SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2927-20

MERVELIN A. GOMEZ,
on behalf of herself and
those similarly situated,

Plaintiffs-Appellants,

v.

CENTERPOINT LEGAL
SOLUTIONS, LLC,

Defendant-Respondent.

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Argued March 28, 2022 – Decided April 29, 2022

Before Judges Fasciale, Firko, and Petrillo.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-0704-21.

Philip D. Stern argued the cause for appellants (Kim Law Firm, LLC and Scott C. Borison (Borison Firm, LLC) of the District of Columbia, Maryland and California bars, admitted pro hac vice, attorneys; Yongmoon Kim and Scott Borison, of counsel and on the briefs).

Peter G. Siachos argued the cause for respondent (Gordon Reese Scully & Mansukhani, LLP, attorneys; Peter G. Siachos, of counsel and on the brief; Kasey Theresa Mahone and Patrick D. Tobia, on the brief).

PER CURIAM

Plaintiff Mervelin A. Gomez appeals from a May 5, 2021 Law Division order granting defendant CenterPoint Legal Solution's (CenterPoint) Rule 4:6-2(e) motion to dismiss for failure to state a cause of action; and a June 15, 2021 order denying plaintiff's motion for reconsideration.[1] Utilizing Rule 4:6-2(e), the trial court dismissed the complaint, with prejudice, relying solely on the entire controversy doctrine (ECD), which it applied as though there still existed a requirement of mandatory party joinder. This misapplication of the ECD, which no longer compels mandatory party joinder, requires that the trial court order be reversed.

I.

Gomez filed suit in the United States District for the District of New Jersey in 2017 against a debt buyer, LVNV Funding LLC, (LVNV) its master servicer, Resurgent Capital Services, and LVNV's collection attorneys, Forster & Garbus (F&G). She alleged they violated the Federal Fair Debt Collection Practices Act and invaded her privacy when they enforced a garnishment against

[1] Plaintiff will be referred to throughout as either "Gomez" or "plaintiff."

her bank account based on a judgment against a different person with a similar name. 15 U.S.C. § 1692 to 1692(p).

The federal claim provided for federal court jurisdiction and supplemental jurisdiction over the state law privacy claims. Gomez was unaware of CenterPoint's involvement in LVNV's collection efforts since CenterPoint's role had not been disclosed and was unknown. Gomez learned of CenterPoint when she conducted depositions of LVNV's and F&G's employees in July 2019.[2] During these depositions, it was disclosed that CenterPoint directed or controlled the actions of F&G and that F&G had not had any contact with LVNV. Gomez alleges that the manner of CenterPoint's operations shielded it from view and its participation in, or supervision of, the practices complained of could not have been detected.

Based on what Gomez learned as a result of the deposition testimony, she filed this State court action on February 1, 2021, alleging that CenterPoint engaged in the unauthorized practice of law.[3] In her complaint, plaintiff

[2] By this time, plaintiff states the deadline to amend the federal complaint as of right had passed. It is undisputed that no motion seeking leave to amend was filed.

[3] Plaintiff emphasizes that the July 2019 deposition is the first time she learned about CenterPoint's supposed unauthorized practice of law and that by this time the deadline by which she could amend her federal complaint as of right had

complied with Rule 4:5-1(b)(2) by certifying that the matter in controversy was the subject of a pending federal lawsuit.[4] Plaintiff asserted three causes of action in her complaint against CenterPoint: (1) enjoining CenterPoint from engaging in the unauthorized practice of law; (2) a violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -227, by committing unconscionable commercial practices; and (3) damages for the unauthorized practice of law in violation of N.J.S.A. 2C:21-22(a). We decline, on this record, to opine as to whether plaintiff alleged sufficient facts to establish each cause of action. That issue is not before us. The basis for the relief granted was not the inadequacy of the pleadings as constituted, but the perceived fatal consequence of commencing this State court action given the pendency of a related federal court suit against other parties.

This State action asserts entirely different theories of liability than those asserted in the federal suit; the claims arise exclusively under State law;

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passed. For purposes of a motion on the pleadings, this allegation is assumed to be true.

[4] The intent of this rule is to provide notice to all parties in all pending actions that there are other ongoing proceedings involving all or some of the same transactions and related issues. The defendants in the federal suit are different than the defendants here. Plaintiff's counsel initially certified in the federal complaint that to the best of her knowledge, the federal claims were not the subject of any other action. Plaintiff filed two amended complaints in the federal case and included the same certification in the amended pleadings.

CenterPoint is not a party to the federal case; the parties to the federal case are not (and need not be) parties to the state court case; the State court case is a putative class action; the federal case is not.[5]

CenterPoint filed a motion to dismiss Gomez's complaint on March 23, 2021, claiming that Gomez's claims were barred by the ECD. Following oral argument on April 30, 2021, the trial court granted CenterPoint's motion to dismiss on May 5, 2021. In granting the motion, the trial court rejected plaintiff's argument that the ECD was inapplicable under the facts of this case:

> Despite having knowledge of CenterPoint by July 25, 2019, plaintiff declined to assert claims against CenterPoint in either of her two subsequent amended complaints. Instead, plaintiff waited eighteen months before pursuing her claims against CenterPoint in the instant action. During this year[-] and[-] a[-] half, plaintiff remained actively involved in the [f]ederal [c]ourt [a]ction, opposing multiple motions, engaging in further discovery with F&G, LVNV, and Resurgent, and appearing for multiple conferences before the [f]ederal [c]ourt. At no point did plaintiff request an opportunity to join CenterPoint as a party to the [f]ederal [c]ourt [a]ction . . . .
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> Both actions stem from alleged wrongful collection activities on plaintiff's one and only alleged delinquent [d]ebt. In her duplicative lawsuits plaintiff maintains that CenterPoint, Resurgent and LVNV hired F&G to perform debt collection activities on the same debt. Lastly, CenterPoint would be prejudiced if forced to litigate this matter in this Court. Plaintiff had the

[5] In its May 5, 2021, opinion, the trial court incorrectly stated that the federal suit was a class action.

> benefit of over three years of discovery in the Federal Action – discovery which directly concerns CenterPoint. Plaintiff's claims against CenterPoint are barred by the [e]ntire [c]ontroversy [d]octrine.

A motion to reconsider was denied on June 15, 2021, for essentially the same reasons the motion was granted in the first instance. This appeal followed. On appeal, plaintiff argues the trial court misapplied the ECD and that CenterPoint, as a non-party to the federal case, had no grounds to raise the ECD and certainly none to obtain relief pursuant to it. We agree. We conclude the trial court's reasoning to rest on an incorrect understanding of the ECD and, as such, dismissal of the case with prejudice on ECD grounds was a mistaken exercise of discretion.

II.

The standard that applies to our review of this appeal is whether the judge abused his discretion by dismissing the complaint relying on the ECD. While we normally analyze appeals granting motions to dismiss pursuant to Rule 4:6-2(e) de novo, we have consistently held that a trial court's decision to apply (or not apply) the ECD is reviewed under an "abuse of discretion" standard. See, e.g., 700 Highway 33 v. Pollio, 421 N.J. Super. 231, 238 (App. Div. 2011); Unkert ex rel. Unkert v. Gen. Motors Corp., 301 N.J. Super. 583, 595 (App. Div. 1997); Busch v. Biggs, 264 N.J. Super. 385, 397 (App. Div. 1993). This

standard aligns with the doctrine's fundamentally equitable purposes, the application of which is customarily "left to judicial discretion based on the factual circumstances of individual cases." Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 114 (2019) (quoting Highland Lakes Country Club & Cmty. Ass'n v. Nicastro, 201 N.J. 123, 125 (2009)). A trial court abuses its discretion when, among other reasons, its decision rests, as we conclude is the case here, on an "impermissible basis." State v. R.Y., 242 N.J. 48, 65 (2020) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

III.

"The entire controversy doctrine has been a cornerstone of New Jersey's jurisprudence for many years. It has gone through several evolutions, from a doctrine of mandatory joinder of claims, to mandatory joinder of parties, to inclusion of potential legal malpractice claims, to an exemption for legal malpractice claims." Hobart Bros. Co. v. Nat'l. Union Fire Ins. Co., 354 N.J. Super. 229, 240 (App. Div. 2002) (internal citations omitted).

The enduring spirit of the doctrine requires a litigant to present "all aspects of a controversy in one legal proceeding." The Malaker Corp. Stockholders Prot. Comm. v. First Jersey Nat'l Bank, 163 N.J. Super. 463, 496 (App. Div. 1978). It is "intended to be applied to prevent a party from voluntarily electing

to hold back a related component of the controversy in the first proceeding by precluding it from being raised in a subsequent proceeding thereafter." Oltremare v. ESR Custom Rugs, Inc., 330 N.J. Super. 310, 315 (App. Div. 2000).

A. Party joinder

In general, the ECD, codified in Rule 4:30A, requires parties to raise all known and transactionally related claims in a single lawsuit. The idea is to encourage comprehensive litigation determinations, avoid fragmentation of litigation, and promote fairness and judicial efficiency. R. 4:30A. The doctrine does not require all parties be joined and has not mandated party joinder for more than twenty years.

In Hobart Bros. Co., decided in 2002, we noted the evolution of the ECD and Rule 4:30A, observing that the Supreme Court had recently amended the Rule "to restrict the scope of the doctrine to non-joinder of claims, as opposed to its earlier formulation of non-joinder of claims and parties." 354 N.J. Super. at 242.

We were clear on that point when we said:

> Mandatory party joinder under the entire controversy doctrine has been eliminated, and preclusion of a successive action against a person not a party to the first action has been abrogated except in special situations involving both inexcusable conduct and substantial

> prejudice to the non-party resulting from omission from the first suit. New Jersey having abandoned mandatory party joinder, the party invoking the entire controversy doctrine has the burden of establishing both inexcusable conduct and substantial prejudice.
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> [Ibid.]

Rule 4:30A provides:

> Non-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 crossclaims in summary actions). Claims of bad faith, which are asserted against an insurer after an underlying uninsured motorist/underinsured motorist claim is resolved in a Superior Court action, are not precluded by the entire controversy doctrine.
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> [Emphasis added].

As our holding in Hobart Bros. Co. and the plain language of the rule make clear, there is no presumptive adverse consequence for the failure to join a party to an action. 354 N.J. Super. at 245-46. No form of the word "party" is mentioned in Rule 4:30A. Indeed, the comment to the Rule lends further clarity on this point, explaining "there is no mandatory party joinder requirement under the entire controversy doctrine. Except in special situations involving both inexcusable conduct and substantial prejudice to the non-party resulting from omission from the first suit, successive actions against a person not a party to

the first action are not precluded." Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 4:30A (2022).

Despite all of this, the trial court's attention was fixed on plaintiff's failure to add CenterPoint to the federal suit. Contrary to the court's focus during oral argument that plaintiff failed to join CenterPoint as a party in the federal case, the ECD is not about mandatory party joinder.[6] As we explained in Hobart Bros. Co., there is no penalty under the ECD for failure to have joined a party to some other separate but transactionally related lawsuit unless some showing can be made that the failure was inexcusable and non-joinder caused substantial prejudice. Nothing in the trial court's opinion or CenterPoint's motion speaks to this standard, and the cited caselaw is from an era when the ECD rubric included mandatory party joinder.

While the tone of the trial court's opinion implies, at least, that it felt plaintiff's failure to join CenterPoint to the federal case was inexcusable there is nothing at all to suggest a finding of "substantial prejudice." Despite a passing reference to "prejudice" near the end of the opinion, there is nothing in the record

[6] Non-party joinder is addressed by the disclosure requirement of Rule 4:5-1(b)(2), which requires each party to certify in their first pleading (and later pleadings) whether the matter in controversy is the subject of any other action. Plaintiff's counsel complied with disclosure requirements here and in the federal case. In this case, the analog to our state rule as to disclosure is Local Rule 11.2 of United States District Court for the District of New Jersey. L.Civ.R. 11.2.

that would cause us to conclude the prejudice was substantial. Indeed, the only prejudice cited by the court, the amount of discovery taken by plaintiff in the federal court action, could easily be mitigated by ordering that all such discovery be produced to CenterPoint and by providing ample time and latitude to CenterPoint to consider that discovery and to take its own. The sanction of dismissal with prejudice of this case for failing to join CenterPoint to the federal case is without legal basis on this record.

B. Claim joinder

The issue of claim joinder is a different one and the serious consequences that may befall a party who fails to join a claim remain intact as part of the modern iteration of the ECD. Mandatory claim joinder is perhaps the oldest feature of ECD jurisprudence.[7] Claim joinder requires all aspects of the controversy among the parties be included in a single action whether assertable by complaint, counterclaim, or cross-claim. See generally Bank Leumi USA v. Kloss, 243 N.J. 218, 227 (2020). Nothing in the record persuades us that the claim joinder mandate of the ECD is relevant here.

Plaintiff's allegations in her complaint demonstrate the claims against CenterPoint and defendants in the federal case are different though they are

[7] William J. Volonte, The Entire Controversy Doctrine: A Novel Approach to Judicial Efficiency, 12 SETON HALL L. REV. 260 (1982).

transactionally related. That nexus, without more, is insufficient to force the conclusion that the claims in this this suit had to have been made part of the claims in the federal action.

In this complaint, paragraphs twenty-four, twenty-five, and twenty-six, allege that CenterPoint contracted with LVNV to practice law by providing legal advice on post-judgment litigation, and that CenterPoint directed F&G to take actions against plaintiff. But the equitable nature of the ECD requires that we consider more than only whether claims against a possible new party may be transactionally related to the claims in the pending federal case.

IV.

Even assuming the ECD required mandatory party joinder, which is not the case, plaintiff did not have a realistic opportunity to amend the federal pleadings to name CenterPoint as a party in the federal case nor any obligation, under the facts set forth in the state court complaint, to do so. In this regard, this case bears some factual similarities to Alpha Beauty Distribs., Inc. v. Winn-Dixie Stores, Inc., 425 N.J. Super. 94 (App. Div. 2012). There, the trial court dismissed the action based on plaintiff's failure in its Rule 4:5-1(b)(2)

certification to mention a pending federal action and on a wrongful application of the ECD.[8]

In Alpha Beauty Distribs., Inc., a federal lawsuit was commenced by a corporation and its majority shareholder against other shareholders. 425 N.J. Super. at 97. The federal suit alleged that plaintiff and the majority shareholders had been damaged by the other shareholders' conversion of corporate assets. A separate suit was later filed in state court by the same plaintiff but against different defendants alleging different claims. The federal court case did not directly involve the claims plaintiff asserted against the state court defendants, though there was some intersection between the claims and facts of the two cases. By the time the state court matter was filed, the federal case was well along, discovery was over, and the time to add additional parties had passed.

We reversed the trial court's order dismissing the case in light of its misapplication of Rule 4:5-1(b)(2) and the ECD. We held that the Rule was not violated and, even if it had been, dismissal with prejudice represented an inappropriate sanction. It is this latter part of our holding that applies with equal force here. There, as here, dismissal with prejudice was unwarranted because the "claims asserted in [the state court] action did not lie at the core of the federal

[8] That shortcoming is not present in this case, so we need not address in detail that part of our holding.

action."[9] Id. at 103. Moreover, defendants were not prejudiced by plaintiff's failure to join them to the federal action and the interests of judicial economy were not disserved because there was no likelihood of duplication of effort or inconsistent determinations. Id. at 104. In this case, by following a path like that traversed in Alpha Beauty Distribs., Inc., we get to the same place. Ibid.

V.

We begin by first stating the obvious: the ECD applies only to known claims. It does not bar unknown claims. Dimitrakopoulos, 237 N.J. at 99 (citing Wadeer v. N.J. Mfrs. Ins. Co., 220 N.J. 591, 606 (2015)). Gomez maintains that at the deposition in the federal case she first learned about CenterPoint's involvement. By that time, she alleges a federal court scheduling order precluded pleading amendments. It is academic whether Gomez would have succeeded if a motion was belatedly filed in the federal case for leave to amend the second amended complaint to name CenterPoint as a defendant in the federal case.

[9] "In determining what constitutes a single controversy [triggering potential ECD consequences], courts 'look at the core set of facts that provides the link between distinct claims against the same or different parties.'" Hobart Bros Co., at 244. In this case, as we described above and as was the case in Alpha Beauty Distributors, Inc., 425 N.J. Super. at 104. "[T]here are facts common to both the federal action and the claims asserted . . . here, but these actions are not part of the same core controversy." Id. at 105.

CenterPoint contends plaintiff must have known about it sooner than the deadline for amending pleadings in the federal case. We cannot resolve that factual dispute on CenterPoint's Rule 4:6-2(e) motion to dismiss. The lack of a hearing on that issue, and reliance by the trial court on the pleadings alone, requires that we examine the record in the light most favorable to plaintiff. See Alpha Beauty Distribs., Inc., 425 N.J. Super. at 97 (citing NCP Litig. Trust v. KPMG, LLP, 187 N.J. 353, 365 (2006) (holding that on a motion to dismiss, the opponent is entitled to a "generous and hospitable approach," an assumption of the truth of its allegations, and the benefit of all reasonable inferences)).

Second, CenterPoint made its motion to dismiss while the federal action was pending before an adjudication on the merits against the defendants in the federal case.[10] This is a significant point. We have already established that failure to join CenterPoint to the federal action, is not, and on this record cannot be, a basis by itself to impose the most punitive effect of the ECD. The inapplicability of ECD relief here is compounded by the fact that at the time the matter under review was filed, there was no disposition substantive or otherwise, of the federal suit. In this State court action, Gomez did not sue a party already

[10] That may have been a strategic choice, and it was CenterPoint's to make. That said, there was no adjudication on the merits against the defendants in the federal case, and there was no adjudication on the merits against CenterPoint since plaintiff never sued CenterPoint in the federal case.

sued. Plaintiff sued a new party while the federal suit was ongoing. Thus, we are satisfied that this case is not a "successive action" and as such is almost certainly out of bounds for ECD relief.

A "successive action" is one which follows a completed case in which disclosure of a non-party's existence was not made when it should have been as per Rule 4:5-1(b) or, if another forum, that forum's analog (if any). See Id. at 101. In such an instance, as we described in Alpha Beauty Distribs., Inc., the penalty for a failure to disclose a potential party or contemplated action under Rule 4:5-1(b) and the ECD would, or at least more readily could, include dismissal of the successive action. 425 N.J. Super. at 101.

However, as we noted, a successive action is one which follows the failure to disclose, and which follows a prior action. (Emphasis added). This litigation is not a successive action for three reasons: (1) it does not follow another (the other lawsuit was still pending at the time this one was filed); (2) Gomez did not learn of CenterPoint until a point in time after prior amendments to the federal suit such that failure to note CenterPoint's existence was not an option, or a

requirement, at the times of amendment;[11] and (3) all disclosure requirements required by Rule 4:5-1(b) were made. (Emphasis added).

Plaintiff did not file this complaint to manipulate the system, forum shop, or gain an unfair advantage. Plaintiff filed the complaint asserting different causes of action against a different party, CenterPoint, after she learned of CenterPoint and had reason to believe it engaged in the unauthorized practice of law. If plaintiff learned about CenterPoint's role before the federal amendment deadline expired, plaintiff could have moved in the federal case to amend the pleadings there, and the federal judge would have addressed whether to exercise supplemental jurisdiction over these different state claims.[12] But that never happened because the federal deadline to amend as of right had expired. Thus, plaintiff's failure to seek leave to file a third-amended complaint in the federal case was arguably excusable and, under a disclosure analysis, defendants were in the same boat as plaintiff.

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[11] Though the language of Local Rule 11.2 of United States District Court for the District of New Jersey tracks closely to Rule 4:5-1(b), it does not require disclosure of contemplated actions nor potential parties thereto.

[12] As to disclosure requirements, defendants in the federal case may have been in a position to assert third-party claims against CenterPoint but, perhaps for strategic or other reasons, chose not to do so. There is no doubt they knew of CenterPoint's role. Even if plaintiff knew sooner, plaintiff's obligation (which was met) would be to comply with the disclosure requirement (in the federal case).

Third, CenterPoint has not demonstrated an inability to defend this action or any related prejudice. This is yet another vital point. "Because a violation of the entire controversy doctrine may result in the preclusion of a claim, a court must consider whether the party against whom the doctrine is sought to be invoked has had a fair and reasonable opportunity to litigate that claim." Hobart Bros. Co., 354 N.J. Super. at 241. The judge found CenterPoint was prejudiced because plaintiff "had the benefit of over three years of discovery" in the federal case. As observed earlier, this "prejudice" can be surmounted. CenterPoint can easily obtain the discovery from the federal case and use it here, and the judge can manage discovery in this case by ensuring CenterPoint has enough time to defend the allegations in the complaint that it engaged in the unauthorized practice of law. Plaintiff did not sue CenterPoint at the last second. CenterPoint will have ample time to prepare for trial.

Nothing in the record satisfies us that CenterPoint's rights have been prejudiced in any way and certainly not substantially. Were substantial prejudice evident on this record, or had the plaintiff failed to comply with Rule 4:5-1(b), or possibly even the federal court's local rule, the imposition of some sanction might have been called for, but even in such a situation "preclusion is a remedy of last resort." Vision Mortg. Corp. v. Chiapperini, Inc., 156 N.J. 580, 584 (1999) (quoting Olds v. Donnelly, 150 N.J. 424, 446-47, (1997)). Thus,

even if we were inclined to find some ECD or Rule violation, which we do not, the penalty of dismissal with prejudice is one to be imposed sparingly and only when no other lesser remedy would be adequate.

Fourth, related to the preceding consideration, application of the ECD is discretionary and the boundaries are not limitless; it is "constrained by principles of equity." Dimitrakopoulos, 237 N.J. at 99. We apply the doctrine under the totality of the circumstances of each case. Gomez argues, and we agree, that the judge did not take full stock of the procedural history in the federal case. Had the judge weighed the "equitable underpinnings" that were apparently overlooked, or were unclear in a pleadings-based review, dismissal would not have been granted. See Alpha Beauty Distribs., Inc., 425 N.J. Super. at 103.

To the extent plaintiff seeks relief on other grounds not expressly addressed, we consider these issues to lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Reversed.