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SUPERIOR COURT OF NEW JERSEY
CAMDEN COUNTY
CIVIL DIVISION
DOCKET NO. L-3997-18

BRIAN NUNEZ,

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

Matthew A. Luber, attorney for plaintiff (McOmber & McOmber, P.C.).

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 cannot maintain his claims under New Jersey's Law Against Discrimination (LAD) as he is unable to show he was

employed by defendants; and 2) 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. Defendants' motion was filed contemporaneously with their motion to dismiss in Doe v. Benedetto, et al., docket no. CAM-L-4588-18 also under R. 4:6-2(e). Doe v. Benedetto, et al. contains factual allegations similar to, and in some case identical to, the allegations contained in this matter. The court has been advised that, at one point, the plaintiff in Doe and the plaintiff here had brought a joint action against defendants which was subsequently dismissed.

I. Factual and Procedural Background[1]

Plaintiff Brian Nunez filed his complaint against defendants, The Law Offices of Conrad J. Benedetto, John Groff, and Conrad J. Benedetto, Esquire on March 18, 2019. 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

[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.

four alleges violation of the CFA; counts five through eight alleged 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"). 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 plaintiff 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

[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.

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 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 sexually harassing plaintiff on a trip to Nevada with unwanted sexual advances. When plaintiff rejected Groff's advances, Groff allegedly threatened to withhold money for lodging, transportation, and food.

Plaintiff thereafter continued travel with Groff and the group of survivors to California. In Riverside, California Groff is alleged to have continued his behavior.

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.

Plaintiff alleges throughout what plaintiff believed was supposed to be a professional relationship with Groff, Groff

sent sexually explicit text messages in an effort to entice plaintiff into a sexual relationship. Under the guise of discussing plaintiff's role in meeting prospective clients for the Benedetto defendants, Groff texted plaintiff "I go [sic] over it while you're in my room and I'm getting you drunk LMAO," to which plaintiff replied "Oh lord stop it lol." Groff responded "Lmao You will be fine papi, I wouldn't put stress on you!" Plaintiff replied "Lol good," to which Groff replied "But I can definitely take away the stress." "Lol keep it professional lol," plaintiff replied. Other times, when Groff discussed getting plaintiff drunk so he could force himself on plaintiff without his consent, plaintiff would ask Groff to "stop," to which Groff responded "I don't like that word." Groff also asked plaintiff if he would "be interested in a sugar daddy," and asked that they discuss terms on the phone to avoid detection. Plaintiff further alleges Groff used plaintiff's vulnerable position to collect private information about him for later use as sexual blackmail, stating "Angel and I are very close, he knows all my deep down secrets lmao I [sic] and I know his."

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 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), and that the CFA count must survive at this stage of the litigation[3].

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-

[3] In his opposition, plaintiff had offered to file an amended complaint to address any deficient factual pleading on counts one, two and three. However, given the court's ruling here, the filing of an amended complaint is not necessary, at this stage, to thwart defendants' motion to dismiss counts one through three.

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 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. 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, which is more properly dealt with under a motion for summary judgment pursuant to R. 4:46.

B. CFA Count

Defendants also move to dismiss plaintiff's CFA count on the 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 cites Manahawkin Convalescent v. O'Neill, 426 N.J. Super. 143 (App. Div. 2012) for the proposition that the defendant's CFA exception only exists for services rendered by learned professionals "so long as they are acting in their professional capacities." Plaintiff then argues "Groff's conduct was outside the scope protected by the learned professional exception" and "[Defendants] were not upholding their obligations under the attorney-client relationship when – by their actions and omissions - they made misrepresentations to [p]laintiff in connection with his understanding of their

legal representation of him." Far from distinguishing the facts of this case, plaintiff's argument for an exception to the CFA only serves to reinforce that defendants were working within their profession when the allegedly offensive conduct occurred.

Because the court finds the learned professional exemption shields defendants from liability under the CFA, it does not reach the other issue raised by defendants regarding the alleged deficiency in pleading the CFA.

III. Decision

Defendants' motion to dismiss is denied as to counts one, two, and three which require factual discovery. Defendants' motion to dismiss count four based upon the CFA is granted with prejudice as to that count only.