SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0788-20

LILOWTIE MOORE-JENSEN,

Plaintiff-Appellant,

v.

THE HOUSING AUTHORITY OF THE CITY OF NEWARK, THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE CITY OF NEWARK, VICTOR CIRILO, EMANUEL FOSTER, SAMUEL MOOLAYIL, KEITH KINARD, ESQ., DEFENDANT X, to be named, hired as HEAD OF EMPLOYEE BENEFITS ON JAN. 15, 2009, JANET ABRAHAMS, SIBYL BYRANT, ESQ., JASON GENO, MICHAEL MOORE, MINA PATEL, HAROLD LUCAS, ESQ., DEBRA TOOTHMAN, and JOSEPH MENNELLA, jointly, severally and in the alternative,

Defendants-Respondents.

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Submitted October 3, 2022 – Decided December 5, 2022

Before Judges Whipple and Smith.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-3916-19.

Law Offices of Steven D. Janel, attorneys for appellant (Steven D. Janel, on the briefs).

Preston & Wilkins, LLC, attorneys for respondents (Gregory R. Preston, on the brief).

PER CURIAM

Plaintiff appeals the trial court's order dismissing her complaint with prejudice for failure to state a claim pursuant to R. 4:6-2(e). For the reasons that follow, we affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

I.

Plaintiff Lilowtie Moore-Jensen was terminated from her employment at the Newark Housing Authority (NHA) on January 12, 2009. At the time of her firing, she had been employed by the NHA for twenty-three years. In January 2010 plaintiff filed a nine-count complaint suing the NHA. She asserted multiple claims, which included: Breach of contract; breach of the duty of good faith and fair dealing; common law wrongful discharge; and violation of the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 (CEPA). Her complaint alleged she was terminated "for raising defendant['s] . . . failure to

properly comply with Public Employees Retirement System [PERS] reporting requirements to her superiors . . . ."[1]

NHA answered and moved for summary judgment. The trial court granted the motion with the exception of the CEPA claim. Following more than a year of pre-trial litigation, the parties agreed to mediation. They eventually settled. Plaintiff and the NHA executed a Settlement Agreement and General Release (Settlement Agreement) in June 2013. The Settlement Agreement contained language affirming that plaintiff consulted with her counsel, and that she read and understood the settlement terms before signing the agreement. Pursuant to the settlement, NHA paid plaintiff a lump sum of $75,000 and she released any further claims against the NHA in June 2013.

In May 2019, nearly six years later, plaintiff filed a pro se complaint against the NHA, the Board of Commissioners of the Housing Authority of the

[1] In her 2010 complaint, plaintiff accused the NHA and administrators of engaging in the systematic "deni[al] of Public Employees Retirement System (PERS) enrollment and pensions and benefits to lower[-]level minority employees." Plaintiff also accused NHA staffers of falsifying "certified PERS employee spreadsheet data," "payroll records," and "NHA audits."

City of Newark (Board), and multiple individual defendants.[2] Plaintiff sought to void the Settlement Agreement, articulating theories of fraud and duress.

In December 2019 plaintiff obtained new counsel, but never amended her complaint. Six months later, defendants moved to dismiss plaintiff's complaint for failure to state a claim pursuant to R. 4:6-2(e).[3] After argument the trial court dismissed plaintiff's complaint with prejudice as to defendants Newark Housing Authority, the Board, Victor Cirilo, Emmanuel Foster, Keith Kinard, Esq., and Samuel Moolayil.

The trial court found plaintiff did not plead with sufficient particularity her claims of fraud in the inducement, equitable fraud, or duress. Additionally, the trial court made findings on laches, concluding that plaintiff's "delay of six years without explanation must preclude plaintiff's complaint."

Plaintiff appealed, raising the following points:

> I. THE LOWER COURT COMMITTED AN ERROR OF LAW AND/OR ABUSE OF DISCRETION BY

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[2] The individual defendants named by plaintiff included: Victor Cirilo, Emmanuel Foster, Samuel Moolayil, Keith Kinard, Esq., Janet Abrahams, Sibyl Bryant, Esq., Jason Geno, Michael Moore, Mina Patel, Harold Lucas, Esq., Debra Toothman, and Joseph Mennella. Plaintiff also named "Defendant X, hired as head of employee benefits on January 15, 2009" as a co-defendant.

[3] The court dismissed for lack of prosecution plaintiff's action against co-defendants Janet Abrahams, Sibyl Bryant, Esq., Jason Geno, Michael Moore, Mina Patel, Harold Lucas, Esq., Debra Toothman, and Joseph Mannella. The record is unclear as to the date of the order.

GRANTING DEFENDANTS' MOTION TO DISMISS UNDER R. 4:6-2(e).

A. PLAINTIFF'S COMPLAINT SET FORTH A PRIMA FACIE CAUSE OF ACTION SOUNDING IN FRAUD IN THE INDUCEMENT.

B. PLAINTIFF'S COMPLAINT SET FORTH A PRIMA FACIE CAUSE OF ACTION SOUNDING IN EQUITABLE FRAUD.

C. PLAINTIFF'S COMPLAINT SET FORTH A PRIMA FACIE CAUSE OF ACTION SOUNDING IN DURESS.

D. THE LOWER COURT ERRONEOUSLY DETERMINED THAT PLAINTIFF'S CLAIMS WERE BARRED BY LACHES.

E. THE LOWER COURT'S FAILURE TO ALLOW AMENDMENT OF THE PRO SE COMPLAINT WAS ERRONEOUS.

II.

We review Rule 4:6-2(e) motions to dismiss for failure to state a claim upon which relief can be granted de novo. Baskin v. P.C. Richard & Son, 246 N.J. 157, 171 (2021) (citing Dimitrakoupolos v. Borrus Goldin, 237 N.J. 91, 108 (2019)). "We 'assume the facts as asserted by plaintiff are true[,]' and we give the plaintiff 'the benefit of all inferences that may be drawn [.]'" J-M Mfg. Co.,

Inc. v. Phillips & Cohen, LLP, 443 N.J. Super. 447, 453 (App. Div. 2015) (quoting Banco Popular N. Am. v. Gandi, 184 N.J. 161, 166 (2005)).

"Motions to dismiss for failure to state a claim require the complaint be searched in depth and with liberality to determine if there is any 'cause of action [] "suggested" by the facts.'" N.J. Comm'r of Transp. v. Cherry Hill Mitsubishi, 439 N.J. Super. 462, 467 (App. Div. 2015) (first alteration in original) (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)). This standard still applies to obscure statements. Banco, 184 N.J. at 165 (quoting Printing Mart, 116 N.J. at 746). "The inquiry is limited to 'examining the legal sufficiency of the facts alleged on the face of the complaint.'" Cherry Hill Mitsubishi, 439 N.J. Super. at 467 (quoting Printing Mart, 116 N.J. at 746).

Only in the "rare instance" where a cause of action is not even "suggested" by the pleadings is a R. 4:6-2(e) motion to dismiss granted. Flinn v. Amboy Nat'l Bank, 436 N.J. Super. 274, 286 (App. Div. 2014) (citations omitted). "However, we have also cautioned that legal sufficiency requires allegation of all the facts that the cause of action requires." Cornett v. Johnson & Johnson, 414 N.J. Super. 365, 385 (App. Div. 2010), aff'd as modified, 211 N.J. 362 (2012). In the absence of such allegations, the claim must be dismissed. Ibid. (citing Sickles v. Cabot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005)).

III.

We first consider plaintiff's claim of fraud in the inducement. She alleges she was induced to sign the settlement agreement through defendants' misrepresentations about a possible wage settlement. "To establish common-law fraud, a plaintiff must prove: '(1) a 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, 184 N.J. at 172-73 (quoting Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610 (1997)).

Our review of plaintiff's complaint revealed the following relevant paragraphs relevant to the question:

> 23. I asked many times to have my settlement be a wage settlement. They told me lies, that I could not have my settlement for wages. I was told I was prohibited from getting a wage settlement, that it wasn't allowed.
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> 25. The lawyers worked for the [NHA]. They knew that the [NHA][,] . . . Kinard[,] and the other defendants did not want to give me my wage settlement. They knew this because if I got a wage settlement[,] I would have a better pension plan because I had already worked for the housing authority and the defendants for twenty-three years.

> 41. The [NHA], the defendants, and the people present at my mediation were telling me false statements and lies to force me to settle.
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> 43. The defendants and the people at my mediation knew they could have given me a wage settlement, but they used their lies, and their threats, to force me into signing a few pages at my mediation that made me take my settlement as pain and suffering, and not as the wage settlement that I wanted and needed.
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> 44. The defendants were making me sign that pain and suffering document during my mediation, and denying me my rights, because they knew I had full information about the many violations of these defendants. They wanted to prevent me from giving any more information to HUD about their violations.

The first element of fraud requires "a material misrepresentation of a presently existing or past fact." Banco, 184 N.J. at 172-73. Plaintiff states in paragraphs twenty-three, forty-one and forty-three of the complaint that defendant NHA made material misrepresentations by telling her that a settlement including a payout structured as employment wages was impermissible. Plaintiff does not specify in the complaint what defendant said to persuade her to reach that conclusion, nor did she identify in her pleadings any support, such as statutes, regulations, or prior practice, for the proposition that a form of settlement which included a wage payout was permissible.

A reading of plaintiff's complaint shows she understood precisely what settlement terms she wanted concerning her pension. It does not suggest she relied in any way on defendants' alleged misrepresentations during negotiations. In fact, her complaint alleges she repeatedly requested defendants structure the 2013 settlement so as to increase her retirement pension. Accepting as true plaintiff's allegation that defendants told her that they weren't allowed to offer her a "wage settlement," such a claim falls far short of misrepresentation. The record shows defendants, rather than mislead plaintiff, simply refused her pension demands. We cannot find allegations in the four corners of the complaint, which taken as true, support any of the first four elements of fraud.

We comment briefly on plaintiff's claim of equitable fraud. Since plaintiff did not establish the falsity of defendant's statements and her reasonable reliance on them, she also failed to state a claim for equitable fraud. "Equitable fraud does not require proof that a defendant knew of the falsity of a statement." Allstate N.J. Ins. Co. v. Lajara, 222 N.J. 129, 148 (2015) (citing Jewish Ctr. of Sussex Cnty. v. Whale, 86 N.J. 619, 624-625 (1981)).

We turn next to plaintiff's claim of duress. Defendant argues that the trial court did not err when it concluded plaintiff failed to plead the prima facie elements of economic duress. We disagree.

"Economic duress occurs when the party alleging it is 'the victim of a wrongful or unlawful act or threat', which 'deprives the victim of his [or her] unfettered will.'" Muhammad v. Cnty. Bank of Rehoboth Beach, 379 N.J. Super. 222, 240 (App. Div. 2005) (alteration in original) (quoting Quigley v. KPMG Peat Marwick, LLP, 330 N.J. Super. 252, 263 (App. Div. 2000), rev'd on other grounds, 189 N.J. 1 (2006)). In New Jersey, "the 'decisive factor' is the wrongfulness of the pressure exerted [and] [t]he term 'wrongful' . . . encompasses more than criminal or tortious acts . . . for conduct may be legal but still oppressive." Cont'l Bank of Pa. v. Barclay Riding Acad., Inc., 93 N.J. 153, 177 (1983).

In its duress analysis, the trial court cited the Settlement Agreement and its terms, highlighting what is concluded was the knowing and voluntary nature of plaintiff's agreement to settle for a $75,000 lump sum payment. The trial court quickly dismissed the duress claim, stating: "[t]he fact the plaintiff was represented by counsel and received adequate compensation in support of the dismissal; $75,000 demonstrates that there was no duress present at the execution of the agreement." We find the trial court's conclusion of law premature. The trial court was faced with allegations of duress by the plaintiff which must be taken as true at the R. 4:6-2(e)

stage. It then improperly engaged in a de facto Swarts[4] analysis, concluding under the totality of the circumstances that plaintiff had knowingly and voluntarily waived her claim against defendants. Such an analysis is in conflict with our R. 4:6-2(e) jurisprudence. The standard on a motion to dismiss does not lend itself to determining voluntariness based on Swarts factors and a totality of the circumstances test.

On a R. 4:6-2(e) motion, the only question should be whether the facts as pled suggest the Settlement Agreement was signed involuntarily. When we examine plaintiff's complaint through that lens, we conclude the facts as pled state a claim for relief under the theory of duress. Plaintiff alleged in paragraphs thirty-two through forty that defendants and their representatives threatened her with criminal charges of theft because she took NHA human resources documents to give them to the United States Department of Housing and Urban Development Inspector General. Taken as true, defendants' threat to file criminal charges against plaintiff, a putative federal whistleblower, states a claim for relief. Muhammad, 379 N.J. Super. at 240. We find plaintiff successfully pled a claim for duress, and we conclude the trial court's dismissal was in error.

[4] Swarts v. Sherwin-Williams Co., 244 N.J. Super. 170, 177 (App. Div. 1990).

We note the trial court did not provide a written or oral statement of reasons for its dismissal with prejudice. R. 1:7-4(a). "When a trial court issues reasons for its decision, it 'must state clearly [its] factual findings and correlate them with relevant legal conclusions, so that parties and the appellate courts [are] informed of the rationale underlying th[ose] conclusion[s].'" Avelino-Catabran v. Catabran, 445 N.J. Super. 574, 594-95 (App. Div. 2016) (alterations in original) (quoting Monte v. Monte, 212 N.J. Super. 557, 565 (App. Div. 1986)). Without these reasons, the reviewing court does not know whether the judge's decision is based on the facts and law or is the product of arbitrary action lacking substantial support from the record. See Monte, 212 N.J. Super. at 565.

Ordinarily, a dismissal for failure to state a claim is without prejudice. Smith v. SBC Commc'ns Inc., 178 N.J. 265, 282 (2004). A court may dismiss with prejudice under some circumstances, like where a "plaintiff[] ha[s] not offered either a certification or a proposed amended pleading that would suggest [an] ability to cure the defects" in the complaint. See Johnson v. Glassman, 401 N.J. Super. 222, 246 (App. Div. 2008). A court might dismiss with prejudice where a statute of limitations applies. See Printing Mart, 116 N.J. at 772.

The trial court did not explain why its dismissal order was with prejudice, however we glean from its statements on the record that laches helped justify its

order. Laches is an equitable doctrine and cannot be used to bar a cause of action governed by a statute of limitations. See Fox v. Millman, 210 N.J. 401, 422 (2012). "Although the defense is available in limited circumstances where an equitable remedy is sought, 'where a legal and an equitable remedy exist for the same cause of action, equity will generally follow the limitations statute.'" Est. of Nicolas v. Ocean Plaza Condo. Ass'n, Inc., 388 N.J. Super. 571, 585-86 (App. Div. 2006). We find the trial court's reliance upon laches as a ground for dismissal inapposite. Laches does not a possible amended complaint on this record, as plaintiff filed within six years of execution of the settlement agreement. N.J.S.A. 2A:14-1(a)[5].

[5] N.J.S.A. 2A:14-1(a) states as follows:

> Every action at law for trespass to real property, for any tortious injury to real or personal property, for taking, detaining, or converting personal property, for replevin of goods or chattels, for any tortious injury to the rights of another not stated in N.J.S.2A:14-2 and N.J.S.2A:14-3, or for recovery upon a contractual claim or liability, express or implied, not under seal, or upon an account other than one which concerns the trade or merchandise between merchant and merchant, their factors, agents and servants, shall be commenced within six years next after the cause of any such action shall have accrued.

A trial court has the discretion to permit the plaintiff to amend the complaint to allege additional facts to state a proper cause of action. Hoffman v. Hampshire Labs, Inc., 405 N.J. Super. 105, 116 (App. Div. 2009). The exercise of the trial court's discretion to amend is carried out through a two-step process which considers "whether the non-moving party will be prejudiced, and whether granting the amendment would nonetheless be futile." Grillo v. State, 469 N.J. Super. 267, 275 (App. Div. 2021) (quoting Notte v. Merchs. Mut. Ins. Co., 185 N.J. 490, 501 (2006)). Rule 4:9-1 requires that "motions for leave to amend be granted liberally even if the ultimate merits of the amendment are uncertain." Prime Acct. Dept. v. Twp. of Carney's Point, 212 N.J. 493 (2013) (quoting Kernan v. One Washington Park Urb. Renewal Assocs., 154 N.J. 437, 456 (1998)).

While we find the record supports the trial court's dismissal of plaintiff's fraud claim under R. 4:6-2(e), we find it does not support dismissal with prejudice. We also conclude that plaintiff's complaint was sufficiently pled as to duress and that the trial court should not have dismissed that claim, with or without prejudice. Consequently, we reverse and remand for the trial court to enter an order: Denying defendant's motion to dismiss plaintiff's complaint under R. 4:6-2(e) as to duress; dismissing plaintiff's complaint as to fraud under

R. 4:6-2(e) without prejudice; permitting plaintiff to seek leave to amend her complaint pursuant to R. 4:9-1 within forty-five days of the date of this opinion; and for further proceedings consistent with this opinion.

Reversed and remanded.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION