SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-4468-19
A-4470-19

ROSA M. WILLIAMS-HOPKINS, on behalf of herself and those similarly situated,

Plaintiff-Appellant,

v.

MIDLAND FUNDING LLC,

Defendant-Respondent.

CAMILLA TOFT, on behalf of herself and those similarly situated,

Plaintiff-Appellant,

v.

ASSET ACCEPTANCE, LLC, ASSET ACCEPTANCE CAPITAL CORP., and MIDLAND CREDIT MANAGEMENT, INC.,

Defendants-Respondents.

Argued October 6, 2021 – Decided April 19, 2022

Before Judges Fuentes, Gilson and Gooden Brown.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket Nos. L-5802-19 and L-7345-19.

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

Han Sheng Beh argued the cause for respondents (Hinshaw & Culbertson LLP, attorneys; Han Sheng Beh, on the briefs).

PER CURIAM

In these back-to-back appeals, which we consolidate for the purpose of issuing a single opinion, plaintiffs Rosa M. Williams-Hopkins and Camilla Toft appeal from the June 29, 2020 Law Division orders dismissing their class action complaints as barred by the entire controversy doctrine. Reviewing "de novo the trial court's determination of the motion to dismiss under Rule 4:6-2(e)," Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019), we affirm substantially for the reasons set forth in Judge Keith E. Lynott's thoughtful and comprehensive written decision.

As described in Judge Lynott's statement of reasons addressing plaintiffs' 2019 complaints, plaintiffs asserted in separate actions "improper [consumer] debt collection activity without required licenses," in violation of the New Jersey Consumer Finance Licensing Act (CFLA), N.J.S.A. 17:11C-1 to -49, and sought "to void prior judgments obtained [against them] in other courts." The complaints identified defendant Midland Funding LLC (MF) and defendants Asset Acceptance, LLC, Asset Acceptance Capital Corp., and Midland Credit Management, Inc. (collectively, the AA defendants), as limited liability companies "in the business of 'purchasing and taking assignment of defaulted credit agreements originally extended by other creditors, which [they] then enforce[] against the borrowers through collection letters, lawsuits, and post-judgment collection efforts.'"

The Williams-Hopkins complaint alleged that after acquiring a defaulted debt extended to Williams-Hopkins by HSBC Bank Nevada, N.A., to collect the debt, defendant MF filed a lawsuit against Williams-Hopkins and obtained a default judgment against her on September 11, 2012. The Toft complaint alleged that after acquiring a defaulted debt extended to Toft by Citifinancial, the AA defendants filed a lawsuit against Toft to collect the debt and obtained a default judgment against her on December 11, 2013. Both complaints alleged

that the collection lawsuits were void ab initio due to the failure of the respective defendants to have obtained the required licenses to pursue the collection activity at issue. The complaints asserted claims for violations of the CFLA and the Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -210, and sought a declaratory judgment and injunctive relief, as well as monetary damages.[1]

Relying on the entire controversy doctrine and other grounds, defendants moved to dismiss the complaints pursuant to Rule 4:6-2(e). The entire controversy doctrine[2] "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." Highland Lakes Country Club & Cmty. Ass'n v. Nicastro, 201 N.J. 123, 125 (2009) (quoting Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7, 15 (1989)); see also Mystic Isle Dev. Corp. v. Perskie & Nehmad, 142 N.J. 310, 323 (1995) ("In essence, it is the factual circumstances giving rise to the controversy itself,

[1] The complaints also asserted claims for unjust enrichment and sought disgorgement or restitution of funds collected by defendants.

[2] As codified in Rule 4:30A, with exceptions not applicable here, "[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."

rather than a commonality of claims, issues or parties, that triggers the requirement of joinder to create a cohesive and complete litigation.").

Applying the governing legal principles, Judge Lynott concluded both actions were barred by the entire controversy doctrine and granted defendants' motions.[3] The judge observed:

> Plaintiffs could have challenged the [d]efendants' debt collection activity, the validity of the assignments[,] . . . and [defendants'] rights to institute and prosecute collection claims in a New Jersey court in defense of the prior [c]ollections [l]awsuits. They could have raised all the legal theories asserted here as defenses/counterclaims in the prior [c]ollection [l]awsuits.
>
> There can be no doubt that the "factual circumstances giving rise to the controversy itself" in the prior [c]ollection [l]awsuits and here are identical . . . .
>
> . . . It is this identity of transactional facts that gives rise to the applicability of the [e]ntire [c]ontroversy [d]octrine.

Unquestionably, "[t]he boundaries of the doctrine are not limitless. The doctrine does not apply to bar component claims that are unknown, unarisen, or unaccrued at the time of the original action." Mystic Isle, 142 N.J. at 323.

[3] The judge did not address the other grounds relied on by defendants in support of their Rule 4:6-2(e) motion.

However, the judge determined "it [was] not inequitable to apply the [e]ntire [c]ontroversy [d]octrine to the circumstances here," explaining "whether [defendants] had or did not have the license at that time was an ascertainable matter of public record to which . . . [p]laintiffs had access during the prior litigation as now." Moreover, according to the judge,

> [t]hat . . . [p]laintiffs had not suffered all of the damages or "ascertainable loss" now sought in the pending actions – i.e. the amounts paid in respect of the judgments themselves – at the time of the prior actions did not render . . . [p]laintiffs' CFA claims unknown or unaccrued at the time of the prior actions.

The entire controversy doctrine is "'an equitable doctrine whose application is left to judicial discretion based on the factual circumstances of individual cases.'" Dimitrakopoulos, 237 N.J. at 114 (quoting Nicastro, 201 N.J. at 125). "The doctrine's equitable nature 'bar[s] its application where to do so would be unfair in the totality of the circumstances and would not promote any of its objectives, namely, the promotion of conclusive determinations, party fairness, and judicial economy and efficiency.'" Ibid. (alteration in original) (quoting K-Land Corp. No. 28 v. Landis Sewerage Auth., 173 N.J. 59, 70 (2002)).

In that regard, the judge reasoned:

> Distilled to their essentials, these actions are collateral attacks on the validity of the underlying judgments obtained by . . . [d]efendants against the respective [p]laintiffs – and, indeed, attacks lodged years after . . . [d]efendants obtained such judgments. Even putting aside that the [c]omplaints allege and rely upon the very same transactions or events that were presented in the prior actions, the relief sought in both cases by . . . [p]laintiffs – a judgment voiding or declaring unenforceable the prior judgments – makes the point pellucid. To conclude that the [e]ntire [c]ontroversy [d]octrine is not applicable in such circumstances is to render the doctrine a virtual nullity.

We discern no abuse of discretion in Judge Lynott's sound decision and no legal or factual basis to intervene.

Affirmed.