

PREPARED BY THE COURT

LG ELECTRONICS U.S.A., INC.,

Plaintiff,

vs.

ACTIONLINK, LLC,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION

BERGEN COUNTY  
DOCKET NO. BER-L-5074-16

CIVIL ACTION

OPINION

**Argued: January 19, 2018**

**Decided: January 29, 2018**

**Honorable Robert C. Wilson, J.S.C.**

Eric Blumenfeld, Esq., appearing for the Plaintiff, LG Electronics, USA, Inc., (from the law offices of Hughes Hubbard & Reed LLP).

Matthew F. Gately, Esq. and Charles R. Cohen, Esq. appearing for the Defendants, ActionLink LLC, (from the law offices of Cohn Lifland Pearlman Herrmann & Knop LLP).

**FACTUAL BACKGROUND**

**THIS MATTER** arises from a dispute regarding a Master Services Agreement dated August 26, 2010 and two incorporated Statements of Work dated December 1, 2010 and April 1, 2012 between LG Electronics U.S.A. Inc. (“LGEUS”) and ActionLink LLC (“ActionLink”). On June 3, 2015 LGEUS filed their complaint against ActionLink, claiming that the Defendant intentionally overcharged LGEUS by approximately \$1.8 million for a fleet vehicle program that ActionLink created pursuant to the above agreements. The three counts of LGEUS’s complaint are breach of contract, common-law fraud, and breach of the implied covenant of good faith and fair dealing.

LGEUS now moves this Court for leave to amend their complaint in three ways. First, Plaintiff asks to add a quotation from the Master Services Agreement. Second, to change the word

“any” to “quarterly” in paragraph eighteen of the complaint. Third, to amend the *ad damnum* clause under count two of the complaint to demand punitive damages for the alleged common-law fraud. Defendant ActionLink opposes the Plaintiff’s motion, and cross-moves for dismissal of the Plaintiff’s common law fraud claim. The Defendant argues that common law fraud is not actionable in this case pursuant to the economic loss doctrine and the Plaintiff’s failure to plead fraud with the requisite particularity.

### **RULE OF LAW AND DECISION**

#### **I. LGEUS May Amend their Complaint to include the Word “Quarterly” and the Quote from the Master Services Agreement because those Amendments do not Prejudice ActionLink and are not Futile.**

New Jersey Rules of Court provide that “[a] party may amend any pleading ... by leave of court which shall be freely given in the interest of justice.” R. 4:9-1. While motions for leave to amend pleadings are to be liberally granted, they are best left to the sound discretion of the trial court in light of the factual situation existing at the time each motion is made. Kernan v. One Washington Park Urban Renewal Associates, 154 N.J. 437, 457 (1998) (citing Fisher v. Yates, 270 N.J. Super. 458, 467 (App. Div. 1994)). “That exercise of discretion requires a two-step process: whether the non-moving party will be prejudiced, and whether granting the amendment would nonetheless be futile.” Notte v. Merchs. Mut. Ins. Co., 185 N.J. 490, 501 (2006). “If a claim does not arise until after a complaint has been filed, leave to amend to add that claim should be granted as of course so long as the moving party has exercised due diligence and the amendment will not cause the trial to be unduly delayed or complicated.” State v. Standard Tank, 284 N.J. Super. 381, 396 (App. Div. 1995). A motion to amend is properly denied where allowing the amendment would unduly protract the litigation. Pressler, Current N.J. Court Rules, comment 2.2.1 on R. 4:9-

1 (2015). Although any asserted prejudice must amount to more than mere inconvenience, if “the proposed amendments requires the reopening of discovery, the prejudice to the non-moving party will be considered greater than if the proposed amendment presents only a new issue of law.” Violas v. General Motors Corp., 173 F.R.D. 389, 396 (D.N.J. 1997) (citing Harrison Beverage Co. v. Dribeck Importers, Inc., 133 F.R.D. 463, 469 (D.N.J. 1990)).

Here, LGEUS may amend their complaint to substitute the word “quarterly” instead of “any” and to include the quote from the Master Services Agreement. ActionLink does not object to the “quarterly” amendment. Instead they claim that the theory of the case represented by this amendment is ultimately of no merit. As such, that portion of LGEUS’s motion is granted.

Second, the amendment to include the quote from the Master Services Agreement is permissible under the Court Rules. The Master Services Agreement is the underlying basis for the Plaintiff’s claims here, and as such including a quote from that agreement does not prejudice the Defendant. Further, these amendments do not change or add any cause of action brought by the Plaintiff. ActionLink argues that such an amendment would require the reopening of discovery, because neither party has engaged in discovery regarding the “third party pass through expenses” language. They point specifically to discovery responses by LGEUS that indicate their theory of the case is derived from the Statements of Work and not the Master Services Agreement. This Court notes that ActionLink’s arguments regarding the above amendment to include the word “quarterly” apply to this subsequent amendment. If the parties have not in fact collected discovery on the issue of “third party pass through expenses,” such a theory would not prevail at trial and therefore would no prejudice the Defendant.

Therefore, pursuant to R. 4:9-1, these amendments are not futile. The instant amendments do not add new claims and thus, the motion to amend is granted.

**II. Count Two of LGEUS's Complaint is Dismissed Pursuant to the Economic Loss Doctrine and LGEUS's Failure to Plead Common Law Fraud with the Requisite Particularity.**

On a motion to dismiss pursuant to R. 4:6-2(e), the Court must treat all factual allegations as true and must carefully examine those allegations “to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim. . . .” Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989). After a thorough examination, should the Court determine that such allegations fail to state a claim upon which relief can be granted, the Court must dismiss the claim. Id.

Under the New Jersey Court Rules, a Complaint may only be dismissed for failure to state a claim if, after an in-depth and liberal search of its allegations, a cause of action cannot be gleaned from even an obscure statement in the Complaint, particularly if additional discovery is permitted. R. 4:6-2(e); see Pressler, Current N.J. Court Rules, Comment 4.1.1. to Rule 4:6-2(e), at 1348 (2010) (citing Printing Mart, 116 N.J. at 746). Thus, a Court must give the non-moving party every inference in evaluating whether to dismiss a Complaint. See NCP Litigation Trust v. KPMG, LLP, 187 N.J. 353, 365 (2006); Banco Popular No. America v. Gandi, 184 N.J. 161, 165-66 (2005); Fazilat v. Feldstein, 180 N.J. 74, 78 (2004). The “test for determining the adequacy of a pleading [is] whether a cause of action is suggested by the facts.” Printing Mart, 116 N.J. at 746. However, “a court must dismiss the plaintiff’s complaint if it has failed to articulate a legal basis entitling plaintiff to relief.” Sickles v. Carbot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005).

In any claims alleging fraud “particulars of the wrong, with dates and items if necessary, shall be stated insofar as practicable. Malice, intent, knowledge, and other conditions of mind of a person may be alleged generally.” R. 4:5-8. Where pleadings only lack specificity, the Court

typically provides the pleader with the opportunity to amend the pleadings. See Rebish v. Great Gorge, 224 N.J. Super. 619 (App. Div. 1988). However, where the pleadings lack specificity and fail to plead the elements of legal or equitable fraud, the Court may dismiss the count. See Levinson v. D'Alfonso & Stein, 320 N.J. Super. 312, 315 (App. Div. 1999).

The elements of legal fraud are “(1) material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages.” Banco Popular No. America v. Gandi, 184 N.J. 161, 172-73 (2005) (quoting Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610 (1997)). Equitable fraud is distinguished from legal fraud by the lack of scienter as an element. See Jewish Center of Sussex Cty. v. Whale, 86 N.J. 619 (1981).

Here, the Plaintiff’s complaint alleges that the invoices sent to LGEUS by ActionLink pursuant to the Master Services Agreement and the subsequently executed Statements of Work were fraudulent because they overcharged the Plaintiff. Further, that these representations made regarding the “actual costs” of the fleet vehicle program induced overpayment, after LGEUS had reasonably relied on these statements.

Here, count two of the Plaintiff’s complaint is barred by the economic loss doctrine. The root of the instant case is a dispute over what the correct charges were under the Master Services Agreement and the Statements of Work. This depends wholly on a determination of the duties of the parties under those contracts. New Jersey Courts have applied the economic loss doctrine to preclude plaintiffs from suing in tort when their claims arise from the breach of a contract and involve economic damages. Wasserstein v. Kovatch, 261 N.J. Super. 277, 286 (App. Div. 1993), Saltiel v. GSI Consultants, Inc., 170 N.J. 297, 310 (2002). Here, there is no allegation that there was fraud at the time the contracts were being negotiated or executed, but only later, as they were

being performed and the allegedly inflated invoices were subsequently tendered. The existence of any fraud in the instant case is dependent in turn on the duties under the contract. This “fraud in performance” is part and parcel of the contract claims and thus barred under the economic loss doctrine.

Additionally, count two must be dismissed as it fails to plead fraud with the requisite particularity. As explained above, “where the pleadings lack specificity and fail to plead the elements of legal or equitable fraud, the Court may dismiss the count.” See, 320 N.J. Super. at 315. Here, the Plaintiff’s complaint alleges that false representations were made in the invoices sent pursuant to the Master Services Agreement and Statements of Work. These claims are barred by the economic loss doctrine. As a result, the Plaintiff has failed to plead any additional or independent ground for fraud by Defendant ActionLink. Thus, count two must be dismissed without prejudice.

For the reasons above, Plaintiff’s motion to amend is **GRANTED IN PART** and **DENIED IN PART**, and the Defendant’s cross motion to dismiss is **GRANTED**.

It is so ordered.