxes and similar liabilities and that the NJFCA, N.J.S.A. 2A:32C-2 (the tax bar), expressly excluded "claims, records, or statements made in connection with state tax laws." The judge rejected plaintiff's contention that his claims were excluded from the tax bar because N.J.S.A. 2A:32C-3(g), which sets forth conduct prohibited under the NJFCA, does not include the word "claim." Relying on DiProspero v. Penn, 183 N.J. 477 (2005), the judge observed that reading section (g)

in isolation as plaintiff argued would "not give sense to the legislation as a whole." Judge Hollar-Gregory also rejected plaintiff's argument that even if the tax bar applied to "claims" such as those he asserted, the other fees he alleged defendants avoided were not taxes. The judge disagreed finding that the fees were alternative minimum assessments (AMA) required as a tax on corporate income by the "Corporation Business Tax Act [(CBT), N.J.S.A. 54:10A-1 to -40]."

On appeal, plaintiff argues that the judge erred by applying the NJFCA's tax bar to his claim and by concluding that the AMA "is a tax under New Jersey's tax laws." He also contends that other unpaid "non-tax fees" alleged in his complaint were not subject to the tax bar. In addition, plaintiff argues that the judge should not have allowed the State to participate in the argument of defendants' motion.

Our review of the judge's order entered under Rule 4:6-2(e) is de novo. See Major v. Maguire, 224 N.J. 1, 26 (2016). Having reviewed the record in light of that standard, we affirm the dismissal of the complaint substantially for the reasons expressed by Judge Hollar-Gregory in her oral decision. We add only the following comments.

Plaintiff's primary argument about the applicability of the tax bar relies upon two separate provisions of the NJFCA. As

plaintiff acknowledges, the NJFCA's definition of a prohibited "claim" expressly excludes matters addressed by state tax laws. It states:

> "Claim" means a request or demand, under a contract or otherwise, for money, property, or services that is made to any employee, officer, or agent of the State, or to any contractor, grantee, or other recipient if the State provides any portion of the money, property, or services requested or demanded, or if the State will reimburse the contractor, grantee, or other recipient for any portion of the money, property, or services requested or demanded. The term does not include claims, records, or statements made in connection with State tax laws.
>
> [N.J.S.A. 2A:32C-2 (emphasis added).]

The other portion of the Act upon which plaintiff relies imposes liability for prohibited conduct that it describes, in pertinent part, as follows:

> A person shall be . . . liable to the State for a civil penalty . . . for each false or fraudulent claim . . . if the person commits any of the following acts:
>
> . . . .
>
> g. Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State.
>
> [N.J.S.A. 2A:32C-3(g) (emphasis added).]

The Supreme Court in L.A. v. Bd. of Educ. of City of Trenton noted that:

> When, as here, an issue concerns more than one statutory provision, "[r]elated parts of an overall scheme can . . . provide relevant context." [I]n addition to "ascrib[ing] to the statutory words their ordinary meaning and significance [we] read them in context with related provisions so as to give sense to the legislation as a whole."
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> [221 N.J. 192, 201 (2015) (first, second, and fourth alteration in original) (quoting Beim v. Hulfish, 216 N.J. 484, 498 (2014)).]

Reading the plain language of the statute in the context of the entire Act, see DiProspero, supra, 183 N.J. at 497, it is clear that, as the motion judge concluded, the Legislature intended to exclude state tax matters from the Act's purview. Contrary to plaintiff's argument, the fact that subparagraph (g) does not refer to "claims" does not compel a contrary reading, especially since the introductory language of the statute specifically includes that reference. Reading a portion of the statute with a blind eye to the balance of its contents is inconsistent with the principles governing statutory construction and, in this case, would be contrary to the Legislature's clear intent to exclude tax matters from the NJFCA

as stated in N.J.S.A. 2A:32C-2.[1] Courts must eschew such results. See Burgos v. State, 222 N.J. 175, 203 (2015), cert. denied, ___ U.S. ___, 136 S. Ct. 1156, 194 L. Ed. 2d 174 (2016).

Turning to plaintiff's contention that the AMA is not a tax, we conclude that it is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). Suffice it to say, the AMA is a part of the CBT and "the Legislature imposed [it] to be used in calculating liability for corporation business tax[es.]" Equip. Leasing & Finan. Ass'n v. Dir. of Taxation, 24 N.J. Tax 527, 529 (Tax 2009).

Equally without merit is plaintiff's contention that the tax bar does not apply to assessments and fees imposed upon foreign corporations by the New Jersey Business Corporation Act (NJBCA), N.J.S.A. 14A:13-1 to -23. Plaintiff's argument ignores the fact that the Legislature placed the overall administration of the NJBCA with the Division of Taxation in the Department of Treasury, see N.J.S.A. 14A:13-22, and that the NJBCA expressly

[1] The federal False Claims Act (FCA), 31 U.S.C.A. §§ 3729 to 3733, also excludes actions that arise from "claims, records, or statements" that relate to tax matters, 31 U.S.C.A. § 3729(d), and has been enforced by federal courts consistent with the approach we have taken herein. See, e.g., Almeida v. USW, 50 F. Supp. 2d 115, 126-27 (D.R.I. 1999) ("[F]ederal courts have recognized that fraudulent income tax claims are not actionable under [the FCA]. Some courts have noted that application of the [FCA] . . . would be redundant and confusing given the fraudulent claims prohibitions within the Internal Revenue Code itself." (citations omitted)).

states that it is "governed in all respects by the provisions of the State tax uniform procedure law [Title 54] except to the extent that a specific provision . . . may be in conflict therewith." N.J.S.A. 14A:13-21.

Finally, we discern no abuse of discretion in Judge Hollar-Gregory's decision to allow the State to appear as an interested party in further support of defendants' motion. The appearance was not an intervention to pursue a claim as contemplated by the NJFCA. See N.J.S.A. 2A:32C-5(d); In re Enf't of N.J. False Claims Act Subpoenas, 444 N.J. Super. 566, 570-71 (App. Div. 2016), aff'd o.b., ___ N.J. ___, ___ (2017). Rather, the application granted by Judge Hollar-Gregory was akin to one to appear amicus curiae. Her decision was a proper exercise of the court's discretion. See State ex rel. Hayling v. Corr. Med. Servs., Inc., 422 N.J. Super. 363, 369 (App. Div. 2011) (acknowledging treatment of statement of interest as application to appear amicus curiae); see also R. 1:13-9; In re State ex rel. Essex Cty. Prosecutor's Office, 427 N.J. Super. 1, 5 (Law Div. 2012).

Affirmed.