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| <p>JEANNE QIN LAMME,</p> <p>Plaintiff,</p> <p>vs.</p> <p>CLIENT INSTANT ACCESS, LLC, a New Jersey Limited Liability Company, OMNIGAGE, LLC, a Nevada Limited Liability Company, and JOSEPH VACCARELLA, individually,</p> <p>Defendants.</p> | <p>SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION BERGEN COUNTY</p> <p>DOCKET NO. BER-C-92-20</p> <p>DECISION ON MOTIONS FOR SUMMARY JUDGMENT</p> <p>FILED</p> <p>APR 15 2021</p> |
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APPEARANCES:

James J. DeLuca, J.S.C.

John K. Walsh, Jr., Esq.
Walsh & Walsh, Esqs.
55 State Street
Hackensack, NJ 07601-5426
Counsel for Plaintiff, Jeanne Qin
Lamme

Dominick Bratti, Esq.
Bratti Greenan, LLC
1040 Broad Street, Suite 104
Shrewsbury, NJ 07702
Counsel for Defendants, Client Instant
Access, LLC, Omnigage, LLC and
Joseph Vaccarella

Introduction

Before the court is a motion filed on behalf of Jeanne Qin Lamme (“Lamme”) seeking summary judgment (i) entering judgment in favor of Lamme as to all counts

of the Complaint¹ and (ii) dismissing, with prejudice, the counterclaims against Lamme (“Lamme’s Motion”). Also before the court is a motion filed on behalf of Client Instant Access, LLC (“CIA”), Omnigage, LLC (“Omnigage”), and Joseph Vaccarella (“Vaccarella,” who together with CIA and Omnigage are referred to collectively as “Defendants”), seeking summary judgment (i) entering judgment in favor of Defendants as to Defendants’ counterclaims² against Lamme and (ii) dismissing the Complaint, with prejudice (“Defendants’ Motion”). The court heard oral argument on April 13, 2021.

Procedural Background

Lamme’s Complaint asserts five (5) causes of action as follows: namely, (i) breach of the duty of loyalty against Vaccarella and Omnigage; (ii) breach of contract against Vaccarella; (iii) breach of the duty of good faith and fair dealing against Vaccarella; (iv) misappropriation of company opportunities against Vaccarella and Omnigage; and (v) tortious interference with contractual relations against Vaccarella and Omnigage.³ Defendants filed an Answer with Counterclaim, asserting that Lamme refused to provide documentation necessary for CIA to secure a Paycheck Protection Program (“PPP”) loan pursuant to the Coronavirus Aid, Relief and

¹ Lamme’s complaint filed on May 4, 2020 is attached as **Exhibit A** to the certification of John K. Walsh, Jr. Esq. dated March 3, 2021, submitted in support of Lamme’s Motion (the “Walsh Cert.”).

² Defendants’ answer and counterclaim is attached as **Exhibit B** to the Walsh Cert.

³ Although CIA is named as a defendant, the Complaint asserts no causes of action against CIA.

Economic Security Act (“CARES Act”) and that by failing to do so, Lamme has interfered in the affairs and management of CIA. The counterclaims of CIA and Vaccarella are as follows: (i) breach of the Settlement (as defined herein) between Lamme and Vaccarella relating to CIA; (ii) breach of the implied covenant of good faith and fair dealing as to the Settlement relating to CIA, (iii) tortious interference with the business of CIA,⁴ and (iv) violation by Lamme of the New Jersey Revised Uniform Limited Liability Company Act (“RULLCA”) related to Lamme’s alleged failure to act reasonably in connection with CIA.

Factual Background

Lamme’s husband, Richard Lamme (“Richard”), and Vaccarella formed CIA, a New Jersey limited liability company, in 1997 to provide communication and conferencing technologies and services. See Lamme’s statement of undisputed material facts dated March 3, 2021, submitted in support of Lamme’s Motion (“Lamme SUMF”) at ¶1. Richard and Vaccarella executed an Amended and Restated Operating Agreement on December 1, 2000 (the “Operating Agreement”) and a First Amendment to the Operating Agreement dated June 17, 2002 (the “First Amendment”). Lamme SUMF at ¶2. The Operating Agreement and the First

⁴ By order entered on September 11, 2020, Count 3 of the counterclaim for tortious interference was dismissed with prejudice. The balance of the counterclaims are the subject of the instant motions.

Amendment are attached as **Exhibit B** to the certification of Dominick Bratti, Esq. dated March 3, 2021, submitted in support of Defendants' Motion (the "Bratti Cert.").

Richard died on September 3, 2013. Thereafter, litigation was commenced by Vaccarella in February 2105 following his appointment as executor of Richard's estate, encaptioned In the Matter of Richard Lamme, Deceased, Docket No. BER-P-061-15 (the "Probate Action"). Lamme SUMF at ¶3. The complaint in the Probate Action is attached as **Exhibit A** to the certification of John K. Walsh, Jr., Esq. dated March 22, 2021, submitted in opposition to the Defendants' Motion. Pursuant to the Probate Action, Vaccarella sought to compel Lamme to sell Richard's interest in CIA to Vaccarella for \$642,000.

On August 12, 2014, Lamme initiated an action in the Superior Court of New Jersey, Law Division, Bergen County, in a matter encaptioned Jeanne Qin Lamme v. Client Instant Access, et al., Docket No. BER-L-7816-14 (the "Law Division Action")⁵ which, among other things, sought to compel CIA and Vaccarella to facilitate distributions to Lamme to which Richard would have otherwise been entitled. In the Law Division Action, Lamme asserted that Vaccarella breached the Operating Agreement by failing to purchase Richard's membership interest in CIA after his death, as well as claims for unjust enrichment, breach of fiduciary duty, conversion

⁵ The Complaint in the Law Division Action asserted ten (10) causes of action for: (i) specific performance, (ii) breach of contract, (iii) breach of the implied covenant of good faith and fair dealing, (iv) unjust enrichment, (v) dissolution, (vi) breach of fiduciary duty, (vii) conversion, (viii) constructive trust, (ix) accounting, and (x) negligence.

and dissolution against Vaccarella and CIA. The Law Division Complaint is attached as Exhibit C to the Bratti Cert.

On January 5, 2016, the parties appeared for trial in the Probate Action before the Honorable Robert P. Contillo, P.J.Ch. At that time, the parties advised that all of the disputes between Lamme and Vaccarella, including the Probate Action and Law Division Action, were settled and the terms of the settlement were placed on the record (the "Settlement"). A copy of the transcript of the Settlement is attached as Exhibit D to the Bratti Cert. Pursuant to the Settlement, Vaccarella agreed to loan Richard's estate sufficient funds to pay its obligations. In turn, Richard's estate distributed Richard's membership interest in CIA to Lamme. The Settlement further provides that the loan by Vaccarella to Richard's Estate was to be paid out of Lamme's share of distributable profits of CIA. Additionally, Vaccarella was allowed to recoup excess compensation that Vaccarella asserted was paid to Richard. The Settlement provides that the amount of the excess compensation was \$1,376,574.00 and that such amount, plus the amount needed to pay all expenses of Richard's estate, were to be repaid to Vaccarella from Lamme's share of CIA's distributable income. To the extent any amounts owed to Vaccarella remained unpaid and CIA was sold, the remaining amounts owed to Vaccarella would be recouped from the sale proceeds. Once the amounts owed to Vaccarella are repaid, Lamme will receive her share of distributions from CIA. The Settlement further provides that (i), Lamme is to receive a fifty percent (50%) passive, non-voting interest in CIA and is dissociated from CIA and has no management rights in CIA and (ii) Vaccarella receives a fifty percent

(50%) interest in CIA and the exclusive power to manage and control CIA as member-manager. Further, the Settlement provided that Lamme is entitled to routine information that is regularly available regarding CIA. Under no circumstances is Lamme obligated to repay any amounts owed to Vaccarella except through the deduction on distributions from CIA.

Lamme's Motion

Lamme asserts that in a financial statement provided by Vaccarella for 2017-2018, Vaccarella disclosed that CIA retained Omnigage to provide services to CIA's customers. It is undisputed that Omnigage received \$150,000 from CIA's customers as compensation for those services. Walsh Cert at ¶¶ 6-7, **Exhibit D**. Lamme further contends that the 2017-2018 financial statement disclosed that CIA loaned Donna Gannon ("Ms. Gannon"), a former CIA employee, \$370,000.00 without any defined repayment terms and that on December 31, 2018, CIA deemed the amount uncollectable. Walsh Cert. at **Exhibit E**. Further, Lamme asserts that the 2018-19 financial statements disclose that CIA again retained Omnigage to provide services to CIA's customers. Again, it is undisputed that Omnigage received \$150,000 from CIA's customers as compensation for those services. As to Caxiam, Lemme asserts that the 2018-2019 financial statements disclose that during 2019 Caxiam provided developmental and integration support services for CIA that amount to \$564,544. Walsh Cert. at **Exhibit F**.

Lamme contends that Vaccarella is the owner of Omnigage and Caxiam and that he invested over \$2,500,000.00 into Omnigage. *Id.* at ¶¶ 9-10. Moreover, Lamme

asserts that Vaccarella acknowledged at his deposition that the only attempts he made to recover the \$370,000.00 loan to Ms. Gannon were by e-mails, texts and in-person conversations. Id. at ¶ 12.

Lamme contends that as a result of the contracts with Omnigage, Caxiam, and the loan to Ms. Gannon, CIA incurred \$1,084,544.00 in losses between 2017 and 2019. See Lamme's letter brief dated March 3, 2021, submitted in support of Lamme's Motion ("Lamme's Brief") at page 7. Lamme contends that Vaccarella testified that he formed Omnigage and Caxiam to perform services to customers of CIA, therefore amounting to direct competition with CIA and usurping a business opportunity otherwise belonging to CIA. Id. at pages 14-15.

As to Defendants' counterclaims, Lamme acknowledges that she declined to provide personal information which would have allowed CIA to apply for a PPP loan because (i) she was under no legal obligation to do so, (ii) she would be personally liable if the funds were misused, and (iii) the increased debt would reduce the value of Lamme's interest in CIA. Walsh Cert. at ¶¶ 15-16. Further, Lamme asserts that she is dissociated as a member of CIA by virtue of the Settlement and is not to actively participate in CIA's business. Lamme's Brief at page 5.

Lamme argues that because she is merely a passive member of CIA and has no experience in business, Vaccarella owes an even greater duty of loyalty to CIA, and therefore, his creation of competing companies directly breaches that duty. Id. at pages 15-16. Finally, Lamme argues that Defendants' counterclaims should be

dismissed because as a result of her dissociation, Lamme owes no affirmative duties to CIA or Vaccarella. Id. at pages 17-21.

Defendants' Motion

Defendants assert that under the terms of the Settlement, Vaccarella was to have sole operational control over CIA and Lamme was not to have any role in the operation or management of CIA. See Defendants' statement of uncontested material facts dated March 3, 2021, submitted in support of Defendants' Motion ("Defendants' SUMF") at ¶ 11; see also Bratti Cert. at **Exhibits A** and **D**. Defendants contend that Vaccarella and Valley National Bank repeatedly advised Lamme that she would be indemnified from any liability in conjunction with the application for the PPP loan. See Defendants' brief dated March 22, 2021, submitted in opposition to Lamme's Motion ("Defendants' Opposition") at page 2. Defendants argue that Lamme admitted that the PPP loan would be good for CIA but that because she does not trust Vaccarella, she refused to provide her proof of identity which was necessary to apply for and obtain the loan. Id. at pages 5-6. Defendants assert that Lamme, even though dissociated, was obligated to act reasonably with respect to CIA and that by refusing to cooperate in the application process for the PPP loan she interfered with CIA's business. Id. at pages 8-9.

As to the claims asserted in the Complaint, Defendants assert that under the terms of the Operating Agreement at §1.03, Vaccarella is permitted to form and operate other businesses, including those which compete with CIA. See Defendants' SUMF at ¶ 17; see also Bratti Cert. at **Exhibit B**. Defendants contend that

Vaccarella formed Omnigage in 2015, prior to the Settlement, to provide ancillary services to those which CIA provides to its clients. Defendants' SUMF at ¶ 19. Defendants assert one hundred percent (100%) of Omnigage's revenue goes to CIA. Id. at ¶¶ 21-23; see also Bratti Cert. at **Exhibit D**. Moreover, Defendants assert that CIA's startup costs were entirely borne by Vaccarella. Defendants' SUMF at ¶ 24.

Further, Defendants argue that the \$370,000.00 loan to Ms. Gannon was a legitimate business decision intended to advance bonuses and goodwill and was to be repaid when CIA was sold to Ms. Gannon. See Defendants' Opposition at pages 2-4. Defendants assert that when the sale was not finalized as planned, CIA sued Ms. Gannon in Morris County to recover the loan. Id. at page 4. The complaint filed by CIA against Ms. Gannon is attached as **Exhibit A** to the Supplemental Certification of Dominick Bratti, Esq. dated March 22, 2021, submitted in opposition to Lamme's Motion.

Defendants assert that Lamme testified that she understood that CIA and Omnigage were operating as a single company and that Vaccarella could work for CIA and Omnigage simultaneously. Defendants' SUMF at ¶¶ 25-27. Further, Defendants argue that Lamme had no issues when Vaccarella operated Conference Calling of America ("CCA") from 2004 to 2006, which utilized CIA to perform its services. Id. at ¶¶ 30-31.

Defendants argue that Lamme's claims are barred by *res judicata* because they are substantially the same allegations raised in both the Probate Action and the Law Division Action. See Defendants' brief dated March 3, 2021, submitted in support of

Defendants' Motion (Defendant's Brief") at pages 7-10. Finally, Defendants assert that Lamme's claim for breach of the duty of loyalty should be dismissed because Lamme improperly asserts a direct claim instead of a derivative claim on behalf of CIA. Id. at page 18.

Rule of Law

Summary judgment is intended to "avoid trials which would serve no useful purpose and to afford deserving litigants immediate relief." Kopp, Inc. v. United Tech. Inc., 223 N.J. Super. 548, 555 (App. Div. 1988). Rule 4:46-2(c) provides that a court may grant summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file together with the affidavits . . . 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." A court must weigh whether "the competent evidential materials presented . . . are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

In determining whether a party is entitled to summary judgment, a court must determine if there is a genuine issue of material fact by viewing all facts in the light most favorable to the non-moving party. Id. A non-moving party "cannot defeat a motion for summary judgment merely by pointing to *any* fact in dispute." Id. Indeed, "if the opposing party [in a summary judgment motion] offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, '[f]anciful, frivolous, gauzy or merely suspicious,' he will not be heard to complain if the court grants summary

judgment.” Id. (citing Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 75 (1954)). Further, “[s]ubstantial means ‘[h]aving substance; not imaginary, unreal, or apparent only; true, solid, real,’ or ‘having real existence, not imaginary[;] firmly based, a substantial argument.” Brill, supra, 142 N.J. at 530-31 (internal citations omitted); see also Manalapan Realty, L.P. v. Township Committee Twp. of Manalapan, 140 N.J. 366, 384 (1995).

Discussion

There is no dispute that the parties were involved in three (3) previous actions, namely, (i) the Law Division Action, which sought to compel Vaccarella to purchase Richard’s fifty percent (50%) interest in CIA, (ii) the Probate Action, which sought to compel Lamme to sell Richard’s fifty percent (50%) interest in CIA to Vaccarella, and (iii) an action encaptioned Client Instant Access, LLC v. Jeanne Qin Lamme filed with the Superior Court of New Jersey, Law Division, Morris County, on April 10, 2020, Docket No. MRS-L-853-20 (the “Morris County Action”), in which CIA raised substantially the same claims as asserted in its counterclaim in this action related to the refusal of Lamme to provide information requested with CIA’s application for PPP loans. The complaint in the Morris County Action is attached as **Exhibit H** to the Walsh Cert. The Morris County Action was dismissed without prejudice on August 31, 2020. See **Exhibit I** to the Walsh Cert.

As an initial matter, the parties contend that the other’s claims are precluded based upon the principles of collateral estoppel, the entire controversy doctrine, and *res judicata*. The entire controversy doctrine embodies the principle that the

adjudication of a legal controversy should occur in one litigation in only one court. Accordingly, all parties involved in a litigation should, at the very least, present in that proceeding all of their claims and defenses that are related to the underlying controversy. The entire controversy doctrine has three fundamental purposes: (1) the need for complete and final disposition through the avoidance of piecemeal decisions; (2) fairness to parties to the action and those with a material interest in the action; and (3) efficiency and the avoidance of waste and the reduction of delay. It is an equitable doctrine whose application is left to judicial discretion based on the factual circumstances of individual cases. See Allstate N.J. Ins. Co. v. Cherry Hill Pain & Rehab Inst., 389 N.J. Super. 130 (App. Div. 2006).

The entire controversy doctrine does not bar a party who files a successful motion to dismiss for failure to state a claim from later asserting claims that arise from the same transactional facts. In Allstate N.J. Ins. Co. v. Cherry Hill Pain & Rehab Inst. *supra*, the Appellate Division determined that application of the entire controversy doctrine following a successful motion to dismiss would be inequitable.

Rule 4:30A codifies the entire controversy doctrine and provides, in relevant part, that

[n]on-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine, except as otherwise provided by Rule 4:64-5 (foreclosure actions) and Rule 4:67-4(a) (leave required for counterclaims or cross-claims in summary actions).

While R. 4:30A provides no further guidance as to what claims are “required to be joined” by the doctrine, the New Jersey Supreme Court has explained that the “claims

must ‘arise from related facts or the same transaction or series of transactions’ but ‘need not share common legal theories.’” Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 119 (2019).

Similarly, New Jersey adheres to the well-recognized standards of claim preclusion, namely: (1) the judgment in the prior action must be valid, final, and on the merits; (2) the parties in the later action must be identical to or in privity with those in the prior action; and (3) the claim in the later action must grow out of the same transaction or occurrence as the claim in the earlier one. Roberts v. Goldner, 79 N.J. 82, 85 (1979); see also Restatement (Second) of Judgments § 24 (1982). Claim preclusion applies not only to matters actually determined in an earlier action, but to all relevant matters that could have been so determined. Blazer Corp. v. New Jersey Sports & Exposition Authority, 199 N.J. Super. 107 (1985). If, under various theories, a litigant seeks to remedy a single wrong, then that litigant should present all theories in the first action; otherwise, theories not raised will be precluded in a later action. If, on the other hand, a claim could not have been presented in the first action, then it will not be precluded in a later action. Ibid.

Unlike *res judicata*, the distinguishing feature of collateral estoppel is that it alone bars re-litigation of issues in suits that arise from different causes of action. United Rental Equip. Co. v. Aetna Life and Cas. Ins. Co., 74 N.J. 92, 101 (1977). To bar a claim based on collateral estoppel, the moving party must establish the following elements:

- (1) the issue to be precluded is identical to the issue decided in the prior proceeding;
- (2) the issue was actually litigated in the prior proceeding;
- (3) the court in the prior proceeding issued a final judgment on the merits;
- (4) the determination of the issue was essential to the prior judgment; and
- (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.

Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 173-74 (App. Div.) (quoting In re Estate of Dawson, 136 N.J. 1, 20 (1994)), *certif. denied*, 164 N.J. 188 (2000).]

“The doctrine of collateral estoppel is a branch of the broader law of *res judicata* which bars re-litigation of any issue actually determined in a prior action generally between the same parties and their privies involving a different claim or cause of action.” Figueroa v. Hartford Ins. Co., 241 N.J. Super. 578, 584 (App.Div.1990) (quoting New Jersey Mfrs. Ins. Co. v. Brower, 161 N.J. Super. 293, 297-98 (App.Div.1978)). Finally, “[e]ven where these requirements are met, the doctrine, which has its roots in equity, will not be applied if it is unfair to do so.” Pace v. Kuchinsky, 347 N.J. Super. 202, 215 (App. Div. 2002).

Here, neither the Complaint nor the counterclaims are barred by *res judicata*, collateral estoppel, or the entire controversy doctrine because the facts and issues raised in the instant action do not arise out of and differ entirely than the claims raised in any of the Prior Actions. The issues in the Law Division Action and the Probate Action related primarily to Vaccarella’s purchase of Richard’s shares in CIA.

In the instant action, Lamme asserts that CIA and Vaccarella have unfairly and improperly usurped business opportunities in connection with Vaccarella's ownership of and involvement with Omnigage and Caxiam, and therefore have breached the terms of both the Settlement and Operating Agreement. Such issues were not raised or litigated in any of prior action involving these parties and no final adjudication was entered with respect to Vaccarella's involvement with Omnigage and Caxiam.

Additionally, the issues raised by Lamme in the instant action are not of the kind that "could have been raised" in either the Law Division or the Probate Action. See Restatement (Second) of Judgments § 24 (1982). Lamme asserts that she did not become aware of Vaccarella's involvement with Omnigage and Caxiam until March 21, 2019, nearly three (3) years after the Settlement was placed on the record. At the same time, Defendants assert that the Settlement resolved all claims between the parties and that Lamme knew that Vaccarella was involved in other companies aside from CIA, such as CCA. However, Defendants' argument is unavailing since the claims raised by Lamme in the instant action were unknown to her at the time the Settlement was executed and are therefore not precluded.

Similarly, the counterclaims are not barred by *res judicata*, collateral estoppel, or the entire controversy doctrine. The crux of the counterclaims against Lamme is that Lamme improperly interfered with Vaccarella's management of CIA by refusing to provide personal information required to apply for a PPP loan under the CARES Act, thereby causing harm to CIA. Any issues regarding Lamme's failure to provide personal information for a PPP loan were not cognizable in any prior action, as the

CARES Act only became law on May 19, 2020. Similarly, neither the facts nor the circumstances raised by Defendants were or could have been brought in the Prior Actions.

As to the Morris County Action, such action was dismissed without prejudice and no responsive pleading was filed by Lamme in that matter. Walsh Cert. at **Exhibit I**. None of the preclusionary doctrines are intended to bar claims that were dismissed without prejudice. See, Zoneraich v. Overlook Hosp., 212 N.J. Super. 83, 93-94 (App. Div.), *certif. denied*, 107 N.J. 32 (1986) (“*Actually litigated* requires there to have been disputes of fact and an adjudication by the court on the merits.”) (emphasis in original). The Appellate Division in Pace, *supra*, 347 N.J. Super. at 216, recognized that

[t]he factors favoring issue preclusion include: conservation of judicial resources; avoidance of repetitious litigation; and prevention of waste, harassment, uncertainty and inconsistency. Those factors disfavoring preclusion include: the party against whom preclusion is sought could not have obtained review of the prior judgment; the quality or extent of the procedures in the two actions is different; it was not foreseeable at the time of the prior action that the issue would arise in subsequent litigation; and the precluded party did not have an adequate opportunity to obtain a full and fair adjudication in the prior action.

Therefore, the factors disfavoring preclusion are predominant in this matter and this court may render a final decision on the merits with respect to all claims raised by the parties.

As to the claims set forth in the Complaint, this court is being asked to interpret the Operating Agreement and the Settlement. Interpretation of a contract is a function which is ripe for summary judgment absent ambiguity or a need for

clarifying testimony. Great Atl. & Pac. Tea Co. v. Checchio, 335 N.J. Super. 495, 502 (App.Div.2000).

The provision of the Operating Agreement central to this action is §1.03 which reads:

Nothing in this Agreement shall be deemed to restrict in any way the freedom of any Member to conduct any business or activity of whatever nature including, without limitation, the acquisition, development, exploitation or sale of real property even if such activity is in conflict with the activities of the Company without any accountability to the company or to the other Members, and no Member shall have any interest in any such other business or activity by virtue of this Agreement.

Lamme asserts that §1.03 of the Operating Agreement is manifestly unreasonable because it eliminates the duty of loyalty in contravention of N.J.S.A. § 42:2C-11(c)(4) – (d)(1)(c). Lamme further argues that Vaccarella’s founding and operation of both Omnigage and Caxiam breaches the duty of loyalty to CIA because such entities “directly compete” with CIA and that Vaccarella has misappropriated business opportunities away from CIA. See Lamme’s Brief at pages 15-16. On the other hand, Defendants contend that §1.03 is reasonable because the Operating Agreement was executed by Vaccarella and Richard at a time when Vaccarella, with Richard’s knowledge, was simultaneously involved in CCA, and used CIA to perform services on behalf of CCA. Further, Defendants argue that neither Omnigage nor Caxiam compete with CIA and that, instead, all of Omnigage’s revenue goes to CIA. See Defendants’ Opposition at pages 13-14.

The court finds §1.03 of the Operating Agreement is clear and unambiguous and permits all members of CIA to engage in any businesses outside of CIA, even if such enterprise is in competition with CIA.

N.J.S.A. 42:2C-11 of the New Jersey Revised Uniform Limited Liability Company Act provides for the scope, function and limitations of an operating agreement between and among the members and provides that:

a. Except as provided in subsections b. and c. of this section, the operating agreement governs:

(1) relations among the members as members and between the members and the limited liability company;

(2) the rights and duties under this act of a person in the capacity of manager;

(3) the activities of the company and the conduct of those activities; and

(4) the means and conditions for amending the operating agreement.

b. To the extent the operating agreement does not otherwise provide for a matter described in subsection a. of this section, this act governs the matter.

c. An operating agreement may not:

(4) subject to subsections d. through g. of this section, eliminate the duty of loyalty, the duty of care, or any other fiduciary duty;

(5) subject to subsections d. through g. of this section, eliminate the contractual obligation of good faith and fair dealing under subsection d. of section 39 of this act;

d. If not manifestly unreasonable, the operating agreement may:

(1) restrict or eliminate the duty:

(a) as required in paragraph (1) of subsection b. and subsection i. of section 39 of this act, to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business, from a use by the member of the company's property, or from the appropriation of a limited liability company opportunity;

(b) as required in paragraph (2) of subsection b. and subsection i. of section 39 of this act, to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and

(c) as required by paragraph (3) of subsection b. and subsection i. of section 39 of this act, to refrain from competing with the company in the conduct of the company's business before the dissolution of the company;

(2) identify specific types or categories of activities that do not violate the duty of loyalty;

(3) alter the duty of care, except to authorize intentional misconduct or knowing violation of law;

(4) alter any other fiduciary duty, including eliminating particular aspects of that duty; and

(5) prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under subsection d. and subsection i. of section 39 of this act.

h. The court shall decide any claim under subsection d. of this section that a term of an operating agreement is manifestly unreasonable. The court:

(1) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(2) may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:

(a) the objective of the term is unreasonable; or

(b) the term is an unreasonable means to achieve the provision's objective.

i. This act is to be liberally construed to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.

In connection with the claims set forth in the complaint, this court finds that the terms of the Operating Agreement control. First, §1.03 specifically contemplates that any member of CIA can compete with CIA. N.J.S.A. §42:2 C-11(d) provides that an operating agreement, if not manifestly unreasonable, may restrict or eliminate the duty of loyalty, the duty of care or other fiduciary duties, identify specific types or categories of activities that do not violate the duty of loyalty, alter the duty of care (except to authorize intentional misconduct or knowing violation of law), alter any other fiduciary duty, including limiting/eliminating particular aspects of that duty and prescribing standards by which to measure the performance of the contractual obligation of good faith and fair dealing.

N.J.S.A. §42:2C-11(h) provides that a court shall decide the issue of whether the term of an operating agreement is manifestly unreasonable and shall make its determination as of the time the challenged term became part of the operating agreement and by considering only the circumstances existing at that time; and may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that the objective of the term is unreasonable or the term is an unreasonable means to achieve the provision's objective.

Here, § 1.03 of the Operating Agreement was adopted in 2000 by Richard and Vaccarella. At that time, the parties understood and agreed that they could engage in competing activities with CIA. Indeed, at the time the Operating Agreement was signed, Vaccarella competed with CIA through CCA. Since that is what the parties understood and agreed to in 2000, this court must enforce the provision as written. Further, the objective of the term is not unreasonable and the term achieves the intended purpose of the parties. Operating agreements are signed every day which allow for members to conduct other activities, including those that compete with the business of the limited liability company. Further, N.J.S.A. §42:2C-11(i) specifically provides that the terms of NJRULLCA is to be liberally construed to give maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.

Additionally, Lamme and Vaccarella understood at the time the Settlement was entered that the Operating Agreement controlled the rights and obligations of the parties. Lamme, in return for Vaccarella's agreement to advance funds for the benefit of Richard's estate, agreed to become a disassociated member of CIA. At the time the settlement was entered, the parties were represented by counsel and the parties were voir dired by the court regarding the acceptance of the Settlement. Lamme cannot now seek to undo that to which she previously agreed.

Further, even if such duty of loyalty exists, the court finds that Vaccarella has not breached his duty of loyalty to CIA or Lamme. The testimony of Lamme and the record provided by Defendants illustrate that neither Omnigage nor Caxiam compete

with CIA. Lamme admits that Omnigage has no other customers besides CIA and that one hundred percent (100%) of Omnigage's profits are directed to CIA. See Lamme's responding statement, dated March 22, 2021, submitted in opposition to Defendant's Motion at ¶ 23. Lamme testified at her deposition that she does not have any information to dispute that all of Omnigage's profits pass to CIA but concedes that CIA and Omnigage are one business which function together. See Bratti Cert. at Exhibit F, 80:14 to 81:23. Vaccarella testified at his deposition that Omnigage records zero revenues and that even when Omnigage provides services to a client of CIA on behalf of CIA, all income is retained by CIA. Id. at Exhibit E, 9:1-16. Moreover, Vaccarella testified Omnigage's value is equal to the amount Vaccarella invested into Omnigage because the company has no income. Id. at 62:7-21. Further, Vaccarella asserts that Omnigage supports CIA's operations with services in addition to, not in competition with, those of CIA by providing services to CIA's clients which CIA does not have the ability to provide on its own. Id. at 61:20 to 62:2.

Lamme has not demonstrated, aside from unsupported allegations, that Omnigage and Caxiam have engaged CIA's clients and usurped opportunities of CIA. Rather, the evidence shows that Omnigage and Caxiam are complementary businesses which assist in servicing CIA's customers. Lamme's failure to show actual competition is fatal to her claim that Defendants breached their duty of loyalty to CIA, as well as Lamme's claim that Defendants misappropriated corporate opportunities of CIA, tortiously interfered with CIA's contractual relations, breached the Operating Agreement, and breached the duty of good faith and fair dealing.

In addition, the court finds that Lamme has failed to demonstrate that Defendants breached the Operating Agreement and/or Settlement and the duty of good faith and fair dealing in connection with the loan made by Vaccarella and CIA to Ms. Gannon. Lamme asserts that Vaccarella made no attempt to collect on the \$370,000.00 loan to Ms. Gannon “without obtaining any writing, collateral, or other security.” Defendants contend that Vaccarella made an effort to collect the loan to Ms. Gannon and CIA filed an action against Ms. Gannon to recover the loan amount.

Vaccarella, by virtue of the Settlement, has sole operational control over the business of CIA and the making of a loan is in the ordinary course of business for any company. Lamme has not shown that the loan was made in bad faith and the court finds that the inability to collect on the loan, though potentially damaging to CIA, is an activity protected by the deference afforded by the business judgment rule. Green Party v. Hartz Mountain Industries, Inc., 164 N.J. 127, 147-48 (2000). Further, the action against Ms. Gannon was pursued by CIA, which ultimately determined to dismiss the action after Ms. Gannon filed counterclaims. As such, the court finds that Lamme has not met her burden with respect to her claims pertaining to the loans to Ms. Gannon. Therefore, the court determines that all counts of the Complaint fail as a matter of law and must therefore be dismissed.

The court next considers whether Defendants’ counterclaims should be dismissed. Defendants assert that Lamme breached the Settlement by impermissibly interfering in CIA’s management by refusing to provide personal information in order for CIA to apply for a PPP loan. Lamme asserts that the Settlement does not obligate

her to provide her personal information in order to obtain the PPP loan, or indeed, any obligation on behalf of CIA, because she is dissociated as a member of CIA. Defendant argues that even though Lamme was dissociated as a member of CIA, she continues to owe a duty to reasonably cooperate with Vaccarella. Additionally, Defendant contends that Lamme has, at a minimum, an obligation to identify herself as a dissociated member on official forms, such as tax returns and any due diligence documents in connection with a proposed sale of CIA.

N.J.S.A. § 42:2C-47 governs the effect of a person's dissociation as a member of a New Jersey limited liability company and provides as follows:

a. When a person is dissociated as a member of a limited liability company:

(1) the person's right to participate as a member in the management and conduct of the company's activities terminates;

(2) if the company is member-managed, the person's fiduciary duties as a member end with regard to matters arising and events occurring after the person's dissociation; and

(3) subject to section 44 and Article 10 (sections 73 through 87 of this act), any transferable interest owned by the person immediately before dissociation in the person's capacity as a member is owned by the person solely as a transferee.

A member's dissociation from an LLC pursuant to the statute does not cause that member to "sell" or "give up" economic rights involuntarily in the LLC. Rather, the member suffers through dissociation the loss of his or her management rights but is entitled to retain an interest in the LLC as an "assignee," preserving the right under N.J.S.A. § 42:2B-39 to resign as a member of the LLC and to receive within a

reasonable time “the fair value of [their LLC] interests as of the date of resignation[.]” See N.J.S.A. § 42:2B-24.1 (noting that the dissociated member has, subject to N.J.S.A. § 42:2B-39, “rights of an assignee of a member’s limited liability interest”). Such assignees are entitled to receive distributions and “allocation of income, gain, loss, deduction, or credit[.]” N.J.S.A. § 42:2B-44.

Lamme became a member in CIA by virtue of Richard’s death in 2013. The Settlement provided that “all of the terms of the [Operating Agreement] and all of the legal consequences, the dissociation and loss of management rights... all remains exactly as it is.” See Bratti Cert. at Exhibit D, 7:5-10. The Operating Agreement at § 9.05(a) provides that “[t]he deceased Member’s legal representative, heirs, executors, administrators, successors, and assigns (collectively, “Heirs”) shall remain subject to the provisions of this Agreement ... for so long as he/she/they retain all or a portion of the deceased Member’s Company Interest.” Id. at Exhibit B. The Settlement further provides that Lamme is “entitled to information... as to the operation of the business.” Id. at Exhibit D, 7:12-14. Additionally, Lamme is entitled to receive monthly financial reports. Counsel for Lamme in the Settlement acknowledged that Lamme “has an obligation as a member of the LLC to be reasonable, as management has ... an obligation to be reasonable in their affairs.” Id. at 8:15-21; 9:3-6.

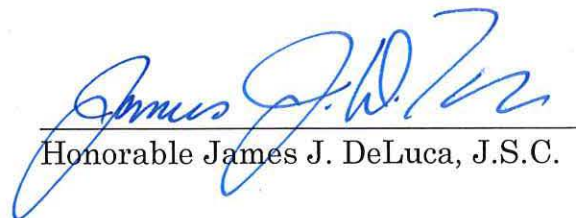
Here, the court finds that Lamme had no obligation to provide information with regard to a potential PPP loan in favor of CIA. She was dissociated pursuant to the Settlement and had no role in the business or management of CIA. Further, CIA

had no right to receive a PPP loan pursuant to the CARES Act. The court finds that Lamme was not obligated to take any action with respect to CIA, even if the risk to her was minimal. This is true even though Defendants agreed to indemnify her from any losses, since there was no assurance that the indemnity would protect Lamme. Thus, the counterclaims against Lamme are hereby dismissed.

Conclusion

For the foregoing reasons, (i) Lamme's Motion seeking judgment against Defendants in her complaint is denied, (ii) Lamme's Motion seeking judgment dismissing the counterclaim is granted; (iii) Defendants' Motion seeking dismissal of Lamme's Complaint is granted; and (iv) Defendant's Motion seeking judgment as to the counterclaims is denied. An order consistent with the terms of this Decision is being issued simultaneously herewith. In light of the dismissal of all claims and counterclaims, the trial scheduled for May 3, 2021 is hereby cancelled.

Dated: April 15, 2021



Honorable James J. DeLuca, J.S.C.