NOT TO BE PUBLISHED WITHOUT
THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
CAMDEN COUNTY
CIVIL DIVISION
DOCKET NO. L-4588-18

JOHN DOE,

Plaintiff,

v.

THE LAW OFFICE OF CONRAD J. BENEDETTO, JOHN GROFF, CONRAD J. BENEDETTO, ESQUIRE, ABC CORPS. 1-5, AND JOHN DOES 1-5,

Defendants.

Argued April 12, 2019 – Decided May 3, 2019

Nellie Fitzpatrick (Brian D. Kent on the brief), attorney for plaintiff (Laffey, Bucci & Kent LLP).

Joshua B. Kaplan (Matthew A. Green on the brief), attorney for defendant (Obermayer, Rebmann, Maxwell & Hippel LLP).

THOMAS T. BOOTH, JR., J.S.C.

Before the court is defendant's motion to dismiss plaintiff's complaint pursuant to R. 4:6-2(e). Defendant asserts that plaintiff's complaint must be dismissed because: 1) plaintiff's name in the complaint is an improperly pled anonymous pseudonym; 2) plaintiff cannot maintain his claims

under New Jersey's Law Against Discrimination (LAD) as he is unable to show he was employed by defendants; and 3) plaintiff's count under the New Jersey Consumer Fraud Act (CFA) cannot be maintained, as a matter of law, against defendants under the facts pled in plaintiff's complaint.

I. Factual and Procedural Background[1]

Plaintiff John Doe filed his complaint against defendants, The Law Offices of Conrad J. Benedetto, John Groff, and Conrad J. Benedetto, Esquire on December 6, 2018. Count one alleges sexual harassment and discrimination based upon plaintiff's gender in violation of the LAD; count two alleges harassment and discrimination based upon plaintiff's sexual orientation in violation of the LAD; count three alleges retaliation/improper reprisal in violation of the LAD; count four alleges violation of the CFA; counts five through eight allege negligent hiring, retention, training, supervision respectively; counts nine and ten allege negligence and gross negligence.

In summary, the facts contained in plaintiff's complaint indicate that plaintiff is a former client of defendant Conrad J. Benedetto, Esquire and his law firm, The Law Offices of Conrad J. Benedetto (hereinafter collectively "Benedetto").

[1] Because this motion is brought pursuant to R. 4:6-2(e), the factual background is gleaned from the plaintiff's complaint and is accepted as true for purposes of analyzing whether to dismiss a plaintiff's complaint.

Plaintiff was a survivor of the Pulse Nightclub shooting of June 12, 2016 and hired Benedetto when Defendant John Groff (Groff) introduced himself to plaintiff as Benedetto's office manager and solicited plaintiff to become a client of Benedetto. Defendant Groff advised plaintiff that he had viable causes of action based on his presence at the Pulse Nightclub during the shooting. In reliance thereon, plaintiff retained Benedetto to file a lawsuit for damages related to the Pulse Nightclub shooting[2]. Soon after retaining Benedetto, Groff began texting plaintiff. Plaintiff alleges the purpose of the texting was not for professional services relating to plaintiff's case, but was to establish a personal relationship with plaintiff to groom him for Groff's imminent sexual harassment.

Plaintiff retained Benedetto in early 2017 and alleges he heard nothing about his case for months. Following the Route 91 Harvest Music Festival shooting in Las Vegas, Nevada on October 1, 2017, plaintiff alleges defendants used plaintiff to recruit those shooting victims to retain Benedetto for legal

[2] In his complaint, plaintiff also indicates Groff solicited other victims of the Pulse Nightclub shooting and created a Facebook group called "Survivors of Mass Shootings" whose stated purpose is to "help each other through our healing process, rather it be a few days or a lifetime." According to plaintiff, Groff held himself out on Facebook as a fellow victim, allegedly gaining access to a database of vulnerable victims for Benedetto to solicit. Plaintiff does not allege in his complaint that he was solicited by Groff or Benedetto in the manner so described, although, at oral argument, his counsel so represented.

representation. Plaintiff alleges Groff knowingly took advantage of plaintiff's vulnerable condition and emotional trauma to convince him to accompany Groff on trips to Nevada and California to speak with other shooting survivors in order to convince them to retain Benedetto. Groff represented to plaintiff that defendants would pay all lodging, transportation and food expenses on the trips in return for plaintiff meeting with other shooting survivors and convincing them to retain Benedetto. Once plaintiff, Groff and other survivors were in Nevada, plaintiff alleges Groff's demeanor and interactions with other survivors changed and he began to treat survivors like employees hired to recruit shooting victims demanding "do your job and get other people to sign up."

Groff is also alleged to have pressured plaintiff to record a promotional video exploiting his story and experience as a shooting victim in order to recruit additional clients for Benedetto, over which plaintiff alleges he was "extremely uncomfortable" but eventually recorded the video.

Plaintiff also alleges Groff used the previously mentioned trips as a way to sexually solicit the shooting survivors, including plaintiff. Groff is alleged to have begun making sexual advances and sexually harassing survivors, but not including plaintiff, on a trip to Nevada. When the survivor rejected Groff's advances, Groff allegedly retaliated by

threatening to withhold money for lodging, transportation, and food. Plaintiff alleges he was unaware of this alleged harassment by Groff at the time. Plaintiff thereafter traveled again with Groff and the group of survivors to California. In Riverside, California Groff began to directly subject plaintiff to repeated sexual advances, which plaintiff rejected, for which plaintiff alleges Groff undertook retaliation.

Without money of his own and no means of getting home, plaintiff alleges he was forced to continue with Groff to the next stop on the trip, which was Sacramento, California. During the trip from Riverside to Sacramento, plaintiff alleges Groff continued his course of retaliation and harassment against plaintiff, seemingly becoming enraged that plaintiff rejected his advances, driving recklessly and dangerously through California, almost causing several accidents and causing plaintiff to strike his head on the roof of the car. Plaintiff alleges Groff also began to withhold money for food.

Throughout the trip to California, plaintiff alleges Groff's sexual advances and demands toward plaintiff became more direct and frequent, demanding sexual favors, sending sexually explicit messages and pornographic images in attempts to entice plaintiff into a sexual relationship with him. Many of the statements are alleged to have had the theme of getting plaintiff drunk so that Groff could force himself sexually upon

plaintiff. On another occasion, Groff advised plaintiff he wanted to get his nails done with plaintiff so "you can't scratch me" when performing sexual acts on each other. Examples of pornographic images Groff texted include images of a man performing oral sex on another man as well as images of male genitals. After texting plaintiff pornographic images of a man with whom Groff claimed to have engaged in sexual intercourse, Defendant Groff advised plaintiff, "He would put a hurting on you [sic] took me a while to get used to that." Groff also sent plaintiff screen shots of text messages from an individual giving a positive review of Groff's ability to perform oral sex on men. Plaintiff alleges he ignored Groff's advances still.

Groff is alleged to have continued his advances toward plaintiff. Groff sent plaintiff a picture of him with a younger man laying together stating, "I can make it happen. I'm a freak." Plaintiff responded "I'm a good boy," to which Groff responded "**** that" and sent a picture of a man apparently performing oral sex on Groff. Groff bragged about other similar sexual exploits, and stated he wanted to "prove" his sexual skill to plaintiff, to which plaintiff replied "I believe you…you don't need to prove nothing [sic]." Groff continued to pursue plaintiff asking him "just once" and promising to keep it "confidential." Groff also offered to perform other sex acts on plaintiff besides oral sex, stating "if you wanted to get your

*** eaten I will do that too…I'm hungry as ****." Plaintiff refused, stating "I'm good…I don't need satisfaction…we are friends!" and "Thanks for the offert [sic] but nop [sic] I'm not food...but serius [sic], I want to stay friends now…I don't want sex."

Plaintiff further alleges Defendant Groff has a prior history of criminal conduct, fraudulent behavior, unlawful intimidation, sexual harassment and retaliation of which Benedetto was aware. Plaintiff's complaint specifically points to a lawsuit filed against Benedetto and Groff in Carrasquillo v. Benedetto, et al. in December 2015 in New Jersey Superior Court alleging Groff utilized his position of authority as office manager and client point of contact for Benedetto to prey on vulnerable prospective clients and entice them to enter into sexual relationships with him, calling the facts in Carrasquillo analogous to the facts here.

In their first responsive pleading to plaintiff's complaint, defendants moved to dismiss the complaint *in toto* based upon the allegedly improper anonymous pleading in violation of R. 1:4-1(a).[3] Alternatively, defendants move to

[3] Defendants' captioned their motion as one to dismiss counts one, two and three with prejudice and submit a proposed form of order so ordering. In the body of their original brief, defendants argue for a dismissal of the entire complaint based upon the allegedly improper anonymous pseudonym used by the (continued)

dismiss counts one, two and three for failure to plead an employee-employer relationship generally, which defendants argue is required, and count four because the CFA has been held inapplicable to attorneys.

In opposition to defendants' motion, plaintiff argues that dismissal of the individual counts is not warranted under New Jersey's notice pleading standard and R. 4:6-2(e), that his anonymous pleading is permitted under the fact of this case, and that the CFA count must survive at this stage of the litigation.

II. Legal Standard on R. 4:6-2(e) Motions

New Jersey is a notice-pleading state, requiring only a general statement of the claim need be pleaded. Printing Mart v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989). Nevertheless, it is still necessary for the pleadings to include a statement of facts that will "fairly apprise the adverse party of the claims and issues to be raised at trial." Jardine Estates, Inc. v. Koppel, 24 N.J. 536, 542 (1957). On a motion to dismiss pursuant to R. 4:6-2(e), the court will accept as

---

(continued)
plaintiff despite their proposed form of order being silent as to this relief. Plaintiff argues *contra* in kind to dismissal of the complaint based upon the anonymous pleading, as well as against dismissal of counts one through four. Defendants' reply brief later indicated it is submitted in support of their motion to dismiss counts one through four of plaintiff's complaint.

As such, the court treats the motion as seeking dismissal of the complaint *in toto* based upon the anonymous pleading as well as counts one through four.

true the facts alleged in the complaint. Craig v. Suburban Cablevision, 140 N.J. 623, 625-26 (1995). The test for determining the adequacy of the pleading is whether a cause of action is suggested by the facts. Velantzas v. Colgate-Palmolive Corp., 109 N.J. 189 (1998). The court must search in depth and with liberality to determine if a cause of action can be gleaned even form an obscure statement, particularly if further discovery is conducted. Printing Mart at 772. The New Jersey Supreme Court cautioned that a R. 4:6-2(e) motion "should be granted in only the rarest of instances." Id.; *see also* Lieberman v. Port Authority of N.Y. & N.J., 132 N.J. 76, 79 (1993). Ordinarily, where a motion to dismiss under R. 4:6-2(e) is granted, it is done so without prejudice, with the court having discretion to permit the plaintiff to amend the complaint to allege additional facts in an effort to state a cause of action. Hoffman v. Hampshire Labs, Inc., 405 N.J. Super. 105, 116 (App. Div. 2009). Under appropriate circumstances, a trial court may, however, dismiss a complaint with prejudice. Johnson v. Glassman, 401 N.J. Super. 513, 524 (App. Div. 2010). Additionally, the court may dismiss a count or counts of the complaint pursuant to a R. 4:6-2(e) motion, as opposed to dismissing the entire complaint. Jenkins v. Region Nine Housing, 306 N.J. Super. 258 (App. Div. 1997), *cert. denied* 153 N.J. 405 (1998).

III. Analysis

A. *Anonymous Pleading*

R. 1:4-1(a) states, "In a complaint in a civil action, the title of the action shall include the name of all the parties…" The rule further states, "Except as otherwise provided by R. 5:4-2(a)[4], the first pleading of any party shall state the party's residence address, or, if not a natural person, the address of its principal place of business."[5] In the complaint, plaintiff indicates, at paragraph 1, that he "is an adult male whose name and address is not contained in his Complaint so as to protect his privacy and identity as he incurred injuries and damages of a sensitive nature as a result of the intentional and negligent acts and failures of Defendants outlined below."

Citing to A.A. v. Gramiccioni, 442 N.J. Super. 276 (App. Div. 2015), defendants argue

> [a] plaintiff should be permitted to proceed anonymously only in those exceptional cases involving matters of a highly sensitive and personal nature, real danger of physical harm, or where the injury litigated against would be incurred as a result of the disclosure of plaintiff's identity. The risk that a plaintiff may suffer some embarrassment is not enough.

---

[4] R. 5:4-2(a) applies to actions in the Chancery Division – Family Part and is thus inapplicable to this action.

[5] N.J.S.A. 2A:61B-1(f) requires anonymity of both sexual abuse victims and defendants, including use of initials or fictitious names in pleading. However, plaintiff's complaint contains no allegation of sexual abuse.

Id. at 285.

Defendants further argue that the balancing test adopted in ABC v. X.Y.Z. Corp., 282 N.J. Super. 494 (App. Div. 1995) governs determinations whether anonymous pleading should be permitted. There the Appellate Division stated,

> Although in rare circumstances the litigant's interest and privacy may overcome the constitutional presumption in favor of open court proceedings, mere embarrassment or a desire to avoid the potential criticism attendant to litigation will not suffice. In cases involving merely money damage claims and employment reinstatement issues a plaintiff should not be permitted to conceal his identity from the public absent a clear and convincing showing that there exists a genuine risk of physical harm, the litigation will entail revelation of highly private and personal information, the very relief sought will be defeated by revealing the party's identity, or other substantial reasons why identification of the party would be improper. Once compelling circumstances have been shown, the litigant's privacy interest must be weighed against the constitutional and public interest in open judicial proceedings.

Id. at 505.

Arguing that plaintiff sets forth a "a basic sexual harassment claim," defendants state the complaint is "devoid of any compelling reason to justify anonymity" and that plaintiff has failed to demonstrate this matter involves matters of a highly sensitive and personal nature or that there is a real danger of physical harm.

In opposition, plaintiff maintains that this is not a matter of mere embarrassment, as revealing his identity threatens to also reveal plaintiff's sexual orientation given

that he was in the Pulse Nightclub, which plaintiff describes as catering to the "LGBT community in the Orlando, Florida area." In support thereof, plaintiff cites to Doe v. Tris Comprehensive Mental Health, Inc., 298 N.J. Super. 677 (Law Div. 1996) which plaintiff argues stands for the proposition that "public identification as a homosexual constitutes a privacy concern that is an exception to the general rule of full disclosure of the identity of the parties." Doe v. Tris Comprehensive Mental Health, Inc., at 681 (citing Doe v. United Services Life Insurance Co., 123 F.R.D. 437 (S.D.N.Y 1988)). However, a close reading of the decision in Doe v. Tris Comprehensive Mental Health, Inc. finds the court did not so hold. In Doe v. Tris Comprehensive Mental Health, Inc., the plaintiff was a physician who alleged employment discrimination based upon his status as a homosexual infected with HIV. In his opinion which sanctioned anonymous pleading in that case, Judge Orlando stated:

> Turning to the case at bar, there is no question that the litigation will entail revealing highly private and personal information about plaintiff. Not only will plaintiff's sexual orientation as a homosexual be disclosed, but *more significantly*, his current status as being HIV positive will be revealed. Plaintiff has zealously tried to guard his medical condition from others. Indeed, outside his support group and one close personal friend, it has not been disclosed to any other person, not even to family members.
>
> …There can be no doubt but that plaintiff will endure significant social stigmatization *if his HIV status is revealed*.

[emphasis added]

Id. at 682

Contrary to plaintiff's argument, the revelation of Doe's sexual orientation was not the basis for Judge Orlando to permit anonymous pleading in Doe v. Tris Comprehensive Mental health, Inc.; rather, it was plaintiff's HIV positive condition.

In TSR v. JC, 288 N.J. Super. 48 (App. Div. 1996), the Appellate Division rejected anonymous pleading by the defendants even where such anonymous pleading had been sanctioned statutorily by N.J.S.A. 2A:61B-1 in cases of sexual abuse. TSR involved allegations of sexual molestation, where the defendant's employer, a church, had already circulated at least three letters among its congregants concerning the substance of plaintiffs' claims and naming the defendant minister directly. Because there had already been wide circulation of the claims and identity of the defendant, the court determined the public should not be excluded from information that had already received wide spread dissemination.

Here, unlike the plaintiff in Doe v. Tris Comprehensive Mental health, Inc., plaintiff is not claiming a right to anonymous pleading based upon a sensitive medical condition, but rather based solely upon a claim that, because he was in the Pulse Nightclub, which he claims "catered to the LGBT community," to plead in his name would, by extension, reveal his

sexual orientation. The plaintiff's claim, which is unsupported by anything in the record before this court, appears to be, then, that because the Pulse Nightclub was known to "cater to the LGBT community," revealing his identity and the fact he was a victim of the shooting there is tantamount to revealing his sexual orientation. Even accepting plaintiff's unsupported claim as true that the Pulse Nightclub "catered to the LGBT community," it is more than reasonable to assume the Pulse Nightclub did not exclude non-members of the LGBT community from attending their facility or working at their establishment.

Also here, plaintiff has already voluntarily revealed his identity and presence in the Pulse Nightclub in an article in the *New York Times* published on April 30, 2018. Indeed, plaintiff himself cites to that very article in his complaint filed in this matter. Additionally, plaintiff had previously pled in his own name identical causes of action based on virtually identical facts in a prior lawsuit which he had dismissed.

As such, plaintiff's claim that requiring him to plead in his own name here will reveal private information he is entitled to shield from disclosure is unpersuasive. Plaintiff himself has already revealed his identity to an audience much wider than that found by the appellate court in TSR to have resulted in proper disclosure of the party's identity. The fact that the

identity disclosed in TSR was that of the alleged perpetrator, and not the alleged victim or target of such conduct, is not lost upon the court. However, plaintiff's voluntary disclosure eclipses his expressed privacy concern.

Similarly, plaintiff's broad claim that revealing his identity will subject him to some future undefined acts of "harassment and violence" and should thus permit anonymous pleading is unavailing. Indeed, such a standard would result in virtually every type of discrimination claim being filed anonymously.

The court does not doubt that plaintiff, like almost every plaintiff in every type of litigation, has a privacy concern in revealing his identity in litigation. However, the court finds that the plaintiff's privacy interest, considering all relevant circumstances involved here, does not outweigh the general presumption in both custom and the Constitution that judicial proceedings will be open. A.B.C. v. XYZ Corp., 282 N.J. Super 494 (App. Div. 1995). As such, plaintiff is hereby ordered to file an amended complaint in compliance with R. 1:4-1(a).

B. LAD Counts

Defendants have moved to dismiss counts one through three, all of which have their basis in the LAD: sexual harassment and discrimination based upon plaintiff's gender; harassment and

discrimination based upon plaintiff's sexual orientation; and for retaliation/improper reprisal. Defendants' basis for seeking dismissal is R. 4:6-2(e).

Citing the language of the LAD, N.J.S.A. 10:5-12(a), defendants argue that, because plaintiff has not pled that he was employed by defendants, and because LAD only applies to individuals who are in an employer and employee relationship, the LAD-based counts must be dismissed. Alternatively, defendants argue that, even if one were to assume the parties were in an employer-employee relationship, the counts must still be dismissed since LAD only applies to employees who reside or work in New Jersey under Buccilli v. Timby, Brown & Timby, 283 N.J. Super 6 (App. Div. 1995) and Brunner v. Allied Signal, Inc., 198 F.R.D. 612 (D.N.J. 2001).

Here, plaintiff's complaint indicates plaintiff was approached by defendants with a proposal to travel to Nevada and California to speak on defendants' behalf for the purposes of advancing the defendants' business interests, namely the solicitation of potential clients. The complaint indicates that, in exchange for agreeing to such travel, the defendants would pay all travel-related costs, including transportation, lodging and meals.

Under New Jersey law, the lack of an employment relationship between a plaintiff and a defendant will preclude

liability under the LAD. Hoag v. Brown, 397 N.J. Super. 34, 47 (App. Div. 2007) (citing Thomas v. County of Camden, 386 N.J. Super. 582 (App. Div. 2006)). The LAD defines "employer" as "all persons [and corporations] unless otherwise specifically exempt under another section of this act." N.J.S.A. 10:5-5e. "Employee" is defined merely as not including "any individual employed in the domestic service of any person." N.J.S.A. 10:5-5f.

At this stage of the litigation, under R. 4:6-2(e), the court accepts as true all facts pled in the complaint and searches in depth and with liberality to determine if a cause of action can be gleaned even from an obscure statement, particularly, if further discovery is conducted. Printing Mart at 772. The court further notes that our courts have recognized that the LAD's purpose, namely "to protect not only the civil rights of individual aggrieved employees but also to protect the public's strong interest in a discrimination-free workplace" as set forth in Lehmann v. Toys 'R' Us, Inc., 132 N.J. 587, 612 (1993). As such, individuals in a non-traditional employment relationship, to include independent contractors, may, under certain circumstances, be extended coverage under the LAD. *See* Hoag at 50. A fact-sensitive analysis is required. Pukowsky v. Caruso, 312 N.J. Super. 171, 182-83 (App. Div. 1998). That analysis, then, requires a fully-developed factual record,

something unavailable here. As such, defendant's motion to dismiss the LAD counts based upon lack of an employer-employee relationship is denied. The plaintiff has sufficiently pled a cause of action suggested by the facts in the complaint. For the same reasons, the defendants' motion based upon lack of a sufficient New Jersey nexus must also be denied pending development of a proper factual record. It is further noted that plaintiff's opposition offered, as further basis to sustain his LAD counts, an argument that defendants offered services in a "place of public accommodation" under N.J.S.A. 10:5-4. The court makes no determination as to whether the plaintiff could sustain his causes of action based upon the "public accommodation" coverage found in the LAD, as a proper factual record in this regard has not been developed as well.

It remains to be seen, after development of a proper factual record, whether plaintiff can sustain his LAD causes of action, such issue being more properly determined in a motion for summary judgment pursuant to R. 4:46.

C. CFA Count

Lastly, defendants move to dismiss plaintiff's CFA count on two bases: 1) that plaintiff's complaint fails to meet the heightened pleading standard in matters alleging fraud; and 2) as a matter of law, defendants are exempt for CFA applicability based upon their status as a law firm, lawyers and their staff.

Defendants rely upon the longstanding principle that an "attorney's services do not fall within the intendent of the Consumer Fraud Act." Vort v. Hollander, 257 N.J. Super. 56, 62 (1992). In opposition, plaintiff offers no case law holding the contrary, nor any substantive argument why the alleged facts of this case take it outside the well-settled rule. Instead, plaintiffs cite to Lemelledo v. Beneficial Mgmt. Corp. of America, 150 N.J. 255 (1997) for the proposition that there is an assumption under the law that the CFA applies and only a patent and sharp conflict between the CFA and the regulatory scheme governing the practice will prevent the CAF's application. Lemelledo did not involve an attorney or other learned professional, as in Vort, but instead involved a financial institution. Lemelledo, an appellate decision, did not overrule Vort, a Supreme Court decision. Therefore, without being offered any plausible argument why Vort should not apply, the court is compelled to dismiss the CFA count with prejudice.

Because the court finds the learned professional exemption shields defendants from liability under the CFA, it does not reach the issue regarding the alleged deficiency in pleading fraud with the requisite specificity.

III. Decision

Defendant's motion to dismiss plaintiff's complaint is granted based upon plaintiff improperly pleading anonymously as

well as for its failure to state a claim under count four for alleged violation of the CFA. Defendants' motion to dismiss is denied as to counts one, two, and three which require factual discovery. Consistent with motions granted pursuant to R. 4:6-2(e), the plaintiff's complaint is hereby dismissed without prejudice and plaintiff may file an amended complaint curing the plaintiff's anonymous pleading of his name and removing count four. Should plaintiff fail to do so within 30 days, defendants may move thereafter to convert the without prejudice dismissal into a with prejudice dismissal.